
(1988) 07 MP CK 0010

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No's. 252, 253 and 254 of 1987

Commissioner of Wealth-tax

APPELLANT

Vs

Babulal Agrawal

RESPONDENT

Date of Decision : 11-07-1988

Acts Referred:

Wealth Tax Act, 1957 — Section 17, 18(1), 27, 27(3)

Citation : (1989) 176 ITR 497 : (1988) 40 TAXMAN 306

Hon'ble Judges : P.D. Mulye, J;K.L. Shrivastava, J

Bench : Division Bench

Advocate : R.C. Mukati, for the Appellant; Nazirsingh, for the Respondent

Judgement

P.D. Mulye, J.—This order shall also govern the disposal of M.C.C. No. 253 of 1987 (CWT v. Babulal Agrawal) and M.C.C. No. 254 of 1987 (CWT v. Babulal Agrawal) as the petitioner has proposed a common question of law in all these petitions relating to the same party.

2. By these reference applications u/s 27(3) of the Wealth-tax Act, 1957, the applicant has prayed that the Tribunal be called upon to refer the following question of law for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that in view of the decision of the Supreme Court in Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, the penalty for default u/s 18(1)(a) was required to be computed in accordance with the provisions of the amended law even in respect of default for the period prior to the amendment made with effect from April 1, 1976?"

3. The statement of facts may be stated, in brief, thus : The assessee is an individual. As returns of wealth were not filed, the Wealth-tax Officer issued notices u/s 17 of the Wealth-tax Act, which were served on December 15, 1981. In response to these said notices, the assessee filed wealth-tax returns for the assessment years 1973-74 to 1975-76 on March 18, 1983.

4. As the assessee's wealth was liable to tax, he ought to have filed the returns as per Section 14(1) of the Wealth-tax Act, according to which these were due by June 30, 1973, June 30, 1974, and June 30, 1975. While completing the assessments on February 10, 1984, in respect of these years, the Wealth-tax Officer initiated penalty proceedings and imposed penalties of Rs. 21,030, Rs. 29,905, and Rs. 6,566, respectively.

5. Against the imposition of penalty, the assessee preferred appeals before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner held that the Wealth-tax Officer issued notices u/s 17 for filing wealth-tax returns on December 15, 1981, in response to which the returns were filed on March 18, 1983. As per the provisions of Section 18(1)(a)(i) as amended by the Taxation Laws (Amendment) Act, 1975, with effect from April 1, 1976, penalty is imposable on a sum equal to 2 per cent. of the assessed tax for every month during which the default continued. For all the assessment years in question, the assessee furnished wealth-tax returns after April 1, 1976 and, therefore, in view of the judgment of the Supreme Court in the case of Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, , penalty has to be levied at 2 per cent. of the assessed tax and not at the rate of 1 1/2. per cent. of the net wealth.

6. Aggrieved by the order of the Appellate Assistant Commissioner, the Wealth-tax Officer filed an appeal before the learned Tribunal, which held that it cannot interfere for the obvious reason that the impugned finding is based on the ratio of the judgment of the Supreme Court. Accordingly, the Tribunal dismissed the appeal filed by the Department. Aggrieved by the order of the learned Tribunal, the Department filed a reference application u/s 27(3) of the Wealth-tax Act seeking reference on the question of law referred to above for the opinion of this court.

7. Learned counsel for the petitioner, relying on the Division Bench decision of this court in Addl. Commissioner of Wealth Tax Vs. Smt. Manjuladevi Muchhal, , submitted that in this decision, it has been held that as the assessee committed defaults in filing the returns on the dates fixed for filing the returns, i.e., June 30, 1961, June 30, 1962, and June 30, 1963, and the law for the purpose of the penalty that would be applicable would be the law in force on those dates and not the law which had been brought into force on April 1, 1969.

8. Learned counsel for the petitioner, therefore, submitted that the said decision applies to the facts of the present case, as the amended provisions came into force on April 1, 1976, whereas the wealth-tax returns relate to the periods 1973-74 to 1975-76. Learned counsel for the petitioner, therefore, submitted that the provisions of the amended law would not apply to the facts of the present case so far as levy of penalty is concerned.

9. On the other hand, learned counsel for the non-applicant, relying on the decision reported in Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, , decided on December 11, 1985, submitted that in that decision, it has been held

that though the default occurred in September 1961, the date relevant for the purpose of initiating proceedings for imposition of penalty was, when, following the assessment made, the Income Tax Officer decided to impose penalty, and that the proper provision to apply was the one provided in Section 271(1)(a) of the Act of 1961 and not the one provided in Section 28 of the Act of 1922.

10. Thus, after hearing learned counsel and after going through the impugned orders as also the case law cited, we are of the opinion that the Supreme Court decision referred to above *Maya Rani Punj Vs. Commissioner of Income Tax, Delhi*,) has impliedly overruled the decision in *Addl. Commissioner of Wealth Tax Vs. Smt. Manjuladevi Muchhal*, , on which learned counsel for the applicant has placed reliance.

11. The Tribunal, in our opinion, has rightly relied upon the said Supreme Court decision which has interpreted the provisions of law regarding the levy of penalty in such a case. In these circumstances, in our opinion, the view taken by the Tribunal in the light of the Supreme Court decision being quite proper, we decline to call upon the Tribunal to make a reference as prayed for by the petitioner in these cases,

12. In the result, the reference applications are dismissed with no order as to costs.