(2004) 08 AHC CK 0059

In the Allahabad High Court

Case No : Wealth-tax Reference No. 288 of 1983 10 August 2004.

CWT APPELLANT

Vs

Smt. Angoori Devi and Others RESPONDENT

Date of Decision : 10-08-2004

Acts Referred:

Citation : (2005) 144 TAXMAN 643

Hon'ble Judges : R. K. Agarwal, J;K.N. Ojha, J;K. N. Ojha, J

Bench : Full Bench

Advocate : Shambhoo Chopra, for the Commissioner R. S. Agrawal, for the Assessee, for the Appellant;

Judgement

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

"1. Whether, on the facts and in the circumstances of the case, each of the assessees for each of the assessment years 1975-76 and 1976-77 was entitled to the deduction permissible u/s 5(1)(iv) of the Wealth Tax Act, 1957, in respect of the immovable property belonging to the firm of M/s. Laxmi Talkies, Mathura, where the assessees were partners ?

2. Whether, on the facts and in the circumstances of the case, the reversionary value of the land of the cinema building could be added to the market value worked out on yield basis ?"

The present reference relates to the assessment years 1975-76 and 1976-77. The respondent- assessees are partners in the firm styled as M/s. Laxmi Talkies, Mathura. The Wealth Tax Officer treated the interest of the assessee in the aforesaid firm which owned immovable property and added to the "net wealth" of the assessee diverse amounts representing their respective share in the said firm, which was determined keeping in view the amounts invested therein. However, in the appeal filed by the respondent-assessee, the Assistant

Commissioner of Wealth Tax directed the assessing officer to allow exemption u/s 5(1)(iv) of the Act in respect of the value of their share in the cinema building, if it exceeded the exemption granted by the assessing authority in each of the assessment. The department took up the matter in appeal before the Tribunal. The Tribunal had dismissed the appeal.

We have heard Sri Shambhoo Chopra, learned counsel appearing for the revenue, and Sri R. S. Agrawal, learned counsel appearing for the respondent-assessee.

Sri Shambhoo Chopra, learned counsel, fairly stated that question No. 2 is covered against the revenue in view of the decision of this court in CWT v. Ram Saran Kajriwal (1987) 168 ITR 485.

So far as the first question is concerned, he submitted that u/s 5(1)(iv) of the Act exemption is available to the house property and not to a cinema building. He submitted that the cinema building cannot be treated as house and, therefore, no exemption u/s 5(1)(iv) of the Act is available. Sri Agrawal learned counsel for the respondent-assessee, however, relied upon a decision in the case of CIT v. Sri Vinod Kumar (1999) UPTC 606, wherein this court in respect of another partner of the same firm had held that the assessee is entitled to deduction u/s 5(1)(iv) of the Act in respect of the immovable property, which is cinema hall.

Having heard learned counsel for the parties, we find that question No. 2 is covered by the decision of this court in the case of Ram Saran Kajriwal (1987) 168 ITR 485 and, therefore, the aforesaid question is answered in the affirmative, i.e., in favour of the assessee and against the revenue.

So far as the first question is concerned, we are of the opinion that u/s 5(1)(iv) of the Act exemption has been granted to one house or part of the house belonging to the assessee. House is a building where people live and reside. It is mainly for residential purposes. Cinema building cannot by any stretch of imagination be treated as a house. This court in ITR No. 238 of 1983, CIT v. J. K. Gupta We are in respectful agreement with the decision of this court in the case of Commissioner of Income Tax Vs. Jai Kishan Gupta, . In view of the foregoing discussions, we answer question No. 1 in the negative, i.e., in favour of the revenue and against the respondent-assessee. However, the parties shall bear their own costs.

