(2004) 12 AHC CK 0064

In the Allahabad High Court

Case No : Reference Case No. 187 of 1984

CWT APPELLANT

Vs

Shri Bhagwan Agarwal and Sons RESPONDENT

Date of Decision : 03-12-2004

Acts Referred:

Citation : (2004) 12 AHC CK 0064

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

Bench : Division Bench

Judgement

1. The Income Tax Appellate Tribunal, Allahabad 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 Income Tax Appellate Tribunal was justified in holding that the assessee was entitled to exemption u/s 5(1)(iv) of the Wealth Tax Act in respect of his share in form of immovable properties of the firm for assessment year 1980-81 ?

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

The present reference relates to the assessment year 1980-81. The respondent was a partner in a firm styled as Bharat Talkies, which owned a cinema building. The respondent claimed exemption u/s 5(1)(iv) of the Act in respect of his share in the cinema building, which was allowed by the Wealth Tax Officer. However, the Commissioner of Wealthtax considering the said assessment to be erroneous as also to be prejudicial to the interest of the revenue passed an order u/s 25(2) of the Act directing the Wealth Tax Officer to recompute the wealth of the respondent after withdrawing the exemption allowed to him u/s 5(1)(iv) of the Act. On appeal filed by the respondent before the Tribunal, the Tribunal has accepted the claim of the respondent and cancelled the order of the Commissioner of Wealth Tax.

3. We have heard Sri A.N. Mahajan, the learned Counsel for the revenue. Nobody has put in appearance on behalf of the respondent.

4. A perusal of Section 5(1)(iv) of the Act shows that the deduction is permissible in respect of one house or part of the house. A Division Bench of this Court in the case of Commissioner of Income Tax Vs. Jai Kishan Gupta, has held that exemption u/s 5(1)(iv) of the Act is not available to a cinema building as it is not a building for human habitation or a dwelling or a home land a cinema hall is not a house at all.

5. We are in respectful agreement with the view taken in the case of Jai Kishan Gupta (supra). The aforesaid decision has been followed by this Court in CIT v. Smt. Urmilla Devi (Wealth Tax Reference Case No. 187 of 1984 decided on 11-8-2004).

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