

(1996) 12 AHC CK 0091

In the Allahabad High Court

Case No : Wealth-tax Reference No. 213 of 1980

Commissioner of Wealth-tax

APPELLANT

Vs

Sunehari Lal Garg

RESPONDENT

Date of Decision : 12-12-1996

Acts Referred:

Gift Tax Act, 1958 — Section 5
Wealth Tax Act, 1957 — Section 4(1)

Citation : (1997) 225 ITR 913

Hon'ble Judges : Om Prakash, J; Bhagwan Din, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Despite sufficient service, the assessee has failed to appear and, therefore, we have heard only learned standing counsel for the Revenue.

2. At the instance of the Revenue, the Income Tax Appellate Tribunal has referred the following questions relating to the following consecutive assessment years 1972-73 to 1975-76 for the opinion of this court :

" 1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that the amount of Rs. 43,100 which represented the amount of gift made by the assessee to his minor children could not be included in his net wealth for the assessment year 1972-73 ?

2. Whether, on the facts and in the circumstances of the case, the contention of the Department before the Income Tax Appellate Tribunal that the proviso to Section 4(1)(a) of the Wealth-tax Act, 1957, made Section 4(1)(a) of the Wealth-tax Act, 1957, inoperative only for a period of assessment years 1964-65 to 1971-72 in respect of the transferred assets chargeable or exempted u/s 5 of the Gift-tax Act, 1958, and that from the assessment year 1972-73 and onwards such assets were to be included in the net wealth of the assessee irrespective of its chargeability or exemption under the Gift-tax Act is legally correct and

whether the Income Tax Appellate Tribunal erred in law in not accepting the same ?

3. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in upholding the Appellate Assistant Commissioner's action in deleting an addition of Rs. 43,100 made by the Wealth-tax Officer to the assessee's wealth u/s 4(1)(a) of the Wealth-tax Act, 1957 ?"

3. The assessee is an individual. In the returns of wealth filed by the assessee for the consecutive assessment years 1972-73 to 1975-76, he disclosed an amount of Rs. 43,100 which represented gifts made by him to his minor children. The question arose whether the said amount was includible in the net wealth of the assessee.

4. Whereas the Wealth-tax Officer took the view that the said amount will not be included in the net wealth of the assessee only up to the assessment year 1971-72 in view of the first proviso to Sub-section (1) of Section 4 of the Wealth-tax Act, 1957 (briefly, "the Act"), the Appellate Assistant Commissioner and the Income Tax Appellate Tribunal took the view that once the amount was chargeable to gift-tax during the period from March 31, 1964, to April 1, 1972, the value of the said assets will not be included in the net wealth of the assessee.

5. The question is squarely covered by the decisions in the cases of : (1) G.A. Parashuram Vs. Commissioner of Wealth-tax, and (2) Commissioner of Wealth Tax Vs. H.H. Bhawani Singh, . In the case of G.A. Parashuram Vs. Commissioner of Wealth-tax, , the Andhra Pradesh High Court clearly held that once the amount was chargeable to gift-tax during the period from March 31, 1964, to April 1, 1972, then the said amount will not be included in the net wealth for all time to come. A similar view was taken by the Madhya Pradesh High Court in the case of Commissioner of Wealth Tax Vs. H.H. Bhawani Singh, , We are in respectful agreement with the view taken by the Andhra Pradesh and the Madhya Pradesh High Courts.

6. Following the aforesaid decisions, we agree with the conclusion reached by the Appellate Tribunal and answer the questions referred to this court in the affirmative, i.e., in favour of the assessee and against the Revenue.