(2007) 08 MP CK 0029

In the Madhya Pradesh High Court

CWT APPELLANT

Vs

Smt. Indram Bai RESPONDENT

Date of Decision : 30-08-2007

Acts Referred:
Wealth Tax Act, 1957 — Section 27(3)

Citation : (2007) 08 MP CK 0029

Hon'ble Judges : Ravi Shankar Jha, J;Dipak Misra, J

Bench : Division Bench

Judgement

Dipak Msra, J.—This Court vide order dated 7-3-1994 had called for a statement of facts from the Income Tax Appellant Tribunal (hereinafter referred to as , ''the Tribunal'') in respect of the following question:

Whether the finding recorded by the Tribunal that silver ornaments weighing 103.5 tolas valued at Rs. 9,645 and gold ornaments weighing 140 tolas valued at Rs. 75,398 were acquired by the HUF in 1975-76 is on correct appreciation of the entire facts and circumstances of the case and is as per the provisions of law ?

2. On the basis of the aforesaid, the Tribunal has sent a statement of case and referred to the question u/s 27(3) of the Wealth Tax Act, 1957 (for brevity, ''the Act'') for opinion of this Court.

3. The facts which are essential to be stated are that the assessee was carrying on business of goldsmith and a pawn broker at Katni. There was a raid by the Central Excise Department in the premises of the assessee on 22-10-1974. In the said search, gold and silver ornaments were recovered from a front room of the house as well as from the floor of that room. 152.280 kgs. of silver ornaments and coins valued at Rs. 1,21,800, silver slabs weighing 101 kgs., silver ornaments weighing 102 kgs., primary gold, gold coins and gold sovereigns, total weighing 1kg. and gold ornaments weighing around 7 kgs. were recovered from the said room. Immediately after the raid, on 22-10-1974 the assessee filed a Wealth Tax return for assessment years 1966-67 to 1974-75

declaring the entire wealth in the shape of gold, silver bullion and ornaments belonging to the HUF. Subsequently, a revised return was filed claiming that gold and silver ornaments belonged to three ladies of the family and were their personal assets seeking exemption u/s 5(1)(viii) of the Wealth Tax Act. It was also stated that the share of the father of the present Karta was also to be excluded.

4. The Wealth Tax Officer assessed the entire wealth in the hands of assessee''s HUF as per the declaration made in the original return.

5. Being dissatisfied with the aforesaid order, the assessee preferred an appeal and the appellate authority allowed the appeal in part as far as it related to the ornaments owned by the three ladies. He directed the Wealth Tax Officer to work out the quantity of pledged silver and silver ornaments on the basis of Girvi register and charts and excluded the same from the articles found in raid. The same was directed in pursuance of the return for the assessment years 1967-68 to 1974-75, Quite apart from the above, the first appellant authority also issued certain other directions.

6. Being aggrieved by the aforesaid order of the first appellant authority, a further appeal was preferred before the Tribunal. The Tribunal confirmed the finding recorded by the Appellate Assistant Commissioner as regards the determination of the quantity of silver ornaments in respect of ladies, though, a contention was advanced that determination by the first appellant authority was inadequate. Be it noted, the Tribunal reduced certain quantity in respect of silver ornaments and gold ornaments pertaining to certain assessment years in the hands of the HUF. The Tribunal also directed l/3rd deduction of the net wealth of HUF. In the ultimate eventuate, the Tribunal allowed the appeal preferred by the assessee in part.

7. It is submitted by Mr. A.K. Shrivastava, learned Counsel for the assessee that the Tribunal after considering the material facts has allowed the plea of assessee by treating certain amount in the hands of the ladies, a Karta of the family and the HUF. Mr. Shrivastava has also submitted that the findings of the Tribunal are based on proper scrutiny, analysis and appreciation of entire facts and circumstances and there is no perversity of approach. It is further submitted by him that the controversy relates to 103.5 tolas of silver ornaments valued at the rate of Rs. 9,665 and 140 tolas of gold ornaments valued in toto at Rs. 75,398 and thereby the total disputed wealth comes to Rs. 85,061 and the tax impact of which is Rs. 6,804. It is urged by him that in view of the aforesaid the department should not be permitted to prosecute the reference. To buttress the aforesaid submission, he had placed reliance on the decision rendered in CWT v. Dr. Ajad Kumar Jain (HUF) WP No. 162/1998 decided on 28-3-2007.

8. To appreciate the submissions of Mr. Shrivastava we have carefully perused the order passed by the Wealth Tax Officer as well as the Appellate Assistant Commissioner and that of the Tribunal. It is evident that the Tribunal has.

scrutinized in detail the subsequent return with regard to the possession of wealth in the hands of the ladies, the Karta and the HUF. It is also noticeable that the revised return was accepted by the first appellant authority as is evident from paras 4 and 5 of the order of the said authority further he had taken note of the fact that the assessee has filed a revised return of explain the gold jewellery and other valuables found at the time of search and the order of Commissioner (Appeals) in respect of the respective assessment years and therein the partial relief granted. Regard being had to the analysis made, there can be no shadow of doubt that there is no perversity of approach on adjudication of the factual score and accordingly we concur with the same.

9. For the sake of completeness, we are also inclined to address to the conception of tax impact. In the case of CWT v. Dr. Ajad Kumar Jain (supra),. This Court in para 11 has expressed the opinion as under:

11. The factual scenario can be perceived from another aspect. Submission of Mr. A.K. Shrivastava, learned Counsel for the respondent is that the tax impact is Rs. 52,565 and, therefore, as per the circular of the CBDT the reference need not be adverted to. A Division Bench of the High Court of Bombay in the case of CIT v. Pithwa Engg. Works, in para 6 expressed the view as under:

This Court can very well take judicial notice of the fact that by passage of time money value has gone down, the cost of litigation expenses has gone up, the assessees on the file of the departments have increased consequently, the burden on the department has also increased to a tremendous extent. The corridors of the superior courts are choked with huge pendency of cases. In this view of the matter, the Board has rightly taken a decision not to file references if the tax effect is less than Rs. 2 lakhs. The same policy for old matters need to be adopted by the department. In our view, the Board''s circular dated 27-3-2000 is very much applicable even to the old references which are still undecided. The department is not justified in proceeding with the old references wherein the tax impact is minimal. Thus, there is no justification to proceed with decades old references having negligible tax effect.

10. Regard being had to both the aspects the reference is answered in favour of the assessee and against the revenue.

