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(1991) 03 AHC CK 0047

In the Allahabad High Court

Case No : Wealth-tax Reference No. 204 of 1979

Commissioner of Wealth-tax APPELLANT

Vs

Prag Nath RESPONDENT

Date of Decision : 13-03-1991

Acts Referred:

Wealth Tax Act, 1957 — Section 18(1)

Citation : (1992) 194 ITR 222

Hon'ble Judges : B.P. Jeevan Reddy, C.J;S.R. Singh, J

Bench : Division Bench

Judgement

B.P. Jeevan Reddy, C.J.—u/s 27(1) of the Wealth-tax Act, 1957, the Tribunal has stated the following question :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was legally justified in striking down the order dated January 4, 1977, of the Inspecting Assistant Commissioner on the ground that the Inspecting Assistant Commissioner had no jurisdiction to pass the penalty order ?"

2. For the assessment year 1965-66, the assessee, an individual, filed the return on February 8, 1967. Proceedings were taken u/s 17 of the Act in response to which another return was filed on December 1, 1971. Observing that there was concealment of assets by the assessee, proceedings were taken for levying penalty u/s 18 of the Act, However, since the penalty imposed exceeded the jurisdiction of the Wealth-tax Officer, as it then stood, the proceedings were made over to the Inspecting Assistant Commissioner. The latter passed orders on January 4, 1977, imposing penalty of Rs. 53,395 u/s 18(1)(c) of the Act. The assessee filed an appeal and it was contended that, on the date the Inspecting Assistant Commissioner passed the orders, the relevant provision contained in section 18(3) was amended and that the Inspecting Assistant Commissioner lost the jurisdiction to impose the penalty. By virtue of the amendment, the power to impose penalty was given to the Wealth-tax Officer irrespective of the quantum

of penalty imposable though of course subject to the approval of the higher authority. This point was accepted by the Tribunal and the penalty quashed. Thereupon, the present reference was obtained.

3. The question raised herein is concluded in favour of the assessee and against the Revenue by the decision of this court in Commissioner of Income Tax Vs. Om Sons, . Though the said decision is contrary to the view taken by certain other High Courts in the country, the said decision is binding upon us on the above point Accordingly, following the same, we answer the question in favour of the assessee and against the Revenue.

4. The reference is answered accordingly. No costs.

5. Learned standing counsel for the Revenue makes an oral request for grant of a certificate u/s 29(1) of the Wealth-tax Act. Since there is a conflict of opinion amongst the High Courts in the country on this question, we are of the opinion that it deserves to be certified as a fit case for appeal to the Supreme Court u/s 29(1) of the Act. A certificate shall, accordingly, be issued.

