
(1988) 08 CAL CK 0005
In the Calcutta High Court
Case No : Matter No. 1257 of 1980

COMMISSIONER OF WEALTH-TAX

APPELLANT

Vs

BHAGWAN PROSAD KANOI.

RESPONDENT

Date of Decision : 08-08-1988

Acts Referred:

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

Citation : (1990) 184 ITR 95 : (1990) 49 TAXMAN 156

Hon'ble Judges : K. M. Yusuf, J;Ajit K. Sengupta, J

Bench : Full Bench

Judgement

AJIT K. SENGUPTA J. - In this application u/s 27(1) of the Wealth-tax Act, 1957, the following question of law has been referred to this court for the assessment years 1964-65 to 1968-69 :

"Whether, on the facts and in the circumstance of the case, the provision of section 18(1)(a) of the Wealth-tax Act. 1957, as they stood prior to the amendment with effect from April 1, 1969, will apply in the matter of the quantum of penalty livable against the assessee for each of the assessment year under consideration ?"

The facts as briefly stated are that the wealth-tax returns were due from the assessee on or before June 30, 1964, June 30, 1965, June 30, 1966, June 30, 1967 and June 30, 1968, respectively. The assessee, however, voluntarily filed the returns for the years under consideration on February 9, 1972. As the wealth-tax returns were filed late, the Wealth-tax officer issued show-cause notice to the assessee as to why penalty u/s 18(1)(a) of the Act be not levied against him for each of the years under consideration. Though he was served the assessee. On the date fixed for hearing, neither appeared before the Wealth-tax Officer nor furnished any sufficient cause for the delayed filing of the returns. The Wealth-tax Officer, therefore, inferred that the assessee had filed the returns for the year under consideration that the assessee had filed the return for the years under consideration late without any reasonable cause, He, therefore imposed penalties

of Rs. 16,808 (assessment year 1964-65), Rs. 21,728 (assessment year 1965-66), Rs. 17,604 (assessment year 1966-67) Rs. 12,832 (assessment year 1967-68) and Rs. 3,801 (assessment year 1968-69) against the assessee u/s 18(1)(a) of the Act.

On appeals filed by the assessee before the Appellate Assistant Commissioner, he upheld the said penalty orders. According to him, mens rea was not an essential prerequisite for imposition of the penalty. He further agreed with the Wealth-tax Officer that the assessee was not prevented from filing the returns in time due to any sufficient or reasonable cause.

The assessee took the matter to the Tribunal. The assessee was absent on the date of hearing. The Tribunal heard the appeals ex parte on merits. The Tribunal after hearing the department representative at great length, held as under :

"As far as the assessment years 1964-65 to 1968-69 are concerned, the assessee committed the default in the matter of non-filing of the return on June 30, 1964, June, 30, 1965, June 30, 1966, June 30, 1967 and June 30, 1968, which is much prior to April 1, 1966, when section 18(1)(a) of the Act was amended so as to increase the rate of penalty u/s 18(1)(a) of the Act with reference to the net wealth tax returned. Since the assessee committed the default in filing of the wealth-tax returns on the dates fixed for filing of the returns for those years, i.e., on June 30, 1964, June 30, 1965, June 30, 1966, June 30, 1967, and June 30, 1968, the law for the purpose of penalty against the assessee u/s June 18(1)(a) of the Act would be that which was in force on those dates and not the law which was brought into force on April 1, 1969, Addl. Commissioner of Wealth Tax Vs. Smt. Manjuladevi Muchhal, , which, in turn is based on several decisions of the Punjab, Allahabad, Madras, Karnataka and Andhra Pradesh High Courts. We hold likewise and direct the Wealth-tax Officer to complete the penalty proceedings against the assessee for the assessment year 1964-65 accordingly."

It appears to us that the controversy in this reference is concluded by the decision of the Supreme Court in the case of Maya Rani Punj v. CIT [1985] 157 ITR 330. There, for the assessment year 1961-62, the assessee's returns of income had to be filed by September 28, 1961, but neither was the return filed by that date nor was any extension asked for, the return was filed after a delay of seven months on May 3, 1962, i.e., after the Income Tax Act, 1961, had come into force. The Income Tax Officer initiated proceedings u/s 271(1)(a) of the 1961 Act holding that the assessee had not been prevented by any reasonable cause from not filing the return within time and imposed a penalty which was livable u/s 271(1)(a) of the 1961 Act. The amount of penalty had to be quantified according to section 28 of the 1922 Act and reduced the penalty to Rs. 400. On a reference, the High Court held that the Tribunal was not competent to reduce the penalty levied u/s 271(1)(a) of the 1961 Act to a figure lower than the sum equal to two per cent. of the tax for every month during which the default continued but not exceeding in the aggregate 50 per cent. of the tax. The Supreme Court

held that the default of non-filing of the return within the time stipulated by law is a continuing offence. The Supreme Court proceeded to hold that penalty is impossible not only for the first default but with reference to the continued default. Non compliance with the obligation of making a return was an infraction of law as long as the default continued.

In this case, returns were filed after the amendment came into force Accordingly, the law applicable on that day has to be applied and not that which was applicable when the first default was committed.

For the reasons aforesaid, we answer this question in the negative and in favour of the Revenue.

There will be no order as to costs.

K. M. YUSUF J. - I agree.