

(1979) 11 AHC CK 0079
In the Allahabad High Court
Case No : W.T.R. No. 177 of 1978

COMMISSIONER OF WEALTH TAX

APPELLANT

Vs

NARAIN DASS JAIN.

RESPONDENT

Date of Decision : 28-11-1979

Acts Referred:

Citation : (1980) 17 CTR 50 : (1980) 3 TAXMAN 506

Hon'ble Judges : R. R. Rastogi, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

JUDGMENT : R. R. Rastogi, J. - The ITAT, Allahabad Bench, Allahabad, has referred the following question for the opinion of this Court :

"Whether on the facts and in the circumstances of the case the Tribunal was right in holding that penalties u/s 18(1)(a) for asst. yrs. 1967-68 and 1968-69 were liable to be calculated in accordance with the law as it stood before amendment on 1-4-1969 even for the period of default after 31-3-1969, and not as per the increased scale of penalty introduced w.e.f. 1-4-69 by the Finance Act, 1969."

The reference relates to the asst. yrs. 1967-68 and 1968-69. The assessee, a HUF should have filed its returns of total wealth for these years by 30th June, 1967 and 30th June 1968 respectively. These were, however, filed on 20th February 1973. The WTO hence took action for levy of penalty u/s 18(1)(a) of the WT Act and issued a notice to the assessee to show cause. Pursuant to that notice the assessee furnished an explanation but that did not find favour with the WTO and he imposed penalties in sums of Rs. 56,690/- and Rs. 61,510/-.

2. The assessee appealed. The AAC accepted the assessee's contention that the delay in the filing of the returns was for a reasonable cause, and he accordingly set aside the penalty orders. Being aggrieved the Department took the matter in appeal before the Appl. Tribunal. The Appl. Tribunal accepted the assessee's contention that there was reasonable cause for not filing the returns up to

December 1971, but thereafter there was no reasonable cause for delay and levy of penalty for the period of default after 1-1-1972 was, therefore, upheld. Coming to the computation of penalty the Appl. Tribunal took the view that even for the default after 1-1-1972 penalty should be calculated in accordance with the law as it stood before the amendment of the Act made on 1-4-1969. The amounts of penalties, therefore, were proportionately reduced; hence this reference at the instance of the Department.

3. The question in regard to the date when default occurs stands almost settled by a decision of this Court in the case of CWT, Lucknow v. Ram Narain Agarwal. The ratio of that decision is that the law operative on the date when the infringement takes place is the law applicable unless it is made applicable ex-post facto. The date of default is the date on which the return should have been filed and thus, the law as applicable on that date will have to be applied. That being the position, the Appl. Tribunal was right in calculating the amount of penalty on the basis of the law as applicable on the date when the default occurred. The fact, that for a portion of the period of default the assessee had a reasonable cause, would not alter the position in this behalf, for the default had already occurred.

4. We, therefore, agree with the view taken by the Appl. Tribunal and answer the question in the affirmative, in favour of the assessee and against the Department. As none appears for the respondent-assessee, there shall be no order as to costs.