

(1996) 04 MP CK 0023

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No's. 298 and 299 of 1990

COMMISSIONER OF WEALTH TAX

APPELLANT

Vs

H.H. MAHARANI USHA DEVI.

RESPONDENT

Date of Decision : 09-04-1996

Acts Referred:

Wealth Tax Act, 1957 — Section 27(3), 35

Citation : (1997) 140 CTR 166

Hon'ble Judges : A.R. Tiwari, J

Bench : Division Bench

Judgement

A.R. TIWARI, J. :

These two cases involve common questions and as such, are heard analogously.

2. The CWT has filed these applications under S. 27(3) of the WT Act, 1957 (for short the Act) proposing the undernoted common questions, labelled as of law, for the asst. yrs. 1966-67 and 1967-68 arising out of the common order passed by the Tribunal in WTA Nos. 94 to 96 and 136 to 141/Ind/85 pertaining to asst. yrs. 1962-63 to 1970-71. However, these two cases relate only to two assessment years as noted above :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in quashing the CWT(A) order on the technical defect of same described in the notice under S. 35 whom the correct name of the assessee was described in the order under S. 35 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the notice under S. 35 did not contain the mistake to be rectified when it was specifically mentioned in the annexure with notice under S. 35 dt. 29th July, 1981 issued a letter to the same effect on 25th Jan., 1983 ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the mistake rectified were not apparent from records but a

debatable issue was involved when the nature of such debatable issue was nowhere specified in its order whereas the CWT(A) has specifically discussed and held that the mistake were apparent from records.

(4) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in commenting that the orders under S. 35 passed were received loan of the period of 4 years is over when S. 35(7) of WT Act specified passing of the orders within 4 years from the expiry of the date of order sought to be amended ?

(5) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in not deciding the grounds specifically raised in Departmental appeals ?"

3. We have heard Shri D.D. Vyas, learned counsel for the Department-applicant and Shri J.W. Mahajan, for the assessee-non-applicant.

4. Both the parties brought to our notice that similar questions presented in MCC Nos. 295/90, 296/90, 297/90 and 308/90 concerning the same non-applicant-assessee have not been held to be referable by order dt. 16th Feb., 1996 passed by this Court and as a result of which the aforesaid Misc. Civil Case were mortalised.

5. Nothing substantial is urged to take a different view in the matter.

6. The applications were submitted before the Tribunal under S. 27(1) of the Act. The same were rejected on the conclusion as noted below :

"Here we find that the Department in the present reference applications has sought to raise questions narrated above which, according to it, arose from the order of the Tribunal in WTA Nos. 93 to 96 and 136 to 141/Ind of 1985. We find that these are appeals Nos. relating to Departmental appeals which were dismissed by the Tribunal on the ground that they did not survive since the order of the CWT(A) was reversed on appeal by the assessee. At best the above questions can be said to have arisen from the order of the Tribunal in assessee's appeals in ITA Nos. 133 to 137 and 110 to 116/Ind of 1985. The Department itself has not raised any question in respect of the finding of the Tribunal given in assessee's appeals in which the Tribunal held that the orders of rectification were invalid for the reasons stated in paragraphs 4 and 5 of their order. For this reason alone, the aforementioned questions are liable to be rejected on the ground that they do not arise out of the order of the Tribunal in the Departmental appeals.

Alternatively and without prejudice the finding of the Tribunal is based on the rationale of the decisions of the Supreme Court in T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, and Y.K. Ganekar v. Agrl. ITO (supra) and of the Madhya Pradesh High Court in the case of Commissioner of Income Tax Vs. Tej Kumar Sethi (HUF), . For this reason we are satisfied that no referable question of law arises. We would, therefore, reject all these reference applications."

7. We are, thus, satisfied as to the correctness of the order passed by the

Tribunal. The aforesaid order dt. 16th Feb., 1996 also clinches the issue against the applicant.

8. We thus, hold that there are no referable questions of law in these cases and the applications are devoid of merit.

9. Consequently, we dismiss these applications without any orders as to costs. Counsel fee for each side is, however, fixed at Rs. 750, if certified.