(2002) 04 RAJ CK 0103

In the Rajasthan High Court

Case No : IT Ref. No. 28 of 1992 19 April 2002 A.Y. 1981-82

CWT APPELLANT

Vs

Champalal Chopra RESPONDENT

Date of Decision : 19-04-2002

Acts Referred:
Wealth Tax Act, 1957 — Section 27(6)

Citation : (2002) 176 CTR 263 : (2003) 128 TAXMAN 784

Hon'ble Judges : N.N. Mathur, J;D.N. Joshi, J

Bench : Full Bench

Advocate : Sandeep Bhandawat, for the Revenue and Rajendra Mehta, for the Assessee, for the Appellant;

Judgement

By the Court

This is a reference u/s 27(6) of the Wealth Tax Act, 1957, by the Tribunal, Jaipur seeking opinion of this court on the following questions :

"Whether on the facts and in the circumstances of the case, the Tribunal was justified in cancelling the order of the Commissioner of Wealth Tax, Jodhpur, passed u/s 25(2) of the Wealth Tax Act, 1957, by holding that :

(a) the assessee had claimed partial partition of the jewellery in the preceding year 1980-81 and the partition has been accepted whereas no such partial partition was accepted by the department after due enquiry and satisfaction,

(b) when the partial partition was accepted in 1980-81 the order of Wealth Tax Officer is not to be revised for assessment year 1981-82 ?"

2. The facts giving rise to the instant reference is that respondent-assessee HUF filed return of net wealth for the assessment year 1981-82 on 26-12-1981, declaring net wealth of Rs. 1,55,178 which included value of gold ornaments and jewellery valued at Rs. 50,000. The assessing officer completed the assessment u/s 16(3) on the net wealth of Rs. 1,61,180 by increasing the value of jewellery

to Rs. 56,000 as against declared value of Rs. 50,000. The matter was sought to be revised u/s 25(2) on the ground that the fact of partial partition of jewellery and ornaments was accepted without the fact being actually verified. After the notice to the assessee, the order of the Wealth Tax Officer was set aside and the direction was given for reassessment taking the entire ornaments weighing 127 tolas as wealth of HUF. The assessee took the matter in appeal before the Tribunal. On scrutiny of the material on record, the Tribunal found that partial partition of 127 tolas of ornaments and jewellery had taken place in the assessment year 1980-81 and the department has accepted the partial partition. Thus, in view of the Tribunal, once Wealth Tax Officer had accepted the partial partition for the assessment year 1980-81, there was no question of refusing the same in the subsequent year In the reference order, the Tribunal had noted the contention of the department to the effect that it had never accepted the position in the assessment year 1980-81, i.e., with respect to the partial partition.

3. We have heard Mr. Sandeep Bhandawat, learned counsel for the revenue and Mr. Mehta, learned counsel for the assessee.

The revenue has failed to substantiate the fact that department had never accepted the position as to the partial partition in assessment year 1980-81. In view of this the Tribunal has erroneously referred the question for the opinion of this court. The Tribunal before making a reference ought to have verified the factual aspect. In view of this, the reference is returned unanswered.

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