

(1995) 05 GAU CK 0001

Gauhati High Court

Case No: WT Reference No. 13 of 1990

Commissioner of Wealth Tax

APPELLANT

Vs

Jiwan Ram Chokhani

RESPONDENT

Date of Decision: May 5, 1995

Acts Referred:

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

Citation: (1995) 82 TAXMAN 86

Hon'ble Judges: D.N. Baruah, J; B.N. Singh Neelam, J

Bench: Division Bench

Advocate: D.K. Talukdar, for the Appellant;

Judgement

Baruah, J.

This is a reference u/s 27(1) of the Wealth-tax Act, 1957 ("the Act"). The following question has been referred at the instance of the department:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the order of the Appellate Assistant Commissioner allowing exemption u/s 5(1)(iv) of the Wealth-tax Act, 1957 in the hands of the assessee in respect of the assessee's share of interest in the property of the firm in which the assessee is a partner?"

The assessee is a partner of the firm known as Satyanarayan Jiwanram, Policebazar, Shillong. The assessee has a share of interest in the property of the firm. In the assessment year 1982-83, the assessee claimed exemption in respect of his share in the property u/s 5(1)(iv) of the Act. His claim was rejected by the WTO. On appeal by the assessee, the AAC directed the WTO to allow the deduction against the share of the assessee in the immovable property of the firm. Thereafter, the department came in appeal before the Tribunal. The Tribunal dismissed the appeal filed by the department. Therefore, at the instance of the department, the present reference has been made by the Tribunal.

2. The point raised in this reference has already been decided in favour of the assessee in a number of decisions of this Court including in CWT v. Tarachand Agarwalla [1989] 2 GLR 129. In the said decision this Court held that where individual assessee was a partner in a firm, the interest of the partner in the immovable property was to be included in computing his net wealth. That interest in the immovable property or benefits to arise out of the land, could not be said to be movable property. Therefore, the contention of the revenue was rejected. The question was answered in the affirmative, in favour of the assessee and against the revenue holding that the assessee was entitled to full deduction as provided u/s 5(1)(iv).

3. Following the said decision we answer this reference also in the affirmative, in favour of the assessee and against the revenue. On the facts and circumstances of the case, there will be no direction as to costs.