

(1984) 05 PAT CK 0016

In the Patna High Court

Case No : Taxation Case No's. 68 to 72 of 1974

Commissioner of Wealth Tax

APPELLANT

Vs

Jagarnath Singh

RESPONDENT

Date of Decision : 17-05-1984

Acts Referred:

Wealth Tax Act, 1957 — Section 18(1)

Citation : (1984) 43 CTR 312 : (1985) 153 ITR 589 : (1984) 19 TAXMAN 63

Hon'ble Judges : Sushil Kumar Jha, J; Ashwini Kumar Sinha, J

Bench : Division Bench

Advocate : B.P. Rajgarhia and S.K. Sharan, for the Appellant; Rameshwar Prasad No. 2, for the Respondent

Judgement

1. This is a batch of five reference cases u/s 27(1) of the W.T. Act, 1957 (hereinafter referred to as "the Act"), in which the point of law involved is common and the questions referred to this court for opinion are with regard to five assessment years in which different quantum are involved. Hence, the Income Tax Appellate Tribunal, Bench "A", Patna, has referred the following questions of law for our opinion :

Asst. Year 1964-65 :

"Whether the Tribunal were justified in law in reducing the penalty to Rs. 346 as against Rs. 7,272 imposed by the WTO ? "

Asst. Year 1965-66 :

"Whether the Tribunal were justified in law in reducing the penalty to Rs. 367 as against Rs. 7,707 imposed by the WTO ?"

Asst. Year 1966-67 :

"Whether the Tribunal were justified in law in reducing the penalty to Rs. 367 as against Rs. 7,707 imposed by the WTO ?"

Asst. Year 1967-68 :

"Whether the Tribunal were justified in law in reducing the penalty to Rs. 406 as against Rs. 3,399 imposed by the WTO ?"

Asst. Year 1968-69 :

"Whether the Tribunal were justified in law in reducing the penalty to Rs. 342 as against Rs. 8,755 imposed by the WTO ?"

2. The statement of case has been submitted which will speak out for itself with regard to the fact and the point at issue.

3. The wealth-tax returns in respect of the five assessment years were due by 30th June of the relevant assessment years. All the returns were, however, actually filed on February 3, 1970. The delay in the filing of the return was very long and the period of delay ranged from sixty-seven months to nineteen months. The returns filed showed net wealth ranging from Rs. 2,38,533 to Rs. 2,72,452. The assessments were made on the figures returned by the assessee. The only explanation given before the WTO for the delay in the filing of the returns was that the assessee filed the returns as soon as he realised the liability under the Act. It was also stated that the returns had been filed voluntarily and the taxes were paid immediately after the assessment and, therefore, it was pleaded that the delay should be condoned. The WTO, having not accepted the plea of the assessee, imposed penalties of Rs. 7,272, Rs. 7,707, Rs. 7,707, Rs. 3,399 and Rs. 8,755 for the respective years in question.

4. Apart from the figures, given above, the facts of the present case being similar to the cases of another assessee wherein the point was decided in favour of the assessee, the Tribunal placing reliance upon its own earlier decisions, made the necessary reductions for the years in question. The orders of the WTO imposing penalties have been marked annexs. A, A1, A2, A3 and A4 forming part of the statement of case. The consolidated order of the AAC has been marked annex. B. . The order of the Tribunal has been marked annex. C forming part of the statement of the case. The orders of the Tribunal in the case of the other assessee aforementioned, namely, Saraswati Devi, has been marked annex. D forming part of the statement of the case.

5. We, therefore, have, to fall back upon the orders of the Tribunal in the case of Saraswati Devi, annex. D, for the reasons which have impelled the Tribunal to reduce the quantum of penalty for each year in question with regard to the present assessee. The reasons recorded by the Tribunal with regard to the quantum of penalty, which find place in annex. D, were that the WTO had calculated the penalty for the entire period for each month of delay of the difference between the net wealth assessed and the initial exemption limit of Rs. 1,00,000. For the earlier period, he has imposed penalty at the rate of 2% of the tax for each month of default. As the default was for a long period, it was limited to 50% of the tax which was Rs. 164. In those cases of Saraswati Devi, the

calculation of penalty for the period after April 1, 1969, was based on the amended provision of law which came into force from April 1, 1969. Similar calculations had been made by the WTO for all the succeeding years in the case of Saraswati Devi as in the cases of the present assessee with which we are concerned in this batch of cases. The Tribunal had, further, held that there was no specific provision which had made the amendment retrospective for the earlier assessment years. The amended provision was applicable to the assessment for the assessment year 1969-70 and onwards. It further went on to hold that in the W.T. Act, as in the I.T. Act, the law for a particular assessment year is the law which is enforced on the first day of April of that assessment year. The WTO had imposed the penalty on the enhanced basis on the ground that the return of income was filed much later than the due date after the amended provision had come into force. It was on this basis that the Department had calculated the quantum of penalty. The Tribunal was of the view that the amendment made considerable enhancement of the quantum of penalty with effect from April 1, 1969. The amendment was with regard to a substantive law and not merely a procedural law and it substantially affected the liability of the assessee to his prejudice. The amendment could not be considered as a procedural law and, therefore, the law could not have any retrospective operation unless there is a specific provision made in the Act for that purpose. The date of filing of the return could not be the relevant criterion for applying the provision of particular law unless the statute provides so either expressly or by necessary intendment. The Tribunal, accordingly, did not uphold the imposition of penalty at the enhanced rates which was sought to be defended by the Revenue on the basis of the amended law which came into force from April 1, 1969. The assessment years being years prior to the coming into force of the amendment, the quantum of penalty could not be determined in accordance with such amendment. These are the reasons which have weighed with the Tribunal in reducing the quantum of penalty for the assessment years in question with regard to the present assessee.

6. In our view, the matter is too well settled now and need not be dilated upon in any detail. Apart from the well established principle of law which, we hold, the Tribunal has rightly taken into consideration, this question has been settled by the Supreme Court also in the case of Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth, . In that case, the Supreme Court held (p. 338):

" That Section 18 of the Act did not require the assessee to file a return during every month after the last day of filing was over. Non-performance of any of the acts mentioned in Section 18(1)(a) of the Act gives rise to a single default and to a single penalty, the measure of which, however, is geared up to the time lag between the last date on which the return has to be filed and the date on which it is filed. The default, if any committed, is committed on the last date allowed to file the return. The default cannot be one committed every month thereafter. The words "for every month during which the default continued" indicate only the multiplier to be adopted in determining the quantum of penalty and do not have

the effect of making the default in question a continuing one. Nor do they make the amended provisions modifying the penalty applicable to earlier defaults in the absence of necessary provisions in the amending Acts. The principle underlying Section 6 of the General Clauses Act is clearly applicable to these cases."

7. The Supreme Court went on to hold that the default complained of was one falling u/s 18(1)(a) of the Act and the penalty had to be computed in accordance with law in force on the last date on which the return in question had to be filed. Neither the amendment made in 1964 nor the amendment made in 1969 had any retrospective effect.

8. We, accordingly, hold that the view taken by the Tribunal in all these cases is quite in consonance with law and the question for the respective years has to be answered in favour of the assessee and against the Revenue in the affirmative. We, therefore, hold that the Tribunal was justified in law in reducing the penalty for each of the five assessment years in question. On the facts and in the circumstances of these cases, however, we shall make no order as to costs.