(2004) 11 AHC CK 0052

In the Allahabad High Court

Case No : WT Reference No. 23 of 1988 1 November 2004

CWT APPELLANT

Vs

Ram Saran Kejriwal RESPONDENT

Date of Decision : 01-11-2004

Acts Referred:

Citation : (2005) 145 TAXMAN 528

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

Bench : Full Bench

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

Judgement

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

"1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that the additional wealth-tax is not chargeable on the value of the interest of the assessee partner in the firm M/s. Cownpore Flour Mills, the assets of which include urban assets?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that the issue being debatable was beyond the ambit of section 35 of the Wealth Tax Act completely?"

We have heard Sri A.N. Mahajan, learned standing counsel for the revenue. Nobody has appeared for the respondent.

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

The respondent is the co-owner of the property situated at 24/73, Birhana Road, Kanpur; besides he is also a partner in firm M/s. New Cownpore Flour Mills which in their turn also owned immovable properties. The firm M/s. New Cownpore Flour Mills has also a branch named M/s. Kejriwal Flour Mills. The Wealth Tax Officer made assessments u/s 16(3) of the Act. Subsequently, he found that there had occurred a mistake apparent on the face of record in the orders of assessment inasmuch as wealth-tax which was chargeable on the urban assets belonging to the respondent under rule 2 of paragraph ''A'' read with rule 3 of paragraph ''B'' of Part I of the relevant Schedule of the rates of the wealth-tax was not charged. Accordingly, after giving an opportunity to the respondent, the Wealth Tax Officer passed orders u/s 35 of the Act whereby additional wealth-tax on the urban assets comprising of the value of the respondent''s interest as a partner in the aforesaid firm as well as the value of share in the building Kishori Niwas, Birhana Road, Kanpur was charged. Feeling aggrieved the respondent preferred an appeal before the Commissioner of (Appeals) who held that no additional wealth tax liability was attracted with respect to the land and building belonging to the said firms. He was further of the view that Kishori Niwas value was less than Rs. 5,00,000, therefore, no additional wealth-tax was chargeable. The revenue''s appeal before the Tribunal has failed. The Tribunal, while upholding the order passed by the Commissioner (Appeals) had relied upon its decision in W.T.A. Nos. 33.34.79 and 80 (All.)/1984 decided on 26-9-1986 in the case of WTO. v. Shri Ram Shanker Gupta, Kanpur, which has been affirmed by this court in the case of COMMISSIONER OF WEALTH-TAX Vs. RAMA SHANKER GUPTA., , which had held that no additional tax is payable in respect of the value of the assets in the two firms.

3. Respectfully, following the aforesaid decision, we answer the question No. 1 in the affirmative, i.e., in favour of the assessee and against the revenue. As the question No. 1 has been answered in the affirmative, question No. 2 has been rendered academic. However, there shall be no order as to costs.

