
(1982) 11 DEL CK 0026

In the Delhi High Court

Case No : Wealth-tax Reference No. 9 to 14 of 1974

Commissioner of Wealth Tax, Delhi-III

APPELLANT

Vs

Rukmani Devi

RESPONDENT

Date of Decision : 24-11-1982

Acts Referred:

Citation : (1983) 34 CTR 358 : (1983) 142 ITR 41 : (1983) 14 TAXMAN 174

Hon'ble Judges : S. Ranganathan, J;D.K. Kapur, J

Bench : Division Bench

Judgement

Ranganathan, J.—This is a consolidated reference under the Wealth-tax Act relating to the six assessment years 1965-66 to 1970-71. The reference has been made at the instance of the Commissioner of Wealth-tax. It arises out of the wealth-tax assessments made on Smt. Rukmani Devi for the above assessment years. A common question of law has been referred for all the assessment years which runs as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that ornaments made of gold, silver, platinum and any precious metals which are not studded with precious or semi-precious stones would be exempt from wealth-tax u/s 5(1)(viii) of the Wealth-tax Act, 1957, up to the 31st March, 1972 ?"

2. It is not necessary to elaborately set out the facts and contentions since the question referred to us is covered by an earlier decision of this court (to which one of us has been a party) in W.T. Rs. 20 to 23/74, in the case of Commissioner of Wealth Tax Vs. Smt. Savitri Devi, . By the judgment delivered on 16th December, 1981, this court has held that gold ornaments held by an assessed would constitute jewelry within the meaning of s. 5(1)(viii) of the W.T. Act, 1957, even though such ornaments are not studded with precious or semi-precious stones. Following the decision in the said references, we have to answer the question referred to us in the present references also in the negative and against the assessed. We answer the references accordingly.

3. Before parting with these references, it is necessary to refer to a certain procedural matter which had assumed some importance in the present case. Some time after the above references (W.T. Rs. 9 to 14/74), were made to this court at the instance of the Commissioner, Smt. Rukmani Devi, the assessed, died on May 18, 1977. This was brought to the notice of the counsel for the applicant and he was directed to take steps to obtain the names of the legal representatives of the deceased respondent and to bring them on record in place of deceased respondent before the reference could proceed further. Sufficient time was given to the counsel for the applicant to take necessary steps in this behalf but no action was taken within the time granted by the court. On behalf of the applicant, it was contended that the rules do not require the applicant to bring on record the legal representatives or to take out notices to them in tax references and that the references may be decided even without bringing on record the legal representatives or issuing notices to them. Fortunately, an advocate who had originally appeared for the late Smt. Rukmani Devi supplied the court with the names and addresses of the legal representatives whereupon notices were issued to them and one of them is also represented by Shri Gurnani, Advocate, before us. We have decided the reference after hearing the counsel for the applicant and Shri Gurnani. But we consider it necessary to indicate the procedure to be followed in such cases for general guidance in future.

4. It is now well settled that a reference under the tax enactments does not abate on the death of the concerned assessed. Shri Gurnani, learned counsel for the respondent attempted to contest this position. But having regard to the long line of decisions on this point (vide *Law & Practice on Income Tax* by Kanga and Palkhivala, 7th edn., Vol, I, pp. 1168-9), we do not consider it advisable to re-open the issue or re-consider the matter at length as if it were *res integra*. The reference has not abated due to the death of Smt. Rukmani Devi.

5. From the above conclusion, it follows that we should proceed to hear and dispose of the reference after hearing the applicant and such persons as may be affected as a result of the assessment in consequence of the death of Smt. Rukmani Devi. Under the taxing Acts where an assessed dies his legal representatives are liable in respect of the tax payable by the deceased to the extent of his estate that has come into their hands. At the stage of the assessment, where an assessed dies, the proceedings can be initiated or continued against the legal representatives who are liable to pay the tax that may be determined as a result of such assessment. The same will be the position at the stage of the appeal as well as the reference because the legal representatives will either be entitled to receive any refunds that may be payable to the deceased as a result of the success in appeals or equally be liable for any taxes that may be found to be due after giving effect to the decisions on appeals or reference. It is, Therefore, necessary, if only as a principle of elementary natural justice, that before the reference is heard and disposed of, the legal representatives of the deceased assessed should be heard by the appellate authority or the High Court. It is impossible to countenance the

suggestion made on behalf of the Department that, in such a case, we should proceed to dispose of the reference without having the legal representatives brought on record or hearing them or their counsel. Even in the absence of any statutory provision or any provision in the rules of the High Court in regard to this matter the requirements of natural justice alone demand that the reference should be heard and disposed of by us only after hearing the legal representatives of the deceased assessed or his counsel.

6. It is true that the rules framed by this court (and, perhaps, by the other High Courts) do not make any specific provision for this situation. It is, however, obvious that steps in this behalf should be taken, where the assessed is the applicant, by the legal representatives and, where the assessed is the respondent by the department. The court has no machinery to trace the legal representatives of a deceased assessed. In tax matters, however, the Department must be in full knowledge of the legal representatives because of the statutory obligations cast on the legal representatives under the taxing enactments. In many cases, the legal representatives themselves become assessed in respect, inter alia, of the sources of income or the assets that previously belonged to the deceased. In our opinion, when it comes to the knowledge of the court by the return of the process sent to a deceased assessed that the assessed is no longer alive, a duty devolves on the legal representatives of the assessed (where the applicants) to assist the court by taking all steps to bring on record such legal representatives and ensuring that they have notice of the proceedings before the court so that they may come and prosecute or defend the references before the court. If, in a case where the Department is the applicant, it fails, despite repeated directions and opportunities given by representatives of the assessed-respondent, the court may be constrained to decline to answer the question and to return the reference unanswered for such default, for the simple reason that no order can be passed by the court on a reference, even though the jurisdiction is purely advisory, without hearing the legal representatives of the deceased.

7. We would, Therefore, like to overrule the preliminary contention that has been submitted before us and to clarify that in cases where the Department is the applicant before the court and any of the respondents has died, it is for the Department, when made aware of this, to take steps to bring on record the legal representatives of the deceased respondent. It is true that if this is not done the reference does not abate, but if, in spite of opportunities and directions given by the court, the Department fails to take any steps in this regard, the court will be constrained to return the reference unanswered.

8. In the present case, however, as already pointed out, the court has been able to obtain the necessary information and notices have also been issued to the legal representatives of Smt. Rukmani Devi. We have heard the counsel for the applicant and counsel for one of the legal representatives who appeared before us.

9. With these observations the reference is answered as already indicated in the negative and in favor of the Revenue. In the circumstances of the case, however, we make no order as to costs.