(1991) 03 BOM CK 0028

In the Bombay High Court

Case No : Wealth-Tax Reference No. 13 of 1977

Commissioner of Wealth-tax APPELLANT

Vs

Bansilal Banechand RESPONDENT

Date of Decision : 15-03-1991

Acts Referred:

Income Tax Act, 1922 — Section 28(1)
Income Tax Act, 1961 — Section 271(1)
Wealth Tax Act, 1957 — Section 18(1), 18(3), 27(1)

Citation : (1991) 189 ITR 1

Hon'ble Judges : T.D. Sugla, J;D.R. Dhanuka, J

Bench : Division Bench

Advocate : Dr. V. Balasubramaniam, for the Appellant; S.N. Inamdar, for the Respondent

Judgement

T.D. Sugla J.

1. In this departmental reference relating to the assessee''s assessment for the assessment years 1965-66 to 1968-69, the Tribunal has referred to this court the following question of law u/s 27(1) of the Wealth-tax Act, 1957 :

"Whether, on the facts and circumstances of the case, the Tribunal was justified in law in quashing the orders of penalty for the assessment years 1965-66 to 1968-69 ?"

2. Briefly stated, the relevant facts are that, for the assessment years 1962-63 and 1963-64, there appeared certain credits in the capital accounts as well as third parties'' accounts in the books of the assessee. Some of these were added as the assessee''s income from other sources. The additions were XXA confirmed by the Tribunal.

3. March 15, 1991 : These cash credits continued to appear as liabilities in the assessee''s books in the subsequent years. While filing his returns of net wealth for assessment years 1965-66 to 1968-69, the assessee disclosure his net wealth

on the basis of the balance-sheets, i.e., without reducing the liabilities by such credits. However, the Wealth-tax Officer held that these liabilities were not real and represented the assessee''s own moneys. Reference was made, in particular, to a letter dated March 26, 1970, written by the assessee''s Income Tax representative wherein it was stated that "As the honourable Appellate Tribunal of Income Tax, Bombay, had confirmed the addition of cash credits in the names of 7 persons (mentioned in the list), he had no objection to the addition of the same in the assessee''s wealth-tax assessment". While completing the assessments, the Wealth-tax Officer recorded a finding that the penal provisions of section 18(1)(c) were attracted as the assessee had claimed these fictitious credits as liabilities.

4. The Inspecting Assistant Commissioner to whom the matter was referred u/s 18(3) of the Wealth-tax Act, 1957, held, after allowing the assessee an opportunity of being heard, that the provisions of section 18(1)(c) were attracted and that in the facts and circumstances of the case, it would be reasonable to levy minimum penalties impossible under the Act.

5. The assessee filed appeals against the orders of the Inspecting Assistant Commissioner and urged that the mere fact that the assessee''s explanation as regards cash credits was not accepted as satisfactory and the amounts were treated as part of the assessee''s wealth on the basis of the assessee''s authorised representative''s letter does not mean that the assessee had field inaccurate particulars of wealth or concealed the particulars of wealth within the meaning of section 18(1)(c) of the Wealth-tax Act. For the elaborate reasons given in the impugned order, the Tribunal accepted the assessee''s explanation and held that the provisions of section 18(1)(c) were not attracted. Penalties imposed by the Inspecting Assistant Commissioner were set aside.

6. The short question in this reference is whether the fact that the nature and source of certain cash credits was held not to have been satisfactorily explained and the amount represented by them was treated as the assessee''s income from undisclosed/other sources for assessment years 1962-63 and 1963-64 and the further fact that, in the subsequent wealth-tax proceedings, the liabilities representing those cash credits were added back to the wealth of the assessee on the basis of a letter written by the assessee''s Income Tax representative brings the case within the four corners of section 18(1)(c). Section 18(1)(c) of the Wealth-tax Act reads as under :

"18(1). If the Wealth-tax Officer, Appellate Assistant Commissioner, Commissioner (Appeals), Commissioner or Appellate Tribunal, in the course of any proceedings under this Act is satisfied that any person -....

(c) has concealed the particulars of any assets or furnished inaccurate particulars of any assets or debts;

he or it may, by order in writing direct that such person shall pay by way of penalty..."

7. There is no dispute that, unlike the provisions under the Income Tax Act, there is no Explanation attached to clause (c) of sub-section (1) of section 18. There is, thus, no deeming provisions as regards concealment. Under the circumstances, the meaning of the expression "has concealed the particulars of any assets or furnished inaccurate particular of any assets or debts" as obtaining in the clause will have to carry the same meaning as it had under the undiluted section 271(1)(c) of the Income Tax Act, 1961, or its preceding section 28(1)(c) of the said Act. The Supreme Court, in the case of Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, , while dealing with the provisions of section 28(1)(c) of the 1922 Act, held that in the absence of cogent material evidence apart from the falsity of the respondent''s explanation from which it could be inferred that the respondent had concealed the particulars of his income or had deliberately furnished inaccurate particulars in respect of the source and that the disputed amount was a revenue receipt, penalty could not be imposed. No doubt, the word "deliberately" occurring in section 28(1)(c) does not now occur in section 18(1)(c). However, the omission of that word, in our view, does not make any material difference inasmuch as when a person is charged with concealment, it has got to be a conscious or wilful act on his part. In the present case, the additions to income in the Income Tax assessments were made by treating the assessee''s evidence to be unsatisfactory. Therefore, for the purpose of Income Tax proceedings, the addition would certainly not amount to concealment under the undiluted provisions of section 271(1)(c) or section 28(1)(c) of the 1922, Act. In fact, penalty imposed under the Income Tax Act was cancelled by the Tribunal and the said decision of the Tribunal has been accepted by the Department.

8. The only question that requires consideration is whether the manner in which the assessee''s Income Tax practitioner agreed to the addition of these amounts as part of the assessee''s wealth bring the assessee''s case within the purview of section 18(1)(c). We have already referred to the contents of the assessee''s Income Tax practitioner''s letter. It reads : "As the honourable Appellate Tribunal of Income Tax, Bombay, had confirmed the addition of the cash credits... he had no objection to the addition of the same in the assessee''s wealth-tax assessment". In our view, by no stretch of imagination can this statement be treated as an admission on the part of the assessee that the liabilities were bogus or that they represented the assessee''s own moneys.

9. In the above view of the matter, we are satisfied that the provisions of section 18(1)(c) are not applicable in this case Accordingly, we agree with the Tribunal and answer the question in the affirmative and in favour of the assessee.

10. No order as to costs.