

**(1990) 06 BOM CK 0079**

**Bombay High Court**

**Case No:** Wealth-Tax Reference No. 144 of 1976

Commissioner of Wealth-tax

APPELLANT

Vs

Norman J. Ferreira and another

RESPONDENT

**Date of Decision:** June 21, 1990

**Citation:** (1990) 186 ITR 539

**Hon'ble Judges:** T.D. Sugla, J; Sujata V. Manohar, J

**Bench:** Division Bench

**Advocate:** Dilip Dwarkadas and S.H. Paralkar, G.S. Jetley, for the Appellant;

### **Judgement**

T.D. Sugla J.

1. In this reference at the instance of the Commissioner of Wealth-tax Bombay City III, Bombay, the Tribunal has referred to this court following four questions as questions of law u/s 27(1) of the Wealth-tax Act, 1957 :

"(1) Whether, on the facts and in the circumstances of the case, it was correct for the Tribunal in law in holding that the assessee was not owner of the property, "Ferreira Mansion" on the valuation date, i.e., on March 31, 1957 ?

(2) Whether, on the facts and in the circumstances of the case, it was correct for the Tribunal in law in holding that the property at plots Nos. 14 and 15 at Sitaladevi Temple Road did not belong to the assessee on the valuation date, viz., March 31, 1957 ?

(3) Whether, on the facts and in the circumstances of the case, there was any trust in existence as on March 31, 1957, whereunder, the assessee had any life interest ?

(4) If the answer to question No. 3 is in the affirmative, whether the said interest of the assessee is an annuity exempt u/s 2(e)(iv) of the Wealth-tax Act for the assessment year 1957-58 ?"

2. The assessment year involved is the assessment year 1957-58. It is agreed between counsel appearing on the two sides that the first question is covered by this court's judgment in the assessee's own case in Commissioner of Income Tax, Bombay City-II, Bombay Vs. Maltida Ferreira and Others, and that, in view thereof, the question must be answered in the affirmative and in favour of the assessee. Counsel are also agreed that in view of this court's judgment in the assessee's own case in Commissioner of Gift-tax, Bombay-III Vs. Matilda Ferreira, the second question must be answered in the negative and in favour of the Revenue. The first two questions are answered accordingly.

3. Question No. 3 also, it appears to us, came up for consideration in the assessee's own case in Commissioner of Income Tax, Bombay City-II, Bombay Vs. Maltida Ferreira and Others. Though such a question was not referred and answered in that case, the court approved the Tribunal's finding as to the ownership of the property which is categorically and unequivocally declared to have belonged to Dr. Ferreira till the date of the settlement. The Tribunal, it may be stated, had emphasised that this was a settlement - a declaration obtained by the court as a result of agreement between the parties. It expressed the view that all these declarations were by reason of act of parties and could, therefore, take effect only from the date of the consent decree and could not have the effect of altering the past. Accordingly, we answer the third question in the negative and in favour of the assessee.

4. In view of our answer to the third question, the fourth question does not survive and is, accordingly, not answered.

5. No order as to costs.