
(2005) 02 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Case No : Wealth-Tax Reference No. 2 of 1999 8 February 2005

Commissioner of Wealth Tax

APPELLANT

Vs

Anil Tayal

RESPONDENT

Date of Decision : 08-02-2005

Acts Referred:

Income Tax Act, 1961 — Section 119, 271, 273

Citation : (2005) 146 TAXMAN 293 : (2005) 146 TAXMAN 239

Hon'ble Judges : Viney Mittal, J;G.S. Singhvi, J

Bench : Full Bench

Advocate : Rajesh Bindal for the RevenueSuvir Sehgal for the Assessee, for the Appellant;

Judgement

G.S. Singhvi, J.

The Income Tax Appellate Tribunal, (herein after referred to as the Tribunal") has, in compliance of order dated 10-11-1997 passed by this court, referred the following question of law for its opinion:

"Whether on the facts and in the circumstances of the case, penalty for failure to furnish the wealth tax return within time for the assessment year 1979-80 was imposable on the assessee u/s 18(1)(a) of the Wealth Tax Act, 1957?"

2. For the assessment year 1979-80, the assessee was required to file wealth tax return on or before 31-7-1979, but he failed to do so despite notice dated 14-11-1981 issued u/s 17 of the Wealth Tax Act, 1957 (herein after referred to as "the Act") which provides for assessment of escaped wealth. He also did not respond to notices 1-9-1982 and 16-12-1985 issued u/s 16(4) of the Act for production of records for the purpose of framing assessment. In the meanwhile, the Wealth-tax Officer, vide his letter dated 21-1-1984, asked the departmental Valuation Officer to value the assessee's property u/s 16A(5) of the Act. The latter submitted report dated 14-3-1985 indicating therein that as on 31-3-1979, the value of the assessee's property was Rs. 15,62,000.

3. After more than one year of the submission of the valuation report, the assessee filed return dated 7-3-1986 declaring his net wealth at Rs. 2,26,000. The Wealth-tax Officer, vide his order dated 21-3-1986, framed the assessment. He accepted the report of the registered valuer submitted by the assessee and determined the value of his property at Rs. 7,34,194. While doing so, he ignored valuation report dated 14-3-1985 submitted by the departmental Valuation Officer. By taking note of this lapse, Commissioner of Wealth-tax, Rohtak (hereinafter described as "the Commissioner") initiated proceedings u/s 25(2). He issued notice dated 22-12-1987 to the assessee which was duly received by him. On 5-1-1988, Shri Kanwal Nain Sharma appeared on behalf of the assessee and sought adjournment on the ground that the assessee had gone to Kanpur. On the next date of hearing, i.e., 19-1-1988, no one appeared on behalf of the assessee. Therefore, the Commissioner proceeded ex parte and vide his order dated 26-2-1988, he enhanced the value of the assessee's wealth by Rs. 8,24,806. The Tribunal allowed the appeal filed by the assessee and held that report dated 14-3-1985 could not be taken into consideration for the purpose of assessing wealth because till the filing of return, the Wealth-tax Officer did not have the jurisdiction to make reference to the Valuation Officer u/s 16A of the Act. The Tribunal then referred to section 17A(1)(b) of the Act and held that the Wealth-tax Officer did not have the jurisdiction to frame assessment after expiry of 4 years from the date of filing of return or revised return.

4. During the pendency of proceedings initiated by the assessee u/s 25(2) of the Act, the Wealth-tax Officer issued notice dated 1-2-1988 to the assessee for levy of penalty u/s 18(1)(a) of the Act. After considering the reply of the assessee, he imposed penalty of Rs. 54,274 vide order dated 25-3-1988. Similar order was passed by the Wealth-tax Officer in relation to the assessment year 1978-79. The Appellate Assistant Commissioner vide his order dated 9-5-1990 dismissed the appeals filed by the assessee in relation to the assessment year 1978-79 but granted relief of Rs. 37,570 for the assessment year 1979-80. The assessee challenged the appellate order insofar as the Appellate Assistant Commissioner upheld the penalty imposed u/s 18(1)(c) of the Act. The revenue also filed appeal against reduction of penalty imposed u/s 18(1)(a) in relation to the assessment year 1979-80. By an order dated 20-3-1996, the Tribunal allowed the appeals filed by the assessee and dismissed the one filed by the revenue by recording the following reasons:

"We have given careful thought to the rival submissions of the parties. On similar facts, the ITAT had already held return for assessment year 1979-80 filed on 7-3-1986 to be put of time and invalid in the light of provisions of section 17A(1b) of the Wealth Tax Act. The decision is equally applicable to the return filed for the assessment year 1978-79. If returns were invalid and could not acted upon, the assessments made are also invalid and under such assessment question of initiating of levying penalties u/s 18 would not arise. Therefore, all the three penalties under appeal are held to be without jurisdiction and are cancelled. We also find force in the alternative submission of Shri Sharma that is

returning value of Cinema building through the income capitalisation method, the assessee did not conceal any wealth or furnished inaccurate particulars of wealth within the meaning of section 18(1)(c) of the Wealth Tax Act. Accordingly, all the three penalties stand cancelled."

5. We have heard Shri Rajesh Bindal, learned counsel for the revenue and Shri Suvir Sehgal, learned counsel for the assessee. Section 18(1)(a) of the Act empowers the Wealth-tax Officer etc. to impose penalty if the assessee fails to file return in terms of sections 14(1) and 14(2) or 17 without any reasonable cause. The facts of the present case show that the assessee was required to file return on 31-7-1979 which he failed to do. Not only this, he did not respond to notice dated 14-11-1981 issued u/s 17(1) of the Act. He filed return on 7-3-1986, i.e., after almost 5 years of the due date. In the meanwhile, the departmental Valuation Officer, on being directed by the Wealth-tax Officer to do so, determined the value of the assessee's property at Rs. 15,62,000. However, without considering the report of the departmental Valuation Officer by relying on the report of the registered valuer submitted by the assessee, the Wealth-tax Officer determined the value of his property at Rs. 7,34,194. That order was revised by the Commissioner who enhanced the value of the assessee's property by Rs. 8,24,806. The order of the Commissioner was set aside by the Tribunal.

6. By an order passed today in W.T.R. Nos. 7 and 8 of 1990, we have accepted the reference made at the instance of the revenue and held that the Tribunal committed a serious error by cancelling the order of the Commissioner passed u/s 25(2) of the Act.

7. In view of that order, the conclusion recorded by the Tribunal on the issue of penalty imposed u/s 18(1)(a) of the Act is liable to be set aside.

8. We are further of the view that the Tribunal committed a serious illegality by upsetting the order of the Appellate Assistant Commissioner in so far as it related to penalty imposed u/s 18(1)(a) of the Act ignoring the fact that the assessee had not filed appeal against that part of the order.

9. Shri Suvir Sehgal argued that even though, the reasons assigned by the Tribunal for cancelling the penalty imposed u/s 18(1)(a) may not be legally sustainable, the levy of penalty should be declared illegal in view of Circular No. 281/8/86-I.T. (INV. III) dated 14-2-1986 issued by the Central Board of Direct Taxes.

10. In our opinion, there is no merit in the argument of the learned counsel. The circular, on which reliance has been placed by Shri Sehgal, reads as under:

"In exercise of the powers conferred by clause (a) of sub-section (2) of section 119 of the Income Tax Act, 1961 (48 of 1961), the Central Board of Direct Taxes hereby directs that the Income Tax Officer and the Inspecting Assistant Commissioner of Income Tax shall not initiate any proceeding for imposition of a penalty on a person or impose penalty on him for an offence under clause (a) or

clause (c) of sub-section (1) of section 271 or section 273 in respect of any assessment year up to and including assessment year 1985-86 in a case, if he is satisfied that such person:

(a) has prior to the detection by the Income Tax Officer, or, as the case may be, the Inspecting Assistant Commissioner of Income Tax, of the concealment of particulars of income or of the inaccuracy of particulars furnished in respect of such income, voluntarily and in good faith, made between the 15-11-1985, and the 31-3-1986 a full and true disclosure of such income:

(b) has, on or before the 31-3-1986, paid the tax on the income disclosed; and

(c) has cooperated in any enquiry relating to the assessment of his income.

2. This order shall come into force on the 17-2-1986."

11. A reading of the above reproduced circular makes it clear that immunity against the levy of penalty is available only if the assessee had voluntarily and in good faith made disclosure of net wealth between 15-11-1985 and 31-3-1986. In the present case, notices had been issued under sections 17(1) and 16(4) of the Act much before the filing of return. Therefore, the assessee cannot claim immunity from levy of penalty by relying on circular dated 14-2-1986.

12. In the result, the reference made by the Tribunal is answered in the affirmative, i.e., in favour of the revenue and against the assessee.