(1990) 04 MP CK 0005

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 49 of 1989

Commissioner of Wealth-tax APPELLANT

Vs

Princess Usha Trust RESPONDENT

Date of Decision : 02-04-1990

Acts Referred:
Wealth Tax Act, 1957 — Section 27

Citation : (1990) 185 ITR 428

Hon'ble Judges : Y.B. Suryavanshi, J;A.G. Qureshi, J

Bench : Division Bench

Advocate : G.S. Mawle, for the Appellant;

Judgement

A.G. Qureshi, J.—The Revenue has filed this application u/s 27(3) of the Wealth-tax Act, 1957, for calling for a statement of the case from the Income Tax Appellate Tribunal, Indore.

2. The facts of the case, in brief, are that the Wealth-tax Officer assessed the non-applicant trust on the net wealth of Rs. 2,49,59,146 for the assessment year 1982-83. The assessee is a private trust created on April 10, 1950. The assessee filed returns declaring its net wealth on the ground that in the year 1973, the beneficiaries under the trust had transferred their beneficial interest in favour of another trust. However, the Wealth-tax Officer assessed the trust as above for the assessment years 1981-82 and 1982-83. The Commissioner of Income Tax (Appeals), following the judgment of the Madhya Pradesh High Court in Princess Usha Trust Vs. Commissioner of Income Tax, which decision was given in respect of the assessee''s case, held that, on the valuation date, the said Princess Usha Trust ceased to exist and accordingly cancelled the assessment. Aggrieved by the aforesaid order of the Commissioner of Wealth-tax (Appeals), the Department filed an appeal before the Income Tax Appellate Tribunal. The Tribunal, placing reliance on the Madhya Pradesh High Court judgment in Miscellaneous Civil Case No. 75 of 1982, dated March 19, 1983, confirmed the order of the Commissioner of Wealth-tax (Appeals). Hence, this reference application on the following

question which has been formulated for reference (153 ITR 183) :

"Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in confirming the Commissioner of Wealth-tax (Appeals)''s order on the basis of the Madhya Pradesh High Court''s order in Miscellaneous Civil Case No. 75 of 1982, dated March 19, 1983, ignoring the fact that the Revenue has gone in appeal to the Supreme Court and SLP is pending ?"

3. The Department had also made an application seeking reference from the Tribunal, which was dismissed by the Tribunal. Hence, in this application, therefore, a prayer has been made that the Income Tax Appellate Tribunal, Indore, be directed to state the case and send a reference on the aforesaid question of law to this hon''ble court for its opinion.

4. While deciding a similar application in Miscellaneous Civil Case No. 54 of 1989 Commissioner of Wealth-tax Vs. Princess Usha Trust, between the same parties, this court, vide its order dated October 3, 1989, has held that the application of the Department cannot be allowed solely on this ground that a SLP has been preferred. No referable question of law arises in this case. The facts and the prayer made by the Revenue (petitioner) in this case are also identical. The only ground on which the reference is sought is the pendency of a SLP against the order of this court dated March 19, 1983, passed in Princess Usha Trust Vs. Commissioner of Income Tax,). The Supreme Court has not passed any order staying the operation of the aforesaid decision of this court and, as such, in our opinion, there is no case for calling for a statement of the case from the Income Tax Appellate Tribunal, Indore. In our opinion, the learned Income Tax Appellate Tribunal has rightly rejected the application for reference made by the Department.

5. Therefore, the application filed by the petitioner is dismissed as being without any merit.

