(1979) 10 MAD CK 0018

In the Madras High Court

Case No : T.C. Petition No''s. 1 to 4 of 1979

Commissioner of Wealth-tax APPELLANT

Vs

B. Viswanathiah RESPONDENT

Date of Decision : 10-10-1979

Acts Referred:
Wealth Tax Act, 1957 — Section 18(1)

Citation : (1981) 131 ITR 706

Hon'ble Judges : V. Balasubrahmanyan, J;Sethuraman, J

Bench : Division Bench

Advocate : J. Jayaraman and Nalini Chidambaram, for the Appellant; S.V. Subramanian, for R. Srinivasaraghavan, for the Respondent

Judgement

Sethuraman, J.—The Commissioner of Income Tax has applied u/s 27(3) of the W.T. Act, 1957, for a reference of the following question ;

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in holding that the provisions of Section

18(1)(a), as they stood before the amendment, should be the basis for the computation of penalty u/s 18(1)(a) notwithstanding the fact that the

default continued even after April 1, 1969 ?

2. The question is common for four years, viz., 1964-65 to 1967-68. For these years, the assessee did not file the returns within the prescribed

time. The WTO issued notices u/s 17(1)(a) of the W.T. Act and in response the assessee filed the returns as follows :

Assessment year Date of return

1964-65 15-1-1970

1965-66 16-2-1970

1966-67 & 1967-68 18-2-1970

3. While completing the assessment, the WTO initiated penalty proceedings u/s 18(1)(a) of the W.T. Act. The explanation of the assessee was that

he had some doubts about the nature of the property held by him and that because of this, the returns could not be filed. The explanation was not

accepted and the WTO levied penalties of Rs. 6,605, Rs. 7,308, Rs. 8,082 and Rs. 8,561 for the respective years. For calculating the amount of

penalty, he took into account the provision as it was in force on the date he levied the penalty. The assessee appealed to the AAC, who confirmed

the penalty so levied. Thereafter, the matter was taken on appeal before the Tribunal and, relying on a decision of this court in Commissioner of

Gift-tax Vs. C. Muthukumaraswamy Mudaliar, , the assessee contended that the penalty provision, as it was in force at the time when the return

was filed, should alone have been taken into account for determining the quantum of penalty. The Tribunal accepted this contention and held that

the quantum of penalty for each of the assessment years was restricted to the maximum of 50 per cent. of the tax levied on the net wealth of the

assessee in accordance with the law that prevailed at the time when the returns were due. The result was that the penalty for each year was

reduced accordingly. It is now sought to be challenged by the Commissioner.

4. In Commissioner of Gift-tax Vs. C. Muthukumaraswamy Mudaliar, , which was rendered under the G.T. Act as well as in COMMISSIONER

OF WEALTH-TAX, MADRAS Vs. P. C. M. SUNDARAPANDIAN AND OTHERS., , which was rendered under the W.T. Act, this court

has taken the view that the quantum of penalty to be levied would have to be calculated with reference to the law that was in force at the time when

the default was committed. The Supreme Court also, in a decision dated August 3, 1979, in Brij Mohan Vs. Commissioner of Income Tax , New

Delhi, has gone into this question on the following facts: In that case, the assessee, a partner, filed a return of his total income for the assessment

year 1964-65 on April 24, 1968. The assessment was completed on a different figure and the ITO initiated penalty proceedings u/s 271 of the I.T.

Act, 1961. The IAC, to whom the levy of penalty was referred, considered that the assessee had concealed Rs. 7,357 and he, therefore, imposed

a like amount as penalty. The assessee appealed to the Appellate Tribunal and contended that the amended provision could not be invoked and

that the law as was in force in the year 1964-65 alone could have been applied. The Tribunal rejected this contention, but reduced the penalty to

Rs. 2,955 taking the view that the assessee was guilty of concealing the share income from the firm. The Tribunal, thereafter, made a direct

reference to the Supreme Court as there was a conflict of opinion on the point in the decisions in HAJEE K. ASSAINAR Vs. COMMISSIONER

OF Income Tax, KERALA., and in Saeed Ahmad Vs. Inspecting Assistant Commissioner of Income Tax, Range II, . The latter decision had also

been followed by the Punjab and Haryana High Court in Income Tax Reference No. 45 of 1971-- Commissioner of Income Tax Vs. Bhan Singh

Boota Singh, . The Supreme Court observed (p. 4 of 120 ITR):

In the case of a penalty, however, we must remember that a penalty is imposed on account of the commission of a wrongful act, and plainly it is

the law operating on the date on which the wrongful act is committed which determines the penalty. Where penalty is imposed for concealment of

particulars of income, it is the law ruling on the date when the act of concealment takes place which is relevant. It is wholly immaterial that the

income concealed was to be assessed in relation to an assessment year in the past.

5. The Supreme Court, therefore, was of the opinion that as the return was filed after 1st April, 1968, the law as amended by the Finance Act,

1968, would govern the levy of penalty. Thus, the view of the Supreme Court is that the penalty has to be levied with reference to the law in force

on the date when the default occurred. In the present case, the default occurred immediately on the day following the day on which the return was

due. Taking into account the date of default, the penalty as reduced by the Tribunal was proper and legal. Therefore, there is no referable question

of law that can be said to arise out of the Tribunal''s order.

6. The petitions are rejected with costs. Counsel''s fee Rs. 250 one set.

