

Cwt Vs. Chhotey Lal

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Court : Allahabad

Decided On : Oct-28-2005

Reported in : [2006]155TAXMAN133(All)

Appeal No. : WT Reference No. 246 of 1992 28 October, 2005

Appellant : Cwt

Respondent : Chhotey Lal

Judgement :

ORDER

R.K. Agrawal, J.

The Income Tax Appellate Tribunal, Allahabad has referred the following questions of law under section 27(1) of the Wealth Tax Act, 1957 (hereinafter referred to as 'the Act') for opinion to this Court:

'1. Whether on the facts and in the circumstances of the case, the Tribunal was justified in applying income capitalisation method on average profit for three years in valuing the Cold Storage in dispute and also holding that book value of the assets is to be taken into consideration and capital in firm is not to be added back separately ?

2. Whether on the facts and in the circumstances of the case, the Tribunal was justified in concluding that the Cold Storage is an industrial undertaking within the meaning of section 5(1) of the Wealth Tax Act, 1957 and thereby allowing the assessee's claim for deduction under the said provisions ?'

2. It may be mentioned here that the Tribunal by a consolidated order dated 19-8-1992 had decided nine reference applications filed by the five assessees who were partners, in their representative capacity in the firm M/s. Vishwanath Cold Storage and Industries, Jaunpur, relating to the assessment year 1985-86 in the case of Sri Chhotey Lal Hindu Undivided Family, Jaunpur, and in respect of the assessment years 1985-86 and 1986-87 of Sri Bankey Lal Hindu Undivided Family, Sri Chhagan Lal Hindu Undivided Family, Sri Lalji Hindu Undivided Family and Sri Bhagwati Seth Hindu Undivided Family of Jaunpur.

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

All the respondent-assessee filed their return of wealth for the assessment years in question in which they had disclosed the interest in the firm M/s. Vishwanath Cold Storage and Industries, Jaunpur by taking three years' average profit and applying the income capitalisation method. The assessing officer had determined the interest separately by adopting the land and building method and the value of the plant and machinery at the market rate. According to the assessing officer, section 4(1)(b) of the Act provides the manner in which the interest of the assessee as partners of the firm or a member of the Association of Person (not being a co-operative society) shall be determined. As per the Wealth Tax Rules, the interest in the partnership is to be determined under rule 2. The assessing officer consequently added the excess valuation to the wealth of the assessee. The assessee further claimed exemption under section 5(1)(xxxii) of the Act in respect of the investment made in the Cold Storage, which exemption was disallowed by the assessing officer. However, in appeals, the Commissioner of Wealth Tax (Appeals) by following the order passed by the Income Tax Appellate Tribunal in respect of the assessment year 1984-85, upheld the contention of the assessee. He directed that the value of the interest be determined on the basis of income capitalisation method. The appeals of the revenue before the Tribunal had

failed.

4. We have heard the learned counsel for the parties.

5. So far as the first question is concerned, we find that this court in Wealth Tax Reference No. 39 of 1985, CWT v. Bankey Lal decided on 21-10-2005 has answered similar question in respect of the determination of partner's interest in the firm M/s. Vishwanath Cold Storage and Industries, Jaunpur, in favour of the revenue and against the assessee. Thus, the first question is answered in the negative, i.e., in favour of the revenue and against the assessee.

6. So far as the second question is concerned, we find that the Apex Court in the case of Delhi Cold Storage (P.) Ltd. v. CIT : [1991]191ITR656(SC) . has held that a cold storage was not an industrial undertaking as in a cold storage an article or goods is neither produced nor processed. It is not entitled for investment allowance. Similar consideration would also be applicable for considering as to whether a cold storage is an industrial undertaking or not under the provisions of section 5(1)(xxxii) of the Act.

7. In this view of the matter, we are of the considered opinion that investment in a cold storage is not entitled to deduction under section 5(1)(xxxii) of the Act as a cold storage is not an industrial undertaking.

8. The second question, therefore, is also answered in the negative, i.e., in favour of the revenue and against the assessee. There shall be no order as to costs.