

(1990) 07 PAT CK 0010

In the Patna High Court

Case No : Taxation Case No's. 350 to 352 of 1980

Commissioner of Wealth Tax

APPELLANT

Vs

Gilliram Suggiram

RESPONDENT

Date of Decision : 25-07-1990

Acts Referred:

Wealth Tax Act, 1957 — Section 18(1), 18(2), 39

Citation : (1991) 39 BLJR 492 : (1990) 89 CTR 278 : (1990) 186 ITR 445

Hon'ble Judges : G.G. Sohani, C.J.; S.C. Mookherji, J

Bench : Division Bench

Advocate : B.P. Rajgarhia and S.K. Sharan, for the Appellant; L.N. Rastogi, for the Respondent

Judgement

G.G. Sohani, C.J.—These are references u/s 27(1) of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act"). As a common question of law arises in all these references, they are being disposed of by a common judgment.

2. By these references, the Income Tax Appellate Tribunal, Patna Bench, has referred the following question of law to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee was not given reasonable opportunity of being heard by Sri Ajat Shatru, the succeeding Wealth-tax Officer, as required u/s 18(2) of the Wealth-tax Act, 1957, and so the penalty orders passed by him for the assessment years 1970-71 to 1972-73 u/s 18(1)(a) were invalid and so were rightly cancelled by the Appellate Assistant Commissioner ?"

The material facts giving rise to these references, briefly, are as follows :

For the assessment years in question, the Wealth-tax Officer initiated penalty proceedings against the assessee-Hindu undivided family u/s 18(1)(a) of the Act and issued notices u/s 18(2) of the Act to the assessee. No cause was shown by the assessee. Thereafter, the Wealth-tax Officer, S. K. Sahay, who had issued the notices, was transferred. Another Wealth-tax Officer, Ajat Shatru, who took over

charge, passed orders imposing penalty u/s 18(2) of the Act. Aggrieved by these orders, the assessee preferred appeals before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner allowed the appeals and set aside the orders imposing penalty. The Revenue preferred appeals before the Tribunal. The Tribunal held that there was no reasonable cause for the assessee-Hindu undivided family for the delay in filing the returns. The Tribunal, however, held that the Wealth-tax Officer who had passed the impugned orders did not issue any fresh notice to the assessee before proceeding to impose penalty and hence the orders imposing penalty were rightly set aside. In this view of the matter, the Tribunal dismissed the appeals. Aggrieved by the orders passed by the Tribunal, the Revenue sought reference and it is at the instance of the Revenue that the aforesaid question of law has been referred to this court for its opinion.

Learned counsel for the Revenue contended that as the assessee had failed to show any cause whatsoever in reply to the notices served on him u/s 18(2) of the Act and as no opportunity was sought by the assessee for any hearing, the successor Wealth-tax Officer was not required u/s 39 of the Act to afford the assessee another opportunity of hearing before continuing and concluding the penalty proceedings. Reliance was placed on the decision in *MURLIDHAR TEJPAL Vs. COMMISSIONER OF Income Tax, PATNA.*, and *Commissioner of Wealth-tax Vs. Umrao Lal*, . In reply, learned counsel for the assessee contended that the orders imposing penalty without hearing the assessee as required by the proviso to Section 39 of the Act was contrary to principles of natural justice and that it was rightly set aside. Learned counsel for the assessee relied on the decisions in *Anantha Naganna Chetty Vs. The Commissioner of Income Tax, Andhra Pradesh, Hyderabad*, , *Ram Saran Dass Kapur Vs. Commissioner of Income Tax, Patella*, and *COMMISSIONER OF Income Tax, WEST BENGAL-IV Vs. SMT. CHITRA MUKHERJEE.*, .

3. Before I proceed to appreciate the contention advanced on behalf of the parties, it would be useful to refer to the provisions of Section 39 of the Act which read as under :

"Whenever in respect of any proceeding under this Act any wealth-tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises such jurisdiction, the authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor :

Provided that the assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof be reopened or that before any order of assessment is passed against him, he be reheard."

From a perusal of the aforesaid provision, it is clear that in a case where, during the pendency of any proceeding, any wealth-tax authority is succeeded by another, the successor may continue the proceeding, but the assessee has the right to demand that he be heard before any order is passed against him. This provision is similar to Section 5(7C) of the Indian Income Tax Act, 1922, and

Section 129 of the Income Tax Act, 1961. In MURLIDHAR TEJPAL Vs. COMMISSIONER OF Income Tax, PATNA., , a Division Bench of this court, while dealing with a case u/s 5(7C) of the Indian Income Tax Act, 1922, observed as follows (at page 135) :

"Learned counsel for the assessee, however, relied upon a decision of the Calcutta High Court in Calcutta Tanneries (1944) Ltd., Calcutta Vs. Commissioner of Income Tax, Calcutta, . It was held in that case that the succeeding officer u/s 5(7C) of the Income Tax Act had no authority to pass an order of penalty without giving the assessee a further opportunity, of advancing arguments before him. With great respect we differ from the view expressed by the Calcutta High Court in this case. In our opinion, the combined effect of Section 28(3) and Section 5(7C) of the Indian Income Tax Act, 1922, is that the succeeding Income Tax Officer has authority to pass an order upon the explanation of the assessee produced before his predecessor-in-office, if the assessee had failed to exercise his right u/s 5(7C) demanding that the proceeding should be reopened. It is admitted in the present case that the assessee did not make any demand for reopening the proceeding before Sri v. Jha, the succeeding Income Tax Officer, under the first proviso to Section 5(7C) of the Income Tax Act. If the assessee had chosen to do so, he might have exercised his statutory right u/s 5(7C) of the Income Tax Act and required the succeeding Income Tax Officer to take a fresh explanation from him before making any order of penalty. But the admitted position is that in the present case the assessee did not exercise his statutory right u/s 5(7C). The result, therefore, is that Sri v. Jha had authority to make an order of penalty u/s 28(1)(c) of the Income Tax Act without calling for a fresh explanation from the assessee....."

Learned counsel for the assessee has not brought to our notice that the aforesaid decision of this court has been overruled. In Commissioner of Wealth-tax Vs. Umrao Lal, , the Allahabad High Court has held that when, on receipt of a notice u/s 18(2) of the Act, the assessee had not put in appearance nor filed any written explanation, the succeeding authority was not required to afford him another opportunity of hearing, The decision in Ram Saran Dass Kapur Vs. Commissioner of Income Tax, Patella, , relied upon by learned counsel for the assessee, is distinguishable on facts. In that case, the assessee had asked for a personal hearing and that personal hearing was given by the officer but before he could give a decision, the case was transferred to another officer who passed the order without giving any hearing. In the instant case, however, on receipt of the notices u/s 18(2) of the Act, the assessee had neither put in any appearance nor filed any written explanation. It is true that the decisions in Anantha Naganna Chetty Vs. The Commissioner of Income Tax, Andhra Pradesh, Hyderabad, and COMMISSIONER OF Income Tax, WEST BENGAL-IV Vs. SMT. CHITRA MUKHERJEE., do seem to support the contention of the assessee but we are bound by the decision of this court in MURLIDHAR TEJPAL Vs. COMMISSIONER OF Income Tax, PATNA., and we see no cogent reason to differ from that decision.

4. For all these reasons, my answer to the question referred by the Tribunal is in the negative and against the assessee. In the circumstances of the case, parties shall bear their own costs of this reference.

S.C. Mookherjj, J.

5. I agree.