

Commissioner of Wealth-tax Vs. Subimal Sen,

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Court : Guwahati

Decided On : Aug-09-1991

Judge : S.N. Phukan and J.M. Srivastava, JJ.

Acts : [Wealth Tax Act, 1957](#) - Sections 5(1)

Appeal No. : Wealth-tax Reference Nos. 20 to 22 of 1985

Appellant : Commissioner of Wealth-tax

Respondent : Subimal Sen, Subrata Sen and Makhanlal Agarwalla and ors.

Advocate for Def. : M.K. Sarma and M.R. Pathak, Advs.

Advocate for Pet/Ap. : D.K. Talukdar and B.J. Talukdar, Advs.

Judgement :

S.N. Phukan, J.

1. By this common judgment and order, we propose to dispose of all the three references as the questions of law involved are same. These references have been made under Section 27(3) of the Wealth-tax Act, 1957, on a direction issued by this court.

2. Before we state the questions of law, it may be convenient to refer to the facts of all the three cases.

3. In Wealth-tax References Nos. 20 and 21 of 1985, the references relate to the assessment years 1972-73 and 1973-74, and in Wealth-tax Reference No. 22 of 1985, the reference relates to the assessment year 1974-75.

4. In Wealth-tax Reference No. 20 of 1985, the assessee was a partner of the firm, M/s. Tinsukia Pharmacy, Tinsukia. The firm had a fixed deposit of Rs. 74,405 and the assessee claimed that his share in the said deposit was Rs. 24,801. While determining the value of interest in the firm, the assessee had deducted the above sum of Rs. 24,801 out of the value of interest in the firm calculated by him. The assessee claimed that he is entitled for deduction under Section 5(1)(xxvi) of the Wealth-tax Act, 1957, in short 'the Act'. Section 5(1) of the Act contemplates exemption in respect of an assessee and further Rule 2(1) lays down provisions for valuation of interest in a partnership or an association of persons. The claim of the assessee was rejected by the Wealth-tax Officer. The appeal was allowed by the lower appellate authority and the second appeal by the learned Tribunal.

5. In Wealth-tax Reference No. 21 of 1985, the assessee was also a partner of the above firm and he claimed exemption, under Section 5(1)(iv) of the Act, of his share of the house property of the firm and also part of his share in the fixed deposit of the firm. This was rejected by the Wealth-tax Officer, but both the lower appellate authority and the Tribunal allowed the contention of the assessee.

6. In Wealth-tax Reference No. 22 of 1985, the assesseees were partners of two firms and in computing the net wealth, the Wealth-tax Officer included their interest in the said firm, but did not grant any exemption,

in respect of the properties held by the firm, under Section 5(1)(iv) of the Act. The contention of the assessee was upheld both by the Appellate Assistant Commissioner and the Tribunal.

7. The question that is referred to us under Section 27(3) of the Wealth-tax Act for opinion is the same and is quoted below :

'Whether, on the facts and in the circumstances of the case, and on a proper construction of Section 2(m), Section 4(1)(b) and Section 5(1)(iv) of the Wealth-tax

Act, 1957, and Rule 2 of the Wealth-tax Rules, 1957, the exemption is admissible under Section 5(1)(iv) with respect to the property in question in the hands of the assessee ?'

8. Of course, in Wealth-tax Reference No. 20 of 1985 in the first question, the last word used is 'business', in fact, it should be 'assessee'. It may also be stated that in Wealth-tax Reference No. 22 of 1985, the question was differently worded, but the legal question involved is the same. We may, however, quote the said question :

'Whether, on the facts and in the circumstances of the case and on a proper construction of Section 2(m), Section 4(1)(b), Section 5(1)(iv) of the Wealth-tax Act, 1957, and Rule 2 of the Wealth-tax Rules, 1957, the Tribunal was justified in upholding the direction of the Appellate Assistant Commissioner that exemption of proportionate share of the interest in the building belonging to the firm should be allowed under Section 5(1)(iv) in the hands of the assessee-partner ?'

9. We have heard Mr. Talukdar, learned counsel for the Revenue. As none appeared for the assessee and, at our request, Dr. M. K. Sarma, learned senior counsel of this court has agreed to assist us, we record our appreciation of the valuable assistance rendered by learned counsel and his junior.

10. Dr. Sarma has very fairly drawn our attention to the fact that this question is already covered by the decision of this court in CWT v. Tarachand Agarwalla . This decision was rendered by a Division Bench of this court. In that case also, the following question was referred for our opinion in compliance with the direction given by this court. The question is as follows (at page 235) ;

'Whether, on the facts and in the circumstances of the case and on a proper construction of Section 2(m), Section 4(1)(b), Section 5(1)(iv) of the Wealth-tax Act, 1957, and Rule 2 of the Wealth-tax Rules, 1957, the Tribunal was justified in upholding the direction of the Appellate Assistant Commissioner that exemption of proportionate share of the interest

in the building belonging to the firm should be allowed under Section 5(1)(iv) in the hands of the assessee-partner ?'

11. The facts of the case are similar and the first question that was taken up for consideration was whether the interest of a partner in partnership assets comprising movable as well as immovable property should be treated as movable property for the purpose of Section 5(1)(iv) of the Act. This court considered Section 2(m) and Section 3 of the Act along with Section 4(1)(b) of the Act. The decisions of the apex court in *Addanki Narayanappa*, : [1966]3SCR400 and *Juggilal Kamlatpat Bankers v. WTO* : [1984]145ITR485(SC) were referred to, wherein the apex court held that, since the firm has no existence, the partnership property will vest in all the partners and, in that sense, every partner has an interest in the property of the partnership ; and further the interest of a partner in the partnership firm belongs to him and would be includible in the 'asset' and will have to be taken into account while computing the net wealth of the individual. Accordingly, the court held that, where an individual assessee is a partner in a firm, the interest of the partner in the immovable property is to be included in computing his net wealth, and further, the interest in the immovable property, or benefits to arise out of the land, cannot be said to be movable property ; therefore, the assessee is entitled to exemption as provided under Section 5(1)(iv) of the Act. This is the view which was expressed by the Calcutta High Court in *CWT v. Naurangrai Agarwalla* : [1985]155ITR752(Cal) and *CWT v. Mira Mehta* : [1985]155ITR765(Cal) .

12. The next question which was considered by the Division Bench of this court was about the method of deduction in computing the net wealth of the firm. The court noted that, under the Act, the partnership firm is not an assessee and held that, therefore, the deduction contemplated is in the computation of the net wealth of the assessee and not of a firm which is not an assessee and, in such a situation, the deduction has to be given in the hands of the assessee. The Division Bench was in respectful agreement with the decision of the Karnataka High Court in *CWT v. Christine Cardoza* : [1978]114ITR532(KAR) where the said High Court also laid down the same ratio and the Division Bench further noted that the SLP (Civil) Nos. 3574 and 3575 of 1981 were also dismissed by the apex court.

However, the Division Bench was in respectful disagreement with the decision of the Madras High Court in *Purushothamdas Gocooldas v. CUT* : [1976]104ITR608(Mad) for the reasons stated in the judgment, and a part of which has been extracted in the judgment.

13. The Division Bench finally held that the net wealth of the firm should be determined including the value Of the building and then it should be allocated amongst the partners indicating the nature of assets and liabilities allotted to the share of the partner and the net wealth of the partner is to be determined by including the share so allotted, and only thereafter, the deduction under Section 5(1)(iv) should be allowed, i.e., deduction should be allowed under the above section in the hands of the assessee-partner and not in the hands of the firm.

14. We have extracted the relevant portion of the judgment of the Division Bench of this court in *Tarachand Agarwalla* as we do not find any scope to take a different view. As in the present three references, the same question is involved, we hold that both the Appellate Assistant Commissioner and the Tribunal rightly allowed the claim of the assessee in rejecting the contention of the Revenue.

15. For the reasons stated above, we answer all the questions in the affirmative and in favour of the assessee. No order as to costs.

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