(1989) 09 MP CK 0020

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No''s. 523, 524 and 525 of 1984

Ravi Mohan — APPELLANT

Vs

Commissioner of Wealth-tax — RESPONDENT

Date of Decision : 13-09-1989

Acts Referred:
Wealth Tax Act, 1957 — Section 5(1)

Citation : (1989) 180 ITR 667

Hon'ble Judges : G.G. Sohani, Acting C.J.;K.M. Agrawal, J

Bench : Division Bench

Advocate : K.K. Khosala, for the Appellant; B.K. Rawat, for the Respondent

Judgement

G.G. Sohani, Actg. C.J.

1. The judgment in this case will govern the disposal of Miscellaneous Civil Cases Nos. 524 and 525 of 1984.

2. By these references u/s 27(1) of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Jabalpur Bench, has referred the following question of law to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in refusing the exemption u/s 5(1)(iv) of the Wealth-tax Act, 1957, against the value of the cinema building owned by the firm wherein the assessee had one-fourth share ?"

3. The material facts giving rise to these references are as follows : For the assessment years in question, the assessee was a partner in a firm having one-fourth share in the said firm which owned a cinema building. While framing the assessment under the Act, the Income Tax Officer took into consideration the value of the cinema building. On appeal, the assessee, for the first time, contended that the value of the cinema building owned by the firm was liable for exemption u/s 5(1)(iv) of the Act. The Appellate Assistant Commissioner,

however, rejected the contention on the grounds that the cinema building was not used for the purpose of the residence of the assessee and that it was owned by the firm and not by the assessee-partners. On further appeal before the Tribunal, the claim of the assessee in that behalf was not upheld by the Tribunal. Hence, at the instance of the assessee, the Tribunal has referred the aforesaid question of law to this court for its opinion.

4. Having heard learned counsel for the parties, we have come to the conclusion that this reference must be answered in the negative and in favour of the assessee. As held by this court in Jagdish Chandra Grover Vs. Commissioner of Wealth-tax, a partner of a firm is entitled to exemption u/s 5(1)(iv) of the Act in respect of the value of his interest in the house property owned by the firm. As regards the question as to whether exemption under Clause (iv) of Sub-section (1) of Section 5 of the Act would be available even for a house used for commercial purposes, learned counsel for the assessee brought to our notice the instructions issued by the Central Board of Direct Taxes, vide letter F. No. 317/23/ 73-WT, dated July 24, 1973, that exemption u/s 5(1)(iv) of the Act was available even for houses used for commercial purposes. No decision to the contrary was brought to our notice. We see no cogent reason for holding that even after the omission of the words "and exclusively used by him for residential purposes" by the Finance (No. 2) Act of 1971, exemption u/s 5(1)(iv) of the Act should not be allowed in the case of a commercial house owned by an assessee. In our opinion, therefore, the Tribunal was not justified in refusing the exemption u/s 5(1)(iv) of the Act in respect of the cinema building owned by the firm.

5. Our answer to the question referred by the Tribunal is, therefore, in the negative and in favour of the assessee. In the circumstances of the case, parties shall bear their own costs of this reference.