(1995) 09 AHC CK 0112

In the Allahabad High Court

Case No : Wealth-tax Reference No. 83 of 1980

Commissioner of Wealth-tax APPELLANT

Vs

Abdul Qayyam RESPONDENT

Date of Decision : 07-09-1995

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

Citation : (1996) 217 ITR 414

Hon'ble Judges : M.C. Agarwal, J;B.M. Lal, J

Bench : Division Bench

Advocate : Rajesh Kumar Agarwal, for the Appellant; None, for the Respondent

Final Decision : Disposed Of

Judgement

M.C. Agarwal, J.—The Income Tax Appellate Tribunal (Delhi Bench "B") has, u/s 27(1) of the Wealth-tax Act, 1957, referred the following question stated to be of law and to arise out of its order dated May 10, 1979, passed in W. T. A. No. 756/(Delhi) of 1977-78 for the assessment year 1967-68 for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the penalty should be worked out on the basis of the law as it existed on the date when the return was due ?"

2. We have heard Sri Rajesh Kumar Agarwal, learned counsel for the Revenue. No one appeared on behalf of the assessee.

3. The question relates to the computation of penalty u/s 18(1)(a) of the Wealth-tax Act, 1957, for delay in the filing of the return of wealth. The return was due on June 30, 1967, but was filed on February 18, 1977. Till March 31, 1969, the penalty prescribed for delay in the filing of the return was two per cent. per month of the tax assessed while for the period thereafter the penalty provided was at the rate of 1/2 per cent. per month of the wealth assessed. The assessing authority levied penalty accordingly in a sum of Rs. 9,163. The appeal to the Appellate Assistant Commissioner failed. On second appeal, however, the Income

Tax Appellate Tribunal held that the penalty was leviable according to the law as it was in force on the date when the return was due.

4. This controversy has since been settled by the decisions of the Supreme Court in Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, and Commissioner of Wealth-tax Vs. P.N. Banerjee, . In Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, , the controversy was of a similar nature, but arising u/s 271(1)(a) of the Income Tax Act, 1961. It was held that the default of not filing the return is a continuing default and the imposition of penalty was not confined to the first default, but with reference to the continued default, on the footing that non-compliance of making a return was an infraction as long as the default continued.

5. In the case of Commissioner of Wealth-tax Vs. P.N. Banerjee, , the question was about the levy of penalty u/s 18(1)(a) of the Wealth-tax Act for the assessment year 1967-68 and following Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, , it was held that the amount of penalty has to be quantified up to March 31, 1969, on the basis of the unamended Section 18 of the Wealth-tax Act and for the period thereafter, on the basis of the amended provisions. The same view was taken by this court in Commissioner of Wealth-tax Vs. Smt. Brij Rani, in which dealing with the assessment years 1967-68 and 1968-69, this court held that the penalties u/s 18(1)(a)(i) of the Wealth-tax Act were to be levied for the period of delay prior to April 1, 1969, in terms of the prescribed rates with reference to the unamended Section 18 of the Act as it stood prior to its amendment by the Finance Act, 1969, and for the period of delay subsequent to April 1, 1969, at the prescribed rates in terms of law under the amended Section 18(1)(a)(i), as it stood after its amendment by the Finance Act, 1969.

6. Therefore, the Tribunal was not right in holding that the penalty should be worked out on the basis of law, as it existed on the date when the return was due and we are of the opinion that the penalty should be calculated for the period up to March 31, 1969, according to the law, as it stood on the date when the return was due and up to March 31, 1969, and the penalty for the period April 1, 1969, onwards should be calculated at the amended rate effective from April 1, 1969. The question is answered accordingly in the negative in favour of the Revenue and against the assessee.