

(2002) 10 DEL CK 0067
In the Delhi High Court
Case No : WTC No. 102 of 1985

Commissioner of Wealth Tax

APPELLANT

Vs

Jai Gopal Goel

RESPONDENT

Date of Decision : 10-10-2002

Acts Referred:

Wealth Tax Act, 1957 — Section 18(1), 27(3)

Citation : (2003) 179 CTR 193 : (2003) 263 ITR 425 : (2003) 132 TAXMAN 905

Hon'ble Judges : Sharda Aggarwal, J; D.K. Jain, J

Bench : Division Bench

Advocate : Sanjiv Khanna, for the Appellant; C.S. Aggarwal and Prakash Kumar, for the Respondent

Judgement

D.K. Jain, J.—By this petition u/s 27(3) of the WT Act, 1957 (for short the Act), the Revenue seeks a direction to the Tribunal, Delhi Benches, to state the case and refer the following questions, stated to be one of law, for the opinion of this Court :

1. "Whether, the Tribunal was correct in law in holding that there was no fraud or willful neglect on the part of the assessed in spite of the fact that in his wealth-tax return filed on 31st March, 1974, he had shown his total wealth of Rs. 1,88,775 under the head "movable property" and he had not disclosed the value of his immovable property ?"

2. "Whether, the Tribunal Was correct in law in cancelling the penalty of Rs. 4,10,000 imposed u/s 18(1)(c) of the WT Act, 1957, which had been upheld by the CWT(A) ?"

2. Background facts giving rise to the present petition are that for the asst. yr. 1974-75, the assessed filed his wealth-tax return declaring a net wealth of Rs. 1,88,775, which represented only the movable property. The return was accepted u/s 16(1) of the Act. However, the assessed moved a petition before the WTO u/s 35 of the Act for rectification of the assessment order, stating that while

computing his wealth, some assets have been included twice over and the liabilities had not been correctly deducted. The application was rejected by the WTO. Against the said order, the assessed filed a revision petition before the CWT(A) u/s 25(1) of the Act wherein it was stated that the return was prepared by the accountant and it was signed by the assessed under the bona fide impression that it was correct. The application was accepted by the CWT and the assessment framed was set aside with a direction to the WTO to pass a fresh order.

In the fresh proceedings before the WTO, the AO found that the assessed had declared that he had some immovable property in the form of a plot and structure at Ghaziabad. He required the assessed to submit complete details about the said property along with the basis of its valuation. Pursuant thereto the assessed filed a revised return along with the valuation report by an approved valuer showing the value of the property at Rs. 5,10,100, determined by adopting rent capitalisation method. A fresh assessment order was passed on the basis of the said return. However, while doing so, proceedings u/s 18(1)(c) of the Act were initiated against the assessed for concealing his wealth. After granting an opportunity to the assessed, a penalty of Rs. 5,10,100, being 100 per cent of the concealed wealth, was imposed by the WTO. assessed's appeal to the CWT(A) was partly successful inasmuch as the CWT(A) reduced the quantum of penalty by Rs. 1 lac.

The assessed took the matter in further appeal to the Tribunal. While deleting the penalty, the Tribunal took note of the fact that in the original return, the value of the land and building had been shown though under the head "movable property"; after the assessment the assessed moved a miscellaneous application seeking rectification and in this application the existence of land and building was also disclosed; up to the stage of rectification application the WTO had not made any inquiries in the matter and the facts regarding immovable property, were disclosed by the assessed himself. Considering the behavior of the assessed in approaching the authorities and the CWT even when his return had been accepted, the Tribunal found that there was no intention on the part of the assessed to conceal wealth or to avoid the payment of wealth-tax. Regarding the fair market value of the asset, the Tribunal felt that the investments made by the assessed and the figures shown in his balance sheet, the disclosure of the value of the asset on actual cost basis could not be said to be an act of fraud in the light of his aforementioned conduct, when he himself got the assessment reopened. The Tribunal has observed that if the assessed had intended to defraud the Revenue he would not have taken any action after his returned wealth had been accepted and, further, he would not have pursued his rectification application even by filing revision petition before the CWT, The Tribunal finally held that there was no gross or willful neglect on the part of the assessed and the onus which lay on him under Explanation to Section 18(1)(c) stood discharged. Revenue's application u/s 27(1) of the Act having been dismissed, the present petition has been filed.

3. We have heard Mr. Sanjiv Khanna, learned senior standing counsel for the Revenue and Mr. C.S. Aggarwal, learned counsel for the assessed.

4. It is vehemently submitted by Mr. Sanjiv Khanna that the disclosure of the immovable property by the assessed was not a voluntary act on his part and it was only after searching inquiries had been made by the WTO that the assessed had no option but to declare his wealth correctly and, Therefore, the finding of the Tribunal that there was no gross or willful neglect on the part of the assessed in disclosing the asset in question is, per se, perverse, giving rise to a question of law, Mr. C.S. Aggarwal, learned counsel for the assessed, on the other hand, while supporting the order passed by the Tribunal has submitted that the findings recorded by the Tribunal while coming to the aforementioned conclusion are based on cogent material on record and cannot be said to be perverse. It is asserted that the aforementioned finding are pure findings of fact giving rise to no question of law.

5. We find substance in the contention of learned counsel for the assessed. Having carefully perused the order of the Tribunal deleting the penalty, we find that the findings recorded by the Tribunal, which are essentially findings of fact, cannot be said to be irrational or without any basis, as is sought to be contended by learned counsel for the Revenue. In our opinion, no question of law arises from the said order and the Tribunal was justified in rejecting Revenue's request for reference to this Court. The petition is accordingly dismissed with no order as to costs.