
(1985) 08 RAJ CK 0061

In the Rajasthan High Court

Case No : Wealth-tax Case No's. 48 and 49 of 1978

Commissioner of Wealth-tax

APPELLANT

Vs

Smt. Kamla Devi Bangur

RESPONDENT

Date of Decision : 20-08-1985

Acts Referred:

Wealth Tax Act, 1957 — Section 27(3), 35, 5(1)

Citation : (1987) 163 ITR 385

Hon'ble Judges : S.N. Bhargava, J;M.C. Jain, J

Bench : Division Bench

Advocate : B.R. Arora, for the Appellant; Rajesh Balia, for the Respondent

Judgement

M.C. Jain, J.—These are two applications u/s 27(3) of the Wealth-tax Act, 1957 (No. 27 of 1957), for directing the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, to state a case and refer the question of law arising out of the Tribunal's order dated June 24, 1977, passed in Wealth-tax Appeals Nos. 137 and 138/JP/1966-67 for the assessment years 1968-69 and 1969-70.

2. The reference applications have arisen out of the following facts :

The assessee-respondent was assessed for the aforesaid two assessment years under the Wealth-tax Act by the Wealth-tax Officer, Jodhpur, on February 6, 1971. The Wealth-tax Officer did not include the whole of the jewellery and ornaments in the total wealth of the assessee in view of the decision of their Lordships of the Supreme Court in Commissioner of Wealth-tax, Gujarat Vs. Arundhati Balkrishna, . Subsequently, Section 5 of the Wealth-tax Act was amended by the Finance (No. 2) Act of 1971, with retrospective effect from April 1, 1963. The effect of the amendment was that exemption in regard to jewellery and ornaments for personal use ceased and the value of the jewellery and the ornaments intended for personal use became taxable. Consequently, the same was includible in the net wealth of the assessee from April 1, 1963. After the amendment, a notice u/s 35 of the Act was issued in respect of both the

assessment years to the assessee and thereafter the Wealth-tax Officer revised . the original assessment in respect of the two years on September 13, 1972. The assessee preferred appeals against the order of the Wealth-tax Officer before the Appellate Assistant Commissioner of Income Tax, Jodhpur, who by his order dated June 22, 1976, annulled the order of the Wealth-tax Officer. Dissatisfied with the order of the Appellate Assistant Commissioner of Income Tax, the Commissioner of Wealth-tax preferred appeals in respect of the two assessment years to the Income Tax Appellate Tribunal. The Tribunal by its order dated June 24, 1977, dismissed both the appeals and observed that the exemption granted in respect of jewellery and ornaments to the assessee at the time of original assessment did not disclose any mistake apparent from the record. Hence, the Appellate Assistant Commissioner was justified in cancelling the order passed by the Wealth-tax Officer u/s 35 of the Act. The petitioner made an application u/s 27(1) of the Act before the Tribunal. That application was rejected by the Tribunal on December 26, 1977. Hence, the petitioner has moved these applications and has prayed that the Tribunal be directed to make a reference to this court on the following question of law :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the exemption granted in respect of jewellery and ornaments to the assessee at the time of original assessment did not disclose any mistake apparent from the record which can be rectified u/s 35 of the Wealth-tax Act, 1957 ?"

3. After hearing the learned counsel for the parties, we are of the opinion that no question of law arises in view of the fact that the original assessment does not disclose any mistake apparent from the record which can be rectified u/s 35 of the Wealth-tax Act. The Tribunal was right in placing reliance on the decision of the Supreme Court in T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, . In that case, their Lordships of the Supreme Court have observed as under (headnote at p. 50) :

"A mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may be conceivably two opinions. A decision on a debatable point of law is not a mistake apparent from the record."

4. A similar question arose before the Bombay High Court in J.M. Shah Vs. J.M. Bhatia, Appellate Assistant Commissioner of Wealth Tax and Others, In that case as well, the Appellate Assistant Commissioner passed an order of rectification u/s 35 of the Wealth-tax Act, 1957, withdrawing the exemption granted to the petitioner in respect of jewellery and ornaments and included an amount of Rs. 4,15,942 being the value of the jewellery and ornaments in the net wealth of the petitioner.

5. A writ petition was filed challenging the rectification order. It was held as under (headnote at pages 519 and 520) :

"It was a debatable point of law as to whether the amending provision applied to a completed assessment against which no further proceedings were pending at the date of enactment of the amending provision as in the present case. The language of Section 35, which confers the power of rectification, shows clearly that the error which can give jurisdiction to a revenue authority to initiate rectification proceedings must be "a mistake apparent from the record". The plain meaning of the word "apparent" is that it must be something which appears to be so ex facie and is incapable of argument or debate. The mistake can be regarded as "apparent" only when it is "glaring, obvious or self-evident mistake". It must be an obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on points on which there may conceivably be two opinions. As the applicability of the amending provision to the completed assessment was itself a debatable point, it must be held that there was no mistake apparent from the record and the Appellate Assistant Commissioner had no jurisdiction to rectify the original order dated June 26, 1970."

6. The matter also came up before the Gujarat High Court in *Padmavati Jaykrishna Vs. Commissioner of Wealth-tax, Gujarat III*, . In that case, exemption was granted in respect of jewellery of the assessee u/s 5(1)(viii) of the Wealth-tax Act. The question was whether the grant of exemption to the assessee could be treated as an error apparent on the record. It was held as under (headnote at p. 115) :

"It is a well-settled position of law that in order to be a mistake apparent from the record of the case, it must be an error apparent, obvious and glaring. Mere complexity of the problem or that some genuine argument is necessary to discover the error may not be sufficient to oust the jurisdiction of the taxing authorities to rectify such a mistake. None the less, it should be one which could be discerned with some precision after a judicial probe into the assessment records without long drawn process of reasoning and on which no two reasonably contrary opinions are conceivable."

7. It was observed that the question of retrospectivity of the amendment was serious and highly debatable and could not be resolved without making a serious and studied attempt of the different amendments sought to be inserted in Section 6(1)(viii) of the Wealth-tax Act. The grant of exemption to the assessee could not, therefore, be treated as an error apparent from the record.

8. This court too had an occasion to consider the question arising u/s 154 of the Income Tax Act in *Commissioner of Income Tax Vs. United Mercantile Co. (Private) Limited*, decided on April 23, 1985. Relying on the decision of T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. *Volkart Brothers, Bombay*, , it was observed that in order to attract the application of Section 154 of the Income Tax Act, it must be a case of a mistake and that mistake must be apparent on the record. In that case, the Appellate Assistant Commissioner, with whom the Appellate Tribunal agreed, has stated that the case of the assessee is

governed by Emerald and Co. Ltd. Vs. Commissioner of Income Tax, Bombay, whereas the successor-income tax Officer has rectified the so-called mistake in respect of the capital gain on the basis of the principles laid down in Commissioner of Income Tax, Bihar Vs. Dalmia Investment Co. Ltd., . It was observed that no substantial question of law arose after the order of the Appellate Tribunal and the Tribunal was right in rejecting the application u/s 2GG(1) of the Act, as there was no obvious and patent mistake committed by the Income Tax Officer in the original order.

9. In view of the decision of the Supreme Court and in view of the other decisions referred to above, in our opinion, no case for initiating proceedings u/s 35 of the Wealth-tax Act has arisen as the original assessment does not disclose any mistake apparent from the record and we decline to direct the Tribunal to state the case on the question stated by the petitioner calling upon the Tribunal to make a reference on the said question.

10. The petitions are, therefore, dismissed. Costs will be borne by the parties.