

(1990) 01 MAD CK 0048

In the Madras High Court

Case No : Tax Case No. 1125 of 1979 (Reference No. 725 of 1979)

Commissioner of Wealth-tax

APPELLANT

Vs

B. Ghevarchand

RESPONDENT

Date of Decision : 25-01-1990

Acts Referred:

Income Tax Act, 1961 — Section 271(1)
Wealth Tax Act, 1957 — Section 18(1), 27(1)

Citation : (1990) 186 ITR 648

Hon'ble Judges : Venkataswami, J;V. Bhaskaran Nambiar, J

Bench : Division Bench

Advocate : N.V. Balasubramaniam, for the Appellant; Janarthana Raja (amicus curiae), for the Respondent

Judgement

Venkataswami, J.—At the request of the Revenue as well as the assessee to draw up a statement of the case and refer certain questions of

law that are said to arise out of the order of the Income Tax Appellate Tribunal, Madras (hereinafter called "the Tribunal"), for the opinion of this

court u/s 27(1) of the Wealth-tax Act, 1957, the Tribunal, by its order dated February 26, 1979, referred the following two questions :

(1) Whether, on the facts and in the circumstances of the case, the Income Tax liability attributable to the concealed income of Rs. 1,90,000 has

to be deducted for the purpose of levy of penalty u/s 18(1)(c) of the Wealth-tax Act, 1957, for the assessment year 1966-67 ?

(2) Whether, on the facts and in the circumstances of the case, the penalty levied u/s 271(1)(c) of the Income Tax Act, 1961, for concealment of

income had become final ?

2. At the outset, we may mention that the respondent/assessee, though served

with notice, has not taken any steps either to appear in person or through counsel. To decide the second question referred to above, certain facts are necessary, namely, whether the assessee has taken any steps to challenge the order of the Tribunal confirming the penalty levied u/s 271(1)(c) of the Income Tax Act, 1961. In the absence of the assessee or counsel for the assessee bringing to the notice of this court any subsequent development regarding the steps taken to challenge the order of the Tribunal confirming the penalty levied u/s 271(1)(c), we are not in a position to answer the second question. Therefore, we return the second question unanswered, confining ourselves in this reference to the first question referred to us at the instance of the Revenue.

3. The brief facts are the following :

For the assessment year 1966-67, the assessee originally a return on May 12, 1969, declaring a net wealth of Rs. 2,33,584. Later on, a revised return was filed on August 28, 1969, disclosing a total wealth of Rs. 2,53,584. Along with the later return, a note was annexed mentioning that a credit of Rs. 1,90,000 in the name of the Madhusudhandas Gordhandas of Bombay was not included in the net wealth as that party was not rendering any account and, therefore, the true nature of the account was not decided. Still later, a third revised return was filed on January 4, 1973, disclosing a net wealth of Rs. 2,52,543. Along with this third and final return, the same note as the one annexed to the second return was also enclosed.

4. The Wealth-tax Officer completed the assessment on January 29, 1973, fixing the total wealth at Rs. 4,47,543 by adding a sum of Rs. 1,95,000 representing profits on account of customs clearance permits received by the assessee. After deducting the Income Tax liabilities, annuity deposits and wealth-tax liabilities, the Wealth-tax Officer determined the net wealth at Rs. 2,97,680.

5. Simultaneously, the Wealth-tax Officer initiated penalty proceedings for concealment of wealth in respect of the sum added in the final return, namely, Rs. 1,95,000. The Wealth-tax Officer referred the matter to the Inspecting Assistant Commissioner. Before the Inspecting Assistant Commissioner, the assessee contended that the sum of Rs. 1,95,000 added by the Wealth-tax Officer on the basis that a similar sum was added in

the Income Tax proceedings of the assessee cannot be sustained for levy of penalty as an appeal was filed against the order of the Income Tax

Officer and it was further contended that there was no evidence to show that the said sum of Rs. 1,95,000 formed part of the assessee's net

wealth on the valuation date. Alternatively, it was contended by the assessee before the Inspecting Assistant Commissioner that in any event, the

assessee having disclosed the said sum in the note annexed to the return, it cannot be construed as concealment of wealth. One more argument put

forward before the Inspecting Assistant Commissioner was that assuming that the said sum represented concealment of wealth, if the tax liabilities

and penalties were deducted, there would be no case for proceedings u/s 18(1) (c) of the Act.

6. The Inspecting Assistant Commissioner, after considering all the contentions raised by the assessee, overruled the same. However, the

Inspection Assistant Commissioner held that from the investigations made, it was clear that there was a sum of Rs. 1,95,000 which alone really

represented the assessee's profits in the customs clearance permits transaction and to that extent alone, Penalty u/s 18(1)(c) is attracted. On the

quantum of penalty, the Inspecting Assistant Commissioner held that the claim of the assessee for the deduction of the penalty amount on the

ground that it became a debt could not be accepted, because the penalty became a debt only on the date of the penalty order and not on the

valuation date. On that basis, he levied a penalty of Rs. 1,90,000 being equal to the amount concealed by the assessee.

7. Aggrieved by the order of the Inspecting Assistant Commissioner, both on merits and on the quantum of penalty, the assessee preferred an

appeal to the Tribunal. The Tribunal took note of the findings rendered by the Tribunal in the Income Tax assessment for the very same year in

respect of the very same assessee and held that the assessee did not disclose the sum of Rs. 1,90,000 as his wealth in the wealth-tax proceedings.

On the question of quantum, the Tribunal, following the decisions of the Calcutta and Kerala High Courts in Commissioner of Wealth Tax Vs.

Bansidhar Poddar, AND C. K. BABU NAIDU Vs. WEALTH-TAX OFFICER, ""A"" WARD, CALICUT, AND ANOTHER SUNDARARAJ

v. WEALTH-TAX OFFICER, ""A"" WARD, CALICUT, AND ANOTHER., , respectively, in preference to a decision of the Gujarat High Court

in Commissioner of Wealth Tax, Gujarat-I Vs. Ahmed Ibrahim Sahigara, , held as follows :

... The result is that the amount of tax liability attributable to the concealed income of Rs. 1,90,000 was a debt owed and the wealth which the

assessee has, in fact, concealed is not Rs. 1,90,000 but is Rs. 1,90,000 reduced by the tax attributable thereto. The Inspecting Assistant

Commissioner has imposed a penalty of Rs. 1,90,000 considering it as the amount which was equal to the wealth concealed. Since this was not the

wealth concealed, we direct the Wealth-tax Officer to rework the penalty and fix the amount as equivalent to the wealth which we have held

concealed, i.e., Rs. 1,90,000 less Income Tax attributable thereto computed with reference to the total income determined.

8. Now, the question is, whether the above view taken by the Tribunal is correct. Learned counsel for the Revenue submitted that the Tribunal

went wrong in holding that the wealth concealed by the assessee has to be arrived at by deducting the Income Tax attributable to the sum of Rs.

1,90,000 being the amount not disclosed as his wealth in the return filed by the assessee. In order words, learned counsel for the Revenue

submitted that the Income Tax payable on the undisclosed wealth will become debt only on the date of the assessment order and not on the date of

valuation. Therefore, the assessee is not eligible to deduct Income Tax payable on the undisclosed wealth. Learned counsel for the Revenue cited

the following two decisions in support of his contention, namely, Lakshmi Kant Jha Vs. Commissioner of Wealth Tax, Bihar and Orissa, and Late

T.S. Srinivasa Iyer (by legal representatives) Vs. Commissioner of Wealth-tax, .

9. As the assessee was not represented by counsel, Mr. Janarthana Raja, at the instance of the court, assisted us. He brought to our notice two

decisions of the Supreme Court, namely, Commissioner of Wealth Tax, Madras Vs. K.S.N. Bhatt, and Commissioner of Wealth-tax, Gujarat Vs.

Smt. Vimlaben Vadilal Mehta, . On the basis of the ratio of the abovesaid rulings of the Supreme Court, Mr. Janarthana Raja contended that the

view taken by the Tribunal is quite in accordance with the ratio laid down by the Supreme Court. In the first case, while answering the question,

namely, whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the liabilities claimed by the assessee,

though the existence of the very liability was questioned by the assessee, should be allowed as a ""debt owed"" in computing the net wealth of the

assessee, the Supreme Court held that in computing the net wealth of the assessee for wealth-tax, the liabilities towards Income Tax, wealth-tax

and gift-tax, which crystallise on the relevant valuation date as determined in the respective assessment orders as liabilities are to be deducted even

though those assessment orders are finalised after the valuation date. In the second case, the question considered by the Tribunal reads as follows :

Whether, in computing the net wealth of the assessee, the amount deductible in respect of liability of tax for any year for which the assessment is

completed after the valuation date is the liability as ascertainable on the valuation date or the actual amount of tax subsequently assessed ?

10. While answering the above question, the Supreme Court held that in computing the net wealth of the assessee, the deduction admissible must

be calculated on the basis of the tax as finally quantified on assessment even though the assessment may have been made subsequent to the

valuation date. The Supreme Court further held that if the wealth-tax assessment is carried in appeal, the appellate authority has to take into

account the ultimate quantification of the tax liability, even though such ultimate quantification has been reached after the relevant valuation date and

during the pendency of the wealth-tax appeal.

11. On a careful consideration of the ratio laid down by the Supreme Court in the above two decisions, we are of the view that the ratios laid

down in the abovesaid Supreme Court judgments will apply to the facts of this case. The decisions cited by learned counsel for the Revenue do not

appear to be apposite to the facts of this case. Therefore, we answer the first question referred to us in the affirmative and against the Revenue.

12. We place on record the valuable assistance rendered by Mr. Janarthana Raja, Advocate.

13. In the result, we answer the first question in this tax case in the above manner and return the second question unanswered. No. costs.