(1989) 09 MP CK 0029

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 345 of 1984

Commissioner of Wealth Tax — APPELLANT

Vs

H.H. Bhawani Singh — RESPONDENT

Date of Decision : 22-09-1989

Acts Referred:

Citation : (1989) 80 CTR 134 : (1990) 181 ITR 458

Hon'ble Judges : G.G.Sohani, Acting C.J.;K.M. Agrawal, J

Bench : Division Bench

Advocate : B.K. Rawat, for the Appellant; B.L. Nema, for the Respondent

Judgement

G.G. Sohani, Actg. C.J.

1. By this reference u/s 27(1) of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Jabalpur Bench, has referred the following question of law to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the articles in question were liable to be included in the net wealth of the assessee notwithstanding the creation of the trust and demand of gift-tax in respect of their transfer to the trust ?"

2. The material facts giving rise to this reference briefly, are as follows : The assessee is an ex-ruler of the former State of Chhatarpur. On October 1, 1970, he created a trust and transferred some parcel of agricultural land, buildings and articles of gold and silver to the trust. During the course of the assessment under the Act for the years 1971-72 to 1974-75, the assessee contended that the property in question, having been transferred to the trust, did not belong to him and should not, therefore, be included in his net wealth. The Wealth-tax Officer rejected that contention and included the value of those properties in the net wealth of the assessee. On appeal, the Commissioner of Wealth-tax (Appeals), held that as the properties were transferred to the trust, proceedings of assessment under the Gift-tax Act should have been initiated by the Gift-tax

Officer. It was further held that by virtue of the proviso to Clause (iv) of Section 4(1)(a) of the Act, as the transfer of assets was chargeable to gift-tax, the value of the said assets could not be included in the net wealth of the assessee. The Commissioner, therefore, directed the Wealth-tax Officer to exclude the value of the assets in question while computing the net wealth of the assessee. Aggrieved by that order, the Revenue preferred an appeal before the Tribunal which was dismissed. Hence, at the instance of the Revenue, the aforesaid question of law has been referred to this court for its opinion.

3. Having heard learned counsel for the parties, we have come to the conclusion that the reference must be answered against the Revenue and in favour of the assessee. The proviso to Clause (a) of Sub-section (1) of Section 4 reads as under :

"Provided that where the transfer of such assets or any part thereof is either chargeable to gift-tax under the Gift-tax Act, 1958 (18 of 1958), or is hot chargeable u/s 5 of that Act, for any assessment year commencing after the 31st day of March, 1964, but before the 1st day of April, 1972, the value of such assets or part thereof, as the case may be, shall not be included in computing the net wealth of the individual."

4. The assets in question having been transferred on October 1, 1970, and having been held chargeable to gift-tax under the Gift-tax Act, the value of those assets is required to be excluded while computing the net wealth of the assessee. The Tribunal was, therefore, right in holding that the assets in question were not liable to be included in the net wealth of the assessee.

5. The reference is accordingly answered in favour of the assessee and against the Revenue. In the circumstances of the case, parties shall bear their own costs of this reference.