

J. M. Bhatia Appellate Assistant Commissioner of Wealth Tax and Others

Vs

J. M. Shah

Civil Appeal No. 680 of 1974

(V. D. Tulzapurkar, Sabyasachi Mukharji JJ)

19.09.1985

JUDGMENT

TULZAPURKAR, J. –

1. This appeal seeks to raise the following question of law for our determination :

Did the Appellate Assistant Commissioner of Wealth Tax have the power to rectify his predecessor's order dated June 26, 1970 in view of the fact that there was no error apparent on the face of the record because the question as to whether the Amending Act applied to assessments which were already completed was a debatable question ?

The High Court certified the question to be of general public importance which required a decision of this Court but in our view on the facts of the case it is unnecessary to decide that question as the appeal could be disposed of briefly on the basis that the assessment in question could not be regarded as having become final or complete and therefore the postulate being absent the question does not arise.

2. The facts which are said to give rise to the question raised in the appeal are these. For the assessment year 1969-70 the respondent assessee was assessed for wealth-tax purposes on the total wealth of Rs. 6,07,690 which included jewellery and ornaments of the value of Rs. 4,15,942 by an assessment order made by the Wealth Tax Officer on February 11, 1970. In an appeal preferred by the assessee the ACC by his order dated June 26, 1970 excluded from her net wealth the said jewellery and ornaments of the value of Rs. 4,15,942 on the ground that they were intended for personal use of the assessee under Section 5(1)(vii) of the Wealth Tax Act, 1957. In doing so the AAC followed the decision of this Court in CWT v. Arundhati Balkrishna ((1970) 77 ITR 505 : (1970) 1 SCC 561 : AIR 1971 SC 915). No further appeal was filed against that decision of the AAC by either side and in a sense the order became final as the period provided for appeal against it was allowed to expire. Section 5(1)(vii) of the wealth Tax Act was amended by the Finance (No. 2) Act of 1971 which received the assent of the President on August 10, 1971 but it was brought retrospectively into effect from April 1, 1963. By Section 32 of the Amending Act in Section 5(1)(vii) the words "but not including jewellery" were added at the end of that clause and these words, as stated earlier were deemed to have been inserted right from April 1, 1963. In view of this amended provision the assessee was served with a notice dated January 25, 1972 by the AAC whereby he proposed to rectify her wealth-tax assessment under Section 35 of the Act, withdrawing the exemption already granted to her in respect of the jewellery and ornaments. The assessee appeared and objected to the proposed rectification but the AAC held that his predecessor has committed a mistake apparent on the fact of the record in excluding the said jewellery and

ornaments and he was, therefore, entitled to rectify the order passed by his predecessor and actually passed the rectification order against the assessee on February 22, 1972. The assessee challenged the said order by filing a writ petition in the High Court.

3. The counsel for the assessee contended before the High Court that the AAC had no power to rectify his predecessor's order dated June 26, 1970 in view of the fact that there was no error apparent on the face of the record because (a) the original assessment when made was in accordance with law; and (b) the question as to whether the Amending Act applied to assessments which were already completed was, in any event, a debatable question. At the hearing counsel for the assessee conceded that so far as the first ground was concerned the matter was concluded by a decision of this Court in *M. K. Venkatachalam, ITO v. Bombay Dyeing and Manufacturing Co. Ltd.* ((1958) 34 ITR 143 : AIR 1958 SC 875) and therefore, he did not press that ground. He, however, strenuously urged that since the original assessment had been completed long before the Amending Act was passed and since the same had become final as no appeal had been preferred against the order dated June 26, 1970 by either side the Amending Act could not reach or affect such completed assessment and in any event the question whether the Amending Act covered assessments or not was a debatable question and, therefore, the AAC had no power to rectify his predecessor's order.

4. As regards the first ground the High Court took the view that the matter had been concluded by this Court's decision in *Bombay Dyeing and Manufacturing Co. case* ((1958) 34 ITR 143 : AIR 1958 SC 875). But as regards the second ground, though it was pointed out by Mr. Joshi, counsel for the Revenue to the High Court that even that aspect had been concluded by the same decision the learned Judges felt that the point could not be said to have been finally concluded by that decision because of this Court's subsequent decision in *ITO v. S. K. Habibullah* ((1962) 44 ITR 809 : AIR 1962 SC 922) and the observations made therein and in fact one of the learned Judges who decided the matter expressed the view that "if that decision (in *Bombay Dyeing case* ((1958) 34 ITR 143 : AIR 1958 SC 875)) had stood alone I might have been disposed to record the question that arises in the present case as concluded by the Supreme Court (by reason of that decision) and to decide this petition in favour of Mr. Joshi". The court further felt that the question as to whether the retrospectivity given by the Amending Act would cover cases of completed assessment was itself a debatable question and following the decision of this Court in *T. S. Balaram, ITO v. Volkart Brothers* ((1971) 82 ITR 50 : (1971) 2 SCC 526 : AIR 1971 SC 2204) the Court did not express any opinion on that point but took the view that since it was a debatable question it could not be said to be error apparent on the face of the record and, therefore, the AAC's order was liable to be quashed. The High Court, therefore, set aside the impugned order of the AAC whereby the rectification had been effected. The Revenue has challenged this view of the High Court before us in this appeal.

5. It is clear that the ground which was urged before the High Court and which seemed to find favour with it was that the question whether the Amending Act applied to assessments which were already completed was a highly debatable question and therefore, it was not a case of an error apparent on the face of the record which entitled the AAC to rectify his predecessor's order but the question thus raised would, in our view, arise only if it is really a case of completed assessment in the literal sense of the word. It may be pointed out that this very aspect of the matter was pressed in service in the *Bombay Dyeing case* ((1958) 34 ITR 143 : AIR 1958 SC 875)) and this Court while negating the contention has taken the view that the assessment order that had been initially passed in that case [which was under Section 18-A(5) of the Income Tax Act, 1922] could not be said to have become final in the literal sense of the word and in that behalf this Court pointed out that irrespective of the question whether any appeal had been preferred or not against it that initial order was liable to be modified or rectified under Section 35 of the Act and therefore, could not be said to

have become final or complete and as such the contention raised would not be of much assistance to the assessee. After referring to the decision of the Privy Council in *Delhi Cloth and General Mills Co. Ltd. v. ITC* (AIR 1927 PC 242 : (1926-27) 54 IA 421) as also to the Board's decision in *Colonial Sugar Refining Co. v. Irving* (1905) AC 369) this Court with reference to the precise argument observed thus :

The same argument is put in another form by contending that the finality of the order passed by the Income Tax Officer cannot be impaired by the retrospective operation of the relevant provision. In our opinion, this argument does not really help the respondent's case because the order passed by the Income Tax Officer under Section 18-A(5) cannot be said to be final in the literal sense of the word. This order was and continued to be liable to be modified under Section 35 of the Act. What the Income Tax Officer has purported to do in the present case is not to revise his order in the light of the retrospective amendment made by Section 13 of the Amendment Act alone, but to exercise his power under Section 35 of the Act; and so the question which falls to be considered in the present appeal centres round the construction of the expression "mistake apparent from the record" used in Section 35. That is why we think the principle of the finality of the orders or the sanctity of the existing rights cannot be effectively invoked by the respondent in the present case.

6. We feel the aforesaid observations apply with equal force to the facts of the present case. The AAC's original order whereby the jewellery and ornaments had been excluded from the computation of the total wealth of the assessee had been passed on June 26, 1970. After the amendment had come into force with retrospective effect from April 1, 1963, proceedings for rectification were undertaken by the AAC in January 1972. It was well within four years of period of limitation available to him under Section 35 of the Wealth Tax Act. This is not a case where the resort to the rectification power was required to be made by reference to any provision in the Amending Act but dehors the Amending Act power was sought to be exercised under the original section, namely, 35(7) of the Wealth Tax Act. If that be so, following the observations quoted above, it must be held that the AAC's order dated June 26, 1970 had not become final in the literal sense of the word notwithstanding the fact that no appeal had been preferred against that order or that the requisite period for appeal was allowed to expire. The said order was and continued to be liable to be modified under Section 35(7) of the Act and in this view of the matter the assessee herein also would not be in a position to invoke the principle of finality of orders or the sanctity of the existing rights which are said to have been acquired by her under the initial order.

7. If, therefore, the order which has been rectified had not received a finality the contention that the amending provision would not be available for the purpose of effecting rectification on the ground that there was no error apparent on the face of the record would not be available to the assessee, and therefore though that question was the basis on which the certificate was issued by the High Court for preferring this appeal to this Court we do not think it is necessary to decide that question and the appeal is capable of being allowed on this short ground.

8. We would, however, like to observe that in *Habibullah* case ((1962) 44 ITR 809 : AIR 1962 SC 922) the court was really concerned with the aspect of retrospectivity of the provisions contained in the new sub-section (6) of Section 35 of the Income Tax Act, 1922 inserted by Section 19 of the Income Tax (Amendment) Act, 1953 (25 of 1953) and the question of giving a greater retrospective operation than intended by its language was considered by the Court in the context of the peculiar provisions contained in the amending enactment. Such a question does not arise in the instant case.

9. The result is that the appeal is allowed and the rectification order passed by the AAC is restored.
No costs.

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