
(2005) 02 AHC CK 0238

In the Allahabad High Court

Case No : WT Reference No. 78 of 1988 2 February 2005

CWt, Meerut

APPELLANT

Vs

Meerut Race Club

RESPONDENT

Date of Decision : 02-02-2005

Acts Referred:

Citation : (2005) 148 TAXMAN 493

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

Bench : Full Bench

Advocate : A.N. Mahajan, for the Assessee, A. Agarwal and P.K. Jain, for the Revenue, for the Appellant;

Judgement

ORDER

The Income Tax Appellate Tribunal, New Delhi, has referred the following questions of law u/s 27(3) of the Wealth Tax Act, 1957 (hereinafter referred to as "the Act") for opinion to this Court:

"1. Whether on the facts and circumstances of the case, the Tribunal was legally justified in holding that the order of the Appellate Assistant Commissioner annulling the assessment?

2. Whether on the facts and circumstances of the case, the Tribunal was legally justified in not pronouncing the decision on merits of the case?"

2. The reference relates to the assessment years 1979-80 to 1982-83.

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

The respondent-assessee is a Society registered under the Societies Registration Act and is running a race club at Meerut. Its claim was that it was an association of persons and under the Act an association of persons is not an assessable entity. The contention was not accepted by the Wealth-tax Officer. Feeling aggrieved the respondent preferred separate appeal before the Appellate

Assistant Commissioner who had accepted the claim of the respondent that the association of persons is "not" an assessable entity by following the order of the Tribunal passed in the preceding assessment year 1977-78. The order of the Appellate Assistant Commissioner has been upheld by the Tribunal.

4. We have heard Sri AN Mahajan, the learned counsel for the revenue and Sri A. Agarwal holding brief of Sri P.K. Jain, learned counsel appearing for the respondent.

5. It may be mentioned here that by the Finance Act, 1981. Section 21AA was inserted in the Act with effect from 1-4-1981 under which the assets held by the association of persons have been made taxable under the Act. The question regarding applicability of section 21AA of the Act came up for consideration before the Apex court in the case of CWT v. Ellis Bridge Gymkhana AIR 1998 SC 120 in which the Apex court has held that the position has been placed beyond doubt by insertion of section 21AA in the Wealth Tax Act itself. This amendment was effected by the Finance Act, 1981 with effect from 1-4-1981. It provides for assessment of association of persons in certain special cases and not otherwise. An association of persons cannot be taxed at all u/s 3 of the Act. That is why an amendment was necessary to be made by the Finance Act, 1981 whereby section 21AA was inserted to bring to tax net wealth of an association of persons where individual shares of the members of the association were unknown or indeterminate. It is thus clear that the Legislature deliberately excluded a firm or an association of persons from the charge of wealth-tax and the word "individual" in the charging section cannot be stretched to include entities which had been deliberately left out of the charge. An unincorporated Club being an association of persons could not be brought to tax as an individual under the Wealth Tax Act.

6. In view of the principle laid down by the Apex Court, we are of the considered opinion that the respondent-assessee was not an assessable entity upto the assessment year 1980-81. However from 1-4-1981, i.e., from the assessment year 1981-82 onwards it became an assessable entity in view of the provisions of section 21AA of the Act.

7. Accordingly, we answer the first question referred to us partly in favour of the assessee and partly in favour of the revenue by holding that the Tribunal was justified in annulling the assessment for the assessment years 1979-80 and 1980-81 and it was not justified in annulling the assessment for the assessment years 1981-82 and 1982-83. In view of our answer to the first question the second question has to be answered in negative, i.e., in favour of the revenue and against the assessee insofar as it relates to the assessment years 1981-82 and 1982-83. In view of the divided success, the parties are left to bear their own costs.