Cwt Vs. Tulsi Dass

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Court : Rajasthan

Decided On : Mar-21-2002

Reported in : (2002)174CTR(Raj)436

Appeal No. : WT Ref. No. 67 of 1983 21 March 2002

Appellant : Cwt

Respondent : Tulsi Dass

Advocate for Pet/Ap. : R.B. Mathur, *for the Revenue* N.M Ranka, *for the Assessee*

Judgement :

P.P. Naolekar, J.

Following questions of law have been referred to the High Court under section 27(1) of the Wealth Tax Act, 1957 (hereinafter referred to as 'the Act of 1957') :

'1. Whether on the facts and in the circumstances of the case the Tribunal was justified in law in holding that the valuation reported was non est and should not have been taken note of the present assessment ?

2. Whether on the facts and in the circumstances of the case the Tribunal was justified in law in holding that a partner was entitled to claim deduction under section 5(1)(iv) of the Wealth Tax Act in respect of his interest in a firm which

owned immovable properties ?'

2. Facts, in brief, relevant for the purpose, of answering the questions are that Shri Tulsi Dass (hereinafter shall be referred to as 'the assessee') is a partner in M/s Gopal Talkies, Alwar, a partnership firm. The assessee-submitted return of his properties before the Wealth Tax Officer and shown the credit balance in M/s Gopal Talkies, Alwar, amounting to Rs. 1,03,210 (Rs. one lakh three thousand two hundred and ten only). The partnership firm M/s Gopal Talkies in its books of accounts had shown the value of Gopal Takes at Rs. 7,25,000 (Rs. seven lakh twenty-five thousand) inclusive of the cost of the building. During the assessment proceedings of the assessee Tulsi Dass, the Wealth Tax Officer came to the prima facie conclusion, that the valuation of Gopal Talkies at Rs. 7,25,000 reflects undervaluation of the property. The assessing officer made a reference to the valuation officer by letter dated 6-1-1978, to make fresh valuation of Gopal Talkies. After revaluation, the valuation officer has assessed the value of Gopal Talkies at Rs. 14,73,000 and accordingly the assessee Tulsi Dass was assessed for wealth-tax taking the valuation given by the valuation officer of Gopal Talkies. Aggrieved by the said order, the assessee preferred an appeal before the Appellate Assistant Commissioner. The submission made by the assessee that the valuation report was made by the valuation officer without giving notice to him, has found favour with the appellate authority and accordingly the valuation report was struck down. The appellant authority has also given to the assessee the benefit of section 5(1)(iv) of the Act of 1957 to the extent of Rs. 1,00,000 and accordingly assessed the assessee for the wealth-tax purposes.

Aggrieved by the said order, the revenue preferred an appeal before the Tribunal. The Tribunal has rejected the appeal filed by the revenue. Thereafter on an application moved by the revenue, the aforementioned questions have been referred to the High Court.

3. The submissions of the learned counsel for the revenue Shri R.B. Mathur is that before the valuation was made by the valuation officer of Gopal Talkies, the notice was given to M/s Gopal Talkies, the firm and, therefore, the valuation could not have been struck down on the basis that the assessee was not given notice. It is

an admitted fact that no notice whatsoever was ever issued by the valuation officer to the assessee as required by the provisions contained in section 16A(2) of the Act of 1957. Section 16A(2) of the Act of 1957 requires that the valuation officer before estimating the value of any asset in pursuance of the reference made under sub-section (1) of section 16A, may serve a notice on the assessee requiring him to produce or cause to produce on a date specified in the notice, such accounts, records or other documents as the valuation officer may require.

Prima facie the purpose of service of notice on the assessee is for production of the documents as mentioned in the notice to help the valuation officer to value the property but at the same time the purpose of service of notice on the assessee would be giving him an opportunity to put forth material before the valuation officer which would support the valuation put by him of the property. This is clear from sub-section (3) of section 16A of the Act of 1957 under which the valuation officer can give his opinion in writing that the value of the asset has been correctly declared in the return made by the assessee under section 14 or section 15 of the Act of 1957. If the assessee is not given a notice, he would not be in a position to satisfy the valuation officer that the valuation put forth by him in return is the correct valuation of the property. Giving notice to the person who would be affected by the revaluation of his property appears to us is in consonance with the principles of natural justice.

It is not a case where the assessee is a firm and notice has been served on the managing partner of the firm which could be held to be a notice to all the partners of the firm or the firm itself. The present case is against the assessee as an individual who happened to be the partner of the firm which owns the Gopal Talkies and thus would be entitled to notice under section 16A(2) of the Act of 1957. The order of the Tribunal striking out the valuation put forth by the valuation officer on the ground of non-service of notice on the assessee does not require any interference and the question is answered accordingly.

4. As regards another question which has been referred to us whether the assessee is entitled for exemption under section 5(1)(iv) of the Act of 1957. Relevant provision reads as under : Wealth-tax shall not be payable by an

assessee in respect of following assets (and such assets shall not be included in the new wealth of the assessee) :

'Clause (iv) One house or part of house belonging to the assessee:

Provided that, where the value of such house or part exceeds one hundred thousand rupees, the amount that shall not be included in the net wealth of the assessee under this clause shall be one hundred thousand rupees' :

Prior to amendment, clause (iv) reads one house or part of the house belonging to the assessee and exclusively used by him for residential purposes.

By amendment dated 1-4-1972, the legislature has deleted the words 'exclusively used for residential purposes'.

5. It is submitted by the learned counsel for the revenue that the assessee is not entitled for exemption under section 5(1)(iv) of the Act of 1957 in respect of the property belonging to firm as its partner and has placed reliance on the judgment of the Rajasthan High Court in Prakash Chand Modi v. CWT , wherein the Division Bench while construing section 5(1)(iv) of the Act of 1957 has held that the assessee, a partner of a firm, is not entitled to exemption under section 5(1)(iv) of the Wealth Tax Act, 1957, in respect of factory land and building owned by the partnership-firm.

6. The assessee has referred to the judgment of the Apex Court in CWT v. T.S. Sundaram : [1999]237ITR61(SC) , wherein it has been held that in computing the net wealth of a firm under rule 2 of the Wealth Tax Rules, 1957, the assets exempt under section 5 of the Wealth Tax Act, 1957, should be included and then apportioned among the partners for granting exemption in their individual assessments after computing their own individual net wealth. Thus, the Apex Court has held that the partner is entitled under section 5 of the Act of 1957 to exemption to his apportioned share of the property belonging to the partnership firm of which he is a partner. The decision rendered by the Apex Court is binding and thus the submission made by the learned counsel for revenue is not accepted.

7. It is then submitted by the learned counsel for revenue that the assessee would be entitled to exemption only if the house or part of the house, belongs to the assessee, is a residential accommodation and not a business or commercial accommodation. For this submission he has placed reliance on the decision rendered in CWT v. V.T. Ramalingam & Ors. : [1993]201ITR839(Mad) in which, while construing unamended section 5(1)(iv) of the Act of 1957, the Madras High Court has held that the availability of the exemption thereunder is inextricably linked to and bound up with the ownership by the assessee of a house or part thereof and the user of what is owned by him for residential purposes only. The use of the word 'and' between the words 'one house or part of a house belonging to the assessee' and 'exclusively used by him for residential purposes' would clearly establish that only a cumulative fulfilment of ownership by the assessee of a house or a part of it and exclusively owned by the assessee would enable the assessee to claim the benefit of the exemption. The judgment turns on the words of section 5(1)(iv) of the Act of 1957, as they stood, wherein the assessee is entitled to exemption for a house or part of house belonging to the assessee and exclusively used for residential purposes, section makes it abundantly clear that exemption can only be given if the house belongs to the assessee and is being used for residential purposes, which necessarily means that entitlement of assessee to exemption is only for use of a house which is a residential house and not a business or commercial- accommodation.

8. Another decision on which reliance is placed is a Full Bench judgment of Madras High Court in the matter of CWT v. Smt. Muthu Zulaikha : [2000]245ITR800(Mad) , wherein, while construing section 7(4) and unamended section 5(1)(iv) of the Act of 1957 which read 'one house or part of a house belonging to the assessee and exclusively used by him for residential purposes', the Full Bench has held that for claiming exemption what is required is that the house should have been exclusively used by the assessee for residential purposes and that means that it should not have been let out for rent or for use of commercial purposes. Thus, while construing that section, it has been held that the house should be used for residential purposes which would necessarily mean the house is a residential house for claiming exemption. The decision of the Full Bench has also no application to the present section wherein the assessee is

entitled to exemption under clause (iv) of section 5(1) in regard to one house or part of a house belonging to the assessee. It is not required that the house should be exclusively used by the assessee for residential purposes and as a necessary corollary it should be a residential house.

9. It is well established rule of interpretation that when the taxing statute is interpreted, the words used in the section have to given strict meaning. The section does not require that for claiming exemption house should be a residential house; the exemption can certainly be claimed for non-residential as well as residential accommodation. The only requirement is that the house or part of the house should belong to assessee.

10. The letter/Circular F. No. 317/23/73-WT, dated 24-7-1973, issued by the department reads :

'After the amendment of the above section from 1-4-1972, it reads as under :

'One' house or part of a house belonging to the assessee.

The point for consideration is whether exemption is available for residential house only or to business premises also. (Of course within the limit laid down in the section).

In this connection, attention is invited to sections 22 to 27 of the Income Tax Act, 1961, which refer to income from house property. These sections are applicable to income from house property whether the house property is residential or it is used for business. In the circumstances, it is presumed that the exemption to house property under section 5(1)(iv) is available both to residential as well as business premises whether used by the Association or let out. Please confirm.'

The letter/circular issued by the department in the absence of statutory provisions or the rules repugnant to that, is binding on the department.

For this also we are of the view that the assessee is entitled to claim exemption under section 5(1)(iv) of the Act of 1957 to the extent of its proportionate share in the partnership property i.e., house which have been used as non-residential or

commercial property. The questions referred to above are answered accordingly.