
(1984) 12 PAT CK 0019
In the Patna High Court
Case No : Taxation Case No. 97 of 1975

Ashok Kumar Jalan

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 18-12-1984

Acts Referred:

Wealth Tax Act, 1957 — Section 14, 18(1)(a), 27(1)

Citation : (1986) 56 CTR 94 : (1987) 164 ITR 522 : (1987) 32 TAXMAN 143

Hon'ble Judges : Uday Sinha, J; Nazir Ahmad, J

Bench : Division Bench

Advocate : K.N. Jain and Rameshwar Prasad, for the Appellant; B.P. Rajgarhia and S.K. Saran, for the Respondent

Judgement

1. This is a reference u/s 27(1) of the Wealth-tax Act, 1957. The following two questions have been referred to this court for our opinion :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that penalty was leviable u/s 18(1)(a)?

2. If the answer to question No. 1 be in the affirmative, whether, on the facts and circumstances of the case, the penalty imposed amounting to Rs. 4,644 is not beyond jurisdiction ?"

2. The facts not in controversy are that the assessee was liable to file a return of net wealth in terms of Section 14 of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act"). It is not in controversy further that the return was not filed on or before June 30, 1969. The return having been filed late, the Wealth-tax Officer in terms of Section 18(1)(a) of the Act assessed the period of default as two months and imposed penalty for that period of Rs. 4,644 at the rate of 1/2 per cent. per month.

3. Learned counsel for the assessee submitted that the imposition of penalty was improper and illegal for the reason that the assessee had shown reasonable cause for not filing the return by the due date, i.e., June 30, 1969. The

circumstances in which the return was not filed within time and which precluded the assessee from filing the return was that most of the assets of the assessee consisted of shares in M/s. Hindusthan Malleables and Forgings Ltd. The shares of that company not being quoted shares, the assessee had to wait till the balance-sheet of the company was prepared. This was finalised on August 2, 1969. Thus, the assessee was precluded from filing the return before August 2, 1969. In those circumstances, learned counsel for the assessee contended that the default could be of only one month at the most. In our view, the submission is entirely fallacious. The entire submission is based on the assumption that the Wealth-tax Officer and the Appellate Assistant Commissioner had accepted the non-filing of the return till August 2, 1969, as good ground on account of the delay in the company's finalising its balance-sheet. If that had been the finding of fact of the Wealth-tax Officer and of the Appellate Assistant Commissioner, the submission of Mr. Jain, for the assessee, would have had substance. But we regret to say that that is not the finding of the authorities. The Wealth-tax Officer (see annexure "A") stated in unmistakable terms that if the assessee was under the wrong impression that the return had to be filed by September 30, 1969, it was ignorance of law for which there was no excuse. The appellate authority also applied itself to the circumstances in which the return was filed late. The Appellate Assistant Commissioner stated in unmistakable terms that he found no reasonable cause for the default in not filing the return by June 30, 1969. To quote the words of the Appellate Assistant Commissioner, he held as follows :

"I am not able to follow the logic behind this argument of the appellant's counsel. I find that in this case the return was not filed even immediately after August 2, 1969. It was filed on September 29, 1969, i.e., about two months after the above date. I further find that the appellant did not apply for time before the Wealth-tax Officer if he had any difficulty in preparing statistics for filing the wealth-tax return. I see no reason therefore to hold this as reasonable cause for default. The appellant is liable to penalty."

4. It is, therefore, futile for Mr. Jain to contend that the Appellate Assistant Commissioner had accepted the reasonable cause for default put forth by the assessee. The finding is one of fact which cannot be challenged in this reference.

5. The Income Tax Appellate Tribunal also considered this aspect of the matter. The Tribunal observed that the assessee was an old wealth-tax assessee. In regard to the explanation, the Tribunal observed that the finalisation of accounts of the limited company on August 2, 1969, was not adequate to explain the time lag between August 2, 1969, and September 29, 1969. It also observed that the assessee himself being a director in the said limited company, he could not escape the statutory responsibility of filing the return within the prescribed date. The conclusion of the Appellate Tribunal also is "that the assessee has not given any satisfactory explanation to show that he was prevented by reasonable cause from filing the return within the prescribed date". Whether an explanation is reasonable or not is a pure question of fact. None of the Revenue authorities nor

the Appellate Tribunal accepted the circumstances put forth by the assessee as reasonable. The concurrent finding of fact, therefore, was that there was no reasonable cause for late filing of the return. In that view of the matter, there is no justification for us to hold that there was reasonable cause. That is beyond the scope of our power. It must, therefore, be held on the first question that the Tribunal was absolutely right in holding that penalty was leviable u/s 18(1)(a) of the Act.

6. The submission of learned counsel for the assessee on the second question referred to us also lacks substance. The entire submission is based upon the assumption that the assessee was precluded by reasonable cause from filing the return till August 2, 1969. On that finding, it was submitted that only one month's penalty could have been levied. The concluded finding being that there was no reasonable cause for not filing the return by June 30, 1969, it must follow that the petitioner had defaulted for two months in filing the return. In our view, therefore, there is no substance in the submission advanced on behalf of the assessee in regard to the second question as well. Our answer, therefore, in regard to the second question as well is that the Revenue authorities were fully justified in imposing the penalty amounting to Rs. 4,644 for two months default.

7. For the reasons stated above, both the questions referred to this court are answered in favour of the Department and against the assessee. In the circumstances of the case, there shall be no order as to costs.