
(1981) 08 GAU CK 0005
In the Gauhati High Court
Case No : Wealth-tax Reference No. 6 of 1975

Badshah Khan

APPELLANT

Vs

Commissioner of Wealth-tax

RESPONDENT

Date of Decision : 27-08-1981

Acts Referred:

Wealth Tax Act, 1957 — Section 18(1)

Citation : (1982) 135 ITR 793

Hon'ble Judges : K.N. Saikia, J;K. Lahiri, J

Bench : Division Bench

Advocate : J.P. Bhattacharjee, S.C. Tibrewal and J.P. Sarma, for the Appellant;
G.K. Talukdar and D.K. Talukdar, for the Respondent

Judgement

Lahiri, J.—The wealth-tax return for the assessment year 1965-66 due on June 30, 1965, was filed by the assessee on June 30, 1970. The WTO held that there was no reasonable cause for not filing the return by the due date and imposed a penalty u/s 18(1)(a) of the Act at the rate of 2% per month on the tax payable subject to the maximum of 50% from July 1, 1965, to March 30, 1969, and at the rate of 1/2% of the net wealth reduced by the basic exemption, from April 1, 1969, to March 31, 1970. On appeal, the AAC turned down the claim of the assessee that he had reasonable cause for not filing the return by the due date. However, the AAC held that the amended provisions of the Act brought in by the Finance Act, 1969, would not apply and the penalty should be on the basis of the law that existed in the assessment year and accordingly directed that the penalty should be calculated at the rate of 2% of the net assessed tax from the date of the default. The revenue took the matter to the Income Tax Appellate Tribunal, Gauhati, for short "the Tribunal" and the assessee also filed cross objection. The learned Tribunal followed its earlier decision in W.T.A. 96 (Gau) and 97 (Gau) of 1973-74 dated November 12, 1974, WTO v. T.K. Roy and T.K. Roy v. WTO, respectively, and held that the AAC was incorrect in directing that the penalty u/s 18(1)(a) should be calculated at the rate of 2% of the assessed wealth-tax even for the period after April 1, 1969. The Tribunal held :

"The penalty u/s 18(1)(a) should be calculated at the rate of 2% of the assessed wealth-tax even for the period after April 1, 1969, as has been discussed in detail in the order of the Tribunal referred to above. The penalty should be calculated at the rate of 2% of the Wealth-tax assessed for the default up to March 31, 1969, and for the period of default from April 1, 1969, onwards the penalty should be calculated at the rate of 1/2% of the assessed wealth."

However, the learned Tribunal held that the assessee was in jail for some time and was hospitalised and, accordingly, for the purpose of computation of penalty u/s 18(1)(a) of the Act, the Tribunal directed the AAC to ascertain the actual period during which the assessee was undergoing imprisonment and also the period during which he was hospitalised and the said periods should not be considered as periods of default for the purpose of computation of penalty. The assessee prayed for a reference and the learned Tribunal was satisfied that questions of law arose out of the order passed by it and referred the following question u/s 27(1) of the W.T. Act, 1957:

"Whether, on the, facts and in the circumstances of the case, the Tribunal was right in holding that the calculation of penalty up to March 31, 1969, was to be made u/s 18(1)(i) of the Wealth-tax Act, 1957, as it originally stood from April 1, 1965, to March 31, 1969, as substituted with effect from April 1, 1965, by Section 18 of the Wealth-tax (Amendment) Act, 1964, and thereafter u/s 18(1) (i) as substituted by Section 24 of the Finance Act, 1969 ? "

Sections 14, 15 and 18 of the W.T. Act were amended on and from April 1, 1965, by the W.T. (Amend.) Act, 1964, and again amended by the Finance Act, 1969, which came into force from April 1, 1969. Section 14 has not undergone any striking change from the original provision. The section provides when and how a person is to submit a return. Section 15 enables a person to file a return at any time before the assessment is made. Section 14 is a duty imposed on the assessee to file his return by a specific date whereas Section 15 enables him to file the return before the assessment is made even though the last date is over. Section 18 of the Act deals with three types of penalties for certain specified omissions and acts on the part of the assesses as detailed in Section 18(1)(3), (b) and (c). In the instant case, we are concerned with the question of levy of penalty in respect of omissions covered by Clause (a) of Sub-section (1) of Section 18. There are four varieties of omissions in Clause (a), namely, (1) failure to furnish the return as required u/s 14(1); (2) failure to furnish the return as required by a notice issued u/s 14(2) or Section 17 ; (3) failure to furnish the return as required u/s 14(1) within the time allowed and in the prescribed manner ; and (4) failure to furnish the return as required by a notice u/s 14(2) or Section 17 within the time allowed and in the prescribed manner. Any such omission exposes the assessee to penalty unless reasonable cause is shown for not performing his duty, subject to certain conditions as to the powers of the WTO or the Tribunal. Between April 1, 1965, to March 31, 1969, the measure of penalty was altered by the Amendment Act of 1964 and the penalty imposable

was a sum equivalent to 2% of the tax for every month during which the default continued but not exceeding in the aggregate 50% of the tax. Therefore, the penalty imposable during the period is less onerous than prior to April 1, 1965. By the Finance Act, 1969, after April 1, 1969, the penalty imposable was altered to a sum for every month, during which the default continued, at the rate of one-half per cent. of the net wealth calculated according to the amended provision in Section 18. The penalty leviable was more drastic than before.

2. In the instant case, the return was due on June 30, 1965, and the assessee had defaulted and continued to default until he filed his return on June 30, 1970. The AAC held that the petitioner would be governed by the then existing law prevalent on June 30, 1969, and the provision of the amendment brought by the Finance Act from April 1, 1965, could not be applied. The learned Tribunal held that "the wrong" or "the offence" was a continuing wrong and the assessee should be liable to penalty up to March 31, 1969, according to the Act as amended by the W.T. (Amend.) Act, 1964, but the penalty leviable on the assessee from April 1, 1969, should be at the enhanced rate imposed by the Finance Act, 1969. The very question came up before the Supreme Court in *Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth*, and their Lordships have held: (1) that the penalty for default in not filing a return u/s 18(1)(a) of the Act is not a continuing wrong or offence and the penalty is to be determined in accordance with the provisions prevailing on the last day on which the return is required to be filed ; (2) that the amendments brought in Section 18(1)(a) made in 1964 as well as 1969 do not operate retrospectively ; and (3) that where the default complained of is one falling u/s 18(1)(a), the penalty has to be computed in accordance with the law in force on the last date on which the return had to be filed. In view of the fact that the question has been answered by their Lordships, in our opinion; the question is No. longer *res integra*. Accordingly, we hold that where the default complained of is one falling u/s 18(1)(a) of the Act, the penalty has to be computed in accordance with the law in force on the last date on which the return in question had to be filed, and, in the instant case, the last date was June 30, 1965.

3. Accordingly, we answer the question partly against the revenue and in favour of the assessee. The learned Tribunal was correct in holding that the calculation of penalty up to March 31, 1969, was to be made u/s 18(1)(i) of the W.T. Act, 1957, as it originally stood but it went wrong in holding that the calculation of penalty from April 1, 1969, should be u/s 18(1)(i) as substituted by the Finance Act, 1969. The calculation of penalty should be made u/s 18(1)(i) as amended by the W.T. (Amend.) Act, 1964. There is no order as to costs.

4. Before we part with the records we would observe that W.T.A. 96 (Gau) and 97 (Gau) of 1973-74 decided by the Tribunal on December 11, 1974 was set aside by the decision of this court in *T. K. ROY Vs. COMMISSIONER OF WEALTH-TAX. S. KARAM SINGH v. COMMISSIONER OF WEALTH-TAX S. N. ROY v. COMMISSIONER OF WEALTH-TAX.*, wherein the majority held that the penalty for

default in not filing the return within time as required u/s 18(1)(a) did not contemplate a continuing wrong and the penalty to be determined must be in accordance with the provisions prevailing on the last date on which the return was required to be filed. We are happy to note that the views expressed by Pathak J. (as his Lordship then was) and Singh J. are substantially the same as those in Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth, .