
(1982) 03 MP CK 0023

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No"s. 170 to 173 of 1980

COMMISSIONER OF WEALTH TAX

APPELLANT

Vs

NANDKISHORE BADRILAL.

RESPONDENT

Date of Decision : 05-03-1982

Acts Referred:

Citation : (1983) 35 CTR 42

Hon'ble Judges : Sohani, J

Bench : Division Bench

Judgement

Sohani, J. - The order in this case shall also govern the disposal of Misc. Civil Cases No. 171, 172 and 173 all of 1980, as common questions are involved in these cases.

2. These are applications u/s 27(3) of the WT Act, 1957 (hereinafter referred to as the Act).

3. The material facts giving rise to these application are as follows :

In these cases, the assessment years in question are 1966-67, and 1968-69. For these assessment years the assessee filed the return of net wealth on 17-11-1970. The WTO initiated penalty proceeding u/s 18(1)(a)(i) of the Act for the delay in filing the return and imposed penalty, in accordance with the amended provisions, which came into force on 1-4-1969. On appeal, however, the AAC held that the WTO was wrong in applying the provisions amended from 1-4-1969 even though the default had occurred prior to the coming into force of the amended provisions. The AAC, therefore, directed the WTO to calculate the amount of penalty afresh in accordance with law. On further appeal before the Tribunal, the Tribunal affirmed the view of the AAC and dismissed the appeals filed by the department. The applications for making a reference u/s 27(1) of the Act submitted by the department were also rejected by the Tribunal. Hence, the department has filed these application.

4. Having heard Id. counsel for the parties, we have come to the conclusion that these applications deserve to be rejected because the question of law sought to be referred to this court is now concluded by the judgment of the Supreme Court in Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth, . The Supreme Court has held that where the default complained of is one falling u/s 18(1)(a) of the Act the penalty is to be computed in accordance with the law in force on the last date, on which the return in question had to be filed. The Supreme Court, further, held that the amendment brought into force in 1969, had no retrospective effect. It was, however, contended by Shri Mukati, the Id. counsel for the department the quantum of penalty subsequent to 1-4-1969 would have to be calculated in accordance with the amended provisions and hence a question of law arose in these applications. The contention cannot be upheld. The Supreme Court has, in the aforesaid decision, held that the default, if any, is committed on the last date allowed to file the returns and that it is not a continuing default and hence the amended provisions would not be attracted. Therefore, it must be held that the question of law sought to be referred is one, which is concluded by the decision of the Supreme Court and hence a reference on this question would be academic.

5. For all these reasons, therefore, the applications are rejected. Parties shall bear their own costs of these applications.

Applications rejected.