

(1980) 01 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : Wealth-tax Reference No. 29 of 1975

Commissioner of Wealth-tax

APPELLANT

Vs

Daljit Singh

RESPONDENT

Date of Decision : 01-01-1980

Acts Referred:

Income Tax Act, 1961 — Section 139(1), 139(2), 271(1)
Wealth Tax Act, 1957 — Section 14(1), 14(2), 18(1)

Citation : (1981) 20 CTR 112 : (1982) 133 ITR 385

Hon'ble Judges : M.R. Sharma, J;B.S. Dhillon, J

Bench : Division Bench

Advocate : D.N. Awasthy and B.K. Jhingan, for the Appellant; Arun Jain, for the Respondent

Judgement

M.R. Sharma, J.—Daljit Singh, the assessee, filed his wealth-tax return for the assessment year 1969-70 after some delay. The WTO issued a notice to him for late filing of the return u/s 14(1) of the W.T. Act, 1957 (hereinafter referred to as "the Act"). After giving an opportunity of being heard to the assessee, he imposed a penalty of Rs. 5,934 on him on account of the delay in filing the said return.

2. The assessee went up in appeal, which was dismissed. The assessee filed a second appeal before the Income Tax Appellate Tribunal, Chandigarh Bench (hereinafter referred to as "the Tribunal"). Before the Tribunal two points were raised on behalf of the assessee. Firstly, it was submitted that the assessee was an agriculturist by vocation and as such he was not conscious of his legal obligation to furnish annual returns of his net wealth. Secondly, it was submitted that the assessment having been started and completed on the basis of a return furnished u/s 14(2) of the Act, penalty u/s 18(1)(i) of the Act could not be imposed for any assumed delay in the furnishing of a return u/s 14(1) of the Act.

3. On the first point, the Tribunal held that the assessee was engaged as a partner in a firm functioning at Muktasar in the name and style of M/s. Bharat

Cotton Ginning and Pressing Factory, and that he had engaged an advocate for filing the Income Tax returns of this business as well as the returns of his net wealth. For these considerations, the decision on the first point was given against the assessee. On the second point, the Tribunal noticed COMMISSIONER OF AGRICULTURAL Income Tax Vs. SULTAN ALI GHARAMI., and held:

"...we are of the view that in the assessment proceedings initiated and completed on the basis of Section 14(2), Wealth-tax Act (return), it was not open to the Wealth-tax Officer u/s 18(1)(i) to penalise the assessee for the default of his failure to furnish the Section 14(1) return. We would add that, as a matter of fact, the assessee never furnished any return u/s 14(1); that total failure to furnish a return u/s 14(1) is not punishable u/s 18(1)(iv) as there could not be a best judgment assessment except after service of a notice asking for a return u/s 14(2), Wealth-tax Act; that in the assessment made on the basis of a return received after service of such a notice u/s 14(2), the assessee could be penalised for delay in furnishing Section 14(1) return only in a case where the revenue definitely establishes it as a fact that the return furnished by the assessee was not one filed in compliance of Section 14(2) notice but one filed in compliance of the statutory obligation u/s 14(1)."

4. At the instance of the revenue, the Tribunal has framed the following question of law for our opinion :

"Whether, on the facts of the case, the Appellate Tribunal was right in law in holding--

(i) that the return furnished by the assessee was not one by way of discharge of his obligation u/s 14(1), read with Section 13, Wealth-tax Act, but it was one by way of compliance with the notice u/s 14(2), Wealth-tax Act ?

(ii) that the said return not being a delayed return u/s 14(1), no penalty for furnishing delayed return u/s 14(1), Wealth-tax Act, was exigible ? and

(iii) that penalty for total failure to furnish return u/s 14(1), Wealth-tax Act, is not exigible in a case where a notice u/s 14(2), Wealth-tax Act, is duly complied with ?"

5. We have heard the learned counsel for the parties. The material portion of Section 18(1) of the 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--

(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..."

6. This section is in pan materia with Section 271(1)(a) of the I.T. Act, 1961 (hereinafter referred to as "the 1961 Act"). While interpreting the latter section, a Division Bench of this court in Commissioner of Income Tax Vs. Dehati Co-operative Marketing-cum-Processing Society, took notice of the words "as the case may be" appearing in Section 271(1)(a) of the 1961 Act and held that the delay in the filing of an Income Tax return could not be deemed to have been condoned if a notice u/s 139(2) of the 1961 Act was subsequently issued to the assessee. The words "as the case may be" also appear in Section 18(1) of the Act, extracted above. Sections 14(1) and 14(2) of the Act are in pari materia with Sections 139(1) and 139(2) of the 1961 Act. On a parity of reasoning, we hold that an assessee" who does not file a return u/s 14(1) of the Act or files the same after delay cannot escape liability merely because the WTO has issued a notice to him u/s 14(2) of the Act. The view taken by us also finds support from The Commissioner of Income Tax, Rajasthan, Jaipur Vs. Indra and Co., Jodhpur, , Mullapudi Venkatarayudu Vs. Union of India (UOI), , CIT v. D. V. Save [1979] 117 ITR 266 , N. Dharmalingam Vs. Union of India (UOI) and Others, and R. Lakshminarayana Reddiar Vs. Commissioner of Income Tax, .

7. Mr. Jain, the learned counsel for the respondent, brought to our notice the case of Addl. Commissioner of Income Tax Vs. Rampratap Shankarlal, decided by a Division Bench of the Madhya Pradesh High Court for the contrary proposition, but in a subsequent decision in Chunnilal and Bros. Vs. Commissioner of Income Tax, , the same High Court has taken a different view.

8. For the reasons aforementioned, we answer question (i) in favour of the assessee and against the revenue and answer questions (ii) and (iii) in the affirmative, i.e., in favour of the revenue and against the assessee. There shall, however, be no order as to costs.

Dhillon, J.

9. I agree.