(1994) 01 MAD CK 0061

In the Madras High Court

Case No : Tax Cases No''s. 930 to 942 of 1981 (References No''s. 426 to 438 of 1981)

Commissioner of Wealth-tax APPELLANT

Vs

B. Imran Hussain RESPONDENT

Date of Decision : 12-01-1994

Acts Referred:
Income Tax Act, 1961 — Section 271(1)
Wealth Tax Act, 1957 — Section 17, 18(1), 27(3)

Citation : (1995) 211 ITR 1017

Hon'ble Judges : Venkataswami, J;Rangarajan, J

Bench : Division Bench

Advocate : N.V. Balasubramanian, for the Appellant; P.P.S. Janarthana Raja, for the Respondent

Judgement

Venkataswami J.

1. In all these tax cases the assessee is common. Common arguments were addressed and, therefore, these cases are disposed of by this common

order.

2. Pursuant to the order of this court u/s 27(3) of the Wealth-tax Act, 1957, the Tribunal referred the following common question for our decision :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding and had valid materials to hold that the

assessee''s case dose not warrant levy of penalty u/s 18(1)(a) of the Wealth-tax Act, 1957?

3. The brief facts leading to the reference are the following : The cases relate to the assessment years 1963-64 to 1969-70. On March 30, 1967,

the assessee''s representative wrote a letter to the Wealth-tax Officer informing him that the wealth-tax returns for the assessment years 1962-63

to 1966-67 were due and that it would take some time for them to finalise the return. In the meanwhile, a sum of Rs. 4,500 was paid towards

probable wealth-tax payable for the assessment years 1962-63 to 1966-67. Thereafter nothing happened. While so, on January 5, 1971, the

Wealth-tax Officer issued a notice u/s 17 of the Act calling upon the assessee to file returns of wealth. In response to that the assessee furnished

the returns on March 31, 1971. As there was a delay in the submission of the returns, the wealth-tax Officer initial penalty proceedings u/s 18(1)

(a) of the Act and called upon the assessee to show cause why penalties should not be imposed. The assessee contended before the Wealth-tax

Officer that he was only a minor at the relevant time, that his guardian-father was not quite clear about the extent of wealth and with the assistance

of the official trustee he had to get information for submitting the returns and all these things have contributed for the delay in the filing of the returns,

and therefore, there was a reasonable cause for the delay in the submission of the returns. However, the Wealth-tax Officer, not satisfied with the

reasons given by the assessee, levied penalties for the assessment years from 1962-63 onwards in the following manner :

Assessment Net taxable tax Penalty levied by

years wealth payable Wealth-tax Officer

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(1) (2) (3) (4)

(Rs.) (Rs.) (Rs.)

1963-64 3,46,600 1,725 64,189

1964-65 3,92,000 1,960 46,060

1965-66 4,50,200 2,251 64,236

1966-67 4,48,900 2,245 64,164

1967-68 4,62,400 2,312 65,433

1968-69 4,55,500 2,278 63,969

1969-70 4,63,500 2,318 56,010

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4. Aggrieved by the levy of penalties, the assessee preferred appeal to the Appellate Assistant Commissioner. The Appellate Assistant

Commissioner though held that there was no reasonable cause for the belated submission of the returns, applying the ratio laid down by this court

in Commissioner of Gift-tax Vs. C. Muthukumaraswamy Mudaliar, reduced the penalties. Against the orders of the Appellate Assistant

Commissioner, the assessee as well as the Department preferred further appeals to the Tribunal for the assessment years 1963-64 to 1968-69

while the assessee alone preferred an appeal for the assessment year 1969-70. The Tribunal after considering the submissions made before it held

as follows :

The assessee, as stated as earlier, was a minor, who attained majority only in 1969. During the periods in which the default took place, therefore

for almost the entire period he was a minor. The guardian was looking after his affairs and in 1967 the guardian did not intimate the Wealth-tax

officer about the liability to pay wealth-tax and had voluntarily made a payment of Rs. 4,500. It is, therefore, clear that there was no intention to

avoid payment of tax or not to comply with the statutory regulations, there was no doubt a lapse after 1967 and the wealth-tax returns were filed

only after issue of notice u/s 17. Thus, we consider that even if the lapse can be construed as a default, the lapse was in the circumstances and

looking to the background only a technical or venial breach. In Hindustan Steel Ltd. Vs. State of Orissa, , it was observed by the Supreme Court

at page 29 as under :

Even if a minimum penalty is prescribed the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is

a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the

manner prescribed by the statute.

Looking to the aforesaid observations and in view of our finding that the breach if anything was only technical or venial, we hold that the facts of

the case do not warrant the imposition of penalty u/s 18(1)(a). In view of this finding, the appeals of the Department would automatically fall to be

dismissed as no penalty survives.

5. Aggrieved by the order of the Tribunal, the Revenue has caused the reference to be made as stated above.

6. Mr. Balasubramanian, learned counsel appearing for the Revenue, placing reliance on a judgment of the Supreme Court in Commissioner of

Income Tax Vs. Kalyan Das Rastogi, , submitted that the reasoning given by the Tribunal, placing reliance on Hindustan Steel Ltd. Vs. State of

Orissa, cannot be sustained. According to learned counsel, the burden of showing reasonable cause is on the assessee and it has not been

discharged in the facts and circumstances of the case. He further submitted that the finding of the Tribunal that he default is only venial is not correct

on the facts. On the other hand, learned counsel appearing for the assessee submitted that the finding given by the Tribunal was on the basis of the

facts placed before it and on an appreciation of the facts, and that finding cannot be lightly interfered with in the reference.

7. We have considered the rival submissions and we are of the view that the Tribunal has given sufficient reasons for coming to the conclusion that

the default is only venial and, therefore, the ratio laid down by the Supreme Court in Hindustan Steel Ltd. Vs. State of Orissa, applies to the facts

of these cases. The reliance placed by learned counsel for the Revenue Commissioner of Income Tax Vs. Kalyan Das Rastogi, is not opposite to

the facts of these cases, for the ratio laid down in that case was to the effect that mens rea was an essential ingredient for levying penalty u/s 271(1)

(a) of the Income Tax Act which is analogous to section 18(1)(a) of the Act (?)

8. We are satisfied with the finding of the Tribunal and we also find that the finding is on the basis of the material placed before it and we also find

that the Tribunal has not taken into account any irrelevant matter and has not omitted to take into account relevant factors. There is no cause for

interference with the common order of the Tribunal. We, therefore, answer the question referred to us in the affirmative and against the Revenue.

The assessee will be entitled to the costs of this reference. Counsel''s fee Rs. 500. One set.