(1987) 04 BOM CK 0062

In the Bombay High Court

Case No : Wealth-tax Reference No. 40 of 1975

Commissioner of Wealth-tax APPELLANT

Vs

J.S. Sabavalla RESPONDENT

Date of Decision : 02-04-1987

Acts Referred:

Finance Act, 1971 — Section 32
Wealth Tax Act, 1957 — Section 35, 5(1)

Citation : (1987) 62 CTR 194 : (1988) 171 ITR 191

Hon'ble Judges : T.D. Sugla, J;Bharucha, J

Bench : Division Bench

Judgement

Bharucha, J.—This reference is made at the instance of the Revenue. The question raised is this :

"Having regard to the fact that the amendment to section 5(1)(viii) of the Wealth-tax Act, 1957, was expressly given retrospective effect by section 32 of the Finance (No. 2) Act, 1971, whether the Tribunal was right in holding that the Wealth-tax Officer was not competent to rectify the assessment of the assessee to tax the value of jewellery on the ground that there was no mistake apparent from the records capable of rectification u/s 35 of the Wealth-tax Act ?"

2. The answer to be given to the question is squarely covered by the judgment of the Supreme Court in J.M. Bhatia, Appellate Assistant Commissioner of Wealth Tax and Others Vs. J.M. Shah, , Having regard to that judgment, the question posed to us must be answered in favour of the Revenue.

3. Mr. Dalvi, learned counsel for the assessee, however, submitted that what was encompassed in the word "jewellery" was itself a debatable question and that, therefore, the rectification proceedings could not have been started. He submitted that the reference by the Tribunal in its order to the case of Ramesh Mafatlal (Wealth-tax Applications Nos. 1498 of 1966-67 (A. Y. 1964-65) and 918 (Bom.) of 1967-68 (A. Y. 1966-67)), showed that this point had been urged on behalf of the assessee before the Tribunal.

4. We will assume that this point was urged before the Tribunal. We, however, do not find the point referred to us. The only point in the question that is referred is whether the Wealth-tax Officer was competent to rectify the assessment of the assessee to bring to tax the value of jewelry in the light of the restrospective effect given to the amendment to section 5(1)(viii) of the Wealth-tax Act, 1957. We cannot, therefore, consider the point urged by Mr. Dalvi before us.

5. The question has to be answered, having regard to the Supreme Court judgment referred to above, in favour of the Revenue.

6. In applying the provisions of section 5(1)(viii) of the Wealth-tax Act, 1957, the Tribunal shall, of course, consider whether the ornaments belonging to the assessee fall within the meaning of the word "jewellery" therein. No order as to costs.