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(1982) 09 MP CK 0014

In the Madhya Pradesh High Court

Case No : M.C.C. No. 61 of 1981

Commissioner of Wealth Tax — APPELLANT

Vs

Smt. Sharda Devi Mittal — RESPONDENT

Date of Decision : 14-09-1982

Acts Referred:
Wealth Tax Act, 1957 — Section 35, 5(1)

Citation : (1984) 146 ITR 510

Hon'ble Judges : R.K. Vijayvargiya, J;K.N. Shukla, J

Bench : Division Bench

Advocate : R.C. Mukati, for the Appellant;

Judgement

Shukla, J.—The Income Tax Appellate Tribunal, Indore, has referred the following question for our opinion in pursuance of the direction of this court in that behalf:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that even if the provisions of Section 5(1)(viii) as amended by the Finance Act No, 2 of 1971, are retrospective in operation, the inclusion of value of gold ornaments and jewellery could not be made by invoking the provisions of Section 35 of the Wealth-tax Act, 1957 ?"

Facts as stated by the Tribunal are as follows : The assessee in her return of wealth for assessment year 1968-69 claimed that jewellery and ornaments valued at Rs. 89,201 were exempt u/s 5 of the W.T. Act. The WTO rejected this submission and added the value of jewellery and ornaments in the net wealth of the assessee. In appeal before the AAC the point was reiterated by the assessee and exemption was claimed u/s 5(1)(viii) of the W.T. Act. The AAC accepted the contention and allowed the appeal.

2. Later, the WTO moved an application u/s 35 of the Act for rectification of the appellate order on the ground that Section 5(1)(viii) of the W.T. Act was amended by the Finance Act (No. 2) of 1971, retrospectively from April 1, 1963. This application was dismissed by the AAC on the ground that there was no

rectifiable error in the order because it involved disputed questions of law and fact. The appeal by the Department before the Appellate Tribunal was dismissed on the ground that though Section 5(1)(viii) had been amended, there was no mistake apparent on the record in the order of the AAC and the same could not be rectified u/s 35 of the W.T. Act. A reference was sought by the Department but the Tribunal rejected the application and thereafter on the direction issued by this court the case has been referred to us for answering the question of law mentioned above.

3. In CWT v. Smt. Tambai (M.C.C. No. 128 of 1978) (see p. 512 infra (Appx.)) this court was called upon to consider two questions on identical facts. Both the questions were answered separately but the effect of the answer was that the AAC had jurisdiction u/s 35 of the W.T. Act to rectify the earlier order, after the amendment to Section 5(1)(viii) of the Act. It was further held that in view of the Explanation to the provision which was not retrospective, the word "jewellery", before the amendment, was susceptible of different meanings and if one meaning was accepted by the AAC, there was no rectifiable error within the purview of Section 35 of the W.T. Act.

4. We, therefore, hold that, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the value of the ornaments and jewellery could not be included by invoking the provisions of Section 35 of the W.T. Act, 1957.

5. There will be no order as to costs.

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