(1978) 02 MAD CK 0031

In the Madras High Court

Case No : Tax Case Petition No''s. 264 to 266 of 1977

Commissioner of Wealth-tax APPELLANT

Vs

V. Thayarammal RESPONDENT

Date of Decision : 03-02-1978

Acts Referred:
Wealth Tax Act, 1957 — Section 24, 35

Citation : (1983) 139 ITR 1072

Hon'ble Judges : V. Sethuraman, J;V. Ramaswami, J

Bench : Division Bench

Advocate : A.N. Rangaswami and Nalini Chidambaram, for the Appellant; S.V. Subramaniam, for Subbaraya Aiyar, Padmanabhan and Ramamani, for the Respondent

Judgement

Sethuraman, J.—The Commissioner of Wealth-tax wants the following questions to be directed for reference ;

(1) Whether the Tribunal is right in holding that there is no provision in the Wealth-tax Act enabling the Department to prefer an appeal to the

Tribunal questioning the order of the Appellate Assistant Commissioner dropping the proceedings initiated by him u/s 35 of the said Act and that

the appeal filed by the Department is incompetent ?

(2) Whether, on the facts arid in the circumstances of the case, the Appellate Tribunal was right in holding that the provision of Section 35 of the

Wealth-tax Act could not be invoked to apply the amended provisions of Section 5(1)(viii) of the said Act on the ground that the said amended

provisions of Section 5(1)(vii) involved a debatable question of law ?

3. The AAC took certain proceedings for the purpose of rectification of the order which he had passed, in view of certain amendments to the

W.T. Act. After giving notice to the assessee he dropped the said proceedings. Against the said order, there was an appeal to the Tribunal, which

the Tribunal has dismissed as incompetent. In the view of the Tribunal, there was no provision for filing an appeal against an order passed u/s 35 of

the W.T. Act. The learned counsel for the Commissioner was not in a position to dispute the fact that Section 24 of the W.T. Act does not provide

for an appeal against the proceedings of the AAC dropping rectification proceedings. A similar question arose under the Indian I.T. Act of the year

1922, and it was held by a Bench of this court in Commissioner of Income Tax, Madras Vs. Vellingiri Gounder and Brothers, Coimbatore, , that

no appeal lay to the AAC against the order of rectification passed by the ITO. The same decision holds good for the W.T. Act also. Therefore,

we do not find that any referable question arises out of the Tribunal''s order. The petitions are, accordingly, dismissed with costs. Counsel''s fee Rs.

250 one set.

