(1990) 08 PAT CK 0020

In the Patna High Court

Case No : Taxation Case No''s. 8 and 9 of 1978

Commissioner of Wealth Tax — APPELLANT

Vs

Ginni Devi Jalan — RESPONDENT

Date of Decision : 06-08-1990

Acts Referred:
Wealth Tax Act, 1957 — Section 35, 5(1)

Citation : (1990) 186 ITR 168 : (1991) 54 TAXMAN 389

Hon'ble Judges : G.G. Sohani, C.J;G.C. Bharuka, J

Bench : Division Bench

Advocate : K.K. Vidyarthi and S.K. Sharan, for the Appellant; K.N. Jain, for the Respondent

Judgement

G.G. Sohani, C.J.—The Income Tax Appellate Tribunal, Patna Bench, has referred the following question of law to this court u/s 27(1) of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act") :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the Wealth-tax Officer could not rectify his assessment orders u/s 35 of the Wealth-tax Act consequent to the amendment u/s 5(1)(viii) of the Wealth-tax Act with retrospective effect ?"

2. The material facts giving rise to this reference, briefly, are as follows : The assessee was assessed under the Act for the assessment years 1968-69 and 1969-70. Subsequently, it came to the notice of the Wealth-tax Officer that the value of jewellery amounting to Rs. 2,20,173 had not been included by the Wealth-tax Officer in view of the judgment of the Supreme Court in the case of Commissioner of Wealth-tax, Gujarat Vs. Arundhati Balkrishna, , but the provisions of Section 5(1)(viii) of the Act were amended with retrospective effect from April 1, 1963. The Wealth-tax Officer was of the view that allowance of exemption in respect of the jewellery in question was a mistake apparent from the record. The Wealth-tax Officer, therefore, after issuing notice and hearing the assessee, rectified the order of assessment u/s 35 of the Act and included the

value of jewellery in the order of assessment. Aggrieved by the order passed by the Wealth-tax Officer, the assessee preferred appeals which were dismissed by the Appellate Assistant Commissioner. On further appeal before the Tribunal, the Tribunal held, relying on a judgment of the Bombay High Court in the case of J.M. Shah Vs. J.M. Bhatia, Appellate Assistant Commissioner of Wealth Tax and Others, , that there was no mistake apparent from the record which could be rectified. In this view of the matter, the Tribunal set aside the order of rectification passed by the Wealth-tax Officer and allowed the assessee''s appeals. Aggrieved by the order passed by the Tribunal, the Revenue sought reference and it is at the instance of the Revenue that the aforesaid question of law has been referred to this court for its opinion.

3. At the time of hearing, it was brought to our notice that the decision of the Bombay High Court in J.M. Shah Vs. J.M. Bhatia, Appellate Assistant Commissioner of Wealth Tax and Others, , on which reliance was placed by the Tribunal, has been reversed by the Supreme Court in J.M. Bhatia, Appellate Assistant Commissioner of Wealth Tax and Others Vs. J.M. Shah, . In view of this decision, it must be held that the Tribunal was not right in holding that the order of rectification passed by the Wealth-tax Officer was not justified. My answer to the question referred by the Tribunal is, therefore, in the negative and against the assessee. In the circumstances of the case, parties shall bear their own costs of this reference,

4. Let a copy of this order be communicated by the officer of this court to the Assistant Registrar, Income Tax Appellate Tribunal, Patna Bench, Patna.

G.C. Bharuka

5. I agree.

