(1986) 03 DEL CK 0034

In the Delhi High Court

Case No : Wealth-tax Reference No. 37 of 1976

Commissioner of Wealth Tax — APPELLANT

Vs

Smt. Ananti Devi — RESPONDENT

Date of Decision : 12-03-1986

Acts Referred:

Citation : (1986) 53 CTR 45 : (1987) 163 ITR 482

Hon'ble Judges : Yogeshwar Dayal, J;Mahinder Narain, J

Bench : Division Bench

Judgement

Yogeshwar Dayal, J.—In this W.T.R. No. 37 of 1976, the following question has been referred to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, and in view Explanation 1 to section 5(1)(viii) of the Wealth-tax Act, 1957, gold ornaments of the assessed of the value of Rs. 4,760 were "jewellery" and were, Therefore, not includible in the total wealth of the assessed for the assessment year 1963-64 ?"

2. The aforesaid question arises in the following circumstances :

The assessed filed wealth-tax return for the assessment year 1963-64 but she did not disclose the value of her jewellery in the said return. She was under the impression that the jewellery is exempt from her assets in view of section 5(1), sub-section (viii) of the Wealth-tax Act. However, on notice being issued to her, she filed a valuation report, inter alia, disclosing gold ornaments of the value of Rs. 4,760. The Wealth-tax Officer vide order dated March 30, 1973, included it for the purposes of computing total wealth.

3. The assessed went up in appeal but the appeal failed.

4. The assessed took up the matter further to the Tribunal. The Tribunal accepted her appeal under the impression that the amendment of clause (viii) of section 5(1) of the Wealth-tax Act was prospective with effect from April 1, 1972, and the inclusion of the word jewellery therein did not affect the assessed and with

this observation accepted the appeal.

5. Mr. K. K. Wadhera who appears for the Commissioner of Wealth-tax brought to our notice the fact that the section relating to exemption of certain assets particularly clause (viii) of section 5(1) of the Wealth-tax Act was amended retrospectively with effect from April 1, 1963, by the Finance (No. 2) Act, 1971. If that be the position, then jewellery has been excluded from the exemption of certain assets provided u/s 5(1)(viii) of the Act.

6. The provisions of section 5(1)(viii) of the Wealth-tax Act came up for consideration before a Division Bench of this court in the case of Commissioner of Wealth Tax, Delhi-III Vs. Rukmani Devi, and in the case of Commissioner of Wealth Tax Vs. Smt. Savitri Devi, . In the case of Smt. Savitri Devi Leila Seth, J., speaking for the Division Bench of this court held that, "gold ornaments not studded with precious stones were ''jewellery'' and were not exempt u/s 5(1)(viii) for the assessment years 1964-65 to 1970-71". Since this amendment to section 5(1)(viii) is made retrospectively applicable with effect from April 1, 1963, for the relevant assessment year 1963-64, this decision is fully applicable. The same view was followed by this court in the later decision in the case of Commissioner of Wealth Tax, Delhi-III Vs. Rukmani Devi, wherein the Bench of Kapur, J., (as his Lordship then was) and S. Ranganathan, J., took the view that, "ornaments made of gold constitute jewellery and are not exempt from wealth-tax u/s 5(1)(viii) of the Wealth-tax Act, 1957, up to March 31, 1972. In this view of the matter, it appears that the Tribunal had wrongly held that the gold ornaments are exempt from the computation of the net wealth of the assessed. The reference is, accordingly, answered against the assessed and in favor of the Commissioner of Wealth-tax.

7. Since nobody has appeared on behalf of the assessed, parties are left to bear their own costs.