

(1981) 12 OHC CK 0031

In the Orissa High Court

Case No : S.J.C. No's. 248 to 254 of 1977

Commissioner of Wealth-tax

APPELLANT

Vs

Ramniklal D. Mehta

RESPONDENT

Date of Decision : 16-12-1981

Acts Referred:

Wealth Tax Act, 1957 — Section 14(1), 17

Citation : (1982) 28 CTR 69 : (1982) 136 ITR 729

Hon'ble Judges : R.N. Misra, C.J.;B.K. Behera, J

Bench : Division Bench

Advocate : None, for the Respondent

Judgement

R.N. Misra, C.J.—In terms of a direction given by this court u/s 27(3) of the W.T. Act at the instance of the revenue, the Cuttack Bench of the Wealth-tax Appellate Tribunal has stated these cases and has referred the following common question for the opinion of the court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in deleting the imposition of penalty in each of the years in question ?"

2. We are concerned with assessment years 1965-66 to 1971-72. For all these years, the assessee filed his return on November 2, 1972, although he had been served with notices u/s 17 of the Act for the three latter assessment years out of these, namely, 1969-70 to 1971-72. Proceedings for the imposition of penalty were initiated for the non-filing of returns and as the assessing officer was not satisfied about the existence of any reasonable cause on the basis of the explanation offered, he imposed various amounts of penalties for these years.

3. The assessee's appeals before the AAC were dismissed. He came to hold that the delinquency committed by the assessee was a continuing one and, therefore, the law as it stood on the date of imposition of penalty was applicable for the computation of penalty and accordingly the various demands of penalties were confirmed.

4. In second appeals, the assessee pleaded before the Tribunal that a reasonable explanation had been furnished before the AAC for the delay in the filing of the returns and the same should have been accepted. The Tribunal held :

"In this case, the assessee had offered no explanation before the Wealth-tax Officer. Therefore, he (the WTO) had no occasion to consider whether there was reasonable cause or not. Before the Appellate Assistant Commissioner the assessee's case was that he was not at all aware of his legal obligation for filing the wealth-tax returns in terms of Section 14(1) of the Act. This explanation did not find favour with the Appellate Assistant Commissioner because he was of the opinion that the assessee, having been assessed to Income Tax from a long time back and having the benefit of regular advice from the taxation lawyer was definitely aware of the obligation cast upon him u/s 14(1) of the Wealth-tax Act and, accordingly, the assessee was liable to penalty for consciously disregarding that obligation. But in consideration of the facts of the case, we are of the opinion that the conclusion of the Appellate Assistant Commissioner was based on mere guess-work. The normal presumption is that almost all the assesseees are completely dependent upon their lawyers or advisers for the highly technical taxation affairs, involving change almost in every year and sometimes more than once within one year and, consequently, they cannot comply with the terms of the Act unless they are advised by their taxation lawyers. It is not the case of the Appellate Assistant Commissioner that the assessee had not filed his wealth-tax returns although he was advised to file the same by his lawyer. The fact that the assessee's wealth became taxable in the year 1964 was within the knowledge of his taxation lawyer cannot be denied because that wealth consisted of mainly his interest in two concerns--M/s. Ramniklal & Co. and M/s. Venilal & Co., the incomes from which were used to be returned by the assessee year after year for his Income Tax assessment. We were told by the learned departmental representative that excepting one assessment year the assessee was never penalised for delayed submission of his Income Tax returns. We are unable to accede to the submission of the learned departmental representative to the effect that the assessee was liable to penalty for negligence of his lawyer who was his agent in accordance with law. The reason is that the facts of this case are peculiar. The assessee was not hitherto assessed to wealth-tax. These were the first assessments to wealth-tax. The assessee was being advised by a lawyer who admittedly advised the assessee to file the Income Tax returns year after year. There is no reason as to why the assessee should have avoided filing the wealth-tax returns had he, in fact, been advised to do so. We find no material on record to come to the firm conclusion that the assessee knew his liability u/s 14(1) of the Wealth-tax Act prior to the service of notice u/s 17. He could not have hoped to conceal the particulars of wealth from the department because they were already on the departmental records. Considering the totality of the circumstances, we are inclined to believe the explanation given by the assessee before the Appellate Assistant Commissioner that the assessee was unaware of his statutory liability. We are not concerned with the question as to how and why

the adviser of the assessee failed to advise the assessee regarding the filing of the returns voluntarily. Once we come to the conclusion that the assessee did not, in fact, get any such advice from him, his explanation must be regarded as satisfactory in the facts of the case....."

5. With these findings, the imposition of penalty has been annulled.

6. There is no dispute that the law is not that in every case of default, the assessee be visited with penalty. In the celebrated decision of the Supreme Court in the case of Hindustan Steel Ltd. Vs. State of Orissa, it has been clearly indicated by the Supreme Court that because there is a power to levy penalty, it is not obligatory that penalty should be levied. An assessee is visited with penalty when his conduct is contumacious or there is a wilful disregard of legal obligations. The WTO could in a given set of facts condone the delay by not penalising the assessee. That power of the WTO is exercisable by the appellate authorities. The Tribunal, in our view, has exercised that power in coming to hold that, on the facts of the case, a situation for the imposition of penalty had not arisen. Learned standing counsel does not dispute the power of the appellate authority. We find that cogent reasons have been advanced by the Tribunal to come to that conclusion. We would, accordingly, hold that, on the facts and in the circumstances of this case, the Tribunal was fully justified in directing the deletion of penalty.

7. Since the assessee has not appeared in spite of notice, there would be no order for costs of these references.

Behera, J.

8. I agree with my Lord the Chief Justice.