(1979) 10 MP CK 0022

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 240 of 1976

Nandkishore Girdharilal Modi APPELLANT

Vs

Commissioner of Wealth Tax RESPONDENT

Date of Decision : 03-10-1979

Acts Referred:
Wealth Tax Act, 1957 — Section 5(1)

Citation : (1981) 132 ITR 868

Hon'ble Judges : R.K. Vijayvargiya, J;G.G.Sohani, J

Bench : Division Bench

Advocate : V.M. Rege, for the Appellant; S.C. Bagadia, for the Respondent

Judgement

Vijayvargiya, J.—By this reference u/s 27(1) of the W.T. Act, 1957 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Indore Bench, has referred the following questions of law, for our opinion :

" (1) Whether, in the facts and circumstances of the case and in view of the Supreme Court decision in Commissioner of Wealth-tax, Gujarat Vs. Arundhati Balkrishna, , the Tribunal was justified in law to include gold ornaments in jewellery ?

(2) Whether gold ornaments not studded with jewels are jewellery within the meaning, of Section 5(1)(viii) of the Wealth-tax Act?"

2. The material facts giving rise to this reference are these: The assessee is an individual of Indore and the assessment year involved is 1968-69. The assessee had originally filed a return declaring his total wealth at Rs. 1,40,054. Subsequently, he filed a revised return declaring his total wealth at Rs. 1,00,754. The assessee made a claim before the WTO for the exemption of jewellery weighing 2,788 grams on the ground that these items of jewellery were gifted by him to his wife before his marriage. As this question is not involved in this reference, it is not necessary to narrate further facts regarding the same. The assessee had also contended that certain ornaments of gold, which are not

studded with any jewels, cannot be included in the term " jewellery " and, therefore, he is entitled to exclude them from his wealth under the provisions of Section 5(1)(viii) of the Act. The Tribunal negatived the contention of the assessee and held that the ornaments of gold even though not studded with any jewels, are included in the term " jewellery " and, therefore, are not exempted u/s 5(1)(viii) of the Act. At the instance of the assessee, the Tribunal has referred the aforesaid questions for the opinion of this court.

3. The relevant provisions of Section 5(1)(viii) of the Act are as follows :

"5(1) Subject to the provisions of sub-section (IA), wealth-tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee--......

(viii) furniture, household utensils, wearing apparel, provisions and other articles intended for the personal or household use of the assessee (but not including jewellery):......

Explanation 1.--For the purposes of this clause and Clause (xiii), '' jewellery'' includes-

(a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;...... "

4. The words "but not including jewellery" in Section 5(1)(viii) of the Act and the Expln. 1 thereto were added by the Finance (No. 2) Act, 1971. By the said Finance Act, retrospective operation was given with effect from April 1, 1963, to the words " but not including jewellery ", while Expln. 1 was given prospective effect from April 1, 1972.

5. In Commissioner of Wealth-tax, Gujarat Vs. Arundhati Balkrishna, , the Supreme Court held that the value of all the jewellery intended for the personal use of the assessee stands excluded from the computation of the net wealth of the assessee u/s 5(1)(viii) of the Act as it stood prior to its amendment as aforesaid. It seems that because of the judgment of the Supreme Court''in Commissioner of Wealth-tax, Gujarat Vs. Arundhati Balkrishna, , Parliament amended the provisions of Section 5(1)(viii) of the Act by adding the words " but not including jewellery ".

6. The learned counsel for the assessee contended that while retrospective effect was given to the words " but not including jewellery", Expln. 1 was given only prospective effect from April 1, 1972, and, therefore, the ornaments of gold, which are not studded with jewellery, cannot be included in the term " jewellery " and they have to be excluded from the computation of the net wealth of the assessee as held by the Supreme Court in Commissioner of Wealth-tax, Gujarat Vs. Arundhati Balkrishna, . He contended that if such ornaments are included in jewellery that would be giving retrospective effect to Expln. 1, which was not

intended by Parliament. He also contended that the term " jewellery ", as it is understood in common parlance, does not include any ornament, which does not contain a jewel and as the ornaments involved in the present case are of gold and they do not contain any jewel, they are not included in the term " jewellery " and, therefore, they do not come within the purview of the amendment made to Section 5(1)(viii) of the Act and the Tribunal erred in law in holding that the ornaments in question are included in the term " jewellery " and, therefore, they cannot be excluded from the computation of the net wealth of the assessee. The learned counsel for the assessee also referred to decisions of the Income Tax Appellate Tribunal, Jabalpur and Jaipur Bench, wherein it was held that the ornaments of gold, which are not studded with jewels, are not included in the term " jewellery ".

7. The question which arises for our consideration, therefore, is whether ornaments of gold, which do not contain any jewels, are included in the term "jewellery" without calling in aid the definition thereof, as given in Expln. 1 to Section 5(1)(viii) of the Act, because it is only in case we come to the conclusion that such ornaments are not otherwise included in the word " jewellery ", the question may arise whether the definition of the term " jewellery " as given in the said Expln. 1 can be taken into consideration or not, in the present case, for interpreting the word " jewellery".

8. Having given due consideration to the contentions raised by the learned counsel for the assessee, we find ourselves unable to agree with him that ornaments of gold, which are not studded with any jewels, cannot be included in " jewellery ", as the said term is used and understood in common parlance. The dictionary meaning of the word " jewellery " relied upon by the learned counsel, also does not support the assessee. The question involved in the present case was examined in detail by the Gujarat High Court in Commissioner of Wealth Tax, Gujarat I Vs. Jayantilal Amratlal, . After analysing the various aspects of the case and considering the dictionary meaning of the word " jewellery ", it was held in that case that the natural impact of the term " jewellery " is very well known and it is a collective description of jewellery as well as other ornaments of precious metals. It was further held that the definition given by Expln. 1, which was added to Section 5(1)(viii) of the Act, by the Finance (No. 2) Act of 1971, in so far as it relates to ornaments, could be only by way of greater caution. The Gujarat High Court also placed reliance upon its earlier decision in COMMISSIONER OF WEALTH-TAX, GUJARAT II Vs. MRS. ARUNDHATI BALKRISHNA., , in which it was held that even according to the dictionary meaning "jewellery" and "ornaments" can be collectively described as " jewellery "; and if they are intended for the personal use of the assessee, could be excluded u/s 5(1)(viii) of the Act prior to its amendment. This decision of the High Court was confirmed by the Supreme Court in Commissioner of Wealth-tax, Gujarat Vs. Arundhati Balkrishna, .

9. The decision of the Gujarat High Court in Commissioner of Wealth Tax, Gujarat I Vs. Jayantilal Amratlal, was followed by the Allahabad High Court in

Commissioner of Wealth-tax Vs. His Highness Maharaja Vibhuti Narain Singh, . It was held that the word " jewellery", as commonly understood, includes ornaments made of precious stones (it should be " precious metals ") and the Explanation only makes explicit, what was implicit in the provision from its inception. We are respectfully in agreement with the view taken by the Gujarat High Court in Commissioner of Wealth Tax, Gujarat I Vs. Jayantilal Amratlal, .

10. In the view we have taken that the word "jewellery " includes ornaments of gold and other precious metals, we are of the opinion that the Tribunal was right in including the gold ornaments belonging to the asses-see in computing his net wealth and the question of giving retrospective effect to Expn. 1 to Section 5(1)(viii) of the Act does not arise.

11. In the light of the discussion aforesaid, our answers to the questions referred to us are in the affirmative and against the assessee. In the circumstances, we direct the parties to bear their own costs of this reference.

