

(1996) 06 GAU CK 0030

In the Gauhati High Court

Case No : Wealth-tax Reference No. 12 of 1990

Commissioner of Wealth-tax

APPELLANT

Vs

Kanak Chandra Sarma

RESPONDENT

Date of Decision : 19-06-1996

Acts Referred:

Income Tax Act, 1961 — Section 256
Wealth Tax Act, 1957 — Section 27

Citation : (1996) 222 ITR 65

Hon'ble Judges : S.B. Roy, J;D.N. Baruah, J

Bench : Division Bench

Advocate : J.K. Joshi and U. Bhuyan, for the Appellant; None, for the Respondent

Judgement

D.N. Baruah, J.—As per direction given by this court in Civil Rules Nos. 4(M) and 5(M) of 1977 for the assessment years 1968-69 and 1969-70, the Tribunal has referred the following question u/s 27(3) of the Wealth-tax Act, 1957, for opinion of this court :

"Whether on filing of an application u/s 18(2A) of the Wealth-tax Act, 1957, by the assessee before the Commissioner of Wealth-tax for waiver or reduction of penalty imposable u/s 18(1)(a) of the Act, there is a legal presumption of lack of reasonable cause for delay in furnishing the return which precludes the assessee from agitating that question in appeal ?"

2. The assessee is an individual. The Assessing Officer imposed penalty u/s 18(1) (a) of the Act for both the years for late filing of the returns. For the assessment year 1968-69, the Wealth-tax Officer found that the assessee filed the return on September 5, 1970, showing a net wealth of Rs. 2,83,566 which was assessed as such. Although the date of filing of the return was extended up to August 31, 1968, the Wealth-tax Officer initiated proceedings u/s 18(1)(a) with which the assessee complied and contended that the accounts of the firm, Janambhumi Press and Janambhumi, were finalised only on January 10, 1970, and the wealth-

tax return was filed on September 5, 1970, and as the accounts could not be prepared in time, the assessee could not ascertain his share of profit and details of capital account. The Wealth-tax Officer found that the assessee was a managing partner of the said firm and was an old assessee. He also observed that as per the partnership deed the books of account were to be closed by 31st day of March of that year and the return was to be filed on January 20, 1970. The Wealth-tax Officer also observed that the assessee did not apply for time if there were any reasonable grounds at all for extension of time. The Wealth-tax Officer did not accept the contention of the assessee and held that the penalty was chargeable. Accordingly, he imposed a penalty of Rs. 15,732 for the delay of 24 months for the assessment year 1968-69. Similarly, for the assessment year 1969-70, the return was due on or before June 30, 1969, The assessee filed the return on January 19, 1971, showing a net wealth of Rs. 2,90,672 and was assessed as such. Here also the Wealth-tax Officer rejected the explanation given on the same reason.

3. The assessee took up the matter for both the assessment years before the Appellate Assistant Commissioner raising various contentions. The Appellate Assistant Commissioner amongst others and after considering various submissions made before him held that the assessee admitted that the default continued up to the date on which the assessee actually filed the returns for both the years. Accordingly, the Appellate Assistant Commissioner did not accept the contentions of the assessee regarding the existence of reasonable cause for the delay in filing the returns. In respect of the quantum of the penalty, the assessee contended that the same was required to be calculated at the prevailing rate on the first day of the relevant assessment year. According to the Wealth-tax Officer, the delay had occurred from point to point and as such the penalty for the completed months had to be calculated as per the provisions of law as prevalent at the relevant time. Accordingly, the Appellate Assistant Commissioner upheld the penalty. The assessee approached the Tribunal also which after considering all the aspects of the matter held that the delay for the assessment years 1968-69 and 1969-70 should be considered only from the date of finalisation of the accounts of the firm, i.e., for the assessment year 1968-69 from January 10, 1970, and for the assessment year 1969-70 from November 14, 1970. The Tribunal held that the penalties would require check up for these two years taking into consideration the directions issued by the Commissioner of Wealth-tax.

4. We have gone through the judgment of the Tribunal. We do not find that the question arises out of the order of the Tribunal. Mr. Joshi, in spite of his best efforts, however, has not been able to show that the question has arisen out of the order passed by the Tribunal. Mr. Joshi submits that the question has been referred by this court and, therefore, it should be taken. The power of this court u/s 256 is limited only to certain extent. In Commissioner of Income Tax, Bombay Vs. Scindia Steam Navigation Co. Ltd., , the Supreme Court held that when a question is raised before the Tribunal and is dealt with by it, it is clearly

one arising out of its order. When a question of law is raised before the Tribunal but the Tribunal fails to deal with it, it must be deemed to have been dealt with by it and is, therefore, one arising out of its order. When a question is not raised before the Tribunal but the Tribunal deals with it, that will also be a question arising out of its order. When a question of law is neither raised before the Tribunal nor considered by it, it will not be a question arising out of its order notwithstanding that it may arise on the findings given by it. But we do not find that the present question comes under any of the three conditions as laid down by the apex court. Similarly, regarding the submission of Mr. Joshi that the question was referred as per direction of this court, we are of the opinion that merely because the question is referred at the instance of the High Court, that cannot be a ground for answering the question u/s 256. In Commissioner of Income Tax, West Bengal, Calcutta Vs. Smt. Anusuya Devi, the apex court held that (page 756) :

"The High Court is, however, not bound to answer a question merely because it is raised and referred. It is well-settled that the High Court may decline to answer a question of fact or a question of law which is purely academic, or has no bearing on the dispute between the parties or though referred by the Tribunal does not arise out of its order. The High Court may also decline to answer a question arising out of the order of the Tribunal, if it is unnecessary or irrelevant or is not calculated to dispose of the real issue between the taxpayer and the Department. If the power of the High Court to refuse to answer questions other than those which are questions of law directly related to the dispute between the taxpayer and the Department, and which, when answered, would determine qua that question the dispute, be granted, we fail to see any ground for restricting that power when by an erroneous order the High Court has directed the Tribunal to state a case on a question which did not arise out of the order of the Tribunal."

5. In this case we find that no question has arisen out of the order of the Tribunal. Therefore, the submission of Mr. Joshi fails.

6. In view of the aforesaid, we decline to answer the question.