
(1997) 08 AHC CK 0025

In the Allahabad High Court

Case No : Wealth-tax Reference No. 197 of 1981

Commissioner of Wealth-tax

APPELLANT

Vs

Babu Ram Gupta (Late)

RESPONDENT

Date of Decision : 07-08-1997

Acts Referred:

Wealth Tax Act, 1957 — Section 18, 18(1)

Citation : (1998) 148 CTR 446 : (1998) 234 ITR 649

Hon'ble Judges : S.C. Verma, J;Om Prakash, J

Bench : Division Bench

Advocate : None, for the Respondent

Judgement

1. Notice by registered post was sent to the assessee on August 6, 1991. None appears for the assessee and we have, therefore, heard only the standing counsel.

2. At the instance of the Revenue, the Appellate Tribunal, as directed by this court, u/s 27(3) of the Wealth-tax Act, 1957, referred the following question for opinion of this court :

"Whether, on the facts and in the circumstances of the case, the view of the Tribunal that the relevant date for purposes of imposition of penalty u/s 18(1)(a) of the Wealth-tax Act, 1957, is the date when the return is actually filed (sic) is justified ?"

3. The relevant facts are that for the assessment year 1964-65, the wealth-tax return had become due on June 30, 1964, from the assessee, but it came to be filed on November 23, 1972. Amendment in Section 18(1)(a) of the Wealth-tax Act came to be made on March 31, 1969, and the effect of that amendment was that with effect from April 1, 1969, the rate of penalty was enhanced.

4. The Wealth-tax Officer treated the default on the part of the assessee as a continuous default and he levied penalty up to March 31, 1969, under the

unamended law and with effect from April 1, 1969, penalty was imposed under the amended law.

5. On appeal, the view of the Wealth-tax Officer was upheld. On further appeal, the Appellate Tribunal found as follows ;

"In our opinion, the default occurred on June 30, 1964, that is on the date when the return was not filed. There was no application for extension nor was it extended by a notice issued u/s 14(2) of the Act. We need not go into the question as to whether an offence u/s 18(1)(a) is a continuing default, because under the provisions of the Act before the amendment which came into effect from April 1, 1969, penalty could be levied for 25 months only and this period of 25 months expired long before that amendment came into force. In other words, the period for which penalty could have been imposed had already been exhausted when the amendment came into effect and this amendment cannot revive the exhausted period, therefore, it is not necessary for us to enter into this controversy and, in our opinion, in the present case the penalty would be computed u/s 18(1)(a)(i) as in force prior to April 1, 1969."

6. The only question for consideration is that when the amendment came before the return was filed whether penalty is to be imposed on the two rates, that is, the rate obtaining anterior to the date of amendment and the rate obtaining posterior to the date of amendment on the principle of continuous default.

7. This question is no more *res integra*, as the same controversy came to be decided in the case of *Maya Rani Punj Vs. Commissioner of Income Tax, Delhi*, . The view taken in *Maya Rani Punj Vs. Commissioner of Income Tax, Delhi*, was reiterated by the Supreme Court in the case of *Commissioner of Wealth-tax Vs. P.N. Banerjee*, . In the case of *Commissioner of Wealth-tax Vs. P.N. Banerjee*, , the facts were that for the assessment year 1967-68, the respondent had to file his wealth-tax return by June 30, 1967. The return was, however, filed only on June 12, 1971. Between those two dates, there was an amendment in Section 18(1)(a) of the Act and, under the amended section, penalty was to be calculated with reference to the net wealth, whereas, under the unamended provisions, penalty was based on the amount of wealth as computed. The Appellate Tribunal held that penalty was to be computed at the rate fixed by law as it stood on April 1, 1967, the first day of the assessment year 1967-68 and, on a reference, the High Court confirmed the decision of the Tribunal.

8. The Supreme Court, setting aside the decision of the High Court, held as follows (headnote) :

". . . that the penalty had to be quantified in terms of the decision of the Supreme Court in the case of *Maya Rani Punj Vs. Commissioner of Income Tax, Delhi*, wherein it was held that the imposition of penalty was not to be confined to the first default but with reference to the continuing default on the footing that non-compliance with the obligation of making a return was an infraction as long as the default continued."

9. This is how the Supreme Court held that the amount of penalty has to be quantified up to March 31, 1969, on the basis of the earlier provisions and after that date on the basis of amended provision.

10. Following the aforesaid authorities we are of the view that the view taken by the Appellate Tribunal is erroneous. The Appellate Tribunal failed to take note of the fact that in the instant case, the return was filed by the assessee much after the amendment was made u/s 18(1)(a) in so far as this relates to the rate of penalty. The default of not filing return being a continuing default, penalty has to be levied on the rates as prevailing before the amendment and after amendment in Section 18(1)(a).

11. For the above reasons, we answer the above mentioned question in the negative, that is, in favour of the Revenue and against the assessee.