(1986) 07 DEL CK 0022

In the Delhi High Court

Case No : WT Reference No. 6 of 1976

Commissioner of Wealth Tax APPELLANT

Vs

Amolak Singh Jain RESPONDENT

Date of Decision : 21-07-1986

Acts Referred:

Income Tax Act, 1961 — Section 139(2), 14, 17, 27(1), 271(1)(a)
Wealth Tax Act, 1957 — Section 18(1)(a)

Citation : (1986) 29 TAXMAN 202

Hon'ble Judges : Yogeshwar Dayal, J;Mahinder Narain, J

Bench : Division Bench

Advocate : P.N. Misra and D.C. Taneja, for the Appellant;

Judgement

Dayal, J.—This order will dispose of Wealth-tax Reference Nos. 6 to 11 of 1976, relating to the assessment years 1959-60 to 1964-65. The question 3ferred by the Tribunal for opinion of this Court is mentioned in Paragraph 5 of the statement of case, which reads as under:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the penalty amount could not exceed 50 per cent of the tax.

This question arises for opinion in the following circumstances as narrated in paragraph 3 of statement of the case which is as under:

(1)******

(2) The background of the facts is that in each of these years, the assessee''s wealth was assessable to wealth-tax. He should have, there- fore, filed his wealth-tax returns by 30th June, after the close of each accounting year. This he did not do. For assessment year 1958-59 a turn was originally filed on 4-11-1963. A revised return was subsequently submitted on 30-3-1970. For the other years the returns were submitted for the first time on 30-3-1970.

(3)Because of inordinate delays in the submission of the returns, the Wealth-tax

Officer commenced penalty proceedings u/s 18(1)(a) of the Wealth-tax Act. Show-cause notices were issued to the assesses to explain why penalties for the delays be not levied. The assessee did not care to reply. Further letters were issued to the assessee providing him another opportunity to explain. There was again no response. The Wealth-tax Officer, therefore, assuming that the assessee had nothing to explain, levied different amounts of penalties for these years.

(4) Feeling aggrieved, the assessee moved appeals before the Appellate Assistant Commissioner and pleaded there that the Wealth-tax Officer had not established that the assessee was not prevented by sufficient cause from filing the returns within the prescribed time limit. It was also claimed that the assessee was entertaining a belief in good faith that his status was that of the Hindu undivided family and, therefore, he was under no legal obligation to file the returns, as the net wealth in the hands of the family was not assessable to tax. He relied upon two decisions of the Kerala High Court and Supreme Court in Dawn Co. v. C1T [1973] 87 LTR 71 and Hindustan Steel Ltd. Vs. State of Orissa, The Appellate Assistant Commissioner after taking note of these pleas and reproducing some portions of the said judgments made a cryptic order to the effect that the Wealth-tax Officer had not given sufficient opportunity to the assessee to explain the delay in the filing of the returns. It was further observed that the basis on which the penalties had been worked out was not clear from the orders. The penalties were, therefore, set aside and the Wealth-tax Officer was directed to proceed de novo.

(5) The revenue has now before us assailed the finding of the Appellate Assistant Commissioner that no sufficient opportunity had been provided to the assessee. It has also been pointed out that the assessee had no misgivings as to his proper status as he had himself filed the returns in the ''status of individual'', and the assessments also followed accordingly. It was never disputed by him in these assessments or in appeals that the status could be otherwise. Moreover, for assessment year 1958-59, the assessee had as early as 4-11-1963, filed the original return in the status of individual and thus he knew very well what his status was. Furthermore, for assessment year 1964-65, his wealth was assessable even if the status was assumed to be of the Hindu undivided family.

(6) The assessee has on the other hand pleaded that the orders of the Wealth-tax Officer suffered from various infirmities inasmuch as he had not given any clear finding that the returns were not filed without any sufficient cause. Prior approval of the Inspecting Assistant Commissioner, it was further pleaded, to be necessary before the imposition of penalties Again, the computation of penalties was pointed out to be under the amended law as brought into vogue from 1-4-1969 although the offences, if any, towards delay had been committed long time earlier. Again, it was claimed that the assessee indeed laboured under a bona fide belief that his status could be that of Hindu undivided family. This status, it was pointed out, had been accepted by the wealth-tax authorities for assessment years 1965-66 onward.

The Tribunal next proceeded to give its decision as under:

(7) We have given our due consideration to all the circumstances. In our opinion the reason given by the Appellate Assistant Commissioner for setting aside the penalty orders cannot be sustained. As the narration of facts above shows the Wealth-tax Officer had in ''each of these years issued two notices to the assessee requiring him to explain why penalties be not imposed for the delays in the submission of returns. He did not care to reply and instead chose to sit tight on the fence. To still hold that the Wealth-tax Officer had not provided sufficient opportunity to the assessee to explain the delays would be entirely erroneous.

The Wealth-tax Officer could not have done anything more. It was that stage that the assessee should have come out with sufficient cause. He could not have reserved it to be agitated for the first time in appeals. The Wealth-tax Officer was in the circumstances right in assuming that the assessee had nothing to explain, and, therefore, proceeded to levy the penalties. We would like to quote here the observations of the Kerala High Court in the case of Dawn & Co. (supra) to which the Appellate Assistant Commissioner has referred as follows:

At the same time we do not interpret Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, case or the case of Hindustan Steel Ltd. [1970] 25 STC 221 (SC) to mean that even in cases where an assessee does not offer any explanation to a notice to show cause against the imposition of penalty for default in filing the return in time u/s 139(2), it is not open to the income tax Officer to infer dishonest disregard of law on the part of the assessee for the imposition of the penalty'' (p. 75)

(8) The Kerala High Court has further in a Full Bench decision in the case of CIT v. Gujarat Travancore Agency, short notes of which are reproduced in 1975 CTE, I (Digest section) held in clear terms that mens rea is not a necessary ingredient in the case of levy of penalty for the belated filing of the return u/s 27(1)(a).

(9) As regards the plea of the assessee that prior approval of the Inspecting Assistant Commissioner should have been obtained by the Wealth-tax Officer before the levy of penalties, we find that the law which required such approval ceased to be operative from 1-4-1965. Thereafter the Wealth-tax Officer could himself take cognizance of penalty proceedings. In the present cases, he had recourse to the penal action long after 1970 when the returns were filed. We have to see whether on those dates, there was any requirement of law necessitating the approval of the Inspecting Assistant Commissioner. Admittedly there was no such incumbence on the Wealth-tax Officer. The old law had been long back amended. Neither the Wealth-tax Officer could move the Inspecting Assistant Commissioner under that repealed law nor the latter could grant any approval. We are, therefore, of the opinion that when on the dates when penalty proceedings were commenced, the law did not enjoin the obtaining of prior approval, the same need not and could not have been obtained on the basis of a long back repealed law.

(10) However, we are unable to sustain the approach of the Wealth-tax Officer in computing penalties at the enhanced rates as per amended law brought into force with effect from 1-4-1969. We find that the offence of default in the filing of the returns was a continuous one. The same started to operate from the due dates when returns should have been filed. Under the law as then existed the maximum penalty that could be imposed was 50 per cent of the tax payable. This was computed at the rate of 20 per cent of each month''s default. In other words, the maximum period for which penalty could be attracted was 25 months, Thereafter though the default in technical sense continued, it lost the sting of penal consequence. In other words, the offence exhausted itself. This happened long before the amending law incorporated on 1-4-1969. The offences thus exhausted themselves long before that date. The amended law could not revive offences which were already completed long time earlier. The levy of penalties, therefore, could not exceed 50 per cent of the tax in each year.

The Learned Counsel for the Commissioner is readily aggrieved by the observations'' in sub-paragraph 10 of paragraph 3 of the statement which reads as under:

In other words, the offence exhausted itself. This happened long before the amending law incorporated on 1-4-1969. The offences thus exhausted themselves long before that date. The amended law could not revive offences which were already completed long time earlier. The levy of penalties, therefore, could not exceed 50 per cent of the tax in each year.

The submission put forward for the Commissioner is that the Supreme Court in the case of Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, , has taken a view contrary to that of the Tribunal.

2. In the case of Maya Rani Punj (supra), the question as referred to under the income tax Act, 1961 (''the 1961 Act'') was as. follows:

Whether, on the facts and in the circumstances of the case, the Tribunal was in law competent to reduce the penalty levied u/s 271(1)(a) to a figure lower than the sum equal to 2 per cent of the tax for every month during which the default continued but not exceeding the aggregate of 50 per cent of the tax.

The High Court in the aforesaid case also answered the reference in favour of the revenue and against the assessee, and the same decision was upheld by the Supreme Court.

The facts of Maya Rani Punj''s case (supra) were that for the assessment year 1961-62, the assessee''s return of income tax had to be filed by 28-9-1961 but neither the return was filed by that date nor was any extension asked for. The return was filed after delay of seven months on 31-5-1962, i.e., after the 1961 Act had come into force. The ITO initiated proceedings u/s 271(1)(a) of the 1961 Act and held that the assessee had not been prevented by any reasonable cause for not filing the return within time and imposed penalty of Rs. 4,060. The

Tribunal on appeal by the assessee held that though the penalty was leviable u/s 271(1)(a) the amount of penalty had to be quantified according to the provision of section 28 of the Indian income tax Act, 1922 and reduced the penalty to Rs. 400. On reference, the Delhi High Court held that the Tribunal was not competent in reducing the penalty levied u/s 271(1)(a) to a figure lower than the sum equal to 2 per cent of the assessed tax every month during which the default continued but not exceeding the aggregate of 50 per cent of the tax. On appeal to the Supreme Court, while affirming the decision of the High Court, the Supreme Court held that though the default occurred in September 1961, the date relevant for the purpose of initiating proceedings for imposition of penalty is when, following the assessment, made, the ITO decided to initiate penalty proceedings and that the proper provision to apply for dealing with the situation relating to penalty is as provided in section 271(1)(a) of the 1961 Act and not one u/s 28 of the 1922 Act. The Supreme Court further held that in view of the language used in section 271(1)(a), the position was beyond dispute that the Legislature intended to deem the non-filing of the return to be a continuing default on the wrong for which penalty was to be visited, commenced from the date of default and continued month after month until compliance was made and the default came to an end. It was also held that imposition of penalty is not confined to the first default but with reference to the continued default was obviously on the footing that non-compliance with the obligation of making a return was an infraction as long as the default continued. If a default is continued from day to day, the non-filing of the return from day to day would become a continuing default. The Legislature scheme u/s 271(1)(a) in making provision for a penalty coterminous with the default provided for a situation of continuing wrong.

3. In the present case the revised return was subsequently submitted on 30-3-1970, thus, the defaults continued for years. The relevant provisions for imposition of penalty when the revised return was filed was as under:

18. Penalty for failure to furnish returns, to comply with notices and concealment of assets, etc. - (1) If the Wealth-tax Officer, Appellate Assistant Commissioner, Commissioner or Appellate Tribunal in the course of any proceedings under this Act is satisfied that any person-

(a)has without reasonable cause failed to furnish the return which he is required to furnish under sub-section (1) of section 14 or by notice given under sub-section (2) of section 14 or section 17, or has without reasonable cause failed to furnish within the time allowed and in the manner required by sub-section (1) of section 14 or by such notice, as the case may be; or

(b)and (c)******

he or it may, by order in writing, direct that such person shall pay by

way of penalty-

(i) in the cases referred to in clause (a), in addition to the amount of wealth-tax, if any, payable by him, a sum equal to two per cent of the assessed tax for every month during which the default continued.

Explanation : In this clause, ''assessed tax'' means the wealth-tax chargeable under the provisions of this Act.

The question involved is, whether the provisions of section 18(1)(a) of the Wealth-tax Act, 1957 which was in force at the time default commenced, should apply or whether provisions of penalty when revised return was filed, should apply.

4. In view of the Supreme Court decision in Maya Rani Punj''s case (supra), the provision applicable for imposing penalty for late filing of returns would be the provision at the time of filing of revised return. The Legislative Scheme is similar in this regard to the 1961 Act. There fore, the question is answered in negative and against the assessee and in favour of the revetfae and it is held that the penalty will have to be imposed in accordance with the amended provisions which came into force on 1-4-1969. Since the respondents are not represented, the parties are left to bear their own costs.

