(2004) 11 AHC CK 0258

In the Allahabad High Court

Case No : WT Reference No. 131 of 1987 5 November 2004

CWT APPELLANT

Vs

Venkatesh Narain Gupta RESPONDENT

Date of Decision : 05-11-2004

Acts Referred:

Citation : (2005) 144 TAXMAN 835

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

Bench : Full Bench

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

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:

"Whether, on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was correct in holding that the claim of the exemption u/s 5(1)(iv) of the Wealth Tax Act for the assessment year 1980-81 is allowable to the assessee as member of the Association of Persons with determinate share ?"

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 had shown in the return the value of his 1/6th share in the house property bearing No. 24/23 Birhana Road, Kanpur owned by the A.O.P. M/s. Jagat Narain Rang Nath. The Wealth Tax Officer while framing the assessment disallowed the claim of the respondent u/s 5(1)(iv) of the Act. The Appellate Assistant Commissioner, however, held that the claim is admissible to each co-owner. The revenue''s appeal before the Tribunal has failed.

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

4. u/s 5(1)(iv) of the Act exemption was available to the assessee in respect of

one house or part of the house belonging to the assessee as the respondent had 1/6th share in the house property which belonged to A.O.P. and A.O.P. not being a legal entity, it would be deemed when the assessee was owning the house in question. In this view of the matter the exemption was available to the assessee.

5. In view of the foregoing discussion, we answer the question referred to us in the affirmative, i.e., in favour of the assessee and against the revenue. However, there shall be no order as to costs.

