

**(1986) 02 KAR CK 0033**

**In the Karnataka High Court**

**Case No : T.R.C. No's. 4, 5, 6, 7, 8, and 9 of 1979**

Askar Mirza

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

**Date of Decision : 07-02-1986**

**Acts Referred:**

Income Tax Act, 1961 — Section 271, 271, 271 (1) (a)  
Wealth Tax Act, 1957 — Section 18, 18 (1), 27 (1)

**Citation :** (1986) 53 CTR 199 : (1986) 159 ITR 697 : (1986) 26 TAXMAN 168

**Hon'ble Judges :** R.S. Mahendra, J;K.S. Puttaswamy, J

**Bench :** Division Bench

**Advocate :** K. Ramanjulu, for the Appellant; K. Srinivasan and H. Raghavendra Rao, for the Respondent

## **Judgement**

Puttaswamy, J.—In these references made u/s 27(1) of the Wealth-tax Act, 1957 ("the Act"), the Income Tax Appellate Tribunal, Bangalore Bench, Bangalore ("Tribunal"), at the instance of the assessee, has referred the following question of law for the opinion of this court for six assessment years from 1967-68 to 1972-73 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the penalty levied u/s 18(1) of the Wealth-tax Act ?"

2. In order to appreciate the question referred to us, it is necessary to notice the facts as found by the Tribunal.

3. One Humayun Mirza of Bangalore, the natural father of the assessee, was the owner of two valuable immovable properties bearing No. 2, Ali Askar Road, and No. 149/150, Infantry Road of Bangalore City. On March 16, 1967, Humayun Mirza made an oral gift of the said two properties in favour of the assessee who was then studying at London. In that view, Smt. Zeebrunnisa Begum, the natural mother and general power of attorney (G.P.A.) of the assessee, accepted the said gift for and on behalf of the assessee.

4. But notwithstanding the above, the assessee or his G.P.A. or his father, did not file the returns for each of the said years and 1973-74 on or before the time stipulated by the Act. As late as on August 29, 1973, the assessee filed his returns under the Act for the said years and 1973-74 before the Wealth-tax Officer, Assessment (8) Circle-II, Bangalore, who on completing the assessments for all the said years, initiated separate proceedings for levy of penalty u/s 18 of the Act which were opposed by the assessee. On a consideration of the cause shown, the Wealth-tax Officer made an order on March 24, 1976 (annexure-A), levying different amounts as penalties for the said years and 1973-74. Aggrieved by the said order of the Wealth-tax Officer, the assessee filed appeals before the Appellate Assistant Commissioner of Income Tax, Bangalore Range-II, Bangalore ("Appellate Assistant Commissioner") who by his order dated September 8, 1976, dismissed them (annexure-C). Aggrieved by the said orders, the assessee filed appeals before the Tribunal which by its order dated January 31, 1978, disposed of them in these terms :

"15. So far as the assessment year 1973-74 is concerned, by Board's Circular No. 113 of June 20, 1973, the date for filing the wealth-tax return was extended to August 15, 1973. The return was actually filed by the assessee on August 29, 1973, so that there is less than a complete month of default for this year and no penalty u/s 18(1)(a) is exigible. The penalty levied for 1973-74 is, therefore, cancelled.

16. To sum up, we direct that for the assessment years 1967-68 and 1968-69, penalty should be recalculated on the basis of section 18(1)(a) as it stood prior to April 1, 1969, that penalty for assessment years 1968-69, 1970-71 and 1972-73 should be recomputed taking into consideration the fact that the time for filing the returns was extended by the Central Board of Direct Taxes up to August 31, 1969, September 30, 1970, and July 31, 1972 respectively. The penalty for 1973-74 is cancelled while the penalties for the remaining two years, viz., 1969-70 and 1971-72, are confirmed."

5. Hence these references for the said years.

6. Sri K. Ramanujulu, learned counsel for the assessee, strenuously contends that the Tribunal was unjustified in upholding the penalties levied under the Act and we should answer the question in the negative. In support of his contention, Sri Ramanujulu strongly relies on the ruling of the Supreme Court in Hindustan Steel Ltd. Vs. State of Orissa, , three rulings of this court in Michael Fernandes Vs. Commissioner of Wealth Tax, Mysore and Another, , All India Sewing Machine Co. Vs. Commissioner of Income Tax, , M.P. Laxman Vs. Agricultural Income Tax Officer and Another, and a ruling of the Gauhati High Court in Commissioner of Income Tax Vs. Golaprai Hoonlal and Co.,

7. Sri K. Srinivasan, learned senior standing counsel for the Income Tax Department, appearing for the Revenue, contends that the Tribunal applying the correct legal principles on a question of fact had found that the assessee had not

shown reasonable cause and, therefore, we should answer the question against the assessee.

8. As to the delay in filing the returns, the assessee cannot and does not dispute the same.

9. The Wealth-tax Officer considering the cause shown by the assessee, rejected the same with which the Appellate Assistant Commissioner concurred.

10. In second appeals, the Tribunal noticing the ruling relied on before us, which were then available and reiterated in the latter rulings, had found that for each of the assessment years except for 1973-74, the assessee had not shown reasonable cause for delay in filing the returns. We are of the view that the said finding of the Tribunal, on the correctness of which there are no references, is essentially on a question of fact and cannot be disturbed by us in a proceeding u/s 27 of the Act which is analogous to section 256 of the Income Tax Act. But still, Sri Ramanujulu who argued the cases with thoroughness, made a very strong and passionate plea to disagree with the said finding of the Tribunal on the ground that at all material times, the assessee as a student was residing outside India.

11. We will assume that the assessee at all material times was outside India. But still that absence, considered by the Tribunal, does not by itself, in law, constitute a ground to hold that the assessee had shown reasonable cause for non-filing of the returns within the time stipulated by the Act. We see no merit in this contention of Sri Ramanujulu.

12. Before us and the Tribunal, the assessee, relying on the ruling of Gauhati High Court in Commissioner of Income Tax Vs. Golaprai Hoonlal and Co., urged that the notices issued by the Wealth-tax Officer without specifying the commencement and termination of defaults completely vitiates the levy of penalties under the Act. Sri Ramanujulu commends for acceptance of the same view and answering the question in favour of the assessee.

13. Sri Srinivasan contends that the ruling of the Gauhati High Court is contrary to the ruling of the Supreme Court in Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, and is impliedly overruled and, in any event, was unsound.

14. In paras 10 and 11 of its order, the Tribunal had noticed the ruling of the Gauhati High Court in Commissioner of Income Tax Vs. Golaprai Hoonlal and Co., and has held that it was distinguishable.

15. In Commissioner of Income Tax Vs. Golaprai Hoonlal and Co., the Gauhati High Court was called upon to decide the validity or otherwise of an order imposing penalty u/s 271(1)(a) of the Income Tax Act that suffered from vagueness. In examining that question, a Division Bench of the Gauhati High Court consisting of Rangarajan and Baharul Islam JJ. (as his Lordship then was) expressed thus (at pp. 897 & 900) :

"Thus, it will be seen that there are two separate starting points of defaults in respect of the situations covered by section 139(1) and section 139(2) of the Act respectively..." The Income Tax Officer has not mentioned as to which date he is taking for the submission of the return. Under the circumstances, there is vagueness in the order of the Income Tax Officer and the order cannot be said to be a legal and speaking order. On this ground alone the penalty order can be cancelled. Though the Tribunal characterised this situation as being vague (vagueness in the order of the Income Tax Officer), it seems apparent that the real import of the said finding is that vagueness was due to the fact that no precise starting point of time, relevant to the imposition of penalty, could be fixed and, hence, the same was invalid.

It seems to us that fixing precisely the starting point (commencement) of the default is basic to the imposition of penalty; in other words, no valid penalty could be levied unless a definite starting point is found. It may be worth a repetition to state that the validity of the order of imposition of penalty would depend upon the fixing of a precise and definite starting point."

16. In *Maya Rani Punj Vs. Commissioner of Income Tax, Delhi*, the Supreme Court dealing with the levy of penalty u/s 261 of the Income Tax Act had expressed thus (at p. 341) :

"The imposition of penalty not confined to the first default but with reference to the continued default is obviously on the footing that noncompliance with the obligation of making a return is an infraction as long as the default continued. Without sanction of law, no penalty is imposable with reference to the defaulting conduct. The position that penalty is imposable not only for the first default but as long as the default continues and such penalty is to be calculated at a prescribed rate on monthly basis is indicative of the legislative intention in unmistakable terms that as long as the assessee does not comply with the requirements of law, he continues to be guilty of the infraction and exposes himself to the penalty provided by law.

There are several statutory provisions where such default is stipulated to be visited with daily penalty. For instance, see *Ajit Kumar Sarkar Vs. Assistant Registrar of Companies*, where the Calcutta High Court, dealing with the provisions of sections 159 and 162 of the Companies Act of 1956, held the liability to be a continuing one. In *United Savings and Finance Co. Pvt. Ltd. and Another Vs. The Deputy Chief Officer, Reserve Bank of India*, while referring to section 58B(2) of the Reserve Bank of India Act, it was held that refusal to comply with the terms of the said section created an offence and continued to be an offence so long as such failure or refusal persisted. In *Oriental Bank of Commerce Vs. Delhi Development Authority and Another*, while referring to the provisions of the Delhi Development Act of 1957, the court held that the offence was a continuing one. In *G.D. Bhattar and Others Vs. The State*, it was pointed out that a continuing offence or a continuing wrong is after all a continuing breach of the duty which itself is continuing. If a duty continues from day to day,

the non-performance of that duty from day to day is a continuing wrong. We are of the view that the legislative scheme u/s 271(1)(a) of the 1961 Act in making provision for a penalty coterminous with the default to be raised provides for a situation of continuing wrong."

17. We are of the view that in the light of this enunciation, the enunciation made by the Gauhati High Court is impliedly overruled and is no longer good law, which means, that we cannot follow the same as urged by Sri Srinivasan. But we will also assume that the ruling which is not referred to by the Supreme Court and expressly overruled, has not been overruled by the Supreme Court as urged by Sri Ramanujulu and examine the same on that basis also.

18. We have carefully read section 271(1)(a) of the Income Tax Act, the above passage and the ruling of the Gauhati High Court in its entirety. With great respect to their Lordships of the Gauhati High Court that decided the case, we find that section 271(1)(a) of the Income Tax Act does not provide for specifying the commencement and termination of default in notices as an absolute and imperative requirement to commence penalty proceedings. When there is default and an authority holds that penalty had to be imposed either u/s 271 of the Income Tax Act or u/s 18 of the Act, the same had to be done calculating the amounts in conformity with those provisions. In such a situation, the matter is one of arithmetical calculation and nothing more than that. We are firmly of the view that what had been enunciated by their Lordships in Commissioner of Income Tax Vs. Golaprai Hoonlal and Co., is nothing but legislation in the thin guise of interpretation which is impermissible. With great respect to their Lordships, we regret our inability to subscribe to the views expressed in Commissioner of Income Tax Vs. Golaprai Hoonlal and Co.,

19. On the foregoing discussion, it follows that we have no other alternative except to answer the question referred to us in the affirmative and against the assessee.

20. In the light of our above discussion, we answer the question referred to us in the affirmative, against the assessee and in favour of the Revenue. But in the circumstances of the cases, we direct the parties to bear their own costs.