(2003) 03 DEL CK 0098

In the Delhi High Court

Case No : WT Reference No. 192 of 1988 21 March 2003

CWT APPELLANT

Vs

M.K. Swami RESPONDENT

Date of Decision : 21-03-2003

Acts Referred:

Citation : (2003) 132 TAXMAN 72

Hon'ble Judges : Madan B. Lokur, J;Madan B. Loikur, J;D.K. Jain, J

Bench : Full Bench

Advocate : R.D. Jolly and Ajay Jha, for the applican, for the Appellant;

Judgement

D.K. Jain, J.

The matter has been placed before the court for appropriate orders as the revenue, at whose instance the reference has been made, has failed to file the paper books, despite various opportunities. Since the issue raised in this reference is no longer res integra, we dispense with the filing of the paper books and proceed to answer the question referred.

2. The Income Tax Appellate Tribunal, Delhi Bench-E, New Delhi (hereinafter referred to as the Tribunal) has referred u/s 27(1) of the Wealth Tax Act, 1957, the following question for our opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that assets comprising of the balance with Canara Bank amounting to Rs. 3,72,552, shares with M/s. Goetz (India) Limited amounting to Rs. 75,350, commission receivable amounting to Rs. 13,313 and dividend receivable amounting to Rs. 4,220 were to be assessed in the hands of the HUF of which the assessed was the karta and not in his assessment as an assessed in his individual capacity ?"

3. There is no appearance on behalf of the assessed. Accordingly we have heard Mr. R.D. Jolly, learned senior standing counsel for the revenue.

4. From the statement of the case we find that it was conceded before the Tribunal that a similar issue, in the case of the assessed himself, in respect of assessment years 1972-73 and 1973-74 had been referred to this court. References pertaining to the said assessment years as also to assessment years 1968-69 to 1970-71 were registered as ITR Nos. 293 to 296/78 and 358/79. The said references were disposed of vide order dated 18-9-2000, inter alia holding that the original investment in shares came out of the individual funds of the assessed and he had received remuneration after he had become a director and subsequently the managing director, in his individual capacity. It was also held that his directorship had nothing to do with the funds of the HUF. It was finally held that since there was no real and sufficient connection between investment from the joint family funds, if any, and the remuneration paid to the individual, the income in question was to be assessed in the hands of the individual and not the HUF, as directed by the Tribunal.

Following the said decision, we answer the question referred in the negative, i.e., in favor of the revenue and against the assessed.

5. The reference stands disposed of in the above terms.