

(1977) 04 MAD CK 0028

In the Madras High Court

Case No : Tax Case No"s. 342 and 395 of 1974 (Reference No"s. 155 and 208 of 1974)

Additional Commissioner of Wealth Tax

APPELLANT

Vs

Babulal K. Shah and Another

RESPONDENT

Date of Decision : 06-04-1977

Acts Referred:

Wealth Tax Act, 1957 — Section 18(1)

Citation : (1978) 114 ITR 370

Hon'ble Judges : V. Sethuraman, J;V. Balasubrahmanyam, J

Bench : Division Bench

Advocate : J. Jayaraman and Nalini Chidambaram, for the Appellant; K. Srinivasan and K.C. Rajappa, for the Respondent

Judgement

Balasubrahmanyam, J.—These two tax cases relate to two wealth-tax assessees who are husband and wife. They arise out of orders of penalty for delayed submission of wealth-tax returns for the assessment year 1968-69. They raise common questions of law, which are as under:

"1. Whether, on the facts and in the circumstances of the case, it has been rightly held that the provisions as it (sic) existed prior to April 1, 1969, should be applied for the purpose of calculation of penalty u/s 18(1)(a) of the Wealth-tax Act, 1957, in this case? And

2. Whether, on the facts and in the circumstances of the case, it has been rightly held that the default for belated filing of wealth-tax return should be deemed to have commenced from the day next to the date of filing of the Income Tax return in this case?"

2. The assessees are residents of Pondicherry. They were served with notices u/s 14(2) of the Wealth-tax Act, 1957, which required them to file their return of wealth on or before June 30, 1968. They did not file the returns before the date. The returns were actually filed only on October 29, 1969, after a delay of nearly

15 months. While completing the assessments, the Wealth-tax Officer initiated penalty proceedings u/s 18(1)(a) of the Wealth-tax Act for the assessee's default in not filing the returns in time. In answer to the notices calling on them to show cause why penalties should not be levied against them, the assessee explained that one of them, the wife, was suffering from bronchial asthma and chronic bronchitis from June, 1968, to January, 1969. It was further represented that the assessee's accountant had a heart attack and was not available to help the assessee prepare the returns not only for wealth-tax but also for Income Tax. It was urged that the taxing enactments were new to Pondicherry and they were unfamiliar with their provisions.

3. The Wealth-tax Officer rejected these explanations and proceeded to levy penalties on both the assessee's. For purposes of quantification of the penalties u/s 18(1)(a)(i) of the Wealth-tax Act, the officer took the period of default as the full 15 months which elapsed between the due date, June 30, 1968, and the actual date of filing the returns, which was October 29, 1969. Besides, the officer applied the provision of Section 18(1)(a)(i) of the Wealth-tax Act as amended with effect from April 1, 1969, and calculated the penalty with reference to the net wealth assessed at the statutory percentage.

4. The assessee appealed against the orders of penalty but the Appellate Assistant Commissioner confirmed the levy in both the cases. On further appeal to the Appellate Tribunal, the assessee's raised two questions, both relating to the basis of penalty, the question being whether penalty should be calculated as a percentage of the net wealth as was done by the officer, or whether it should be as a percentage of the wealth-tax on the basis of Section 18(1)(a)(i) as it existed before April 1, 1969. The second question raised before the Tribunal related to the correct ascertainment of the period of default, for purposes of determining for how many months' delay the penalty had to be reckoned.

5. On the first question, the Tribunal held that the law to be applied in a matter of levy of penalty was the law as it existed on the date when the default had occurred. The Tribunal noticed that in both the cases, the wealth-tax returns were due to be filed on June 30, 1968, and since they were not filed by then, the default must date from that time onwards. On this basis, the Tribunal held that Section 18(1)(a)(i), as it existed prior to its amendment in 1969, was the pertinent provision to be applied to the cases on hand. The Tribunal accordingly directed the Wealth-tax Officer to re-calculate the penalties as a percentage on the wealth-tax in the place of the existing penalties which were calculated as a percentage on the assessed net wealth itself, on the wrong assumption that the law to be applied was the law as on April 1, 1969.

6. The first question raised by the department in both these references is as to the correctness of the Tribunal's decision in regard to the appropriate law to be applied for the levy of penalties. The answer to the question, however, is concluded against the department by an earlier decision by a Bench of this court dated February 2, 1977, in T.C. Nos. 246, 247 and 259 of 1974 (Commissioner of

Wealth-tax v. P.C.M. Sundarapandian See page 367 supra). In that decision, after reviewing the authorities on the subject, this court held that the law to be applied in penalty proceedings is the law as it stands on the date of the commission of the default and not on the date when the assessing authority initiated the proceedings for the levy or actually made the orders of penalty. Adopting the ruling in that decision, we answer the first question in the present reference in the affirmative and in favour of the assessee.

7. On the second question relating to quantification of the penalties, the Wealth-tax Officer, as already observed, had taken the period of default in filing the returns to be 15 months in both the cases. The Tribunal, however, did not agree with this determination. Before the Tribunal it was represented on behalf of the assessee that for the very same assessment year 1968-69, the department had accepted their explanations for delayed submission of returns in regard to Income Tax and the penalty proceedings initiated against them under the relevant provisions of Section 271(1)(a) of the Income Tax Act, 1961, had been dropped. It was, however, contended on behalf of the department that the dropping of penalty proceedings for delayed submission of Income Tax returns was only because of the small tax effect and that action in that regard cannot be interpreted as acceptance by the department of the assessee's explanations for the delay. The Tribunal, however, did not think it necessary to go into the real motive behind the department's action in dropping the proceedings against the assessee for delayed submission of Income Tax returns. According to the Tribunal, the fact that the assessee's Income Tax returns were delayed was by itself, without more, a pertinent factor in considering the liability for penalty for delayed submissions of wealth-tax returns. The Tribunal observed that to enable the assessee to file their wealth-tax returns, the necessary particulars that were filed for the Income Tax proceedings would have relevance. In this view, the Tribunal held that up to the date of filing the Income Tax returns in respect of which penalty proceedings had been dropped, there could be said to be reasonable cause for not filing the wealth-tax returns as well. The Tribunal found from the record that the Income Tax returns of both the assessee were filed only on June 2, 1969. The wealth-tax returns were submitted later, on October 29, 1969. In between there were three completed months. This period of 3 months, according to the Tribunal, had to be reckoned for purposes of calculating the penalty u/s 18(1)(a)(i) of the Wealth-tax Act and not the period of 15 months which the Wealth-tax Officer had adopted.

8. The correctness of this approach is canvassed by the department before us in the present two references under the second question of law which we have set out earlier. The question for our consideration is whether the delay in the preparation of particulars of an assessee's income for purposes of filing his Income Tax return can provide reasonable cause for the delay in filing his wealth-tax return. We are of the view that in certain circumstances the delay in finalising one's Income Tax return might by itself be a just reason for the delay in filing the same person's wealth-tax return. Wealth-tax assessee are required to make

returns of their net wealth on given valuation dates, and in order to do so, it is essential that they should correctly represent their debts and liabilities as they subsist as on the said valuation dates. If the wealth-tax assessees are also Income Tax assessees, their liability towards Income Tax would be a necessary ingredient in arriving at the correct net wealth which has to be disclosed in their wealth-tax returns. The correct ascertainment of particulars of taxable income of a person would, therefore, be a necessary step in ascertaining the position of the net wealth of the same person on the relevant valuation date. It follows from these premises, therefore, that any reasonable delay in the preparation of particulars of the assessee's income for purpose of Income Tax cannot be brushed aside as irrelevant, while considering whether any consequential delays in the filing of the same assessee's wealth-tax return was for reasonable cause or not. In the present two cases, it is common ground that the Income Tax returns for the relevant assessment year, 1968-69 were filed only on June 2, 1969, and not earlier. It is further found that the penalty proceedings started u/s 271(1)(a) for belated filing of the assessee's Income Tax returns were later dropped. Learned counsel for the department sought to make out that the dropping of the penalty proceedings in Income Tax was not on merits. We, however, think that the reason or motive of the department for dropping the penalty proceedings in the Income Tax assessments cannot be canvassed in the present proceedings. It is sufficient for the present case to know that the assessee's liability for Income Tax was a necessary particular to be ascertained for preparing their wealth-tax returns, and that since the preparation of the Income Tax returns got delayed, the attendant delay in the submission of the wealth-tax returns became unavoidable. It is not suggested that the assessee should have filed their wealth-tax returns even without caring to ascertain their Income Tax liability for the year. It may be mentioned that the Tribunal had held that there was no excuse whatever for the assessee to delay their wealth-tax returns a moment after the submission of their Income Tax returns. It is on this footing that the Tribunal had held that the delay subsequent to June 2, 1969, cannot be excused as being for a reasonable cause. Having regard to all the circumstances of this case, we agree with the conclusion of the Tribunal that the period of unreasonable delay in filing the assessee's wealth-tax returns must be reckoned for purposes of penalty u/s 18(1)(a)(i) of the Wealth-tax Act from the date of filing of their Income Tax returns. In the result, the second question in these two references must also be answered in the affirmative and in favour of the assessee. There will, however, be no order as to costs in both the tax cases.