

(1985) 08 RAJ CK 0050

In the Rajasthan High Court

Case No : Civil Wealth-tax Case No's. 8 to 11 of 1978

Commissioner of Wealth-tax

APPELLANT

Vs

Akshay Kumar Sanghi

RESPONDENT

Date of Decision : 20-08-1985

Acts Referred:

Wealth Tax Act, 1957 — Section 18(1), 27(3)

Citation : (1987) 163 ITR 43

Hon'ble Judges : S.N. Bhargava, J;M.C. Jain, J

Bench : Division Bench

Advocate : B.R. Arora, for the Appellant; C.R. Mehta, for the Respondent

Judgement

M.C. Jain, J.—These are 4 applications u/s 27 of the Wealth-tax Act directing the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, to state the case and refer the questions of law arising out of the Tribunal's order dated April 13, 1977, passed in wealth-tax appeals in respect of the assessment years 1968-69, 1969-70, 1970-71 and 1971-72.

2. We may state here the brief facts giving rise to the present applications.

3. The respondent, Akshay Kurnar Sanghi, was an assessee under the Wealth-tax Act. He submitted the returns for the assessment years 1968-69, 1969-70, 1970-71 and 1971-72. The valuation dates in respect of the above assessment years were 31st March, 1968, 31st March, 1969, 31st March, 1970, and 31st March, 1971, respectively. The assessee had shown value of his immovable property at Rs. 36,000 in his returns in respect of these assessment years. The Wealth-tax Officer after considering the evidence on record valued the property in question at Rs. 75,000, Rs. 80,000, Rs. 85,000 and Rs. 90,000 in respect of the aforesaid assessment years, respectively. The Wealth-tax Officer also initiated penalty proceedings u/s 18(1)(c) of the Wealth-tax Act. Since the minimum penalty leviable exceeded Rs. 25,000, the matter was referred to the Inspecting Assistant Commissioner of Wealth-tax. The Inspecting Assistant

Commissioner was not satisfied with the explanation given by the assessee in his letters dated 8th and 16th April, 1976. According to him, the assessee had concealed his wealth and also furnished inaccurate particulars of his assets and so he imposed penalties of Rs. 34,000, Rs. 39,000, Rs. 44,000 and Rs. 49,000 for the assessment years 1968-69, 1969-70, 1970-71 and 1971-72, respectively. The assessee took up the matter before the Tribunal. The Tribunal, vide its order dated April 13, 1977, allowed the appeals preferred by the assessee and the orders imposing penalty passed by the Inspecting Assistant Commissioner were cancelled.

4. The present petitioner submitted four applications in respect of the said assessment years for drawing up the statement of case and for making reference to this court on questions of law. The Tribunal after hearing the parties rejected the applications, vide its order dated July 24, 1977. The Tribunal referred to the following questions in its order rejecting the applications :

"1, Whether, on the facts and in the circumstances of the case, the Tribunal was justified in cancelling the orders of penalties in respect of the assessment years 1968-69 to 1971-72 without considering Explanation 1(i) to Section 18(1)(c) of the Wealth-tax Act, according to which the burden was on the assessee to prove that the failure to return the correct value of the plot did not arise from any fraud or any gross or wilful neglect on his part?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that there is no positive material on record which would go to show that the assessee knowingly and deliberately did not disclose the value of the plot as assessed so as to warrant the conclusion that the assessee has not concealed the particulars of the assets or furnished inaccurate particulars of any asset within the meaning of Section 18(1)(c) of the Wealth-tax Act, 1957?"

5. The petitioner's case before us is that the petitioner sought reference of the following four questions :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in cancelling the orders of penalties in respect of the assessment years 1968-69 to 1971-72 without considering Explanation 1(i) to Section 18(1)(c) of the Wealth-tax Act, according to which the burden was on the assessee to prove that the failure to return the correct value of the plot did not arise from any fraud or any gross or wilful neglect on his part?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that there is no positive material on record which would go to show that the assessee knowingly and deliberately did not disclose the value of the plot as assessed so as to warrant the conclusion that the assessee has not concealed the particulars of the assets or furnished inaccurate particulars of any asset within the meaning of Section 18(1)(c) of the Wealth-tax Act, 1957?

3. Whether the finding of the Tribunal that no penalty was called for, on the facts

and in the circumstances of the case, as the assessee in good faith showed the value of the plot in question on the valuation date is not sustainable in law as the Appellate Tribunal did not take into consideration the entire evidence, direct and circumstantial, which was taken note of by the Inspecting Assistant Commissioner while imposing the penalties in respect of the assessment years 1968-69 to 1971-72?

4. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in cancelling the penalty levied u/s 18(1)(c) of the Wealth-tax Act, 1957, in respect of the assessment years 1968-69 to 1971-72?"

6. It may be stated that whether the questions sought to be referred are as stated in the order of the Tribunal or are as stated in the 4 reference applications presented before this court are not very material. The whole question is as to whether the order of the Tribunal dated April 13, 1977, gives rise to any question of law which may necessitate the making of a reference by the Tribunal or which may require this court to issue a direction to the Tribunal to state the case to this court on any question of law. While rejecting the applications, the Tribunal has expressed an opinion that the orders do not raise any question of law. The finding which has been recorded by the Tribunal is essentially a finding of fact and in the opinion of the Tribunal, no question of law arises out of the Tribunal's order :

7. We have heard Mr. B.R. Arora, learned counsel for the petitioner, and Mr. C.R. Mehta, learned counsel for the respondent-assessee.

8. Mr. Arora, learned counsel for the Revenue, submitted that the Tribunal proceeded to determine the question as if the burden is on the Revenue. Once the valuation given by the assessee is not accepted and the assessee has been assessed on a higher valuation of the property, then the burden lies on the assessee to prove that the valuation which was given by him was not given as a result of fraud or any gross or wilful neglect on his part. According to Mr. Arora, the assessee has failed to discharge the burden and the Tribunal committed an error without looking to the entire material on record in observing that there was no positive material to establish that there was lack of bona fides on the part of the assessee. It was urged by Mr. Arora that the Tribunal ought to have taken into consideration as to what claim was advanced by the assessee in respect of the property before the Tribunal awarding the compensation. The assessee made a claim for Rs. 1,55,568 in respect of the plot in question as far back as in the year 1966. This fact was not disclosed by the assessee. The assessee rather tried to mislead the authorities in order to arrive at the correct valuation of the property. In such circumstances, the finding which has been arrived at by the Tribunal is not borne out from the evidence or material on record and the Tribunal was wrong in observing that no question of law arises from the Tribunal's order.

9. We have carefully considered the submissions of the learned counsel for the

petitioner and, in our opinion, the submissions are devoid of any force. We may extract the observations of the Tribunal which will show as to how the Tribunal has proceeded to consider the question. The Tribunal stated in its order as under;

"In penalty proceedings, the assessee gave detailed explanation, vide letters dated 16th July, 1976 and 26th July, 1976. The copies of the letters are in the paper-book. The assessee explained in detail in those letters that the value of the land on the valuation dates was the same which was disclosed in the return. Inter alia, it was explained that the land was situated in Air Force area which was about 200 yards away and was very uneven in size as is clear from the following dimensions :

North : 338 ft.; West: 288 ft.; South : 166 ft.; East: 357 ft.

This land was requisitioned by the Collector, Jodhpur, on January 30, 1964, and the possession was also taken over on February 6, 1964. Ultimately, the land was acquired by the Government, vide Gazette Notification dated September 8, 1971, and the acquisition order was passed by the Collector, Jodhpur, on January 18, 1972, and the compensation was paid to the assessee on April 7, 1972. Thus the date of notification and the date of acquisition order both fell outside the valuation dates of the years under consideration. The assessee explained in detail that at the relevant valuation dates, the value of the land could not be more than the value disclosed in the return. Even originally the Wealth-tax Officer accepted the value of the plot in question as returned by the assessee. Later on, the Wealth-tax Officer reopened the assessment u/s 17 of the Act and enhanced the value of the plot in question. In appeal, the learned Appellate Assistant Commissioner of Wealth-tax accepted the value of the land as was returned by the assessee. On further appeal, the Tribunal has taken the value of the plot at Rs. 70,000, Rs. 75,000, Rs. 80,000 and Rs. 85,000 in respect of the assessment years 1968-69 to 1971-72, respectively. If we consider the entire material on record, it is clear that the assessee in good faith showed the value of the plot in question as on the valuation date. At that time he was not in the know that the value of the plot in question would be taken as discussed above. There were preponderance of probabilities as detailed in the two explanations referred to above and it was proved that there was no fraud or gross or wilful neglect on the part of the assessee in not returning the assessed value of the plot in question. There is no positive material on record which would go to show that the assessee knowingly and deliberately did not disclose the value of the plot as assessed. Thus, in our opinion, in the present case, there is no convincing evidence on record which would go to show that the assessee has concealed the particulars of any assets. Thus the learned Inspecting Assistant Commissioner erred in imposing penalties in question. Since we have decided the matter on facts, there is no necessity for deciding the other point raised by the learned counsel for the assessee."

10. It would appear from the above consideration of the Tribunal that the Tribunal found that whatever valuation was given by the assessee, was given in

good faith. The property was already under requisition on a fixed rent of Rs. 4,000 per annum. Originally, the property was purchased for a sum of Rs. 35,711 which facts are not disputed. What has weighed with the Tribunal is the valuation on the valuation dates and not on the date of the notification. The date of notification and the date of acquisition order both fell outside the valuation dates of the years under consideration. A positive finding has been recorded by the Tribunal weighing the preponderance of probabilities that it was proved there was no fraud or gross or wilful neglect on the part of the assessee in not returning the assessed value of the plot in question. The Tribunal was alive to the fact that the burden is on the assessee. Having recorded such a finding, it proceeded to consider as to whether that burden has in any way been rebutted. While considering that, the Tribunal stated that there is no positive material on record which would go to show that the assessee knowingly and deliberately did not disclose the value of the plot as assessed. It would appear from the order of the Tribunal that the approach of the Tribunal was correct and it rightly placed the burden initially on the assessee and thereafter considered that it has been proved by the assessee that there was no fraud or gross or wilful neglect on his part. The Tribunal after considering the material on record, recorded a finding that it was proved that there was no fraud or gross or wilful neglect on the part of the assessee in not returning the assessed value of the plot in question. It cannot be said that while recording such a finding, the Tribunal has failed to take into consideration any material on record whereby the finding may be considered to be vitiated. The Tribunal, after considering the entire material on record and after assessing the same, recorded such a finding. It was not necessary for the Tribunal to make reference to each material and all relevant material have been taken note of by the Tribunal. Thus a perusal of the order of the Tribunal would show that the Tribunal has allowed the four appeals after recording a finding which is essentially a finding of fact and the finding was such which calls for imposition of no penalty. We may profitably recite the authorities cited by the assessee's learned counsel. They are the decisions in connection with estimates of income.

11. In ADDITIONAL COMMISSIONER OF Income Tax, RAJASTHAN Vs. NOOR MOHD and CO. AND OTHERS., it was observed as under (headnote):

"The question whether a statutory presumption had been rebutted in any given case by evidence is always a question of fact. What quantum of evidence would rebut a legal presumption in a given set of facts does not admit of any rigid rule. Nor does it raise a question of law. The evidence may be direct or circumstantial or both. A mere statement of the assessee may be enough in some cases. No single fact but the cumulative impact of all the facts must be taken into account.

The Explanation to Section 271(1)(c) raises the presumption that where the income returned by an assessee is less than 80% of the income assessed, the assessee is guilty of fraud or gross or wilful neglect and concealment of income. But where an assessee maintains accounts but fails to maintain quantitative

details and the Income Tax Officer finding that the income of the assessee cannot be deduced from the method of accounting, estimates such income and imposes a penalty on the assessee under the Explanation to Section 271(1)(c) and the Tribunal finds on an examination of the facts and circumstances of the case that the presumption of concealment under the Explanation has been rebutted, no question of law arises and no reference to the High Court lies from the order of the Tribunal cancelling the penalty."

12. In Addl. Commissioner of Income Tax Vs. Gem Palace, while dealing with the Explanation to Section 271(1)(c) of the Income Tax Act, 1961, the matter has been stated in the headnote as under :

"The Inspecting Assistant Commissioner levied a penalty on the assessee under the Explanation to Section 271(1)(c) of the Income Tax Act, 1961. On appeal, the Appellate Tribunal observed : This is a case in which the assessee has maintained regular books of account and the return of income was also based on those accounts. The accounts were rejected on the technical ground that there was no day-to-day stock account. The gross profit estimate has also been made on a purely subjective basis without any indication from the accounts of any actual concealment or manipulation indulged in by the assessee. The assessee's statement that it agrees to an addition of Rs. 6,000 by way of enhancement of gross profit, in the circumstances and background of the case, could not be equated with a categorical acceptance of concealment of income on its part" and set aside the order of penalty. The Tribunal refused to make a reference to the High Court on the ground that the finding arrived at by it was only a finding of fact. On the application of the Commissioner u/s 256(2) of the Act;

Held, that the Tribunal was right in holding that the question whether there was any concealment of income and whether there was any fraud or gross or wilful neglect in the filing of the proper return of its income on the part of the assessee was essentially a question of fact and from the finding of the Tribunal it could not be said that the Tribunal was not mindful of the Explanation to Section 271(1)(c) of the Act. The Tribunal came to the conclusion that there was no fraud or gross or wilful neglect on the part of the assessee and on the basis of that finding, the penalty was cancelled. It was purely a finding of fact and no question of law arose and as such the Tribunal could not be directed to make a reference."

13. It may be stated that reliance was placed in this case on the decision of their Lordships of the Supreme Court in The Commissioner of Income Tax Madras Vs. Khoday Eswarsa and Sons, . In that case, the income was enhanced by Rs. 9,900. The addition was made on the ground that certain sales had not been properly accounted for. The incomes of different sections were taken into consideration. Regarding the pharmaceuticals section, the Tribunal held that though there might be certain doubtful transactions, it could not be held that the respondent had made any deliberate attempt at concealment. Regarding the chemical section the Tribunal held that though there might be justification for making additions in the original assessment order to the amount shown in the

return, those additions by themselves could not lead to the conclusion that the respondent had concealed its income or that it has furnished deliberately incorrect particulars. Their Lordships held that the conclusions drawn by the Appellate Tribunal were all on findings of fact recorded against the Department and on those findings no question of law arose for reference. It was further observed in that case as under (headnote of *The Commissioner of Income Tax Madras Vs. Khoday Eswarsa and Sons*,

"Penalty proceedings being penal in character, the department must establish that the receipt of the amount in dispute constitutes income of the assessee. Apart from the falsity of the explanation given by the assessee, the department must have before it before levying penalty cogent material or evidence from which it could be inferred that the assessee has consciously concealed the particulars of his income or had deliberately furnished inaccurate particulars in respect of the same and that the disputed amount is a revenue receipt. No doubt, the original assessment proceedings for computing the tax may be a good item of evidence in the penalty proceedings; but penalty cannot be levied solely on the basis of the reasons given in the original order of assessment."

14. If the order of the Tribunal is viewed in the light of what has been observed in the cases referred to above, it would appear that the finding which has been recorded by the Tribunal is essentially a finding of fact based on the material on record and it cannot be said that the assessee has failed to prove that there was no fraud or gross or wilful neglect on his part in not returning the value of the plot and such a finding being a finding of fact will not give rise to any question of law as discussed above.

15. In the result, in our opinion the applications have no merit and the same are hereby dismissed but without any order as to costs.