(1982) 03 OHC CK 0026

In the Orissa High Court

Case No : Special Jurisdiction Case No''s. 105 to 111 of 1977

Commissioner of Wealth-tax — APPELLANT

Vs

Ajit Kumar Sur — RESPONDENT

Date of Decision : 15-03-1982

Acts Referred:
Wealth Tax Act, 1957 — Section 27(3)

Citation : (1983) 140 ITR 389

Hon'ble Judges : R.N. Mishra, C.J;B.K. Behera, J

Bench : Division Bench

Advocate : R. Mohanty and R. Sharma, for the Respondent

Judgement

R.N. Mishra, C.J.—Moved by the Revenue, this court u/s 27(3) of the W.T. Act, 1957 (hereinafter referred to as "the Act"), directed the Wealth-tax Appellate Tribunal, Cuttack Branch, to state a case and refer the following common question in respect of assessment years 1964-65 to 1970-71.

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in deleting the penalties and whether the finding that the assessee''s conduct was not contumacious or deliberate is based on any evidence and, if so, whether the same can be the basis for deleting the penalty levied ?"

2. 30th September of the respective year was the due date for submission of the returns. The returns were, however, filed for the first year in August, 1972 (sic) and for the other years on different dates in 1970 (sic). The WTO initiated proceedings, called upon the assessee to show cause and ultimately imposed varying penalties for the years u/s 18(1)(a) of the Act. The AAC did not accept the assessee''s explanation and confirmed the imposition. In second appeal the Tribunal held:

"6. The assessee''s case is that he was an Income Tax assessee but he did not submit the returns under the Wealth-tax Act for the assessment years 1964-65 to 1968-69, as on the advice of his counsel, Sri Neogi, he was under the impression that certain immovable properties were HUF properties and the value of those properties was not to be included in his net wealth and that it was only when he received the notice for the assessment years 1969-70, that he got the properties, both movable and immovable, valued by the chartered valuer and on the receipt of his report he submitted the returns. In his returns he included the value of those properties showing his share at 1/3rd therein and the value of those properties was included in his net wealth in the assessment. In the proceeding before the Wealth-tax Officer, he did not plead that l/3rd share of those properties did not belong to him individually. He, however, went in revision to the Commissioner and before him he contended that those properties could not be included in his net wealth. He, however, was of the view that the assessee had only 1/9th share in those properties individually and he directed the Wealth-tax Officer to rectify the assessment accordingly. In the penalty appeals, the AAC observed that the assessee submitted the returns voluntarily, co-operated with the Department during the assessment proceedings and paid the taxes properly. From the above facts we are of the opinion that the delay in the submission of the returns was not intentional. It has further been held in the case of Shakuntla Mehra Vs. Commissioner of Wealth Tax and Others, that the mere failure to file the return within the time allowed did not make the assessee liable to penalty and there had to be contumacious or deliberate default. We do not find the assessee''s conduct as contumacious or deliberate in not submitting the returns in time. We, therefore, cancel the penalty orders in all the years under consideration."

3. The question that arises now is as to whether the finding recorded by the Tribunal that there was no contumacious conduct and the assessee was not liable to penalty is one of fact or law.

4. From the extract of the Tribunal''s decision it is clear that the Tribunal relied upon the findings of the AAC, namely, that the returns were voluntary, that the assessee had co-operated with the Revenue in the matter of completing the assessments and had paid the taxes as per demand. The further feature is that the explanation offered by the assessee that he was under a bona fide impression that the property belonged to the HUF has been accepted by the Tribunal. These are materials relevant to the question and if a final forum of fact relying on these facts comes to its conclusion that there was no contumacy, we do not think a question of law would arise. A Division Bench of this court in the case of CIT v. Nilamani Ghosh, held that whether there was a situation requiring penalty to be invoked was one of fact and no legal question arose. In a recent unreported decision of this court in S.J. Cs. Nos. 211 to 213 of 1977 disposed of on February 12, 1982 (since reported in Commissioner of Wealth-tax Vs. R.K. Deo,), we have taken a similar view and have relied upon the observations of the Supreme Court in Hindustan Steel Ltd. Vs. State of Orissa, , where it was stated :

"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation."

5. In that very case we have also held that the Tribunal as a second appellate authority has the same jurisdiction as the WTO for appreciating facts to determine whether a fit case for imposition of penalty was made out. For the reasons given in these two decisions, we must hold that no question of law arises out of the appellate order of the Tribunal. We decline to answer the reference.

6. No costs

Behera, J.

7. I agree with my Lord the Chief Justice.