

(2003) 02 RAJ CK 0006

In the Rajasthan High Court

Case No : .W.T. Reference No"s. 76 and 77 of 1984 25 February 2003

CWT

APPELLANT

Vs

Mukund Das Vishnu Kumar Rath

RESPONDENT

Date of Decision : 25-02-2003

Acts Referred:

Wealth Tax Act, 1957 — Section 5(1)(iv), 7(4)

Citation : (2003) 129 TAXMAN 976

Hon'ble Judges : Y.R. Meena, J;Khem Chand Sharma, J

Bench : Full Bench

Advocate : Mrs. Parinitoo Jain, for the Revenue and Anuroop Singhi, for the Assessee, for the Appellant;

Judgement

Since similar questions of law are involved in both the reference applications, both are being decided by this common judgment.

2. By this application u/s 27 of the Wealth Tax Act, 1957 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (hereinafter referred to as "the Tribunal") has referred the following questions for the opinion of this court :

"1 Whether, on the facts and in the circumstances of the case the Tribunal was justified in holding that gratuity liability is an ascertained liability and, therefore, the same should be deducted while determining the market value of share of M/s. Krishna Mills Ltd., Beawar ?

2. Whether, on the facts and in the circumstances of the case the Tribunal was justified in holding that provisions of section 7(4) of the Wealth Tax Act are applicable in respect of immovable properties occupied by partners for their self-residence notwithstanding the fact that the properties belonged to the firm ?

3. Whether, on the facts and in the circumstances of the case the Tribunal was justified in holding that deduction u/s 5(1)(iv) of the Wealth Tax Act is admissible in the hands of partners in respect of their interest in the firms in relation to the

immovable properties owned by the firm ?"

3. The relevant assessment years are 1977-78 and 1979-80. The assessee, a specified Hindu undivided family is holding unquoted shares of M/s. Krishna Mills Ltd., Beawar. The assessee and the other assesseees were partners in the firm M/s. Seth Khivraj Rathi Ginning and Pressing Factory and M/s. Thakurdas Khivraj Rathi having 50 per cent share. These firms owned immovable properties at Beawar and Jaipur. A part of these properties was occupied by the partners for their self-residence. An issue was raised in valuing the shares of the partnership firm that whether the gratuity liability should be allowed or not while valuing the shares. The Appellate Assistant Commissioner has accepted the contention of the assessee and directed the Wealth Tax Officer to verify the gratuity liability on actuarial basis. The Tribunal has also affirmed the view taken by the Appellate Assistant Commissioner so far the valuation of the shares of the partners in the firm is concerned in the residential property, which is owned by the firm.

4. The case of the assessee was that to the extent of the shares of the partners, though the firm owned that property but to the extent of shares of partners, the assessee-partner is entitled to deduction u/s 5(1)(iv) of the Act but the issue should be whether the property should be valued under the provisions of section 7(4) of the Act, when the share of the partner is exempted then what method for valuation of that property will be, is of academic interest.

5. At the outset, learned counsel appearing for the department submits that in the case of another partner of this very firm M/s. Gopal Das Pradeep Kumar Rathi, the issue regarding liability of gratuity should be deducted or not ? was considered and this court has taken the view that gratuity is not deductible. For this purpose, learned counsel for the revenue has placed reliance on the decision of this court in the case of Commissioner of Wealth-tax Vs. Gokuldas Pradeep Kumar Rathi,

6. Following the view taken by this court in the case of Gokuldas Pradeep Kumar Rathi (supra), we hold that the valuation of unquoted shares of the company the gratuity liability should not be deducted.

7. The next issue for our consideration is while in computing the net wealth of a firm under rule 2 of the Wealth Tax Rules, 1957 the assets exempted u/s 5 of the Act should be included and then the same be apportioned among the partners for granting exemption in their individual assessments after computing their own individual net wealth ?

8. This issue has been considered by their Lordships of the Supreme Court in the case of Commissioner of Wealth Tax, T.N.-III, Madras Vs. T.S. Sundaram, Madras, and their Lordships of the Supreme Court after considering the relevant provisions of the Wealth Tax Act and Rules have held that in computing the net wealth of a firm under rule 2 of the Wealth Tax Rules, 1957, the assets exempted u/s 5 of the Act should be included and then apportioned among the partners for granting exemption in their individual assessments in computing their own

individual net wealth.

9. Following the view of their Lordships in the case of T.S. Sundaram (supra), we direct that in computing the net wealth of this assessee under rule 2 of the Wealth Tax Rules, 1957 the valuation of the property owned by the firm should be taken into consideration and then apportion the share of assessee which it has in that property and then exemption be granted to it in assessing its individual wealth-tax as per the provisions of section 5(1)(iv) of the Act.

10. The third issue is related to the valuation of the property as per section 7(4) of the Act. Mr. Singhi, learned counsel for the assessee submits that when the share of the assessee in the house property is exempted under the Wealth Tax Act, there is no justification in valuing that share as per the provisions of section 7(4) of the Act.

11. Mr. Singhi has rightly pointed out that when the share in the residential house property is exempted u/s 5(iv) of the Act, what will be the method for the valuation of that property, whether it should be valued as per section 7(4) of the Act or otherwise will be of academic interest.

12. In the result, we answer question No. 1 in affirmative (sic) in favour of the revenue and against the assessee. In view of the submissions made by the learned counsel for assessee, we decline to answer question No. 2 being of academic nature in this case. We answer question No. 3 in affirmative i.e., in favour of assessee.

13. Both the reference applications stand disposed of accordingly.