
(1982) 05 MP CK 0002

In the Madhya Pradesh High Court

Case No : Special Jurisdiction Case No. 220 of 1977

Commissioner of Wealth Tax

APPELLANT

Vs

Chiranjilal Agarwala

RESPONDENT

Date of Decision : 11-05-1982

Acts Referred:

Wealth Tax Act, 1957 — Section 14(2), 27(3)

Citation : (1982) 10 TAXMAN 224

Hon'ble Judges : R.N. Misra, C.J.; Patnaik, J

Bench : Division Bench

Advocate : B.K. Mahanti and Ch. P.K. Misra, for the Appellant;

Judgement

R.N. Misra, C.J.—These are eighteen applications u/s 27(3) of the Wealth-tax Act of 1957 (hereinafter called "the Act"), at the instance of the Revenue. By order dated 19th of February, 1979, made in these cases, this court directed the Wealth-tax Appellate Tribunal, Cuttack Bench, to state a case and refer the following common question of law for the opinion of the court:

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in annulling the imposition of penalty for delayed submission of returns for the respective years?

These 18 cases relate to three persons, Chiranjilal Agarwala, the father, and the two sons being Rajkishore Agarwala and Sanwarmal Agarwala. Six assessment years are involved being 1964-65, 1965-66, 1966-67, 1967-68, 1968-69 and 1969-70. The parties were assesseees under the income tax Act for several years past. Returns under the Wealth-tax Act for the aforesaid years were, however, not filed until 18th of March, 1972. Before any notice u/s 14(2) of the Act had been issued, voluntary returns for all these six years by all the three assesseees were filed before the WTO. The WTO initiated penalty proceedings for delayed submission of returns. The returns were substantially accepted. As against Chiranjilal, a tax of Rs. 12,071 was demanded for the six years, but the penalty

worked out at Rs. 7,42,365. As against Rajkishore, the tax demand for all these six years came to Rs. 5,488. He was visited with a penalty of Rs. 3,34,426. Sanwarmal was asked to pay a tax of Rs. 5,629 and suffered a penalty of Rs. 3,01,113. Assessment of tax was not in dispute. Imposition of penalty was seriously challenged.

2. All the assessments appear to have been taken at a time. In the penalty proceedings the assessee took the stand that Chiranjilal was badly laid up with illness ever since 1964. As the father, karta, had been ill and his illness did not abate, he had to be taken to several experts including doctors at Calcutta and Madras. In support of his illness, prescriptions, medical certificates as also reports of clinical examinations were produced. It was also the stand of the assessee that they had been told by their lawyers that returns under the Act could be filed at any time before assessments were taken up. In view of this legal advice which they believed to be correct and their pre-occupation in the treatment of the karta, no particular attention was given to the furnishing of the returns. It was stated that the amount of tax involved was small and there was no contumacious conduct or an attitude to avoid the legal liability. Reliance was also placed on their performance as assessee under the income tax Act where regularity in complying with law and co-operation in satisfying demands were exhibited. The AAC did not accept these explanations. He, however, reduced the penalty for all the assessment years in question. Assessee appealed to the Tribunal. By a common judgment dated March 22, 1976, the Appellate Tribunal set aside the orders of the AAC by directing:

...It has been held by the Orissa High Court in the case of Commissioner of Income Tax Vs. Ketini Krishnamurty and Partners, that in view of uncertainty of law before the Full Bench decision in the case of Commissioner of Income Tax Vs. Gangaram Chapolia, the assessee might have been deprived of adequate opportunity to present their case, when they were disposed of before the Full Bench judgment, by proceeding as if the entire burden was on the Revenue and, therefore, another opportunity should be given to the assessee. In the present case also even though the assessee must be taken to have been aware at the time the appeals were taken up before the Appellate Assistant Commissioner that the evidential burden was on them, the opportunity to produce necessary evidence before the Appellate Assistant Commissioner appears to have been missed in contesting certain legal issues. In view of the decision of the Full Bench of the Orissa High Court in the case of Commissioner of Income Tax Vs. Gangaram Chapolia, , before the imposition of penalty, a finding has to be given regarding the question of fact whether there was reasonable cause for the delay in filing the returns and such a finding has not been given after judicially considering the relevant evidence. We are also satisfied that the assessee did not have adequate opportunity to bring on record necessary evidence in respect thereof. We are, therefore, of the opinion that the Appellate Assistant Commissioner should consider afresh the explanation of the assessee both in regard to the illness of the father as well as in regard to honest belief that there

was no delay, after affording the assessee opportunity to bring on record the relevant evidence. We, therefore, set aside the orders of the Appellate Assistant Commissioner and restore the appeals to his file for fresh disposal....

3. Three separate affidavits were filed in the three sets of cases where, inter alia, it was stated:

(1) That my father Sri Chiranjilal Agarwal is a wealth-tax assessee and his age is about 62 years. He has been lying ill with various ailments ever since 1964 and is ill even today. He is so ill and bed-ridden that he is not in a position to move from the bed and to come and appear for an affidavit. I have taken full instructions from him and I am swearing this affidavit on such instructions believing this fact to be true as instructed by him.

(2) That my father was continuously ill from 1964 and was under treatment of Dr. K. C. Sahu, Dr. Tajeswar Rao, Dr. B. D. Agarwal of Calcutta, Dr. G. Arjun Das of Madras and Dr. S. L. Bajoria.

(3) That my father has been under treatment and taking medicines ever since 1964 and I am filing the prescriptions from 1969 onwards as the prescriptions for the said treatment from 1964 to 1969 are not readily available.

(4) That during the illness of my father he could not give time for computing the wealth-tax returns and we had consulted our then lawyer, Sri B. N. Mahanti, advocate, and Sri B. K. Mahanti, advocate, who was acting as his junior then, who were of the opinion that a return can be filed at any time before the completion of assessment under the Wealth-tax Act and there being no limitation for completion of assessment under the Wealth-tax Act, returns of several years could also be filed at one time....

4. The Tribunal, after hearing the parties, set aside the penalty in every case by holding:

...the Wealth-tax Officer did not consider the explanation at all and imposed huge penalties by passing cryptic orders that are not speaking at all. The explanation of the assessee was there before the Wealth-tax Officer. As pointed out in the case of Commissioner of Income Tax Vs. Gangaram Chapolia, , it was his duty to consider the explanation judicially and arrive at a reasoned conclusion. He has failed to do so. The Appellate Assistant Commissioner has rejected the explanation of the assessee on considerations which, to our mind, do not appear to be strictly relevant. The prolonged illness of Chiranjilal has not been disputed. The confused state of law at the relevant time has been recognised in the case of Commissioner of Income Tax Vs. Ketini Krishnamurthy and Partners, The assessee's consultation with their lawyers has not been disputed. The Appellate Assistant Commissioner himself has observed that penalties imposed under the Wealth-tax Act were expropriatory. In our opinion, these penalties are certainly very heavy. But the fact remains that the assessee was new to wealth-tax proceedings. They were diligently filing the income tax

returns within due time. They took steps to consult experts regarding wealth-tax matters. The returns for all the years were filed on the same date voluntarily. Taking all the circumstances into consideration, we are inclined to hold that the assessee could have entertained an honest belief that no penal liability is incurred if the returns were filed before the assessments were made. We are not concerned with the question as to whether the assessee's belief was right or wrong. What is to be considered is whether the circumstances stated above could induce the belief claimed by the assessee even though it was subsequently found to be erroneous. In our considered opinion, there is enough material on record to justify the conclusion that the assessee was indeed labouring under an honest belief that they could take it easy in the matter of filing the wealth-tax returns and once that difficulty was removed, all the returns were filed on the same day voluntarily. This fact shows the anxiety to discharge their statutory obligation. Considering all the facts and circumstances of the case, we hold that the penalties imposed were not justified.

5. Two grounds in support of the plea had been advanced by the assessee from the beginning, namely: (i) illness of Chiranjilal, the karta, and (ii) the advice given by two advocates handling tax matters. There is enough material in support of the plea of illness. Apart from the affidavits, the record shows that there were certificates, clinical examination reports and prescriptions produced before the WTO. There is no material to counter these. In these circumstances, the plea of illness, which has been accepted as a fact by the Tribunal, is not open to challenge. The affidavits go to show that the illness began in 1964 and was continuing even at the time when the returns were filed. The illness claimed to be serious, necessitated consultation with experts in Calcutta and Madras. The illness of the father (karta) of the two other assesseees is certainly a justifying factor.

6. The facts that advice was taken from two lawyers has also been asserted in the affidavits and there has been no dispute. The WTO did not choose to examine the advocates with a view to discrediting the affidavits. In fact, Mr. B. K. Mahanti, whose advice is said to have been taken, now appearing for the assesseees, affirmed before us that such advice had been given on account of the confused state of the law. Parties were income tax assesseees from before but they were new to the Wealth-tax Act. In fact, these were the very first returns to be filed. Taking a sum total view of the matter, it was open to the Tribunal, which exercised the same powers as of the WTO, to find out whether the facts of the case warranted any penalty. This court has held in the case of Commissioner of Wealth-tax Vs. Ramniklal D. Mehta, , that where the assessee for the first time is assessed to wealth-tax and acts on the advice of his lawyer in the matter of filing of return, the explanation for delay based upon such advice is acceptable. We see no justification to take a different view here.

7. In the circumstances, we are inclined to hold that the Tribunal had come to the conclusion on the basis of evidence that there were justifying circumstances

for annulling the penalty. Our answer, therefore, to the question referred is against the Revenue and we hold that on the facts and in the circumstances of the case, the Tribunal was justified in annulling the imposition of penalties for delayed submission of returns of the respective years. There would be no order for costs.

Patnaik, J.

I agree.