**(1984) 06 MP CK 0003**

**In the Madhya Pradesh High Court**

**Case No :** Miscellaneous Civil Case No. 117 of 1979

ANIL KUMAR TODY — APPELLANT

Vs

COMMISSIONER OF WEALTH TAX. — RESPONDENT

**Date of Decision :** 19-06-1984

**Acts Referred:**
Wealth Tax Act, 1957 — Section 18(1)(c), 27(1)

**Citation :** (1985) 44 CTR 85 : (1984) 19 TAXMAN 158

## Judgement

By the Court - The Tribunal, Indore Bench, has made this reference u/s 27(1) of the WT Act, 1957 (the Act) to this court for its opinion on the following question of law :

"1. Whether, on the facts and in the circumstances of the case the IAC had jurisdiction to impose penalty under s. 18(1)(c) on 24-3-1977 after the amendment of s. 18(3) of the WT Act by the Taxation Laws (Amendment) Act, 1975 ? and

2. Whether, on the facts and in the circumstances of the case, once the IAC had imposed composite penalties for concealment detected by the WTO and enhanced by the ACC in the value of shares and jewellery on estimates, the order was bad even relating to the part which had been originally detected by the WTO and, therefore, could not be maintained qua that part ?"

2. The material facts giving rise to this reference, in brief, thus : For the asst. yrs. 1973-74 and 1974-75, on reference by the WTO to the IAC under s. 18(3) of the Act, penalties at Rs. 1,80,000 and Rs. 5,000, respectively, were imposed under s. 18(1)(c) by the IAC. In appeal, the Tribunal reduced the penalty to Rs. 3,650, and Rs. 4,650 respectively. The WTO had completed the assessment on 21-3-1975 who made the reference to the IAC on 15-1-1977. The Taxation Laws (Amendment) Act, 1975 was admittedly amended on 1-4-1976.

3. It was contended before the Tribunal that the IAC, who passed the impugned order on 24-3-1977, had no jurisdiction to impose penalty after the amendment

 

of section 18(3) by the Taxation Laws (Amendment) Act, 1975 with effect from 1-4-1976. This objection was overruled by the Tribunal holding that the IAC had the necessary jurisdiction. Being aggrieved by the order passed by the Tribunal, the assessee sought a reference and it is at his instance that the aforesaid questions have been referred to this court for its opinion.

4. When the matter came up for consideration before this court by an order passed on 13-3-1981, this court directed the Tribunal to send a supplementary statement of the case and he stated the date on which the matter regarding imposition of penalty was referred by the WTO to the IAC in the present case. In pursuance of that order, a supplementary statement of the case has been received in which it has been stated that the reference was made by the WTO to the IAC on 15-1-1977.

5. At the hearing of this petition, none appeared on behalf of the assessee, though SPC was issued to him.

6. We have, therefore, heard the ld. counsel for the revenue, Shri R. C. Mukati, who submitted that the questions involved in the present case have been decided by the decision reported in Commissioner of Income Tax Vs. A.N. Tiwari, , which has been followed in Manjuladevi Tody, Jaora v. CWT (Misc. Civil Case No. 5 of 1980), wherein it has been held that the IAC had no jurisdiction to impose penalty under s. 18(1)(c) after the amendment of section 18(3), w.e.f 1-4-1976, by the Taxation Laws (Amendment) Act, 1975.

7. Section 18(3) is as follows :

"Notwithstanding anything contained in clause (iii) of sub-section (1), if, in a case falling under clause (c) of that sub-section, the amount (determined by the Wealth-tax Officer on assessment) in respect of which penalty is imposable under clause (c) aforesaid exceeds a sum of twenty-five thousand rupees, the Wealth-tax Officer shall not issue any direction under sub-section (1) for payament by way of penalty without the previous approval of the Inspecting Assistant Commissioner."

8. Thus, from 1-4-1976, on which date the Taxation Laws (Amendment) Act, 1975 came into force, the IAC had no jurisdiction to impose penalty. He derived jurisdiction for the purpose of imposing penalty on a reference made to him by the WTO and if the refernce was not validly made, then it follows that the IAC would have no jurisdiction to impose penalty. In the present case as stated in the supplementary statement of the case the reference was made by the WTO on 15-1-1977 when the provisions of s. 18(3) requiring the WTO to refer the case to the IAC were substituted by the aforesaid provisions of s. 18(3).

9. Thus, considering the facts and circumstances of the case as also relying on the case law referred to above, we are of the opinion that the IAC had no jurisdiction to impose penalty under s. 18(1)(c) after the amendment of s. 18(3) w.e.f. 1-4-1976, by the Taxation Laws (Amendment) Act, 1975. Our answer to

 

Question No. 1, referred to this court, therefore, is against the department. As the answer to Question No. 2, depends on the answer given to Question No. 1, the same is answered against the department.

10. The reference is answered, accordingly. However, considering the facts and circumstances of the case, parties shall bear their own costs of this reference as none appeared on behalf of the assessee at the hearing.