

(1975) 09 OHC CK 0018

In the Orissa High Court

Case No : Special Jurisdiction Case No's. 87 to 93 of 1974

Commissioner of Wealth-tax

APPELLANT

Vs

Binapani Chakraborty

RESPONDENT

Date of Decision : 26-09-1975

Acts Referred:

Citation : (1975) 09 OHC CK 0018

Hon'ble Judges : R.N. Misra, J;N.K. Das, J

Bench : Division Bench

Advocate : A. Pasayat, for the Respondent

Judgement

R.N. Misra, J.—These are seven references made u/s 27(1) of the Wealth-tax Act (hereinafter referred to as "the Act"), by the Wealth-tax Appellate Tribunal on the application of the revenue in respect of the assessment years 1965-66 to 1971-72. The following question has been referred for the opinion of this court :

"Whether the word "jewellery" in Section 5(1)(viii) of the Wealth-tax Act, 1957, prior to the amendment of the section and the introduction of the Explanation by the Finance (No. 2) Act of 1971, could take in gold ornaments without precious or semi-precious stones embedded on them ?"

2. The relevant valuation dates are 31st of March of each of the years in question. The Wealth-tax Officer, while taking up assessment proceedings for the years 1968-69 to 1971-72, had reasons to believe that the assessee had failed to file returns in respect of the assessment years 1965-66 to 1967-68. Notice u/s 17 of the Act was, therefore, issued in respect of the said three years. While completing the assessments for all the years in question, the Wealth-tax Officer included in the net taxable wealth the value of gold ornaments as he was of the view that, as a result of the amendment brought about by the Finance (No. 2) Act of 1971, to Section 5(1)(viii) of the Act, no exemption in respect of jewellery kept for personal use was admissible. In each of these years, an addition of Rs. 10,000 to the net wealth representing the value of fifty tolas of jewellery was

made.

3. The Appellate Assistant Commissioner turned down the contention of the assessee that the amendment did not authorise inclusion of the value of jewellery kept for personal use and accordingly sustained the computation of net wealth.

4. Upon the assessee appealing to the Tribunal, the second appellate authority took the view that the amendment brought about by the Finance (No. 2) Act of 1971 was effective only from April 1, 1972, and Explanation 1 had no retrospective effect. Accordingly, it deleted the addition holding that the gold ornaments without any precious or semi-precious stones embedded on them could not be treated as jewellery prior to April 1, 1972. Aggrieved by the deletion, the revenue asked the Tribunal to state a case.

5. The Supreme Court in the case of Commissioner of Wealth-tax, Gujarat Vs. Arundhati Balkrishna, observed :

"There is no dispute that the jewels in question were intended for the personal use of the assessee; but it is said on behalf of the revenue that Section 5(1)(viii) does not apply to jewels as these articles are specifically provided for u/s 5(1)(xv). On the other hand it is urged on behalf of the assessee that Section 5(1)(viii) deals with jewellery which are not intended for the personal use of the assessee, such as heirloom or other jewellery which are retained as valuable assets or intended for the use of persons other than the assessee, whereas Section 5(1)(viii) takes in only such jewellery as are intended for the personal use of the assessee. We think the contention advanced on behalf of the assessee is the correct one. It is well known that jewellery is widely used as articles of personal use by the ladies in this country specially by those belonging to the richer classes. That being so, jewellery intended for the personal use of the assessee comes within the scope of Section 5(1)(viii). But the jewellery mentioned in Section 5(1)(xv) need not be articles intended for the personal use of the assessee. That provision deals with jewellery in general. The two provisions deal with different classes of jewellery. That is made further clear by Section 5(1)(viii) which says that wealth-tax shall not be payable by an assessee in respect of any drawings, paintings, photographs, prints and other heirloom not falling within clause (xii) and not intended for sale but not including jewellery. If the contention that the jewellery is exclusively dealt with by Section 50(1)(xv) is correct then there was no occasion for the legislature to refer to jewellery in Section 5(1)(xiii). From an analysis of the various provisions in Section 5, it appears to us that therein there are four provisions dealing with jewellery, viz., (1) jewellery intended for the personal use of the assessee --Section 5(1)(viii); (2) jewellery that is heirloom--Section 5(1)(xiii); (3) jewellery in the possession of any Ruler -- Section 5(1)(xiv); and (4) jewellery in general--section 5(1)(xv). u/ s 5(1)(xv), as it stood at the relevant time, every assessee was entitled to deduct a sum of Rs. 25,000 from out of the value of the jewellery in her possession whether the same was intended for her personal use or not but u/s

5(1)(viii) the value of all the, jewellery intended for the personal use of the assessee stands excluded in the computation of the net wealth of an assessee."

6. Soon after. Parliament brought about amendment to the position by the Finance (No. 2) Act of 1971. Under the amendment, in Section 5(1)(viii), exemption from net wealth was provided in the following terms :

"Furniture, household utensils, wearing apparel, provisions and other articles intended for the personal or household use of the assessee but not including jewellery."

7. The phrase "but not including jewellery" was specifically added with effect from April 1, 1963. Two Explanations were added prospectively with effect from April 1, 1972. Explanation 1, which is relevant, provides ;

"For the purposes of this clause and Clause (xiii) "jewellery" includes-

(a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;

(b) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel."

8. In view of the decision of the Supreme Court and in view of the clear provision that the Explanation I has no retrospective effect, in our opinion, the Tribunal took the right view when it came to the conclusion that jewellery incorporated in Clause (viii) shall have the meaning as given by the Supreme Court to the term and the legislative meaning given to the term by the Explanation- I shall operate from April 1, 1972. In that view of the matter, the deletion directed by the Tribunal of the value of the gold ornaments from the taxable net wealth was justified. " -

9. Our answer to the question referred for opinion, therefore, is-

The word "jewellery" in Section 5(1)(viii) of the Wealth-tax Act of 1957, prior to amendment of the provision and the introduction of the Explanation I by the Finance (No. 2) Act of 1971, would not take in gold ornaments without precious/ or semi-precious stones embedded on them.

10. The assessee shall have costs of the reference. Consolidated hearing fee is assessed at rupees two hundred.

Das, J.

11. I agree.