
(2006) 08 AHC CK 0074

Allahabad High Court

Case No: W.T. Reference No. 308 of 1983

Commissioner of
Wealth Tax, Meerut

APPELLANT

Vs

Kundan Singh

RESPONDENT

Date of Decision: Aug. 23, 2006

Acts Referred:

- Wealth Tax Act, 1957 - Section 27(1), 5, 5(1), 5(1)(xxxii)

Hon'ble Judges: Vikram Nath, J; R.K. Agrawal, J

Bench: Division Bench

Advocate: A.N. Mahajan, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

1. The Income Tax Appellate Tribunal, Delhi has referred the following question of law u/s 27(1) of the Wealth Tax Act, 1957 (hereinafter referred to as the Act) for opinion to this Court:-

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in allowing the assessee's claim for exemption u/s 5(1) (xxxii) of the Wealth-tax Act, 1957 as worked out after including the value of land and building also for assessment years 1973-74 to 1975-76

The question relates to the assessment year 1973-74 to 1975-76.

2. Briefly stated the facts giving rise to the present reference are as follows. The assessee had claimed a deduction u/s 5(1)(xxxii) of the Wealth-tax Act, 1957 In respect of the Interest of the assessee in the firm which is an industrial undertaking. Since the Interest in the firm under Rule 10(2) worked out to a minus figure, the Wealth-tax Officer held that no exemption in respect of that was allowable.

3. The order of the Appellate Assistant Commissioner gives some more facts. The assessee is a partner in the firm Guru Nanak Engineering Co., Ghaziabad and (the Wealth-tax Officer had calculated the interest of the assessee in the firm by excluding the value of land and building on the basis of an erroneous Interpretation of the section. Before the Appellate Assistant Commissioner reliance was placed on an order of the Tribunal in the case of another partner of firm in which it had been held that land and building for which exemption was not admissible under any of clauses of section 5(1) were exempt in terms of section 5(1)(xxxii). The Appellate Assistant Commissioner, therefore, accepted the assessee's contention and following the order of the Tribunal directed the Wealth-tax Officer to work out the assessee's proportionate interest in firm Including value of land and building.

4. The department came In appeal before the Tribunal but since the Appellate Asstt. Commissioner has followed an order of the Tribunal In the case of assessee's partners In the same firm, the Tribunal upheld the order of the Appellate Assistant Commissioner.

5. We have heard Shri A.N. Mahajan, learned Standing Counsel for the revenue. u/s 5(1)(xxxii) of the Act, the value as determined In the prescribed manner of the interest of the assessee in the assets forming part of an Industrial undertaking or a firm or an association or person of which the assessee's are partners or as the case may be a member is deductible from the net wealth of the assessee. However, such determination has excluded the value of any land and building or any parts in any land and building or any assets referred to in any other clause of sub-section (1) of Section 5 of the Act.

Shri A.N. Mahajan has not been able to point out that the land and building, namely, Industrial undertaking qualifies for exemption under any other clauses of sub section (1) of section 5 of the Act. We also find that this Court in C.W.T. v. Aisha Begum [2007] 163 Taxman 736 has held that the clause (xxxii) is attracted in a case where the assessee is a partner in the industrial undertaking, which owns land and building and also not specifically covered by others clauses of sub-sections 1 of Section 5 of the Act.

6. We, therefore, are of the considered opinion that the respondent assessed was entitled for exemption in respect of land and building also. We, accordingly, answer the question referred to us in the affirmative, that is, in favour of the assessee and against the revenue.

There shall be no order as to costs.