(2004) 11 AHC CK 0288

In the Allahabad High Court

Case No : W.T. Reference No. 82 of 1988 , 18 November 2004

CWT APPELLANT

Vs

Rajiv Kumar Agarwal RESPONDENT

Date of Decision : 18-11-2004

Acts Referred:

Citation : (2005) 144 TAXMAN 801

Hon'ble Judges : R.K. Agrawal, J;P. Krishna, J

Bench : Full Bench

Advocate : Dhananjay Awasthi, for the Assessee, for the Appellant;

Judgement

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 the Tribunal has been in error in holding that the assessee was entitled to exemption u/s 5(1)(iv) of the W.T. Act, 1957 in respect of the immovable property of Raj Shree Cinema of the firm M/s. Agrawal Enterprises, in which he was a partner subject to the maximum permissible limit of Rs. 1,50,000 in respect of assessment year 1980-81?"

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

The respondent is a partner in the Firm M/s. Agrawal Enterprises which owns a cinema building known as Raj Shree Cinema. The respondent claimed exemption u/s 5(1)(iv) (sic) of the Act in respect of his proportionate share in the said cinema building. The Wealth Tax Officer had disallowed exemption which was upheld by the CWT (Appeals). However, the Tribunal has allowed the exemption.

3. We have heard Shri Dhananjay Awasthi, the learned standing counsel for the revenue. Nobody has appeared on behalf of the respondent assessee. Exemption u/s 5(1)(iv) of the Act is admissible to a house or a part of a house belonging to the assessee. The cinema building cannot be said by any stretch of imagination

to be a house inasmuch as house is the place where people reside. This court in the case of Commissioner of Income Tax Vs. Jai Kishan Gupta, has held that exemption in respect of a cinema building is not available u/s 5(1)(iv) of the Act.

4. Respectfully following the aforesaid decision we answer the question referred to us in negative, i.e., in favour of the revenue and against the assessee. However, there shall be no order as to costs.

