
(1991) 04 DEL CK 0050

In the Delhi High Court

Case No : WT Ref. No's. 38 to 41 of 1976

Commissioner of Wealth Tax

APPELLANT

Vs

Narinder Kaur

RESPONDENT

Date of Decision : 12-04-1991

Acts Referred:

Citation : (1991) 04 DEL CK 0050

Hon'ble Judges : Milap Chand Jain, C.J.; Arun Kumar, J

Bench : Division Bench

Advocate : B. Gupta, for the Appellant;

Judgement

M.C. Jain, C.J.—The Income Tax Appellate Tribunal, Delhi Bench B, New Delhi, has referred the following questions of law for the opinion of this Court which arose out of the order dt. 24th February, 1975 of Delhi Bench "B" of the Income Tax Appellate Tribunal in WTA Nos. 342 to 345 (Del)/72-73 :

"1. Whether on the facts and in the circumstances of the case, the Tribunal was justified in confirming the AAC's order reducing the penalty levied by the WTO under s. 18(1)(a) of the WT Act, 1957 ?

2. Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that if maximum penalty of 50% of the tax had been reached under the law for default up to 31st March, 1969, there would be no further penalty for default after that date ?

3. Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that in case where maximum penalty of 50% had not been reached on 31st March, 1969 the old law for default prior to 1st April, 1969 would apply even for the period of default subsequent to 31st March, 1969 ?

2. The assessed respondent submitted wealth-tax returns in respect of all the four assessment years on 17th March, 1970. In respect of first asst. yr. 1965-66, the delay was of 16 months 18 days. In respect of subsequent assessment year

the delay was 14 days months and 16 days and for the further assessment year the delay was 32 months and 16 days and in the last assessment year the delay was 20 months and up to 31st March, 1969 and the other period commencing from 1st April, 1969 as the law was amended w.e.f. 1st April, 1969. The rate of penalty up to 31st March, 1969 was 2% per month of the tax; whereas the rate of penalty w.e.f. 1st April, 1969 was half per cent per month of the assessed wealth.

3. In appeals, the AAC of Income Tax (Special Range-I) allowed the appeals in part and remanded the matters back to the WTO for recalculating the penalties in the light of directions given by the AAC. However, on further appeal by the WTO, the Tribunal set aside the order of the AAC for the asst. yr. 1964-65 and declined to interfere with the other orders related to the asst. yrs. 1965-66 to 1968-69.

4. On an application under s. 27(1) of the WT Act, 1957, the Tribunal has made these references on the aforesaid questions of law.

5. The question that emerges for consideration in the present reference is as to whether the rate of penalty applicable to the assessed in respect of four assessment years is the law as obtained w.e.f. 1st April, 1969 or the law as it obtained prior to 1st April, 1969. The law was amended from 1st April, 1969 as stated above. The question of applicability of the rate of penalty would depend upon the question as to whether the default is a continuous default on the part of the assessed or the default is a fixed one which has arisen once on the part of the assessed when he was required to file the return. The law on this question now stands settled by the Supreme Court in *Maya Rani Punj vs. CIT* expressed in *Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth*, stands overruled. Their Lordships of the Supreme Court in *Maya Rani Punj* (supra) observed that in view of the language used in s. 271(1)(a) of the IT Act, 1961, the decision was beyond dispute that the Legislature intended to deem the non-filing of the return to be a continuing wrong for which penalty was to be visited, which commenced from the date of default and continued month after month until compliance was made and the default but with reference to continued default was obviously on the footing that non-compliance with the obligation of making a return was an infraction as long as the default continued. If a duty continued from day-to-day, the non-performance of that duty from day-to day is a continuing wrong. The legislative scheme under s. 271(1)(a) of the 1961 Act in making provision for a penalty co-terminus with the default provided for a situation of continuing wrong.

6. This Court too had an occasion to deal with the question after the decision in *Maya Rani Punj* (supra).

7. This case relates to imposition of penalty under the WT Act for delay in filing the return. Reference may be made to *Commissioner of Wealth Tax Vs. Inder Sain Jain and Satyapal Jain*, . It has been held following the aforesaid decision of the Supreme Court that for delay in filing return under s. 14(1) of the WT Act, the law applicable for levy of penalty under s. 18(1)(a) of the Act is a law

prevailing on the date the return was filed and not the law existing on the relevant valuation date.

8. Thus, it would be clear that the law is settled and penalty had to be imposed according to the amended provisions of s. 18(1)(a) w.e.f. 1st April, 1969. Our answer to the questions are in the negative, in favor of the Revenue and against the assessed.

9. The opinion expressed by this Court in respect of questions referred to above be sent to the Tribunal.