
(1987) 08 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Wealth-tax Reference No. 23 of 1978

Commissioner of Wealth-tax

APPELLANT

Vs

Kishan Dev

RESPONDENT

Date of Decision : 12-08-1987

Acts Referred:

Wealth Tax Act, 1957 — Section 18(1), 27(10)

Citation : (1987) 08 P&H CK 0013

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

Bench : Division Bench

Advocate : L.K. Sood, for the Appellant; S.S. Mahajan and J.S. Bhatti, for the Respondent

Judgement

S.S. Sodhi, J.—The reference here has to be returned unanswered. The question referred for the opinion of this court being :

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in cancelling the penalty by holding that the delayed completion of the accounts of the firm constituted a reasonable cause for the delay in the filing of the wealth-tax return of the assessee-partner without requiring him to prove that he was diligent and vigilant and made all efforts to get the accounts of the firm completed in time ? "

2. The facts relevant to this matter are that the wealth-tax return for the assessment year 1971-72 which should have been filed on or before June 30, 1971, was filed beyond that date by the assessee, namely, on February 20, 1973. At the time of assessment, the Wealth-tax Officer also initiated penalty proceedings against the assessee u/s 18(1)(a) of the Wealth-tax Act, 1957 (hereinafter referred to as " the Act"), for not having filed the wealth-tax return in time. The assessee submitted a written explanation to account for this delay by taking the plea that as the accounts of the firm, of which he was a partner, had not been completed within time, he could not ascertain the value of his interest in that firm and could not, therefore, file the wealth-tax return in time.

This explanation was rejected by the Wealth-tax Officer who imposed a penalty of Rs. 15,430. On appeal, the Appellate Assistant Commissioner held that the assessee had reasonable cause for the delay in the filing of the wealth-tax return and the imposition of penalty was consequently not justified. This order of the Appellate Assistant Commissioner cancelling the penalty was upheld on appeal by the Tribunal. It is this that led the Commissioner of Wealth-tax, Amritsar, to seek the reference now before us.

3. It is now well-settled, as held by this court in Commissioner of Income Tax Vs. Vidya Sagar, that the question whether there was reasonable cause for filing a delayed return, is a pure question of fact and no question of law arises therefrom and no reference can, therefore, be sought with regard to it. A similar view was expressed in two later judgments of this court namely, Addl. CIT v. Roshan Lal Kuthiala [1978] 100 ITR 329 and Commissioner of Wealth-tax Vs. Smt. Kamla Devi, .

4. Further, it has also been ruled by this court in Telu Ram Raunqi Ram Vs. Commissioner of Income Tax, that if the decision of a High Court of a State covers a question sought to be referred to that High Court, then so far as the Tribunal of that State is concerned, no referable question of law can be said to arise, even if the given question raises a question of law, as otherwise it will tantamount to questioning the correctness of the binding decision of the High Court by the Tribunal.

5. The legal position being as set forth above, this reference cannot but be left unanswered and is accordingly returned as such.

D.S. Tewatia, J.

6. I agree.