

(1976) 07 MAD CK 0022

In the Madras High Court

Case No : Tax Case Petition No's. 99 to 102 of 1976

Commissioner of Wealth Tax

APPELLANT

Vs

P. Krishnaswamy Mudaliar

RESPONDENT

Date of Decision : 12-07-1976

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 256(2)
Wealth Tax Act, 1957 — Section 18(3)

Citation : (1977) 110 ITR 301

Hon'ble Judges : Sethuraman, J;Ismail, J

Bench : Division Bench

Advocate : J. Jayaraman and Nalini Chidambaram, for the Appellant; S.V. Subramaniam, for Subbaraya Ayyar, Padmanabhan and Ramamani, for the Respondent

Judgement

Ismail, J.—By these petitions u/s 27(3) of the Wealth-tax Act, 1957, the Commissioner of Wealth-tax, Tamil Nadu-II, Madras, requests the

court to direct the Income Tax Appellate Tribunal, Madras Bench, to refer the following questions of law for the opinion of this court:

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in cancelling the penalties levied u/s 18(1)(c)

of the Wealth-tax Act for the assessment years 1966-67 to 1969-70?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding and had valid materials to hold that

the assessee cannot be charged with the concealment of wealth ?

3. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that penalty u/s 18(1)(c) of the Wealth-

tax Act should not be levied on the assessee because penalty for concealment of

income was not levied on him ?

4. Whether a liability to penalty u/s 18(1)(c) of the Wealth-tax Act and the liability u/s 271(1)(c) of the Income Tax Act are not different and

whether penalty under section, 18(1)(c) of the Wealth-tax Act should not be levied independently ?

5. Whether the Appellate Tribunal's view is reasonable one and based on valid and relevant considerations ?

2. The facts that give rise to these question are as follows : The respondent herein is a partner of the firm, M/s. P. Krishnaswamy and Company,

Madras. In respect of the assessment years 1964-65 and 1965-66 of the firm, dealing with Income Tax, certain peak credits of the hundi loans as

a result of settlement arrived at between the firm and the department, were agreed to be spread over for the assessment years 1966-67 to 1969-

70 as the income from the firm and the same to be capitalised. This was effected pursuant to a settlement entered into between the firm and the

department, and one of the terms of the settlement was that minimum penalty should be levied for all the years and that the wealth-tax assessment

of the partners should be modified. It is the common case that no penalty under the Income Tax Act was levied. Subsequently, action was taken

u/s 18(1)(c) read with Section 18(3) of the Wealth-tax Act, 1957, for levy of penalty for all these years, viz., 1966-67 to 1969-70. The Inspecting

Assistant Commissioner passed orders levying penalty in a hurried manner in view of the fact that the time limit for passing the order was about to

expire. The Tribunal has extracted the relevant part of the order of the Inspecting Assistant Commissioner in its order. The same is as follows ;

The matter is simple. There is no dispute on facts. Section 18(2A) application is pending. Limitation for penalty expires on March 31, 1973. That

the assessee had not admitted the peak in the original wealth-tax return renders him liable for penalty. The concealment is Rs. 79,348. In the

circumstances, I direct that the assessee shall pay by way of penalty u/s 18(1) (c) for the assessment year 1966-67 a sum of Rs. 79,348 (rupees

seventy nine thousand three hundred and forty-eight only). The Wealth-tax Officer will issue the demand notice and chalan accordingly.

3. We must point out that this order was passed after the assessee had filed a revised wealth-tax return showing his share in the capitalised amount

of the firm referred to already as part of his wealth. The assessee contended that he was not liable to any penalty under the Wealth-tax Act, because the necessity for filing the wealth-tax return arose as a result of the settlement arrived at between the firm and the department, in respect of the Income Tax of the assessee, and but for that, there would have been no occasion for him to file a revised return showing a larger wealth, and, therefore, no penalty whatever can be levied. The Tribunal set aside the order of penalty pointing out the summary manner in which the Inspecting Assistant Commissioner had dealt with the question of penalty with reference to the statutory provision concerned and also the fact that there was settlement between the firm and the department and the extra wealth had to be shown only as a result of the settlement. It is thereafter the Commissioner requested the Tribunal to refer to this court the questions of law extracted already. On the Tribunal rejecting the applications, the Commissioner has come up to this court.

4. We are clearly of the opinion that no question of law arises on the facts of this case. It is admitted that there was a settlement between the department and the firm in respect of the Income Tax assessment proceedings. In these proceedings, one of the terms of the settlement was that minimum penalty was leviable in respect of the Income Tax and the wealth-tax assessment will have to be modified. There is no specific reference to any penalty leviable under the Wealth-tax Act. We are of the opinion that, having regard to the terms of the settlement, it was the intention of the parties that no penalty should be levied under the Wealth-tax Act. We are referring to this aspect of the matter because the wealth for the four successive years, unlike income, which accrues or arises, year after year, will be practically the same subject to any accretion or disposal and if a penalty equivalent to the value-of the total wealth is levied, the penalty for the four years will be four times the total wealth itself and such a thing could not have been in the contemplation of the parties. The petitions filed before this court refer to the total wealth declared for four years as under :

S. No. Assessment year Total wealth declared

Rs.

1. 1966-67 1,61,669

2. 1967-68 1,77,163

3. 1968-69 2,62,990

4. 1969-70 1,54,001

Thus, it will be seen that from 1966-67 to 1967-68, there is a small increase in the wealth, that from 1967-68 to 1968-69, there is a further

increase in the wealth, and in the year 1969-70, the wealth has come down to Rs. 1,54,001. If the penalty for all these four years is to be levied

equivalent to the value of the wealth declared for each year, certainly, it will be several times more than the value of the wealth itself, and that is one

of the reasons why we are of the view that when the settlement was effected, it was the intention of the parties that no penalty under the Wealth-tax

Act should be levied, and that a minimum penalty under the Income Tax Act should be levied. As we have already pointed out, even this minimum

penalty under the Income Tax Act had not been levied. Under these circumstances, having regard to the fact that the entire thing took place as a

result of the settlement arrived at between the department and the firm, the levy of penalty was not called for, and the Tribunal was right in setting

aside the order of the Inspecting Assistant Commissioner. Having regard to these facts, no question of law can be said to arise out of the order of

the Tribunal.

5. Accordingly, these petitions are dismissed. There will be no order as to costs.