

(2003) 06 GUJ CK 0026
In the Gujarat High Court
Case No : WT Ref. No. 49 of 1991

Commissioner of Wealth Tax

APPELLANT

Vs

Chandrakant Gandlal

RESPONDENT

Date of Decision : 23-06-2003

Acts Referred:

Wealth Tax Act, 1957 — Section 18(1)

Citation : (2003) 184 CTR 517

Hon'ble Judges : Anil R. Dave, J;A.M. Kapadia, J

Bench : Division Bench

Advocate : Manish R. Bhatt, for the Appellant; None, for the Respondent

Judgement

A.R. Dave, J.—At the instance of the Revenue, the following question of the law has been referred to this Court for its opinion by the Tribunal, Ahmedabad Bench "B", under the provisions of Section 27(1) of the WT Act, 1957 (hereinafter referred to as "the Act") :

"Whether the Tribunal is right in law and on facts, in confirming the cancellation of the penalties levied by the WTO u/s 18(1)(c) of the WT Act."

2. Standing counsel Ms. Mauna Bhatt has appeared for the applicant Revenue, whereas nobody has appeared for the respondent-assessee, though the respondent-assessee has been duly served with the notice of this Court.

3. The facts giving rise to this reference, in a nutshell, are as under:

4. The assessee filed his wealth-tax return showing value of his building situated at Porbandar as Rs. 2,22,000. During the course of the assessment proceedings, the WTO asked the assessee to get the building valued by an approved valuer and, therefore, the assessee got the said building valued by an approved valuer. Before the assessment was completed, the assessee filled, a revised return on the basis of the valuation arrived at by the approved valuer stating that the value of the building was Rs. 4,25,000.

5. On the basis of the revised return, the WTO assessed the wealth of the assessee and also initiated penalty proceedings under the provisions of Section 18(1)(c) r/w Expln. 4 to the said section on the ground that the assessee had furnished inaccurate particulars of the said asset in the original return filed by the assessee. The WTO ultimately imposed penalty upon the assessee.

6. Being aggrieved by the order of penalty imposed by the WTO, the assessee filed an appeal before the Dy. CWT(A). After hearing the concerned parties, the Dy. CWT(A) deleted the penalty on the ground that there was no concealment by the assessee. Moreover, according to him, immediately upon getting the valuation report from the approved valuer, the assessee had filed the revised return and the said revised return was filed before completion of the assessment. In the circumstances, according to the appellate authority, no penalty could have been levied under the provisions of Section 18(1)(c) r/w Expln. 4 to the said section.

7. Being aggrieved by the order passed in appeal, the Revenue preferred an appeal before the Tribunal. The Tribunal ultimately confirmed the order passed by the Dy. CWT(A). In the aforesaid circumstances, the reference has been made to this Court.

8. Learned standing counsel Ms. Bhatt appearing for the Revenue has submitted that the Tribunal committed an error while upholding the order passed by the Dy. CWT(A). According to the learned counsel, in the instant case, the assessee did not reveal correct value of the building in the original return. It has been submitted by her that the assessee had valued the said building at Rs. 2,22,000. The WTO was not satisfied with the valuation and, therefore, he asked the assessee to get the building valued by an approved valuer. In pursuance of the said direction given by the WTO, the assessee got the building valued by an approved valuer and upon knowing that value of the building on the valuation date was Rs. 4,25,000, the assessee filed a revised return showing value of the building as ascertained by the approved valuer.

9. It has been submitted by the learned counsel that the assessee had an intention to furnish "inaccurate particulars" of the asset and only for that reason he initially valued the building at Rs. 2,22,000. It has been further submitted by her that had the WTO not given the direction to the assessee to get the building valued by an approved valuer, the assessee would not have filed a revised return and in that event, he would not have stated correct value of the building. It has been, therefore, submitted by the learned counsel that the assessee had an intention to give inaccurate particulars of the building and, therefore, in the original return, the value of the building was grossly undervalued.

10. It has been, therefore, submitted by the learned counsel that as per law laid down in the case of Commissioner of Income Tax Vs. A. Sreenivasa Pai, the Tribunal ought to have set aside the order passed by the Dy. CWT(A). It has been also submitted that this Court should presume that the assessee wanted to

conceal the particulars of his asset and, therefore, only with that intention the initial return had been filed by the assessee showing that the building was worth Rs. 2,22,000.

11. We have heard the learned standing counsel at length and have also considered the facts and the circumstances in which the reference has been made to this Court.

12. In our opinion, the Tribunal was not in error when it confirmed the order passed by the Dy. CWT(A).

13. It is pertinent to note that the assessee had filed the revised return within the prescribed time-limit. The said revised return was filed before the assessment had been completed.

14. Upon perusal of Section 15 of the Act, it is very clear that it is open to the assessee to file a revised return within the time-limit prescribed by the said section. It is not in dispute that before the assessment had been completed, the assessee had filed his revised returns for both the years stating correct valuation of the building in question.

15. As the assessee had revealed correct valuation of the building before the assessment proceedings had been completed, it cannot be said that the assessee had furnished "inaccurate particulars" of the building situated at Porbandar. The WTO had relied upon Expln. 4 to Section 18, which reads as under:

"Where the value of any asset returned by any person, is less than seventy per cent of the value of such asset as determined in an assessment u/s 16 or Section 17, such a person shall be deemed to have furnished inaccurate particulars of such asset within the meaning of Clause (c) of this sub-section, unless he proves that the value of the asset as returned by him is the correct value."

In the instant case, the value of the asset returned had been revised by the assessee before the assessment had been completed. Immediately upon knowing the correct valuation of the asset in question, the assessee had filed a revised return. As stated hereinabove, it is not in dispute that the revised return was filed within the prescribed period and, therefore, it was the duty of the WTO to assess the asset as per the value of the asset shown in the revised return. It is not in dispute that in the revised return the assessee had valued the asset in question correctly as per the valuation arrived at by the approved valuer.

16. It is pertinent to note that penalty can be imposed only when the Revenue comes to a conclusion that the assessee had a mala fide intention. Whether the assessee is having mala fide intention is a question of fact. In the instant case, the Dy. CWT(A) has come to a conclusion that the assessee had no intention to furnish inaccurate particulars and the said finding has been confirmed by the Tribunal. In the instant case, we, therefore, cannot presume that the assessee had a mala fide intention to furnish inaccurate particulars. As mens rea is an essential ingredient of an offence and as both the appellate authorities have

arrived at a finding that the assessee had no intention to furnish inaccurate particulars of the asset in question, we would not like to come to a different conclusion with regard to intention of the assessee.

17. Looking to the facts of the case and the legal provisions referred to hereinabove, in our opinion, it cannot be said that the Tribunal had committed an error while upholding the appellate order passed by the Dy. CWT(A).

18. In the circumstances, we answer the question referred to us in the affirmative, i.e., in favour of the assessee and against the Revenue.

19. The reference, thus, stands disposed of with no order as to costs.