

Cwt Vs. Maharaja Prithvi Raj

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Court : Delhi

Decided On : Mar-16-2002

Reported in : (2002)175CTR(Del)94

Appeal No. : WT Appeal No. 5 of 2001 16 March 2002 A.Y. 1991-92

Appellant : Cwt

Respondent : Maharaja Prithvi Raj

Advocate for Pet/Ap. : J.R. Goel, for the Revenue; S. Ganesh and;D.D. Singh &

Judgement :

S. B. Sinha, C. J.

The sole question, which arises for consideration in this appeal, is as to whether this court in the facts and circumstances of this case should entertain a purported question of law in a reference after a long-time.

The assessment year involved in this appeal is 1991-92.

2. The question, which arose for consideration before the Appellate Tribunal. Delhi Bench-F, New Delhi (hereinafter referred to as 'the Tribunal'), was as to whether 1/6th share of the wealth shown by the assessed in his income-tax return, as having been derived from the estate of late H.H. Sir Sawai Man Singh would be included in the wealth of the assessed. The assessed filed a return of wealth

declaring net wealth of Rs. 29,32,569. Allegedly he had not shown 1/6th share in the estate of late H.H. Sir Sawai Man Singh in the past, purported to be on the ground that the status issue involved in the manner is pending before this court.

The said wealth being 1/6th in the estate of late H.H. Sir Sawai Man Singh was added by the assessing officer subject to rectification under section 35 of the Wealth Tax Act, 1957, on the final outcome of the decision of the High Court.

An appeal was preferred there against by the assessed, which was marked as, Appeal No. 178 of 1994-95. The Commissioner of Wealth Tax (Appeals) by an order dated 4-9-1995, held that the same is not to be included in the estate of the assessed.

The appellant herein preferred an appeal thereagainst before the Tribunal. The said appeal was dismissed by the Tribunal holding thus :

'3. Both the parties were heard. The learned counsel for the assessed placed before us various orders of the Tribunal, including those referred to by the learned Commissioner (Appeals), by which the issue stood decided in favor of the assessed. In particular, our attention was invited to the order, dated 3-2-1993, of the Tribunal, Delhi Bench A, New Delhi rendered in WTA Nos. 31, 32 & 774/Del/88, etc., in assessed's own case and in the cases of other family members wherein it has been held that neither 1/6th share nor 1/36th share of the estate left by late Maharaj H.H. Sir Sawai Man Singhji was to be included in the hands of the assessed. Nothing has been brought on record by the department to show that the earlier orders of the Tribunal were in anyway disturbed by the higher appellate authorities. therefore, following the earlier orders of the Tribunal, we would affirm the order of the learned Commissioner (Appeals).

4. In the result, the appeal is dismissed.'

This appeal is directed against the said order.

3. The contention of the appellant appears to be that several matters are pending before this court, which are as follows :

- (a) IT Ref. No. 438 of 1983, CIT v. Jagat Singh, Assessment Year 1972-73
- (b) IT Ref. No. 9 of 1982, CIT v. Bhawani Singh, Assessment Year 1973-74
- (c) IT Ref. No. 222 of 1984, CIT v. Prithvi Raj (HUF), Assessment Year 1975-76
- (d) IT Ref. No. 297-298 of 1981, CIT v. Bhavani Singh, Assessment Year 1967-68 and 1968-69
- (e) IT Ref. No. 318 of 1981, CIT v. Bhavani Singh (HUF) Assessment Year 1970-71.

It has been contended that in the aforementioned situation this court should admit the appeal on the substantial question of law, i.e., whether 1/6th share in the estate of Maharaja Man Singh should be included in the estate of respondent assessed.

4. From a perusal of number of the matters, which are allegedly pending before this court, it appears that no dispute had ever been raised as regards non-inclusion of the said 1/6th share of late H.H. Sir Sawai Man Singh in the wealth of the assessed.

It has also not been disputed that no appeal has been preferred against the orders of assessment passed by the Tribunal not only in relation to the petitioner in the earlier years, but also in respect of his other five co-shares.

In the aforementioned situation, a contention has been raised by Mr. Ganesh that this court should not entertain this appeal. The learned counsel appears to be correct.

5. It has not been disputed that for more than 30 years, the said 1/6th share in the estate of late H.H. Sir Sawai Man Singh had not been included in the estate of the assessed. Even assuming that some matters are pending before this court, it appears that last assessment year for which a reference has been made is 1975-76. Even thereafter, 25 years have passed the said question in relation to the latter assessment years had not been raised.

It will bear repetition to state that even no application has been filed under section 256(2) of the Income Tax Act, 1961, in relation to the five other co-sharers of the respondent.

6. A compilation of the order passed by the Tribunal had been produced before us, from a perusal whereof it appears that the same view has been taken by the Tribunal for a long-time.

In this view of the matter, we are of the opinion that it is not a fit case where this court should entertain this appeal in terms of section 27A of the Act.

7. In *Union of India & Ors. v. Kaumudini Narayan Dalal & Anr.* : [2001]249ITR219(SC) the Apex Court observed as under :

'The order under challenge in this appeal by the revenue followed the earlier judgment of the same High Court in the case of *Paradip Ramanlal Sheth v. Union of India* : [1993]204ITR866(Guj) . Learned counsel for the revenue states that the papers before us suggest that a special leave petition was preferred against that judgment but he has no instructions as to what happened thereafter. Learned counsel for the respondents states that their enquiries with the Registry reveal that no appeal against the judgment was preferred by the revenue.

If the revenue did not accept the correctness of the judgment in the case of *Pradip Ramanlal Seth* (supra), it should have preferred an appeal thereagainst and instructed counsel as to what the fate of that appeal was or why no appeal was filed. It is not open to the revenue to accept that judgment in the case of the assessed in that case and challenge its correctness in the case of other assessed without just cause. For this reason, we decline to consider the correctness of the decision of the High Court in this matter and dismiss the civil appeal.

No order as to costs.

8. In *Collector of Central Excise v. R. M. D. C. Press (P) Ltd.* : 1997(92)ELT29(SC) , the Apex Court noticed thus :

'2. It is not yet explained on the affidavit why the revenue did not choose to file appeals against the order other of the High Court which were rendered simultaneously with the order under appeal in Special Leave Petition (C) No..... (CC No. 4847 of 1995) of 1996. On 19-1-1996, a final opportunity was given to the revenue to explain this fact by way of an affidavit. It has not been done so far. The learned counsel for the revenue is not in a position to state that the appeals have been preferred at least by now. In the circumstances, we are not inclined to interfere in the matter. The special leave petitions are dismissed accordingly. No opinion on merits.'

9. Yet again in Collector of Central Excise, Chandigarh v. Hindustan Hydraulic (P) Ltd & Ors with Collector of Central Excise, Chandigarh v. Kay Jay Engineering & Ors. : 1999(111)ELT3(SC) , the Apex Court held in the following terms :

'3. We find from the order under appeal that these are not different from the other cases in the sense that the Tribunal has followed its earlier different orders in these appeals as well. Moreover, these appeals were admitted, as noticed already, to be heard along with other connected appeals. We do not find any good ground to pass an order on merits in these appeals alone as it is on fact that the appeals filed against the order of the Tribunal relied on for passing the common order under appeals were dismissed by this court on the ground of limitation. Mr. Bajpai also brought to our notice that a three-Member Bench had considered the issue in Machine Builders v. CCE (1996) 83 ELT 576 (Trib) and rendered a detailed judgment ultimately remanding the matter to the authorities. '

In view of the aforementioned binding precedents, we are of the opinion that even if substantial question of law arises, the same should not be permitted to be raised at this stage.

This appeal is accordingly dismissed. However, in the facts and circumstances of the case, no orders as to costs.