

(2004) 08 P&H CK 0115

In the Punjab And Haryana At Chandigarh

Case No : Wealth Tax Reference No. 13 of 1984

Commissioner of Wealth Tax

APPELLANT

Vs

Bal Krishan Shoor

RESPONDENT

Date of Decision : 30-08-2004

Acts Referred:

Wealth Tax Act, 1957 — Section 18(1)

Citation : (2005) 277 ITR 248

Hon'ble Judges : S.S. Grewal, J;N.K. Sud, J

Bench : Division Bench

Advocate : D.S. Patwalia, for the Appellant;

Judgement

1. At the instance of the Revenue, the Income Tax Appellate Tribunal, Amritsar (for short "the Tribunal"), has referred the following question of law arising out of its order dated October 6, 1983, relating to the assessment year 1972-73 for opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that penalty levied u/s 18(1)(a) in this case had been rightly deleted by the Appellate Assistant Commissioner ?"

2. The assessee was required to file his wealth-tax return on or before August 31, 1972, but the return was actually filed on January 17, 1973 which was late by four months. While framing the assessment, penalty proceedings u/s 18(1)(a) of the Wealth-tax Act, 1957 (for short "the Act"), were initiated and a show-cause notice was issued. The Assessing Officer, vide order dated March 27, 1981, levied a penalty of Rs. 16,140 on the ground that despite specific opportunities granted to the assessee, no reply to the show-cause notice was filed nor did any one attend the proceedings before him on the date fixed for that purpose. The assessee preferred an appeal before the Commissioner of Wealth-tax. It was contended that the assessee had duly applied for extension of time from November 1, 1972 to January 3, 1973, vide application filed on November 1,

1972, vide receipt No. 15572. It was also pointed out that the assessee had furnished a reply to the show cause notice on March 24, 1981, vide receipt No. R-463636 explaining this position but the said reply has not been taken into account by the Assessing Officer who had levied penalty on the assumption that no reply had been filed. The Commissioner of Wealth-tax accepted these contentions and held that the penalty imposed by the Assessing Officer without taking into account the reply filed by the assessee and even the application for extension filed by him was tantamount to denial of a proper opportunity of being heard and thus the order of penalty was not sustainable. These findings have been upheld by the Tribunal on further appeal by the Revenue.

3. We have heard learned counsel for the Revenue. He has not been able to controvert the factual position that the application for extension had duly been filed and that the reply to the show-cause notice had also been filed. These have not been taken into account by the Assessing Officer while levying the penalty. In view of this factual position, we are of the view that the Commissioner of Wealth-tax and the Tribunal were justified in holding that the penalty order passed by the Assessing Officer was clearly not sustainable. Accordingly, we answer the question in the affirmative, i.e., in favour of the assessee and against the Revenue.