(2005) 09 MAD CK 0005

In the Madras High Court

Case No : Writ Petition No. 968 of 2000 , 27 September 2005

Smt. Snehlata — APPELLANT

Vs

Union of India and Another — RESPONDENT

Date of Decision : 27-09-2005

Acts Referred:

Citation : (2006) 200 CTR 317

Hon'ble Judges : S.L. Kochar, J

Bench : Division Bench

Advocate : B.I. Mehta, for the Petitioner and A. Patankar,s, for the appearing parties;

Judgement

S.L. Kochar, J.

The petitioner has filed this petition under Art. 226 of the Constitution of India challenging the order dated 30-12-1999 passed and conveyed to

the petitioner by respondent No. 2, CIT, Bhopal (Annex. P/1) whereby, the declaration made by the petitioner, under the provisions of Voluntary

Disclosure of Income Scheme, 1997 (hereinafter referred to as the VDI Scheme, 1997) submitted on 9-12-1997 before the IT department for

issuance of certificate as per provisions u/s 68(2) of VDI Scheme, 1997, was refused to be entertained on the ground that the gold Ginnis claimed

to have been acquired at the time of marriage on 11-7-1959 and declaration was sought for the assessment year 1963-64 whereas the valuation of

the gold ornaments were done as on 1-4-1962 which was not in accordance with the provisions of the scheme.

2. Learned counsel for the petitioner has submitted that under the VDI Scheme, 1997, any income which was not disclosed prior to December,

1997, could be declared, for which the assessment (sic-return) was not filed as per provisions u/s 139 of the Income Tax Act. Learned counsel for

the petitioner has pointed out Annex. P/6 wherein it is mentioned that the petitioner acquired 110 gold Ginnis on 11-7-1959 at the time of her

marriage relevant to assessment year 1960-61. Therefore, the same can be considered for issuance of certificate under the VDI Scheme, 1997.

3. On the other hand, learned counsel for the respondents has submitted that as per own showing of the petitioner, the valuation was done on 1-4-

1962. Therefore, the said amount would be considered only for the assessment year 1963-64. Apart from this, he has also submitted that the gold

Ginnis were received by the petitioner at the time of marriage from her various relations as gift, therefore, the same could not be considered as

income acquired prior to VDI Scheme, 1997. Thus, the respondent No. 2 has rightly refused to issue certificate to the petitioner.

4. Having heard learned counsel for the petitioner and the respondents and after perusing the petition, reply as well as the documents filed herein,

this court is of the opinion that as per provision of the Finance Act, 1997 wherein Chapter IV is for VDI Scheme, 1997 and according to section

64, charge of tax on voluntarily disclosed income is prescribed. The provision of main section is reproduced thus:

64. Charge of tax on voluntarily disclosed income.-(1) Subject to the provisions of this Scheme, where any person makes, on or after the date of

commencement of this Scheme, but on or before the 31-12-1997, a declaration in accordance with the provisions of section 65 in respect of any

income chargeable to tax under the Income Tax Act for any assessment year.

5. According to this main provision, any person could make a declaration in accordance with the provisions of section 65 in respect of any income

earned prior to 31-12-1997, chargeable to tax under the Income Tax Act, for any assessment year. ""Income Tax Act"" is defined in this scheme u/s

63(b) i.e. ""Income Tax Act means the Income Tax Act, 1961"" and in Income Tax Act, ""income"" is defined u/s 2 sub-section (24) and in definition

of income, the receipt of any cash or coin at the time of marriage by the spouse are not covered. Therefore, the receipt of 110 gold Ginnis at the

time of marriage by the petitioner on 11-7-1959 from her relations, would not fall within the definition of ''income'' for which the return could not be filed as per provision u/s 139 of the Income Tax Act.

6. The receipt of 110 gold Ginnis by the petitioner at the time of marriage from her relations would, at the most be considered as gift received at

the time of marriage and gift is not included in the definition of income. Therefore, as per VDI Scheme, 1997, for receipt of 110 gold coins in the

year 1959, the petitioner cannot be granted required certificate. Though the respondent No. 2 has not considered this aspect of the matter, but

since it is a pure question of law and the respondents have specifically raised this question in their return, therefore, the same can be considered by

this court.

7. In the result, it is held that the petitioner is not entitled for consideration of her claim under the provisions of VDI Scheme, 1997. Therefore, for

the reasons as aforesaid, this petition is hereby dismissed. There shall be no orders as to costs.