(1990) 09 OHC CK 0022

In the Orissa High Court

Case No : S.J.C. No. 69 of 1983

Banshidhar Mohanty APPELLANT

Vs

Commissioner of Wealth Tax RESPONDENT

Date of Decision : 20-09-1990

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

Citation : (1991) 189 ITR 421 : (1991) 54 TAXMAN 158

Hon'ble Judges : S.C. Mohapatra, J;K.C. Jagadeb Roy, J

Bench : Division Bench

Advocate : P.K. Misra and R.L. Bose, for the Appellant; S.C. Ray, General, for the Respondent

Judgement

S.C. Mohapatra, J.—The statement of the case has been made by the Appellate Tribunal u/s 27(3) of the Wealth-tax Act, 1957, on the following question of law :

"Whether, on the facts and in the circumstances of the case, the imposition of penalty u/s 18(1)(a) of the Wealth-tax Act for the assessment year 1972-73 is correct in law ?"

In respect of the assessment year 1972-73, return was to be filed by the assessee on or before June 30, 1972. He filed the same only on October 15, 1974. In the proceedings for imposition of penalty u/s 18(1)(a) of the Act, the assessee explained that he was under the bona fide impression that he could file the return any time before the assessment as provided u/s 15 of the Act and, therefore, in the absence of any mens rea, penalty should not be imposed. The Appellate Tribunal held that the assessee did not file any return earlier but indicated the return filed as a revised return as if he had filed a return earlier. On this finding, the Tribunal sustained the imposition of penalty.

2. The intention of a person can be gathered from his conduct. An inference from conduct, when reasonable, is a finding of fact and no question of law arises out of the order.

3. Mr. B.K. Mohanty, learned counsel for the assessee, submitted that the Wealth-tax Officer found the delay to be about two years, whereas the Tribunal has found it to be 22 months. Thus, it is not known whether a return was actually filed earlier. Therefore, while considering the question of imposition of penalty, the taxing authorities not having taken due care, the appellate order suffers from unreasonableness. We are not impressed with the submission in view of the clear finding of the Tribunal that the assessee did not file a return earlier but described the return filed late as a revised one. The assessee knows well whether he had filed a return earlier. When, without filing a return earlier, he makes a misstatement that the return filed late is a revised return, there is no unreasonableness in the finding of the Tribunal that he is liable for penalty.

4. Mr. Mohanty submitted that the assessee has, in the meantime, expired. Since we are affirming the view of the Tribunal, death of the assessee would not, in any way, affect his legal representatives.

5. In the result, the question is answered by stating that, on the facts and in the circumstances of the case, imposition of penalty u/s 18(1)(a) of the Wealth-tax Act for the year 1972-73 is correct in law. Our answer is in the affirmative and against the assessee. There shall be no order as to costs.

K.C. Jagadebroy, J.

6. I agree.