(1988) 01 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 422 of 1983

COMMISSIONER OF WEALTH-TAX — APPELLANT

Vs

RAM AWATAR. — RESPONDENT

Date of Decision : 12-01-1988

Acts Referred:
Wealth Tax Act, 1957 — Section 27(3)

Citation : (1989) 71 CTR 21 : (1988) 71 CTR 21 : (1989) 177 ITR 429 : (1988) 40 TAXMAN 344

Hon'ble Judges : C. P. Sen, J

Bench : Division Bench

Judgement

C. P. SEN J. - In pursuance of the direction of this court u/s 27(3) of the Wealth-tax Act, 1957, in Miscellaneous Civil Case No.522 of 1981, decided on November 19, 1982, the Income Tax Appellate Tribunal has stated the case and referred the following question of law for this courts opinion:

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in cancelling the penalties of Rs. 3,000 and Rs. 16,500 as imposed by the Wealth-tax Officer u/s 18(1)(a) of the Act for the assessment years 1971-72 and 1972-73, without taking into account the fact that the assessee was given opportunity by the Appellate Assistant Commissioner to give his explanation on the question of delay and to substantiate the same ?"

The assessee filed his returns of wealth for the two years in dispute on August 16, 1974, while the returns were due on June 30, 1971 and July 31, 1972. Penalty proceedings for filing the returns late were started and the assessees counsel wars heard. But no reasonable cause was shown. The Wealth-tax Officer, therefore, imposed penalty of Rs.3,000 for the assessment year 1971-72 and Rs. 16,500 for the assessment year 1972-73. The Wealth-tax Officer also levied a penalty of Rs. 1,075 for the assessment year 1973-74, which is not the subject-matter of this reference. The assessee went up in appeals before the Appellate Assistant Commissioner, who disposed of the appeals for the years 1971-72 to

1973-74 by a common order. The explanation of the assessee that he was under a bona fide belief that only his capital in the firm was subject to wealth-tax, was not accepted, in further appeals to the Tribunal, all the three appeals were disposed of by a common order. So far as the appeal for the assessment year 1973-74 was concerned, the penalty has already been waived by the Wealth-tax Officer and regarding the penalties for the years 1971-72 and 1972-73, the Tribunal has observed that the order of the Commissioner of Wealth-tax is very septic and that although there is an entry on February 14, 1978, for hearing of the case, there is no earlier order fixing the hearing on that date. The orders of the Wealth-tax Officer, not being speaking orders and against the principles of natural justice, were quashed. On an application being made u/s 27(3) of the Act, the aforesaid question was directed to be referred to this court. This question is directly covered by the decision of this court in Sardar Pritam Singh Vs. Commissioner of Income Tax, . "Notice issued to show cause why penalty be not imposed-Prayer for adjournment of proceedings granted-Assessee not appearing on the date fixed-Order imposing penalty passed_ Tribunal l justified in holding that assessee was granted reasonable opportunity of being heard before the imposition of penalty."

In the present case, the Appellate Assistant Commissioner had heard the assessee and his explanation was found to be unacceptable. It was also observed that when the case was fixed for hearing before the Wealth-tax Officer and a prayer for adjournment was made, it was refused. It was also mentioned that the assessees counsel was heard and no reasonable cause of the Revenue and against the assessee. Under the circumstances, there shall be no order as to costs, since the assessee has not appeared and opposed the reference.

