(1996) 03 MP CK 0096

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No''s. 199 to 203 of 1989

Commissioner of Wealth Tax APPELLANT

Vs

Smt. Usha Devi RESPONDENT

Date of Decision : 12-03-1996

Acts Referred:
Wealth Tax Act, 1957 — Section 27(1), 27(3), 5(1), 5(1)(xiv), 7

Citation : (1996) 87 TAXMAN 399

Hon'ble Judges : N.K. Jain, J;A.R. Tiwari, J

Bench : Division Bench

Advocate : D.D. Vyas, for the Appellant; J.W. Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Jain, J.—These 5 applications made u/s 27(3) of the Wealth-tax Act, 1957 (''the Act'') are being taken up together and disposed of by this common order. Briefly stated the facts leading to these reference applications are: that Late His Highness Maharaj Yeshwant Rao Holkar expired on 5-12-1961. His Highness Maharani Usha Devi, his daughter was recognised as ruler of Indore and also the legal representative of the deceased ruler. The Wealth tax Returns for the assessment years 1957-58 to 1961-62 were furnished whereupon the assessments were made by the WTO on 31-3-1979. In appeal, the Commissioner (Appeals) set aside all these assessments and directed the WTO to make fresh assessments vide his order dated 20-2-1980. Pursuant to the direction of the Commissioner (Appeals), the WTO made fresh assessments including certain assets and taking higher value thereof. The assessee went in appeal to the Tribunal which by a common order dated 11-11-1987 partly allowed the appeals deleting the inclusion of ''Heirloom Jewellery'' worth Rs. 13,80,000. Dissatisfied with the order of the Tribunal, the department moved applications u/s 27(1) of the Act requiring the Tribunal to state the case and refer the under noted questions said to be of law, for the opinion of this Court. The Tribunal by a common order dated 7-3-1989 rejected the applications. The applicant-department has, therefore, come up before this Court u/s 27(3). The proposed questions are these :

(i) Whether, on the facts and in the circumstances of the case, the ITAT was legally correct in directing the WTO allow exemption u/s 5(1) (xiv) of the W.T. Act ?

(ii) Whether, on the facts and in the circumstances of the case, the ITAT was legally correct in not considering that Rule 5 (2) of the W.T. Rule is consistent with the provision of section 7 of the Act, as provisions of section 7 of the Act are subject to the rule made by the C.E.D.T. in the behalf ?

(iii) Whether, on the facts and in the circumstances of the case, the ITAT was legally correct in ignoring to consider harmonious rule of construction of the relevant provisions of law, according to the usual cannon of construction the various clauses in a statutory provisions should be read harmoniously so that each clause will have its full operation as held in Commissionr of Wealth-tax Vs. P.R. Shanmugam, Mad?

2. We have heard Shri D.D. Vyas, the learned counsel for the applicant-department and Shri J.W. Mahajan, the learned counsel for the non- applicant/ assessee. We have also gone through the order dated 11-11-1987 of the Tribunal.

3. In the original assessments dated 31-3-1979, the WTO, Indore exempted the aforesaid ''jewellery'' from assessment, in view of the CBDT''s letter No. 4/ l(12) /58-WT dated 19-9-1959 which recognised the said ''jewellery'' as ''Heirloom Jewellery'' under the Wealth-tax (Exemption of Heirloom Jewellery of Rules), Rules, 1958, for the purpose of section 5(1) (xvi) of the Act. However, pursuant to the order of the Commissioner (Appeals) in appeal, the exemption was withdrawn and consequently the WTO included the value of the ''jewellery'' for assessment in each assessment year. This was obviously done on account of the CBDT''s Circular dated 12-9-1980 whereby the exemption granted earlier by the Board was withdrawn by it. However, this Court by its decision reported in Smt. Usha Devi v. WTO [1987] 33 Taxman 179 has quashed the aforesaid circular dated 12-9-1980 of the Board. The Tribunal while allowing assessee''s appeals, has relied upon the aforesaid decision and also rejected and rightly so, the reference applications made by the department.

4. The controversy in all these cases thus, stands concluded by the aforesaid decision of this Court. It was, however, contended by Shri D.D. Vyas, the learned counsel for the applicant - department that since the department has gone in appeal against the decision of this Court in the case of Smt. Usha Devi (supra) and the matter is pending before the Supreme Court, the Tribunal be directed to state the case and refer the proposed questions for the opinion of this Court, Shri Mahajan, on the other hand, submitted that pendency of the case before the Supreme Court does not furnish any valid ground for seeking the direction about the reference of the questions which already stand answered by this Court. He, further submitted that in case the department succeeds in the Supreme Court it

may apply for rectification before the WTO or before the Appellate Tribunal. The learned counsel, therefore, submitted that these applications are devoid of any merit and should be dismissed.

5. In CWT v. Smt. Usha Devi [l990] 183 ITR 75 1 (MP) and also in Ganga Cut Piece Centre v. CIT [MCC No. 48 of 1985] decided on 19-12-1995, this Court has held that the pendency of same issue before the Supreme Court is no ground for directing the reference. The point of controversy stands decided by this Court against the department and the Tribunal having followed the decision of this Court, we hold that no referable questions arise in this case. We, thus, reject the applications but without any order as to costs. The applicant-department shall, however, be free to resort to appropriate remedy when the occasion so arises and if permissible under the law. The counsel''s fee on either side is fixed at Rs. 750 in each case, if certified.

