(1986) 08 CAL CK 0007

In the Calcutta High Court

Case No : Matter No. 986 of 1978

Commissioner of Wealth Tax APPELLANT

Vs

Krishna Bazaz RESPONDENT

Date of Decision : 14-08-1986

Acts Referred:
Wealth Tax Act, 1957 — Section 14(1), 18(1)

Citation : (1987) 64 CTR 145 : (1987) 166 ITR 620 : (1987) 34 TAXMAN 46

Hon'ble Judges : Monjula Bose, J;Dipak Kumar Sen, J

Bench : Division Bench

Advocate : H.M. Dhar and Sunil Mukherjee, for the Appellant;R.N. Dutta, amicus curiae, for the Respondent

Judgement

Dipak Kumar Sen, J.—Sri Krishna Bazaz, the assessee, was assessed to wealth-tax for the assessment year 1968-69, the valuation date being July 8, 1967. The due date for filing the return u/s 14(1) of the Wealth-tax Act, 1957, was June 30, 1968, but the assessee filed his return on November 6, 1969.

2. For the delay in filing the return, the Wealth-tax Officer initiated penalty proceedings against the assessee u/s 18(1)(a) of the Wealth-tax Act and penalty of Rs. 23,400 was levied. The contention of the assessee that the delay in filing the return was on account of her illness was not accepted.

3. On an appeal by the assessee, the Appellate Assistant Commissioner held that there was no reasonable cause for - the delay and that penalty was leviable. The Appellate Assistant Commissioner, however, directed that penalty should be levied in accordance with the law in force prior to the amendment of Section 18(1) of the Wealth-tax Act which came into force from April 1, 1969.

4. The Revenue being aggrieved came up on appeal before the Income Tax Appellate Tribunal. It was contended on behalf of the Revenue before the Tribunal that as the default continued beyond April 1, 1969, penalty was levied on the assessee for the period up to March 31, 1969, under the provisions of law as

effective up to that date and thereafter at the increased rate under the amended law. The Tribunal did not accept the contention of the Revenue and following the decisions of the Madras High Court and the Allahabad High Court, respectively, held that the offence was committed on the due date when the return was not filed and the law on that date would govern the levy of penalty.

5. On an application by the Revenue u/s 27(1) of the Wealth-tax Act, the following question stated to be a question of law arising out of the order of the Tribunal has been referred for the opinion of this court :

" Whether, on the facts and in the circumstances of the case, the penalty would be leviable under the law in force before its amendment by the Finance Act, 1969, for the entire period of default or under the pre amended law for the period of default up to March 31, 1969, and under the, amended law for the default after March 31, 1969 ? "

6. Controversy in this case, in our view, appears to be covered by several decisions of the Supreme Court, (a) The first decision is in Brij Mohan Vs. Commissioner of Income Tax , New Delhi, . In this case, it was held by the Supreme Court that where penalty was imposed on account of commission of a wrongful act, it was the law operating on the date on which the wrongful act was committed which would determine the penalty,

(b) Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth, . The facts of this case are similar to the facts before us. It was held by the Supreme Court in this case that where the assessee committed default u/s 18(1)(a) of the Wealth-tax Act, 1957, in failing to file his return of wealth-tax on or before the due date without reasonable cause, penalty was to be computed in accordance with the law in force when the return in question had to be filed.

(c) Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, . In this case, for the assessment year 1961-62, the assessee failed to file the return of income till the date due nor did the assessee ask for extension. The return was filed after a delay of seven months when the Income Tax Act, 1961, had come into force. Penalty was imposed u/s 271(1)(a) of the Act of 1961. The question arose as to under what law penalty would be quantified.

7. The Supreme Court held that though the default occurred in September, 1961, the relevant date for the purpose of initiating proceedings for imposition of penalty was, when the Income Tax Officer decided to impose penalty after the assessment. It was held that the Income Tax Act, 1961, would apply. The Supreme Court further held that in the scheme for imposing penalty under the Income Tax Act, 1961, the default was to be treated as a continuing default. The earlier decision of the Supreme Court in Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth, was overruled.

8. Following Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, , we answer the question by stating that penalty in the instant case would be leviable in

accordance with the law in force when wealth-tax assessment was completed and the Wealth-tax Officer decided to initiate proceedings for imposition of penalty. Accordingly, the amended law which came into force after April 1, 1969, would apply to the penalty proceeding. The question is accordingly answered in favour of the Revenue.

9. As no one appeared for the assessee, we invited learned advocate, Mr. R. N. Dutt, to act as amicus curiae. We record our appreciation of the assistance rendered by the amicus curiae who drew our attention to the relevant decisions of the Supreme Court.

10. The reference is disposed of accordingly. There will be no order as to costs.

Monjula Bose, J.

11. I agree.

