(1985) 03 AHC CK 0030

In the Allahabad High Court

Case No : W.T. Application No''s. 234 to 241 of 1983

Commissioner of Wealth Tax — APPELLANT

Vs

Jangi Lal — RESPONDENT

Date of Decision : 11-03-1985

Acts Referred:

Voluntary Disclosure of Income and Wealth Ordinance, 1975 — Section 15, 16(1)
Wealth Tax Act, 1957 — Section 18(1), 27

Citation : (1986) 50 CTR 55 : (1986) 157 ITR 119 : (1986) 27 TAXMAN 521

Hon'ble Judges : N.D. Ojha, J;A.N. Dikshita, J

Bench : Division Bench

Advocate : Bharatji Agarwal and M. Katju, for the Appellant; S. Chopra, for the Respondent

Judgement

N.D. Ojha, J.—These eight applications u/s 27(3) of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act"), have been made by the Commissioner of Wealth-tax, Allahabad. They pertain to the assessment years 1967-68 to 1974-75, The assessee, opposite party, apart from the returned wealth in respect of the aforesaid assessment years, made a voluntary disclosure also of his wealth in pursuance of the Voluntary Disclosure of Income and Wealth Ordinance, 1975 (Ordinance No. 15 of 1975) (hereinafter referred to as "the Ordinance"). The Wealth-tax Officer, however, initiated proceedings against the assessee for imposition of penalty and passed separate orders imposing penalty on the petitioner in respect of the aforesaid assessment years. Against these orders, the assessee preferred appeals before the Appellate Assistant Commissioner. These appeals were, however, dismissed by a consolidated order dated January 12, 1981. The matter was taken up by the assessee in further appeals before the Income Tax Appellate Tribunal, Allahabad (Bench B). Those appeals were allowed by the Tribunal by its order dated October 25, 1982. The Commissioner of Wealth-tax thereafter made these applications before the Tribunal u/s 27(1) of the Act for referring the following two questions to this court for its opinion :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal is legally correct in its interpretation of Section 15 of the Voluntary Disclosure of Income and Wealth Ordinance, 1975, that it granted immunity against penalty with reference to wealth declared in whomsoever''s hands it came up for consideration ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is legally correct in cancelling the penalty imposed u/s 18(1)(a)?"

2. The Tribunal, however, by its order dated August 4, 1983, dismissed those applications and it is in these circumstances that the present applications have been made by the Commissioner of Wealth-tax before this court u/s 27(3) of the Act requiring the Tribunal to draw up a statement of case and refer the aforesaid two questions to this court for its opinion.

3. Having heard counsel for the parties, we are of opinion that the questions mentioned above are not questions of law arising out of the order of the Tribunal. It has been urged by Sri Markhandey Katju, appearing for the applicant, that since the orders of the Wealth-tax Officer in this behalf did not disclose that he had accepted the voluntary disclosure made by the assessee, the Appellate Assistant Commissioner was right in upholding the imposition of penalty by the Wealth-tax Officer. We find it difficult to agree with this submission. Section 15 of the Ordinance is the relevant section which deals with voluntary disclosure of wealth. It does not contemplate the acceptance by a specific order of the voluntary disclosure made by the assessee. The requirement of the said section which is relevant for the disposal of these applications was that voluntary disclosure could be made on or after the date of commencement of the Ordinance but before the first day of January, 1976, by any person and that such disclosure had to be in the form of declaration in respect of (a) the net wealth chargeable to wealth-tax for any assessment year for which he has failed to furnish a return u/s 14 of the Wealth-tax Act ; or (b) the value of the assets which has not been disclosed or the value of the assets which has been understated, in any return of net wealth for any assessment year. If the declaration in the aforesaid manner was made then, notwithstanding anything contained in the Act, the net wealth, or, as the case may be, the value so declared was not to be taken into account for the purpose of any proceedings relating to imposition of any penalty on the person making the declaration or for purposes of prosecution of the declaration under the Wealth-tax Act. Further, as is apparent from the appellate order of the Tribunal, each of the wealth-tax assessment orders for the assessment years in question recorded the following :

"The assessee has made a voluntary disclosure u/s 15(1) of the Voluntary Disclosure of Income and Wealth Ordinance, 1975, and disclosed a net wealth of...... The assessee will be given immunities to this extent as laid down under the Disclosure Scheme."

4. This indicates that the voluntary disclosure was accepted. The appellate order

further indicates that it was not disputed that the wealth-tax chargeable in respect of the net wealth for the assessment years in question was paid by the declaration within the time prescribed. The Appellate Tribunal while dismissing the applications made by the Commissioner of Income Tax u/s 27(1) of the Act has held that the finding recorded by it in its appellate order did not give rise to any referable question. In view of what has been pointed out above, we are of the opinion that it is not possible to hold that the view taken by the Tribunal in this behalf is incorrect. The assessee, in view of the fact that he had complied with the requirements of Section 15 of the Ordinance and in view of the order passed by the Wealth-tax Officer quoted above, was entitled to the immunity from imposition of penalty as held by the Tribunal. It is in this view of the matter that we are of the opinion that no question of law arises out of the appellate order of the Tribunal so as to require the Tribunal to refer that question to this court for its opinion.

5. In the result, all these applications are dismissed. The assessee will be entitled to one set of costs of Rs. 125.