(2005) 03 AHC CK 0007

In the Allahabad High Court

Case No : WT Reference No. 149 of 1993 18 March 2005

CWT, Agra — APPELLANT

Vs

Smt. Shand Devi Agarwal — RESPONDENT

Date of Decision : 18-03-2005

Acts Referred:

Citation : (2005) 148 TAXMAN 612

Hon'ble Judges : Pradeep Kant, J;P. Krishna, J

Bench : Full Bench

Advocate : A.N. Mahajan, for the Appellant;

Judgement

By the Court

1. The Income Tax Appellate Tribunal, Delhi has referred the following question of law u/s 27(1) of the Wealth Tax Act, 1957 (hereinafter referred to as ''the Act''), for opinion to this Court:

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal erred in law in holding that the assessee HUF was entitled to the exemption u/s 5(1)(iv) of the Wealth Tax Act, 1957 in respect of its share in the value of immovable property belonging to the partnership firm M/s. Kanhaiya Ice Factory in which the assessee was a partner."

2. Briefly stated the facts giving rise to the present reference are as follows :

The dispute relates to the assessment year 1983-84. The assessee who is a partner in the firm namely Kanhaiya Ice Factory claimed exemption u/s 5(1)(iv) of the Act in respect of the factory building owned by the Firm. The said claim was not accepted by the assessing authority. But the Tribunal has allowed the same.

3. Heard Shri A.N. Mahajan, the learned standing counsel for the revenue. He submitted that this court in the case of same assessee for the earlier assessment year 1982-83 has answered the similar question in favour of the department and

against the assessee on the basis that exemption on the ice factory cannot be granted as it is not house within the meaning of section 5(1)(iv) of the Wealth Tax Act. He also seeks support of the judgment of this court in Commissioner of Income Tax Vs. Jai Kishan Gupta, , wherein cinema building has been held to be not a house.

4. Respectfully, following the aforesaid judgment of this Court, we answer the question referred to us in negative, i.e., in favour of the department and against the assessee. There shall be no order as to costs.

