
(1984) 07 P&H CK 0036

In the Punjab And Haryana At Chandigarh

Case No : Wealth-tax Reference No"s. 11 and 12 of 1980

Commissioner of Wealth-tax

APPELLANT

Vs

Jagir Singh

RESPONDENT

Date of Decision : 12-07-1984

Acts Referred:

Wealth Tax Act, 1957 — Section 18(1)

Citation : (1985) 44 CTR 260 : (1985) 154 ITR 633

Hon'ble Judges : Surinder Singh, J;D.S. Tewatia, J

Bench : Division Bench

Advocate : Ashok Bhan and Ajay Kumar Mittal, for the Appellant; B.K. Jhingan, for the Respondent

Judgement

Tewatia, J.—This order would dispose of three Wealth-tax References Nos. 11 and 12 of 1980 and 14 of 1983, which relate to the assessment years 1970-71, 1971-72 and 1972-73, respectively, as a common question of law and fact arises therein.

2. Regarding the facts, reference shall be made wherever necessary to Wealth-tax References Nos. 11 and 12 of 1980.

3. Out of the many questions which the CWT, Jullundur, wanted the Tribunal to refer, it referred the following solitary question for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding having relied on the observations of the Punjab and Haryana High Court on page 518 in the case of Additional Commissioner of Income Tax Vs. Karnail Singh V. Kaleran, , that the circumstances do not lead to the reasonable and positive inference that the assessee's explanation is false and, therefore, the assessee must be held to have proved that there was no fraud or gross or wilful neglect on his part ?"

4. Mr. Ashok Bhan, learned counsel appearing for the Revenue, has canvassed that the Division Bench decision in Additional Commissioner of Income Tax Vs.

Karnail Singh V. Kaleran, , having been expressly overruled by the Full Bench decision of this court in Vishwakarma Industries Vs. Commissioner of Income Tax, , the order of the Tribunal, which is primarily based on Additional Commissioner of Income Tax Vs. Karnail Singh V. Kaleran, , in regard to the fact as to whether the explanation offered by the assessee u/s 18(1)(c) of the W.T. Act. 1957, hereinafter referred to as the Act, is acceptable or not, is erroneous and, therefore, deserves to be set aside. In the alternative, Mr. Ashok Bhan submitted that the Tribunal having not given a definite finding in regard to the acceptability of the explanation offered by the assessee, the matter be remitted back to the Tribunal to give a firm finding again.

5. We find no merit in either of the submissions advanced on behalf of the Revenue. As to the first submission, it may be observed that what the Full Bench of this court in Vishwakarma Industries Vs. Commissioner of Income Tax, found unacceptable in Additional Commissioner of Income Tax Vs. Karnail Singh V. Kaleran, was its view that even though the explanation offered by the assessee was not acceptable, that is, was found to be false, then too, penalty could not be imposed u/s 271(1)(c) of the I.T. Act (the legal import of which is *pari materia* with the provisions of Section 18(1)(c) of the Act), unless the Revenue established as a fact that the assessed income over and above the income disclosed in the return, in fact, accrued to the assessee and the amendment effected by the Legislature, by adding the Explanation to Section 271(1)(c) of the I.T. Act, did not change the position of law as laid down in Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, , as is evident from the following observations of the Full Bench (p. 670) :

"With the greatest respect, therefore, the view expressed in Additional Commissioner of Income Tax Vs. Karnail Singh V. Kaleran, that no change whatsoever had been effected by the amendment in Clause (c) of Section 271(1) and the addition of the Explanation thereto, is untenable.....Further, the observations made in Additional Commissioner of Income Tax Vs. Karnail Singh V. Kaleran, that, despite the presumption raised against the assessee by the Explanation in the category coming within its ambit, it was still incumbent, in penalty proceedings, on the Department to prove that the assessed income was truly the income of the assessee, is a corollary of its earlier view and consequently is erroneous. Indeed, taking such a view would remove the very cornerstone of the Explanation and render it nugatory. This is so because of the fact that unless the assessed income is accepted as the correct income of the assessee himself (and the Explanation in terms says so) the very question of the application of the Explanation could not arise. The anvil on which the attraction of the Explanation is rested is the twin criteria of the income returned by the assessee on the one hand and that assessed by the Department on the other."

6. The Tribunal in the present case, although it had made reference to Additional Commissioner of Income Tax Vs. Karnail Singh V. Kaleran, while discussing the matter, yet, as is evident from the discussion in the order, it has taken a correct

view of the import of the Explanation, that is, it held that in the given case, the onus to prove that the concealment was not due to fraud or gross or wilful neglect on the part of the assessee, was on the assessee. The Tribunal, after considering the facts on the record, however, termed the explanation offered by the assessee as plausible and then it turned to the Revenue to prove that the explanation offered by the assessee was false. The Tribunal found that the Revenue led no evidence to do so and it, therefore, accepted the explanation and held that no penalty was exigible. This, in fact, is in accord with the ratio of the Full Bench decision of this court in Vishwakarma Industries Vs. Commissioner of Income Tax, , as would be clear from the following observations made therein (p. 671) :

"To conclude, it must be held that the patent intent of the Legislature in amending Section 271(1)(c) and in inserting the Explanation thereto by the Finance Act of 1964 was to bring about a change in the existing law. Consequently, the ratio of Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, , which had considered the earlier provision of Section 28(1) of the 1922 Act is no longer attracted. The true legal import of the Explanation is to shift the burden of proof from the Department on to the shoulders of the assessee in the class of cases where the returned income was less than 80 per cent, of the income assessed by the Department. In this category of cases, the Explanation raises three rebuttable presumptions against the assessee as spelt out in detail above in para. 16 of this judgment. The onus of proof for rebutting these presumption lies on the assessee. This burden, however, can be discharged (as in civil cases) by preponderance of evidence. Equally, it would be permissible in the penalty proceedings for the assessee to show and prove that on the existing material itself, the presumption raised by the Explanation stands rebutted. On these point Additional Commissioner of Income Tax Vs. Karnail Singh V. Kaleran, does not lay down the law correctly."

7. Learned counsel for the Revenue, however, maintained that in the light of the Full Bench decision in Vishwakarma Industries Vs. Commissioner of Income Tax, , the Tribunal could not require the Revenue to prove the falsity of the explanation. This assertion on the part of the Revenue runs counter to the observations of the Full Bench extracted above. Once the assessee's explanation is found plausible by the Tribunal, then the same has to be accepted, unless there exists any material on the record or brought on the record by the Revenue to show that, in fact, the explanation offered by the assessee is false. In the present case, the Tribunal has expressly stated that the explanation offered by the assessee was plausible and it further mentioned that the Revenue had led no evidence to prove that it was false and, therefore, it accepted the same. The explanation offered by the assessee, unless it is inherently false, cannot be treated as false merely because the Department says so and if the Tribunal finds it plausible, it must be accepted, unless some material brought on the record by the Revenue proves its falsity.

8. For the reasons aforementioned, we answer the referred question in the affirmative, that is, in favour the assessee and against the Revenue in all the three references--Wealth-tax References Nos. 11 and 12 of 1980 and 14 of 1983. There will, however, be no order as to costs.