(1996) 11 AP CK 0067

In the Andhra Pradesh High Court

Case No : WT Case No. 4 of 1991

Commissioner of Wealth Tax APPELLANT

Vs

Anwar Begum RESPONDENT

Date of Decision : 07-11-1996

Acts Referred:

Income Tax Act, 1961 — Section 28
Wealth Tax Act, 1957 — Section 2, 21(1), 21(2), 27(1), 27(3)

Citation : (1998) 150 CTR 666 : (1998) 232 ITR 818

Hon'ble Judges : S.S. Mohammed Quadri, J;B.S. Raikote, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

Syed Shah Mohammed Quadri, J.—This is an application under s. 21(3) of the WT Act, 1957, for short "the Act". The Revenue is the petitioner. It seeks a direction to the Tribunal to state the case and refer the following questions as questions of law to this Court for opinion :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the value of the jewellery fund in Part I of the schedule to the SB. Anwar Begum Trust should not be included on the ground that there is no beneficial interest of the assessee, within the meaning of s. 2(e) of the WT Act, 1957 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in confirming the order of the CIT(A) holding that the value of the jewellery mentioned in question No. 1 above should not be included for direct assessment on the beneficiary under s. 21(2) of the WT Act ?"

2. For the asst. yrs. 1977-78 to 1982-83, the WTO valued the right to wear jewellery on ceremonial occasions, vested in one of the granddaughters of H.E.H. the Nizam, and accordingly assessed the same under s. 21(1) of the Act. On appeal, the CWT(A) set aside the assessment. The Revenue preferred an appeal

before the Tribunal against the said order of the CWT(A). The Tribunal, following the judgment of a Division Bench of this Court in RC No. 67 of 1969, dt. 5th November, 1971, held that the right to wear jewellery, however widely the expression might be interpreted, could not be considered to be "property" for the purpose of wealth-tax and thus dismissed the appeal of the Revenue on 30th May, 1989. The application of the petitioner under s. 21(1) of the Act to refer the said questions to this Court, filed before the Tribunal was dismissed on 26th September, 1989. On these facts, the petitioner has filed this petition.

3. Learned standing counsel for the petitioner submits that an identical question has been referred to the Full Bench and, therefore, this case may also be referred to the Full Bench. Sri Murali Krishna, learned counsel for the respondent, submits that the question now sought to be referred, was not one of the questions referred to the Full Bench. He further contends that the question is covered by not merely the judgment relied upon by the Tribunal, but also another judgment of this Court in Commissioner of Wealth Tax Vs. Trustees of H.E.H. The Nizam''s Wedding Gifts Trust, , and, therefore, the petition is liable to be dismissed.

4. We have perused the order relied upon by learned junior standing counsel for the Revenue in RC No. 41 of 1989, dt. 23rd February, 1995. It relates to the interpretation of the trust deed executed by H.E.H. the Nizam on 21st March, 1953, viz., Sahebzadi Anwar Begum Trust. The present case arises out of the trust known as "the Nizam''s Wedding Gifts Trust for two granddaughters", dt. 4th September, 1951. A Division Bench of this Court, of which one of us was a member (Syed Shah Mohammed Quadri, J.) in CWT vs. Trustees of H.E.H. The Nizam''s Wedding Gifts Trust (supra), declined to refer an identical question. That case related to the asst. yrs. 1976-77 to 1980-81. Following the judgment in RC No. 67 of 1969, dt. 5th November, 1971, the Bench held as follows :

"From the extract of the judgment of the High Court in RC No. 67 of 1969, dt. 5th November, 1971, quoted by the Tribunal, we may note the following observation made by Justice O. Chinnappa Reddy, as he then was, speaking for the Bench. The learned Judge observed, ''her interest in the jewels is limited to being allowed to wear them if the trustees do not withdraw them from her. To our minds, the interest appears to be of a permissive nature and cannot be called property, however widely the expression may be interpreted. We, therefore, agree with the Tribunal that neither the interest of the Sahebzadi in the jewellery fund nor her interest in the shares fund is an asset within the meaning of the WT Act. We are in entire agreement with the observation of the Bench. In view of the said observation, the point is squarely covered by a binding judgment of this Court. Therefore, no referable question of law arises."

5. In view of the above position, we opine that no referable questions of law arise. Accordingly, the wealth-tax case is dismissed.