(2001) 05 CAL CK 0021

In the Calcutta High Court

Case No : Matter No. 1307 of 1988

Bireswar Sirkar APPELLANT

Vs

Wealth Tax Officer and Others RESPONDENT

Date of Decision : 23-05-2001

Acts Referred:

Citation : (2002) 172 CTR 57 : (2001) 252 ITR 693 : (2003) 128 TAXMAN 483

Hon'ble Judges : Pinaki Chandra Ghose, J

Bench : Single Bench

Advocate : Bhattacharjee, for the Appellant;

Judgement

Pinaki Chandra Ghose, J.—The question involved in this application whether the petitioner is entitled to get the benefit under the amnesty scheme for the assessment years 1978-79, 1979-80, 1980-81 and 1981-82.

2. The facts of the case are as follows :

The petitioner was an assessee under the Wealth-tax Act, 1957. The petitioner duly filed his wealth-tax return for the assessment years 1976-77 to 1981-82. The Wealth-tax Officer (hereinafter referred to as "the WTO"), assessed the wealth of the petitioner at a higher amount quantum than what was declared by the petitioner in the said returns. The petitioner duly preferred appeals before the Commissioner of Income Tax (Appeals) (hereinafter referred to as "the CIT (A)"). The Commissioner of Income Tax (Appeals) after hearing the parties passed a consolidated order on August 30, 1984, setting aside the said assessments with a direction for fresh assessments.

3. It was specifically stated by the said Commissioner of Income Tax (Appeals) that proper opportunity of hearing was not given to the assessee and it was further directed that after giving an adequate opportunity to the assessee of being heard the assessments should be made. The assessment orders were made in violation of the principles of natural justice. Hence, the orders became non est in the eye of law.

4. On November 15,1985, the said amnesty scheme was declared pursuant to and in terms of the said amnesty scheme for the first time for the assessment years 1985-86 and 1986-87 and the assessment was completed under the assessment for the said years and the demand was issued in favour of the petitioner. On March 31, 1986, the petitioner filed the returns for the years 1978-79 to 1981-82.

5. On October 20, 1987, the petitioner received a letter from the Wealth-tax Officer, "B" Ward, informing that the returns filed under the amnesty scheme for the assessment years 1978-79 to 1981-82, by the petitioner cannot be considered by him, since the assessments were set aside by the appellate authority and that the assessed wealth is much higher than the declared wealth. The petitioner duly replied by the said letter dated February 22, 1988, and submitted that the wealth declared under the amnesty scheme was higher than the originally returned wealth and as such the returns filed under the amnesty scheme are valid and also requested him to accept the said returns, under the said scheme. Since no reply was received the petitioner filed this application challenging the jurisdiction of the Wealth-tax Officer in respect of such refusal and with a direction to accept the returns filed under the said amnesty scheme.

6. Mr. Bhattacharjee, senior advocate, appearing on behalf of the petitioner, contended that the amnesty scheme was a voluntary disclosure scheme, which the Government introduced to encourage the true disclosure of the wealth of an assessee and to save the assessee from the hazards of the assessment procedures. He further contended that if any assessee filed his return under the amnesty scheme, the intention of the legislators is that the said return would be accepted without any demur from the Government''s side or without any further scrutiny. The circulars by which the Government announced such amnesty scheme did neither enumerate any conditions or criteria to be fulfilled by the petitioner. Return may be accepted under the amnesty scheme and nor did not indicate that the said returns would be open to scrutiny before the concerned Wealth-tax Officer or that the returns would be accepted subject to the satisfaction of the Wealth-tax Officer. Thus his contention that the same had to be accepted by the Wealth-tax Officer without any objection.

7. He also contended that the circular issued by the Government are binding upon the departmental officers. In support of his contention, he relied upon a judgment in Navnitlal C. Javeri Vs. K.K. Sen, Appellate Assistant Commissioner of Income Tax, ''D'' Range, Bombay, , where it has been held by the Supreme Court that the circular issued by the Central Board of Revenue would be binding upon the officers and persons employed in the execution of the Income Tax Act.

8. He further contended that the original assessment orders being set aside by the Commissioner of Income Tax (Appeals), the same became non est in the eye of law and could not be relied upon not only by the Department but also by the assessee. Therefore, the Wealth-tax Officer had no jurisdiction to refuse such return on the ground that the assessed wealth of the petitioner was higher than

the wealth disclosed by the assessee under the amnesty scheme. Once the return is filed under the amnesty scheme the only option open to the Wealth-tax Officer is to accept the return as it is as had been done in the case of the petition for the assessment years 1985-86 and 1986-87.

9. He further drew my attention to [1986] 157 ITR 53, and drew my attention to question No. 4 in respect of the Finance Minister''s assurance on disclosure of income and wealth where the question was to be whether higher income can be shown in cases where assessments have been set aside on appeal or pending reassessment in "question No. 4" which is reproduced hereunder :

"Question No. 4. Whether higher income can be shown in cases where assessments have been set aside on appeal or pending reassessment being reopened u/s 147 ?

Answer : Yes. The assessees could avail of the benefit under these circulars."

10. and he submitted that in view of such question and answer given by the Finance Minister, the said Wealth-tax Officer had no authority to make any enquiry into the said returns filed in the said scheme in respect of the said assessment years.

11. He further contended that the letter which has been issued by respondent No. 1 which is dated October 15, 1987, refusing to accept the returns under the said amnesty scheme on the ground :

(a) Original assessments having been set aside by the appellate authority, the returns under the amnesty scheme would not be accepted.

In view of question No. 4 and answer thereto as made in the circular enclosed, the said ground is untenable being wholly frivolous.

(b) The other ground that as the assessed wealth is much higher than the declared wealth, returns cannot be considered under the amnesty scheme.

12. This ground, ex facie, is frivolous in view of the fact and well-settled position in law that once the assessments are set aside, orders of assessments are non est in the eye of law. In any event, findings and/or conclusions of the said assessments which have been set aside, cannot be relied on either by the Department or by the assessee.

13. Mr. Bhattacharjee contended that such question cannot be sustained in view of the answer given by the Minister in this circular. The first ground is untenable being wholly frivolous and the second ground is also frivolous in view of the fact that once the assessment is set aside, orders of assessments are non est in the eye of law. Therefore, the Department cannot rely upon such assessment. Accordingly, he submitted that such impugned order and letter dated October 15, 1987, is liable to be quashed and set aside.

14. No affidavit-in-opposition has been filed in this matter. No affidavit has been

filed by the Department although the rule was issued on March 9, 1988. Affidavit directions were also given in the matter. The matter did appear before me from time to time. On March 20, 2001, the matter appeared before me again when at the instance of the Department the matter was adjourned till March 27, 2001. Thereafter again the matter appeared on April 12, 2001. None appeared. Thereafter, notice was also served on the Central Government advocate although time was extended from time to time. Further notice was served upon the Central Government Advocate and the matter did appear on April 19, 2001. Thereafter, the matter appeared before me and this matter is being taken up by me.

15. After considering the facts and circumstances of this case, I do not have any hesitation to hold that since there was no assessment order subsisting on the date of the issuance of the amnesty scheme, there cannot be any doubt in the mind that the assessment for the said period has not been concluded. Furthermore, it is clear from the question and answer of the Minister where it has been specifically mentioned that in cases where assessments have been set aside on appeal and pending reopening u/s 147 the assessees could avail of the benefit under this circular. Therefore, there cannot be any hesitation in my mind to hold that the ground mentioned in the letter dated October 15, 1987, that original assessment having been set aside by the appellate authority the returns of the amnesty scheme would not be accepted, cannot be sustained in law. The other ground which has been mentioned that the wealth is much higher than the declared wealth. Returns cannot be considered under the amnesty scheme. The said ground has been taken by the said Wealth-tax Officer is totally misconceived in view of the fact that once the assessments are set aside the orders of assessments are non est in the eye of law. The Department cannot take such plea as it has been cleared by the circular and the question and answer given at the time of introducing the said amnesty scheme by the Minister in charge. Accordingly, in my opinion the said ground cannot be sustained in law. In my opinion, the duty of the Wealth-tax Officer after considering these aspects and the circular issued by the Central Government under the amnesty scheme, has no other alternative but to accept the return for the said assessment years so filed by the petitioner in toto, Accordingly, the said letter dated October 15, 1987, is set aside and quashed and the rule is made absolute. The application is thus disposed of on the above terms.