

(1984) 03 KAR CK 0039
In the Karnataka High Court
Case No : T.R.C. No. 34 of 1978

Paramananda L. Bajaj

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 16-03-1984

Acts Referred:

Income Tax Act, 1961 — Section 36 (1) (vii)
Wealth Tax Act, 1957 — Section 35, 4 (1) (b)

Citation : (1984) 150 ITR 58 : (1985) 1 KarLJ 33

Hon'ble Judges : S.A. Hakeem, J;K. Jagannatha Shetty, J

Bench : Division Bench

Judgement

K. Jagannatha Shetty, J.—The question that has been referred for the opinion of this court is :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the WTO had jurisdiction to invoke s. 35 of the WT Act, 1957 ?"

2. The facts behind the legal formulation lie in a narrow compass.

3. The assessee is a partner of a firm called "M/s. Mangoomal Vijaya kumar" in which he had 1/3rd share. In the assessment of that firm for the year 1972-73, the bad debt of Rs. 37,674 was disallowed by the ITO. But in the assessment under the WT Act pertaining to the assessee, that 1/3rd share of the bad debt was not included. The WTO invoked s. 35 of the WT Act and rectified that mistake.

4. The appeal preferred against the said order was dismissed by the AAC and so too the further appeal preferred to the Appellate Tribunal.

5. It is not in dispute that the bad debt of Rs. 37,674 was disallowed in the firm's assessment. Under s. 4(1)(b) of the WT Act, where the assessee is a partner in a firm, the value of his interest in the firm shall be included in his net

wealth. Rule 2(1) of the WT Rules provides the method by which the valuation of interest in partnership is to be determined. Rules 2A and 2-C provide for adjustment in the value of an asset not disclosed in the balance sheet. Rule 2-C provides that the value of an asset not disclosed in the balance sheet shall be taken to be in the case of a debt of a debt due to the assessee, the amount due to the assessee, and if any debt has been allowed as a deduction under clause (vii) of sub-s. (1) of s. 36 of the IT Act, 1961, the amount of debt as reduced by the deduction is required to be allowed in computing the net wealth of the assessee. Here, as we have earlier stated although the bad debt has been claimed by the firm, it was not allowed by the ITO. That means, that was a debt in respect of which the firm has subsisting right to recover. Quite naturally proportionate amount must be included in computing the value of the assets of the assessee. The individual assessment of the assessee who is a partner of such firm shall fall in line with the assessment of the firm. Not including the proportionate share of the assessee in computing the net wealth was patent error which could certainly be rectified under s. 35 of the WT Act.

6. In the result, we answer the question in the affirmative and against the assessee.