

(1982) 02 OHC CK 0011

In the Orissa High Court

Case No : S.J.C. No's. 211, 212 and 213 of 1977

Commissioner of Wealth-tax

APPELLANT

Vs

R.K. Deo

RESPONDENT

Date of Decision : 12-02-1982

Acts Referred:

Wealth Tax Act, 1957 — Section 17, 18(1)

Citation : (1982) 137 ITR 324

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

Bench : Division Bench

Advocate : R. Mohanty, for the Respondent

Judgement

R.N. Misra, C.J.—On applications being made u/s 27(3) of the W.T. Act of 1957 (hereinafter referred to as "the Act") by the revenue, this court by order dated February 6, 1979, directed the Wealth-tax Appellate Tribunal to state a case and refer the following common question for opinion of the court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that penalty was not exigible ?"

2. Assessee is an individual being the ex-zamindar of Jeypore in the district of Koraput. Under the provisions of Section 14(1) of the Act, returns should have been filed on or before September 30, 1967, September 30, 1968 and September 30, 1969, for the corresponding assessment years 1967-68, 1968-69 and 1969-70, respectively. When the assessee did not file returns the WTO served notices u/s 17 of the Act in July, 1972, for the three years under consideration. Returns became due in August, 1972, but the assessee actually filed the returns for all the three years on September 13, 1972. The WTO was of the opinion that the assessee had committed default and started proceedings for penalising him u/s 18(1) of the Act. When notices were issued, the assessee took the stand that he had lost his mental balance and was under medical treatment between 1967 and 1972 and was not in a position to attend to normal business.

When he received the notices u/s 17 of the Act, he knew that returns had not been filed and took immediate steps for complying with the notices. In short, his stand was that the delay was on account of sufficient cause and under unavoidable circumstances and, therefore, the proceedings should be dropped.

3. The WTO took the view that the explanation of the assessee was not entertainable, in the absence of evidence regarding the actual state of the mental condition, and the statutory obligation for furnishing voluntary returns in the case of liability was paramount and unconditional. He also took note of the feature that the assessee had not applied for extension of time. He, therefore, imposed penalties to the tune of Rs. 10,61,530, Rs. 7,38,600 and Rs. 5,50,480 respectively for the three assessment years.

4. The assessee appealed to the AAC and produced certain material in support of his stand of mental illness. It was contended on his behalf that he was relying upon a power-of-attorney-holder who was none other than his wife and she on account of her social circumstances depended upon a paid employee for managing the taxation affairs of the assessee. It was further contended that the assessee was entitled to huge refunds from the department and in these circumstances there could be no occasion for an intentional or contumacious avoidance of the statutory obligation. The AAC did not dispute the plea of illness, but found that the power-of-attorney-holder and the employees were negligent in fulfilling the statutory requirements and the consequences of their negligence had to be suffered by the assessee. He concluded that the assessee was liable to penalty but reduced the quantum to the basic minimum in terms of the law as it stood at the relevant time. As a result of the appellate order for the first two years the penalty amounts stood at Rs. 7,63,000 and Rs. 6,51,263 respectively. There was no reduction in the last year's penalty amount.

5. In second appeals by the assessee, the stand taken before the WTO and the appellate authority was reiterated. It was emphatically contended that the assessee being ill, his wife had been given a power-of-attorney, but the wife joined politics, left the matters in the hand of a paid manager; the said manager had for some time been quite faithful and, therefore, was taken as reliable, but when rift developed between the assessee and his wife, the paid manager ceased to be faithful and took advantage of the situation. Ultimately, he left service in 1972. The assessee bona fide thought that the returns had been filed in time. Only when notices u/s 17 of the Act, were served, the default came to the notice of the assessee and steps were taken for filing the returns immediately. It was next contended that the assessee had really no tax to pay for these years as refunds due to him were more than the demand. It was also the contention of the assessee that the facts of the case did not warrant the assessee to be visited with any penalty.

6. The Tribunal found as a fact that the assessee was suffering from mental illness for a long period including the period under consideration. From the appellate order it appears that the revenue did not challenge this position. The

Tribunal further found that the management of the estate had been taken over by the court of wards for some time and after its release in 1965, it was managed by the wife of the assessee under a power-of-attorney. The Tribunal, therefore, held that the assessee was not in a position to behave and manage his affairs as a prudent man. Having examined the facts of the case, it came to a categorical finding that the assessee was prevented by sufficient cause from filing his returns within the prescribed time limit. It further found that the assessee was entitled to refunds after adjustment of wealth-tax liability for the three years under consideration and, therefore, there could be no motive for avoiding payment of tax by delaying the filing of returns. It accepted the position that the assessee did not know that there was default in the filing of the returns until the notice came. For similar defaults under the I.T. Act, no penalty had been levied and the assessee's stand was apparently accepted. The fact that all the three returns were simultaneously filed soon after the notices u/s 17 of the Act, were issued, led the Tribunal to hold that the assessee's conduct was not contumacious. With these findings, the Tribunal vacated the penalties. It may be pointed out that the Appellate Tribunal had also relied upon the decision of the Patna High Court in the case of Additional Commissioner of Income Tax Vs. Bihar Textiles, , for holding that once notices issued u/s 17 of the Act, requiring returns to be filed, the past default, if any, of the assessee must be taken to have been wiped out.

7. This very Division Bench had occasion to deal with the ratio of the Patna decision referred to above in an unreported decision of this court in the case of Commissioner of Income Tax Vs. Ravi Talkies, . The unreported decision related to a levy of penalty u/s 271(1)(a) of the I.T. Act. The question for consideration there was, whether the Tribunal was right in directing that penalty should be calculated only from the date of filing the return fixed by the service of notices under Sections 148 and 139(2) of the Act, and with the issue of such notices whether the past default stood wiped out ? This court did not approve of the ratio of the Patna decision and has categorically held that the accrued liability of default for non-compliance with the statutory obligation is in no way affected by the issue of notice requiring the assessee to file returns. We are inclined to reiterate the same view. Therefore, no support is available from the ratio of the Patna decision for wiping out the penalty.

8. The real question for consideration is whether there was sufficient cause for the delay in furnishing the returns for the three years. As was pointed out by the Judicial Committee of the Privy Council in the case of CIT v. Laxminarain Badridas [1937] 5 ITR 170

"If the assessment in this case was made by the officer to the best of his judgment, it must stand unless the assessee succeeded in satisfying the officer that he had not a reasonable opportunity to comply or was prevented by sufficient cause from complying with the terms of the notice u/s 22(4) requiring him to produce or cause to be produced his accounts for three years. This he

failed to do, and upon the undisputed and indisputable facts of the case he necessarily so failed. His application u/s 27 for cancellation of the assessment was doomed to failure, and his appeal to the Assistant Commissioner u/s 30 was equally incapable of success. There the matters should have ended, unless the Commissioner chose to proceed u/s 33. The questions involved were purely questions of fact, indeed one might say of self-evident fact, and no reference in regard thereto should have been made u/s 66(2)."

9. Whether there was sufficient or reasonable cause for the assessee's failure to file a return has been held in several authorities as a question of fact. See for instance, *Commissioner of Income Tax Vs. Vidya Sagar*, , *Commissioner of Income Tax Vs. V.M. Modi and Sons*, , *Commissioner of Income Tax Vs. Dilsukhrai Ranglal*, . A Bench of this court in the case of *CIT v. Nilamani Ghosh* 1976 C.T.R. (Ori) 118, also took the view that whether there was a reasonable cause or not was a question of fact.

10. The Tribunal in the instant case on the basis of materials placed before it has come to the clear conclusion that there existed sufficient cause for not filing the returns when they became due. We do not think, a question of law can be culled out of the situation.

11. It was pointed out by the Supreme Court in the case of *Hindustan Steel Ltd. Vs. State of Orissa*,

"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation."

12. The Tribunal exercising appellate jurisdiction was entitled to consider whether circumstances existed which warranted levy of penalty and on the basis of facts placed before it, it has come to the factual conclusion that the situation was such that visiting the assessee with penalty was not warranted. We do not think, out of such a situation a question of law can be carved out.

13. We accordingly hold that the finding of the Tribunal was concluded by fact and no question of law emerges out of the appellate order for being dealt with by this court. Parties are directed to bear their own costs of these references.

B.K. Behera, J.

14. I agree with my Lord the Chief Justice.