
(1991) 02 CAL CK 0037
In the Calcutta High Court
Case No : Matter No. 1127 of 1982

Commissioner of Wealth Tax

APPELLANT

Vs

Smt. Shirin Paul

RESPONDENT

Date of Decision : 14-02-1991

Acts Referred:

Wealth Tax Act, 1957 — Section 7

Citation : (1992) 108 CTR 397 : (1994) 205 ITR 596 : (1993) 69 TAXMAN 519

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Advocate : Anil Roy Chowdhury, for the Respondent

Judgement

Ajit K. Sengupta, J.—This is a reference u/s 27(1) of the Wealth-tax Act, 1957, and not u/s 256(1) of the Income Tax Act, 1961, as stated by the Tribunal. The following question of law has been referred for the assessment year 1973-74 :

"Whether, on the facts and in the circumstances of the case, particularly in view of the fact that the assessee, while making voluntary disclosure under the Voluntary Disclosure of Income and Wealth Ordinance, 1975, did not furnish details of jewellery, the Tribunal was right in holding that the assessee was entitled to claim that the value of the jewellery should not be taken as per value given in the voluntary disclosure but should be determined on the basis of the valuer's report furnished at the time of assessment showing details of jewellery at a lower value, observing that there does not appear to be any dispute about the details and the nature of the jewellery articles ?"

2. Shortly stated the facts are that the assessee filed returns for the assessment years 1973-74 and 1974-75 under the Voluntary Disclosure of Income and Wealth Ordinance, 1975, on December 26, 1975. The assessee subsequently during the assessment proceedings submitted the value of some jewellery based on the valuer's report dated April 30, 1972, at Rs. 1,08,888 for each of these years as against the value at Rs. 2,30,000 and Rs. 2,45,000 shown in the

voluntary disclosure for the assessment years 1973-74 and 1974-75, respectively. The Wealth-tax Officer pointed out that the assessee did not furnish details of jewellery shown under the Voluntary Disclosure Scheme and, therefore, he rejected the valuation shown by the assessee subsequently in the assessment proceedings as per the valuer's report but substituted the valuation shown in the voluntary disclosure petitions.

3. On appeal before the Appellate Assistant Commissioner it was contended that there was a bona fide error in overestimating the valuation of jewellery in the returns filed along with the voluntary disclosure petitions as the valuer's reports were not available at that time. It was also contended that the information in the declaration u/s 15 of the Scheme was merely to be taken into account for the purpose of wealth-tax assessment but this did not mean that the valuation of any assets declared became final and conclusive. The Appellate Assistant Commissioner did not accept the contention of the assessee as, according to him, if the actual valuation reports of the jewellery were available with the assessee before making the declaration under the Voluntary Disclosure Scheme, there was no reason why a higher valuation would be shown therein by the assessee.

4. On second appeal, the Tribunal was of the view that although the information contained in the declaration was to be passed on to the Wealth-tax Officer, none the less the assessment was to be made under the provisions of the Wealth-tax Act. It also observed that if the assessee could show that the value represented by a particular asset was really not the value but it was lower, the assessee can plead for adoption of the lower valuation provided that there was no dispute about the particular item of jewellery to be valued. Thereupon the Tribunal gave a finding that there did not appear to be any dispute about the nature of the articles and the details of the jewellery were also available on record, and the report of the valuer dated April 30, 1972, also made reference to those details. It is for these reasons that the matter was restored to the Wealth-tax Officer subject to the observations made by the Tribunal.

5. At the hearing Mr. Anil Roy Chowdhury, learned advocate, has contended that the assessment in pursuance of a declaration made under the Voluntary Disclosure Scheme has to be made under the provisions of the Wealth-tax Act, and, accordingly, the assessee is entitled to relief in the assessment proceedings if he can demonstrate that the value disclosed in the declaration made under the scheme is not the correct value. He further submits that the valuer's report correctly disclosed the value of the jewellery.

6. This contention has no substance at all. Under the Voluntary Disclosure Scheme, if a declaration is made in compliance with the requirements of the scheme, and an assessment order is passed accepting the declaration, the assessee will be entitled to immunity from the imposition of penalty. An encouragement has been given by the Legislature in the form of reduction or waiver of penalty. The Wealth-tax Officer has accepted the disclosure made by

the assessee under the scheme which has granted immunity to the assessee from the imposition of penalty. Under the scheme an assessee has not only to declare his wealth but is also required to pay the tax on the basis of such declaration. If the contention of the assessee is accepted, in that event, the very purpose of the scheme would be frustrated. The assessee makes a declaration ; pays the tax and thereafter in course of the assessment proceedings asks the Wealth-tax Officer to reduce the valuation as shown in the declaration, and if the valuation is reduced than what has been shown in the declaration the assessee would be entitled to refund. This is not the intent and purport of the Scheme.

7. On the contrary, it will be open to the Wealth-tax Officer to take into account the information contained in the declaration for the purpose of the proceeding relating to assessment or reassessment of the net wealth of the declarant. The Wealth-tax Officer may obtain a report of the Valuation Officer in respect of the properties and assets and determine their value at a higher figure than disclosed in the declaration. If the assessee requires the Wealth-tax Officer in course of the assessment proceedings to arrive at a lower value than what has been shown in the declaration, in that event, the Wealth-tax Officer would be at liberty to complete the assessment in accordance with the provisions of the Act and the assessee will not be entitled to the benefit or immunity granted by the Scheme. The assessee, however, may dispute the valuation before the wealth-tax authorities in respect of any item not disclosed by him but included in the assessment. He cannot be permitted to say that the value of the assets disclosed in the declaration on the basis whereof taxes have been paid and in respect of which the assessee obtained a benefit or immunity is not the correct value; that too on the basis of the valuation report obtained prior to the disclosure.

8. Admittedly, the value of jewellery assessed is the same as that declared by the assessee in the declaration u/s 15(1) and the return accompanying it. The information furnished in these documents are statements made under solemn affirmation verified by the declarant assessee in the prescribed form and manner to be correct and complete in every respect. The four valuation reports from an authorised valuer were available with the assessee as on April 30, 1972. If such valuation reports were obtained in due course, it is difficult to understand as to how in December, 1975, the assessee declared u/s 15(1) a different value at a much higher figure.

9. In our view, having regard to the facts and circumstances of this case, the Tribunal fell into an error in directing the Wealth-tax Officer to determine the value of the jewellery afresh on the basis of the evidence adduced by the assessee being the report of the valuer. If the assessee disputes the correctness of his declaration, the Wealth-tax Officer would be at liberty to complete the assessment in the normal course, and in such an event the Wealth-tax Officer would also be at liberty to initiate proceedings or launch prosecution if the facts so warrant.

10. Mr. Roy Chowdhury, however, realising his difficulty, has fairly conceded that

the assessee is bound by her declaration and even if a revaluation is made, in terms of the direction of the Tribunal, the assessee would not be entitled to get any refund. As indicated the net wealth or value of assets declared by the assessee in the declaration under the scheme will bind her and there is no scope for further consideration, as the net wealth or value so declared shall not be taken into account for the proceeding relating to imposition of penalty on the person making such declaration.

11. For the foregoing reasons, the question in this reference is answered in the negative and in favour of the Revenue.

12. There will be no order as to costs.

Shyamal Kumar Sen, J.

13. I agree.