
(1991) 09 SC CK 0018

In the Supreme Court Of India

Case No : Civil Appeal No. 2367 of 1980

Commissioner of Wealth-tax

APPELLANT

Vs

P.N. Banerjee

RESPONDENT

Date of Decision : 12-09-1991

Acts Referred:

Wealth Tax Act, 1957 — Section 18(1)(a)

Citation : (1992) 102 CTR 166 : (1991) 192 ITR 399

Hon'ble Judges : V. Ramaswami, J;S. Ranganathan, J;D. N. Ojha, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

1. This is an appeal by certificate from judgment of the Allahabad High Court (P.N. Banerjee Vs. Commissioner of Wealth-tax, , in a wealth-tax reference. The reference before the High Court related to two assessment years but we are concerned only with one of the two assessment years and this is in the assessment year 1967-68. The question posed before the High Court was (at p. 660) :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the penalty should be calculated on the basis of the law prevailing prior to April 1, 1969, for the assessment year 1967-68 ?

2. For the assessment year 1967-68, the wealth-tax return by the asses-see was due to be filed on or before June 30, 1967. The return, however, was filed only on June 12, 1971. In between April 1, 1967 (which was the first day of the assessment year 1967-68) and the date when the return was filed, there was an amendment of the provisions of Section 18(1)(a) of the Wealth-tax Act, 1957. Under the new provisions, the penalty was to be calculated with reference to the net wealth whereas earlier the penalty had to be calculated with reference to the amount of tax sought to be avoided. The income tax Officer levied a penalty on the former basis because the return had been filed on June 12, 1971. On appeal,

however, the Appellate Tribunal took the view that the law applicable for imposing the penalty will be the law as it stood on the first day of the assessment year in question and, accordingly, it directed that so far as the assessment year 1967-68 was concerned, the penalty should be recomputed on the basis of the tax sought to be avoided and calculated in accordance with the provisions of the Act as they stood before the amendment on April 1, 1969. This view of the Tribunal was confirmed by the High Court following its own earlier decision in Commissioner of Wealth-tax Vs. Ram Narain Agrawal, . Hence, this appeal by the department.

3. The question is now concluded by the decision of this Court in Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, . Though that is a decision under the income tax Act, the provisions of the Wealth-tax Act are analogous and the nature of the amendment was also identical. Under the Wealth-tax Act, an earlier view had been taken by this Court in Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth, . But this view was overruled in Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, referred to earlier. The Court held that, in view of the language used in Section 271(l)(a) of the 1961 Act (corresponding to Section 18(1)(a) of the Wealth-tax Act), the position was beyond dispute that the Legislature intended to deem the non-filing of the return to be a continuing default and the wrong for which penalty was to be visited, commenced from the date of default and continued month after month until compliance was made and the default came to an end. The imposition of penalty, the Court held, was not to be confined to the first default but with reference to the continued default on the footing that non-compliance with the obligation of making a return was an infraction as long as the default continued. In other words, it appears that, as a result of this decision, the amount of penalty has to be quantified up to March 31, 1969 on the basis of the earlier provisions and, after that date, on the basis of the amended provisions.

4. In view of the decision of this Court, the High Court judgment has to be set aside. We order accordingly. The amount of penalty will now have to be quantified in terms of the decision of this Court. The Tribunal will now proceed to dispose of the appeal before it conformably to this judgment.

5. The appeal is disposed of accordingly. There will be no order as to costs.