

(1987) 04 PAT CK 0017

In the Patna High Court

Case No : Taxation Cases No's. 269, 270, 280 and 281 of 1976, decided on April 27, 1987.

COMMISSIONER OF WEALTH-TAX

APPELLANT

Vs

DALIP KUMAR WORAH AND ANOTHER.

RESPONDENT

Date of Decision : 27-04-1987

Acts Referred:

Income Tax Act, 1961 — Section 11, 12, 139, 14, 142

Citation : (1987) 64 CTR 260 : (1987) 167 ITR 811 : (1987) 32 TAXMAN 577

Hon'ble Judges : S. S. Sandhawalia, C.J.; Uday Sinha, J.; B. N. Agrawal, J

Bench : Full Bench

Judgement

S. S. SANDHAWALIA C.J. - Whether the date of the decision of the authority to initiate proceedings for levying penalty would govern the relevant law applicable for the quantification of the amount of such penalty u/s 18 of the Wealth-tax Act, 1957, is, in essence, the core question which has necessitated the reference of this set of four connected taxation cases to the Full Bench. Equally at issue is the correctness of the view in an earlier Division Bench judgment of this court in Commissioner of Income Tax/Wealth Tax Vs. Jagjit Kaur, , holding that penalty would be computed on different rates applicable during the period of each month in accordance with the rules existing during the said period.

The facts giving rise to the issues aforesaid which patently enough are pristinely legal deserve recounting with relative brevity. The representative matrix thereof may be noticed from Taxation Case No. 269 of 1976. The assessee, Dalip Kumar Worah, Dhanbad, therein was required to submit his return under the Wealth-tax Act by June 30, 1968, for the assessment year 1968-69. Admittedly, he filed the return much later on February 20, 1970. Meanwhile before the filing of the return, the Finance Act, 1969 (Act 68 of 1969), came into force on April 1, 1969. By virtue of the amendments made thereby in section 18 of the Wealth-tax Act, 1957 (hereinafter called "the Act"), steeply enhanced rates of penalty different from that which applied prior to such amendment were brought on the statute

book. Patently enough, the return had been filed far beyond the time prescribed by law. The Wealth-tax Officer, therefore, initially levied penalty for the late filing of the returns in terms of the law prevailing prior to the 1st of April, 1969, and imposed a penalty of Rs. 573 only. Admittedly, the assessee virtually accepted the said penalty and no appeal was preferred against its imposition. However, later, the Wealth-tax Officer found that in the matter of the quantum of penalty, an error of law apparent on the record had been committed inasmuch as the law and the rate applied were that which prevailed prior to April 1, 1969, though the return had been filed on February 20, 1970, and, therefore, the law applicable was the one in force after the enforcement of the Finance Act, 1969, namely, April 1, 1969. He, therefore, initiated rectification proceedings and after complying with the requirements of section 35 of the Act passed an order for the levy of penalty in terms of section 18 of the Wealth-tax Act as amended by the Finance Act, 1969, and enhanced the penalty in accordance with the statute to Rs. 15,358.62. The assessee then being aggrieved by the order of rectification filed an appeal before the Appellate Assistant Commissioner. The latter not merely adverted to the quantum of penalty but proceeded to examine the issue on merits afresh and came to the conclusion that in fact no penalty at all was leviable and consequently set aside the whole amount thereof. The Revenue, being aggrieved by the order of the Appellate Assistant Commissioner, filed appeals before the Tribunal which broadly agreed with the Appellate Assistant Commissioner and rejected the same. The Commissioner of Income Tax then claimed a reference to the High Court in all the four connected cases. The Tribunal found that common questions of law did arise and referred the following two questions to the High Court in all the four connected cases :

"(1) Whether, on the facts and in the circumstances of the case, the rectification of the penalty order u/s 18(1)(a) of the Wealth-tax Act, 1957, could be legally made to give effect to the provision of section 18(1)(a) as amended by the Finance Act, 1969, in respect of the assessment year 1968-69 ?

(2) Whether, in spite of the assessee's acceptance of the merits in levying penalty as per the original order without objection, the Tribunal was correct in law in holding that the Appellate Assistant Commissioner was competent to consider the cases on merits in the appeals before him against the orders u/s 35 of the Wealth-tax Act, 1957, passed by the Wealth-tax Officer in which the quantum of penalty was increased by the Wealth-tax Officer as per the provisions of section 18(1)(a) of the Wealth-tax Act, 1957, as amended by the Finance Act, 1969, in respect of the assessment years 1968-69 and 1970-71 ?"

These cases originally came up for consideration by a Division Bench consisting of my learned brothers, Uday Sinha J. and B. N. Agrawal J. In their lucid order of reference dated January 14, 1987, it was noticed that whilst the matter relating to the assessment year 1970-71 raised no problem, the basic difficulty arose in cases concerned with the assessment year 1968-69 in which the period of default could be dissected in two parts, namely, from July 1, 1968, to March 31, 1969,

and April 1, 1969, to February 20, 1970. On these premises, it was urged before the Division Bench, on behalf of the assessee, that different rates of penalty would be applicable for the two periods. As already noticed, basic reliance of the counsel for the assessee was on the Division Bench judgment in Commissioner of Income Tax/Wealth Tax Vs. Jagjit Kaur, , wherein it was laid down that differential rates of penalty would be applicable. Raising a frontal doubt about the correctness of that view and observing that this seemed to be directly contrary to the ratio in Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, , which had laid down that the relevant date for ascertaining the rate of penalty will be the date on which the satisfaction of the assessing officer is arrived at, namely, the date when the proceedings for levy of penalty are initiated, rightly opining that it may be inept to deviate from the earlier view of a co-equal Division Bench, the matter was referred to a larger Bench for an authoritative adjudication. Equally it was thought prudent to similarly refer the second question so that the entire set of cases may be disposed of. That is how the matter is before us now.

Inevitably, one first adverts to the crucial question No. (1) aforesaid which, as already noticed, is the reason for the reference. However, as I am inclined to the view that this question now stands covered and concluded on all fours by the recent binding decision of their Lordships of the Supreme Court in Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, , it would be obviously wasteful to launch on any exhaustive dissertation of principle and rationale on this point. It was common ground before us that the root ratio decidendi is derived from the judgment of the Constitution Bench in Jain Bros. and Others Vs. The Union of India (UOI) and Others, . Therein, Grover J., speaking for the court, observed in unmistakable terms as under (p. 116) :

"It is obvious that for the imposition of penalty it is not the assessment year or the date of the filing of the return which is important but it is the satisfaction of the Income Tax authorities that a default has been committed by the assessee which would attract the provisions relating to penalty. Whatever the stage at which the satisfaction is reached, the scheme of sections 274(1) and 275 of the Act of 1961, is that the order imposing penalty must be made after the completion of the assessment. The crucial date, therefore, for purposes of penalty, is the date of such completion."

In the light of the above, the issue came up directly and more pointedly for consideration by their Lordships in Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, . Therein, for the assessment year 1961-62, the assessee's return had to be filed by September 28, 1961, but was in fact filed after a delay of seven months on May 3, 1962, i.e., after the Income Tax Act, 1961, had already come into force. The Income Tax Officer initiated proceedings u/s 271(1)(a) of the 1961 Act and imposed a penalty of Rs. 4,060 under its provisions. However, the Appellate Tribunal took a contrary view holding that though the penalty was leviable u/s 271(1)(a), the amount of penalty had to be quantified according to section 28 of the Indian Income Tax Act, 1922, 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. On appeal to the Supreme Court, their Lordships affirmed the decision of the High Court and repelled a pointed challenge to that view in particular. On a consideration of principle and precedent and particularly the case of Jain Bros. and Others Vs. The Union of India (UOI) and Others, , it was held as under (p. 337) :

"On the ratio of Jain Bros. and Others Vs. The Union of India (UOI) and Others, , the following conclusions are reached :

(a) Though the default occurred in September, 1961, the date relevant for the purpose of initiating proceedings for imposition of penalty is when, following the assessment made, the Income Tax Officer decided to initiate penalty proceedings.

(b) The proper provision to apply for dealing with the situation relating to penalty is an provided in section 271(1)(a) of the 1961 Act."

Proceeding further, their Lordships took the view that the default of non-filing of the return within the time stipulated by law is a continuing offence. The contrary view of a smaller Bench of the Supreme Court in Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth, was expressly overruled on this point and it was ultimately held as follows (p. 341) :

"The imposition of penalty not confined to the first default but with reference to the continued default is obviously on the footing that non-compliance with the obligation of making a return is an infraction as long as the default continued. Without sanction of law, no penalty is imposable with reference to the defaulting conduct. The position that penalty is imposable not only for the first default but as long as the default continues and such penalty is to be calculated at a prescribed rate on monthly basis is indicative of the legislative intention in unmistakable terms that as long as the assessee does not comply with the requirements of law, he continues to be guilty of the infraction and exposes himself to the penalty provided by law....

We are of the view that the legislative scheme u/s 271(1)(a) of the 1961 Act in making provision for a penalty conterminous with the default to be raised provides a situation of continuing wrong."

It was finally concluded as under (p. 341) :

"In the instant case, assessment was made on June 30, 1964, and proceedings for imposition of penalty were directed to be initiated that day. Provisions of section 271(1)(a) of the 1961 Act were fully applicable and the demand of penalty was thus justified being within the limits of law. In our opinion, the High Court had taken the right view and the appeal has, therefore, to be dismissed."

In the light of the aforesaid authoritative and binding enunciation of the law, Mr. B. P. Rajgarhia, learned standing counsel on behalf of the Revenue, had forcefully submitted that the question herein is virtually concluded in favour of the Revenue by the ratio in *Maya Rani Punj Vs. Commissioner of Income Tax, Delhi*. In my view, there is patent merit in the said submission.

Faced with the stonewall of binding precedent, learned counsel for the respondent-assessee, Mr. K. N. Jain, vainly attempted to first distinguish *Jain Bros. and Others Vs. The Union of India (UOI) and Others*, on the alleged ground that the categoric observations made therein were in the context of section 297(2)(g) of the Income Tax Act, 1961, and were, therefore, not attracted in the present case. Though learned counsel may be complimented for his ingenuity, patently the submission made is nevertheless fallacious. The ratio in *Jain Bros. and Others Vs. The Union of India (UOI) and Others*, , quoted above, is generic in its application and cannot be wriggled out by any finical distinction sought to be drawn on the basis of section 297(2)(g) of the Income Tax Act, 1961. This apart, as has been already noticed above, their Lordships of the Supreme Court themselves in *Maya Rani Punj Vs. Commissioner of Income Tax, Delhi*, rested on the ratio of *Jain Bros. and Others Vs. The Union of India (UOI) and Others*, for the conclusion quoted above. Once their Lordships of the Supreme Court have thus considered and culled the ratio of *Jain Brothers* case in the terms specified in *Maya Rani Punjs* case, it is, to my mind, not open for this High Court to take a contrary view. The veiled suggestion of Mr. K. N. Jain that the Bench in *Maya Rani Punj Vs. Commissioner of Income Tax, Delhi*, misread the true import of the observations in *Jain Brothers* case is equally without merit. I am inclined to hold that the ratio of *Jain Brothers* case as enunciated by their Lordships in *Maya Rani Punj Vs. Commissioner of Income Tax, Delhi*, quoted above, is binding on the High Court and even otherwise I am entirely in agreement therewith.

Perhaps, as a last argument of despair, Mr. K. N. Jain had contended that both *Jain Bros. and Others Vs. The Union of India (UOI) and Others*, and *Maya Rani Punj Vs. Commissioner of Income Tax, Delhi*, were under the Income Tax Act whilst in the present case we have to examine the issue u/s 18 of the Wealth-tax Act. This submission has only to be noticed to be rejected. For all material purposes, the provisions which call for interpretation are in *pari materia* would be manifest when the relevant provisions thereof are juxtaposed against each other :

Wealth-tax Act, 1957

"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 -

(a) has without reasonable cause failed to furnish the return which he is required to furnish under sub-section (1) of section 14 or by notice given under sub-section (2) of section 14 or section 17, or has without reasonable cause failed to

furnish within the time allowed and in the manner required by sub-section (1) of section 14 or by such notice, as the case may be; or

(b) has without reasonable cause failed to comply with a notice under sub-section (2) or sub-section (4) of section 16; or

(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 -

(i) in the cases referred to clause (a), in addition to the amount of wealth-tax, if any, payable by him, a sum equal to two per cent. of the assessed tax for every month during which the default continued.

income tax Act, 1961

271(1). If the Income Tax Officer or the Appellate Assistant Commissioner or the Commissioner (Appeals) in the course of any proceedings under this Act, is satisfied that any person -

(a) has without reasonable cause failed to furnish the return of total income which he was required to furnish under sub-section (1) of section 139 or by notice given under sub-section (2) of section 139 or section 148 or has without reasonable cause failed to furnish it within the time allowed and in the manner required by sub-section (1) of section 139 or by such notice, as the case may be, or

(b) has without reasonable cause failed to comply with the notice under sub-section (1) of section 142 or sub-section (2) of section 143 or fails to comply with a direction issued under sub-section (2A) of section 142, or

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income,

he may direct that such person shall pay by way of penalty -

(i) in the cases referred to in clause (a), -

(a) in the case of a person referred to in sub-section (4A) of section 139, where total income in respect of which he is assessable as a representative assessee does not exceed the maximum amount which is not chargeable to Income Tax, a sum not exceeding one per cent. of the total income computed under this Act without giving effect to the provisions of sections 11 and 12, for each year or part thereof during which the default continued."

Explanation. - In this clause, assessed tax means the wealth tax chargeable under the provisions of this Act.

The close similarity and the virtual identity of the aforesaid provisions are

somewhat too patent to call for further elaboration. However, what is of even greater significance is the fact that this aspect also was considered in *Maya Rani Punj Vs. Commissioner of Income Tax, Delhi*, . It deserves to be recalled that *Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth*, was specifically u/s 18 of the Wealth-tax Act. In overruling the same basically on the ratio of *Jain Bros. and Others Vs. The Union of India (UOI) and Others*, and their own rationale, their Lordships has observed as follows (p. 340) :

"We are inclined to agree with counsel for the Revenue that the conclusion reached in *Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth*, is contrary to law. *Jain Bros. and Others Vs. The Union of India (UOI) and Others*, was not referred to at all in *Suresh Seths* case. On the facts found in *Suresh Seths* case where the returns for the assessment years 1964-65 and 1965-66 had been filed on March 18, 1971, and for which assessment was made on March 22, 1971, the ratio of *Jain Bros. and Others Vs. The Union of India (UOI) and Others*, would have been fully applicable. Though *Jain Brothers* case was with reference to the Income Tax Act, 1961, the provisions of section 18(1)(a) of the Wealth-tax Act, as amended, brought in a similar provision and a sum equal to 2% of the tax for every month during which the default continued with an optimum of 50% of the tax due becomes payable. As rightly pointed out in *Jain Bros. and Others Vs. The Union of India (UOI) and Others*, , the question of imposition of penalty would arise only after assessment of tax is made and, therefore, in *Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth*, on the analogy of the ratio accepted by this court in *Jain Brothers* case, the amended provisions would become applicable."

It seems somewhat plain from the above that both on principle and precedent any attempt to distinguish *Maya Rani Punj Vs. Commissioner of Income Tax, Delhi*, on the specious ground that the said case was not u/s 18 of the Wealth-tax Act appears to be a vain exercise. The submission of Mr. K. N. Jain on this aspect also must, therefore, be rejected.

It remains to advert to the decision in *Commissioner of Income Tax/Wealth Tax Vs. Jagjit Kaur*, , the observations wherein necessitated the reference to the larger Bench. A perusal of the very brief judgement would indicate that the matter was not adequately debated in depth before the Division Bench as is manifest from the report. No one appeared for the assessee. Mr. B. P. Rajgarhia who had appeared for the Revenue in the said case was fair enough to admit that the issue was not projected in its full ramifications and perhaps his stand and submission were not lucidly presented and consequently not correctly appreciated by the Division Bench. A close analysis of the judgement would indicate that apart from a delineation of the relevant facts, the issue was not examined in depth on principle or on all precedents and it seems to have been said as a dictum as follows (p. 846) :

"It was, therefore, rightly submitted that penalty would be computed on different rates applicable during the period of each month in accordance with the rules

existing during the said period."

With deepest respect, rightly the aforesaid observations appear to me (as observed by the referring Bench itself) to be in the teeth of the ratio in *Maya Rani Punj Vs. Commissioner of Income Tax, Delhi*, as also of *Jain Bros. and Others Vs. The Union of India (UOI) and Others*, which was not even referred to. With great deference, I am constrained to overrule the decision in *Commissioner of Income Tax/Wealth Tax Vs. Jagjit Kaur*, .

To finally conclude, the issue posed at the outset is rendered in the affirmative and it is held that the date of the decision of the authority to initiate proceedings for levying penalty would govern the relevant law applicable for the quantification of the amount of such penalty u/s 18 of the Wealth-tax Act, 1957.

In the light of the above, the answer to question No. (1) referred to the High Court is rendered in the affirmative, i.e, in favour of the Revenue and against the assessee.

Coming now to the referred question No. (2), it again appears to me that within this court the matter is concluded in favour of the Revenue by the Division Bench judgement in *Ramanand Singh and Co. Vs. Commissioner of Income Tax*, . Therein, in an exhaustive judgement to which my learned brother, Uday Sinha J., was a party, it has been concluded as under (p. 88) :

"It cannot be doubted that when the original penalty u/s 271(1)(a) was imposed, the assessee had a right of appeal but the assessee did not prefer any appeal against the penalty levied u/s 271(1)(a). It cannot be doubted that the penalty order u/s 271(1)(a) has become final. The assessee now can appeal only against the rectification order u/s 246(f) of the Act. The assessee in the appeal against the rectification order will not be entitled to challenge that the Income Tax Officer had no jurisdiction to impose penalty u/s 271(1)(a) of the Act.

In view of my discussions above, I hold that the assessee in an appeal against an order u/s 154 of the Act could not challenge the validity of the order imposing penalty u/s 271(1)(a) of the Act."

Mr. B. P. Rajgarhia, learned counsel for the Revenue, has forcefully relied upon the above observation and the judgement as a whole as concluding the issue. It was further highlighted that an identical view has earlier been taken by the Bombay High Court in *Arvind N. Mafatlal Vs. Income Tax Officer, North Satara*, . Therein, it has been held that where the assessee does not prefer an appeal against the original order of assessment and the order becomes final, he is not entitled to contend, when a notice for rectification of an error is issued later u/s 35 of the Indian Income Tax Act, 1922, that besides that error there are other errors in the order of assessment to be rectified. Against the aforesaid judgment, an appeal was taken to their Lordship of the Supreme Court and a Constitution Bench in *Income Tax Officer, North Satara Vs. Arvind N. Mafatlal and Others*, upheld the judgement of the High Court and dismissed the appeal. The Bombay

High Courts view consistent with the one taken in Ramanand Singh and Co. Vs. Commissioner of Income Tax, has thus the seal of approval of the final court itself.

Mr. K. N. Jain, with inimitable fairness, had conceded that Ramanand Singh and Co. Vs. Commissioner of Income Tax, concludes the matter against him. However, he, somewhat half-heartedly, attempted to assail the correctness of that view before the Full Bench. For doing so, he tenuously relied on an isolated line in International Cotton Corpn. (P) Ltd. Ors. Vs. Commercial Tax Officer, Hubli, and Others, . Reading of that judgment would indicate that the question before us was not even remotely raised before that Bench. Mr. Rajgarhia was right in pin-pointing that the provisions of the Central Sales Tax and State Sales Tax Acts are far from being in pair material with the provisions of the Income Tax Act or the Wealth-tax Act which we are called upon to construe. This apart, one is reminded Quinn v. Leathem [1901] AC 495, that what is important in a case is the ratio disdained thereof and not every passing line or observation therein. The case of Quinn v. Leather [1901] AC 495, has been repeatedly affirmed by their Lordships of the Supreme Court with the added caution that it is an unprofitable task to build on a sentence or lines in a judgement. The fragmentary reliance on International Cotton Corporation (P.) Ltd. v. CTO [1975] 35 STC 1, by Mr. Jain does not appear to me as even remotely casting a doubt on the correctness of the considered view in Ramanand Singh and Co. Vs. Commissioner of Income Tax, . What has been said above seems to apply equally to a passing observation in Kundan Lal Srikishan, Mathura (U.P.) Vs. Commissioner of Sales Tax, U.P. and Another, . A reading of para. 7 thereof would at once show that the specific issue was not under consideration and is no warrant for a proposition contrary to Ramanand Singh and Co. Vs. Commissioner of Income Tax, . Even otherwise, as has already been pointed out, Ramanand Singh and Co.s case had referred to and relied on Arvind Arvind N. Mafatlal Vs. Income Tax Officer, North Satara, , which, as noticed, has been affirmed by a Constitution Bench of the Supreme Court. I find no adequate reason whatsoever to differ from or take a view contrary to the case of Ramanand Singh and Co. Vs. Commissioner of Income Tax, which has been arrived at after an exhaustive discussion of principle and precedent. The somewhat tenuous challenge to its correctness on behalf of the assessee, therefore, must be rejected.

In the light of the above, the answer to question No. (2) is rendered in the negative, i.e., in favour of the Revenue and against the assessee.

There will be no order as to costs.

UDAY SINHA J. - I agree.

B. N. AGRAWAL J. - I agree.