
(1984) 05 PAT CK 0025
In the Patna High Court
Case No : Tax Case No's. 73 to 76 of 1974

Commissioner of Wealth Tax

APPELLANT

Vs

Saraswati Devi

RESPONDENT

Date of Decision : 18-05-1984

Acts Referred:

Wealth Tax Act, 1957 — Section 18(1)

Citation : (1985) 45 CTR 244 : (1985) 151 ITR 300

Hon'ble Judges : S.K. Jha, J;A.K. Sinha, J

Bench : Division Bench

Advocate : B.P. Rajgarhia and I.K. Sharan, for the Appellant; Rameshwar Prasad No. 2, for the Respondent

Judgement

1. This batch of four cases are references made u/s 27(1) of the W.T. Act, 1957 (hereinafter referred to as "the Act"). The income tax Appellate Tribunal, Patna Bench "A", Patna, has submitted a consolidated statement of the case and invited our decision with regard to a common question arising out of the assessment orders for the four years being assessment years 1965-66, 1966-67, 1967-68 and 1968-69. The questions referred for our decision are:

Re :--Assessment year 1965-66:

" Whether, on the facts and in the circumstances of the case, the Tribunal were justified in reducing the penalty to Rs. 82 for the assessment year 1965-66 as against Rs. 1,993 imposed by the Wealth-tax Officer ? "

Re :--Assessment year 1966-67 :

" Whether, on the facts and in the circumstances of the case, the Tribunal were justified in reducing the penalty to Rs. 95 for the assessment year 1966-67 as against Rs. 2,340 imposed by the Wealth-tax Officer ? "

Re :--Assessment year 1967-68 :

" Whether, on the facts and in the circumstances of the case, the Tribunal were

justified in reducing the penalty to Rs. 113 for the assessment year 1967-68 as against Rs. 2,305 imposed by the Wealth-tax Officer ? "

Re :--Assessment year 1968-69:

" Whether, on the facts and in the circumstances of the case, the Tribunal were justified in reducing the penalty to Rs. 110 for the assessment year 1968-69 as against Rs. 2,520 imposed by the Wealth-tax Officer ?"

2. Though the Commissioner of Wealth-tax has made separate application for each year, the Tribunal proceeded to draw up a consolidated statement of case as stated above.

3. The WTO imposed penalties of Rs. 1,993, Rs. 2,340, Rs. 2,305 and Rs. 2,520 u/s 18(1)(a) of the Act in respect of the assessment years 1965-66 to 1968-69, respectively. The wealth-tax returns in respect of these assessment years were due by 30th June of the relevant assessment years. However, the returns for all these years had been filed only on February 3, 1970. The WTO found that there was a delay in the filing of the returns and the period of delay ranged from 55 months to 7 months. Wealth returned by the assessee ranged from Rs. 1,32,750 to 1,72,066. The wealth shown had been accepted in the assessments made by the WTO.

4. A notice was issued to the assessee by the WTO to show cause as to why she should not be levied penalty under the provision of the Act for the late filing of the returns. In response to the show-cause notice, it was stated by the assessee that she had filed the returns voluntarily and had also paid the tax thereon and thus it is a fit case for condonation of delay. According to the assessee, she filed the returns when she came to know of her liability under the Act. The explanation given by the assessee was not accepted by the WTO who imposed penalties as stated above. The orders of the WTO have been marked as annexures A, A1, A2 and A3, respectively, and form part of the statement of the case.

5. Before the AAC, the same arguments were reiterated and it was submitted that the appellant having made the returns and deposited the tax deserved some consideration from the Department. It was also submitted that a token penalty was sufficient in such a case to meet the ends of justice. The AAC held that it was the assessee's responsibility to file her return as there was no doubt that her wealth exceeded the limit of exemption laid down under the Act, The AAC did not accept the plea that the WTO could have knowledge about the assessee's wealth by looking into the balance-sheet of the company whose shares were held by the assessee. The Appellate Assistant Commissioner further held that the value of these shares either on the basis of their face value or on the basis of their break up value would make the assessee liable for wealth-tax. The AAC also found that there was nothing to suggest from the records up to February, 1970, that the assessee was under the belief that her wealth did not exceed the taxable limit and the AAC came to the conclusion that the assessee had no reasonable

cause for the inordinate delay in filing of the returns. The assessee had admitted her default in her statement of facts. The AAC also upheld the calculation of penalty as made by the WTO and dismissed the assessee's appeals. The order of the AAC has been marked as annexure 8 to the statement of the case.

6. When the matter came up before the Appellate Tribunal, it was submitted on behalf of the assessee that in these cases, the Department had not proved that the default was deliberate. It was further submitted that the explanation given by the assessee that she was not aware of her liability under the Act should have been accepted. The Tribunal, however, found that the only plea taken by the assessee was that if the Department had issued notice to the assessee, the assessee would have filed the returns. It also found that there was nothing to show that the assessee came to know about her wealth-tax liability only on February 3, 1970, when the I.T. returns were filed. The Tribunal, however, held this contention to be untenable in law and on this point upheld the orders of the AAC. The imposition of penalty was, therefore, upheld and the quantum thereof was substantially reduced for the years in question on the ground that the law before its amendment in 1969 applied to these assessment years. The Tribunal, accordingly, sustained the penalties only of Rs. 82, Rs. 95, Rs. 113 and Rs. 110, respectively, for the assessment years in question. The Tribunal was of the view that the amendment of Section 18(1)(a) affected the substantive right of the assessee and was not a part of the procedural law and, therefore, it could not have any retrospective effect. The amendment aforementioned came into force with effect from April 1, 1969, that is to say, from the assessment year 1969-70.

7. The only point that deserves our consideration to answer the question posed before us is as to whether the Tribunal was right in taking the view that the amendment could not have any retrospective effect and could not apply to the assessment year prior to the assessment year 1969-70. There can be no doubt even as a matter of first impression that the view taken by the Tribunal was correct. The nature of the aforesaid amendment inserted in the year 1969 u/s 24 of the Finance Act affects prejudicially the financial liability of the assessee and there can be no manner of doubt that any statutory provision affecting substantive rights of the assessee, unless expressly stated by the statute itself or by necessary intendment, can have no retrospective operation. The legal principle apart, this has now been settled by the Supreme Court in the case of Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth, . In that case, the Supreme Court held that the default cannot be one committed every month after the last date on which the return had to be filed and in determining the quantum of penalty, the multiplier to be adopted cannot have any effect of making the default a continuing one. Nor do they make the amended provisions modifying the penalty applicable to earlier defaults in the absence of necessary provisions in the amending Acts. The principle underlying s. 6 of the General Clauses Act is made applicable to such cases. It was, therefore, held by the Supreme Court in that case that where the default complained of was one falling u/s 18(1)(a) of the Act, penalty had to be computed in accordance with the law in force on the

last day on which the return in question had to be filed. Neither the amendment made in 1964 nor the amendment made in 1969 had any retrospective effect. The question posed before us, therefore, has already been answered by the Supreme Court on principle in Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth, , wherein it has been categorically held that the amendment made in 1969 had no retrospective effect. In that view of the matter, we come to the conclusion that the Tribunal had correctly applied the principle for the computation of the quantum of penalty in each of the cases before us. The questions referred for the respective years are, therefore, answered in the affirmative, in favour of the assessee and against the Revenue.

8. In view of the fair attitude of the learned senior standing counsel for the Revenue, however, we shall make no order as to costs.