(1987) 09 RAJ CK 0025

In the Rajasthan High Court

Case No : .I.T. References No''s. 38 and 38A of 1980

Commissioner of Income Tax APPELLANT

Vs

S.K. Golcha RESPONDENT

Date of Decision : 07-09-1987

Acts Referred:
Wealth Tax Act, 1957 — Section 18

Citation : (1988) 173 ITR 664 : (1987) RLW 724

Hon'ble Judges : J.S. Verma, C.J;I.S. Israni, J

Bench : Division Bench

Advocate : R.N. Surolia, for the Appellant; S.K. Keshote, for the Respondent

Judgement

1. This order shall dispose of both these references.

2. These references u/s 256(1) of the Income Tax Act, 1961, are at the instance of the Revenue in respect of the same assessee for the assessment years 1969-70 and 1970-71, for answering the following questions of law, namely :

Assessment year 1969-70 :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in cancelling the penalty order passed u/s 18(1)(c) of the Wealth-tax Act, 1957, holding; that the Inspecting Assistant Commissioner had no jurisdiction to levy the said penalty of Rs. 3,70,733 on March 2, 1977 ?

Assessment year 1970-71 :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in cancelling the penalty order passed u/s 18(1)(c), holding that the Inspecting Assistant Commissioner had 10 jurisdiction to levy the said penalty of Rs. 3,95,333 on March 2, 977 ? "

3. The assesses filed a wealth tax return for the assessment year 1969-70 on July 23, 1971, showing a net wealth of Rs. 2,55,219. The assessment was

completed on January 5, 1973, on a net wealth of Rs. 4,19,514. This assessment was cancelled by the Commissioner of Wealth-tax and a fresh assessment was made on March 5, 1975, on the net wealth of Rs. 5,19,370. The Wealth-tax Officer initiated penalty proceedings u/s 18(1)(c) of the Wealth-tax Act and referred the case for levy of penalty to the Inspecting Assistant Commissioner of Wealth-tax on December 16, 1976. By an order dated March 2, 1977, the Inspecting Assistant Commissioner imposed penalty of Rs. 3,70,333. Similarly, for the assessment year 1970-71, the wealth-tax return was filed by the assessee on July 23, 1971, declaring a net wealth of Rs. 3,08,614. Ultimately, the assessment was made on March 5, 1975, on a net wealth of Rs. 7,83,720, for this assessment year. The Wealth-tax Officer initiated penalty proceedings u/s 18(1)(c) of the Wealth-tax Act for this year and referred the matter to the Inspecting Assistant Commissioner on January 17, 1977. On March 2, 1977, the Inspecting Assistant Commissioner imposed a penalty of Rs. 3,95,333.

4. The Tribunal has upheld the assessee''s contention that the Inspecting Assistant Commissioner had no jurisdiction to impose penalty by the order passed on March 2, 1977, for both these years after the deletion of earlier Sub-section (3) of Section 18 of the Wealth-tax Act, 1957, with effect from April 1, 1976, by the Taxation Laws (Amendment) Act, 1975 and its substitution by new Sub-section (3). Hence these references at the instance of the Revenue.

5. We have already held in a number of Income Tax matters relating to imposition of penalty u/s 271(1)(c read with Section 274 of the Income Tax Act, 1961, that after the amendment made in Section 274 by the deletion of Sub-section (2) thereof by the Taxation Laws (Amendment) Act, 1975, with effect from April 1, 1976, the Inspecting Assistant Commissioner had no jurisdiction to impose penalty in references made by the Income Tax Officer subsequent to April 1, 1976, and that it is only the references pending before the Inspecting Assistant Commissioner prior to April 1, 1976, in which the Inspecting Assistant Commissioner had jurisdiction to make the order. This was on the ground that the determining factor is the date of making reference, so that only the references made to the Inspecting Assistant Commissioner prior to April 1, 1976, were saved for being decided by the Inspecting Assistant Commissioner and not those references which were made by the Income Tax Officer subsequent to April 1, 1976. We have taken this view in the Income Tax matters involving the same point following the view taken in Commissioner of Income Tax Vs. Shri Ram Prakash Saraf, . The same view has to be taken in respect of the corresponding provisions in the Wealth-tax Act also.

6. It follows that the Inspecting Assistant Commissioner in respect of both these assessment years had no jurisdiction to impose penalty after the above change in the Wealth-tax Act in the references made by the Wealth-tax Officer on December 16, 1976, and January 17, 1977, i.e., after April 1, 1976.

7. Consequently, these references are answered against the Revenue and in favour of the assessee by holding that the Tribunal was justified in cancelling the

penalty for both these years for the reasons given by us,

8. No costs.

