

(1984) 03 RAJ CK 0016

In the Rajasthan High Court

Case No : Wealth-tax Reference Case No's. 103 and 104 of 1980

Commissioner of Wealth Tax

APPELLANT

Vs

S.K. Golecha

RESPONDENT

Date of Decision : 23-03-1984

Acts Referred:

Wealth Tax Act, 1957 — Section 18(1), 27(3)

Citation : (1985) 45 CTR 36 : (1985) 156 ITR 877 : (1984) 19 TAXMAN 197

Hon'ble Judges : S.N. Bhargava, J; S.C. Agrawal, J

Bench : Division Bench

Advocate : R.N. Surolia, for the Appellant; S.K. Keshote, for the Respondent

Judgement

1. Both these reference cases arise out of the applications submitted by the Commissioner of Wealth-tax, Jaipur Circle, Jaipur, u/s 27(3) of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act"), for directing the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, to state the case and refer the questions of law arising out of its order dated September 19, 1978, in Wealth-tax Appeals Nos. 36 and 37/JP/74-75 relating to the assessment years 1967-68 and 1968-69.

2. The non-petitioner assessee filed his wealth-tax return relating to the assessment year 1967-68 on March 31, 1969, declaring a net wealth of Rs. 1,00,000. Subsequently, on June 23, 1971, he filed a revised return declaring net wealth of Rs. 1,87,359. By order dated June 30, 1971, the Wealth-tax Officer completed the assessment on a net wealth of Rs. 2,45,417, but subsequently the said assessment order was rectified by the Wealth-tax Officer u/s 35 of the Act and the net wealth of the assessee for the said year was computed at Rs. 1,97,716. After completing the assessment, the Wealth-tax Officer initiated penalty proceedings against the assessee u/s 18(1)(c) of the Act, but since the penalty leviable exceeded the pecuniary jurisdiction of the Wealth-tax Officer, he referred the matter to the Inspecting Assistant Commissioner of Income Tax and the Inspecting Assistant Commissioner by order dated March 25, 1974, imposed a penalty of Rs. 97,800 u/s 18(1)(c) of the Act.

3. In respect of the assessment year 1968-69, the assessee filed his wealth-tax return on March 31, 1969, declaring a net wealth of Rs. 1,00,000. On July 23, 1971, he filed a revised return declaring the net wealth of Rs. 2,23,894. By order dated March 30, 1972, the Wealth-tax Officer completed the assessment on a net wealth of Rs. 4,29,501. At the time of completing the assessment, the Wealth-tax Officer initiated proceedings u/s 18(1)(c) of the Act, but since penalty leviable exceeded the pecuniary jurisdiction of the Wealth-tax Officer, he referred the matter to the Inspecting Assistant Commissioner of Income Tax and the Inspecting Assistant Commissioner by order dated March 25, 1974, imposed a penalty of Rs. 3,30,000 u/s 18(1)(c) of the Act.

4. Feeling aggrieved by the aforesaid orders regarding the imposition of penalty passed by the Inspecting Assistant Commissioner, the assessee filed appeals No. W.T.A. 36 & 37/JP/74-75, which were disposed of by the Tribunal, by a common order dated September 15, 1978. Before the Tribunal, reliance was placed on behalf of the Department on the Explanation to Section 18(1)(c) of the Act and it was submitted that the presumption arising under the said Explanation had not been rebutted by the assessee and, therefore, the penalty had been rightly imposed by the Inspecting Assistant Commissioner. The Tribunal held that from the facts, it was clear that the original returns were filed suo motu and bona fide on estimate basis and later on when the assessee was able to collect the relevant data, he filed revised returns declaring his net wealth on the first date of hearing voluntarily and that by these dates of the filing of the revised returns, the Wealth-tax Officer had not discovered any mistake in the original returns. According to the Tribunal, the failure to return the correct wealth did not arise from any fraud or gross or wilful neglect and the lapse, if any, was unintentional. The Tribunal further found that from the explanation of the assessee as furnished before the Inspecting Assistant Commissioner and other contentions urged by him to consider, in their entirety, it would be clear that in the present case, the assessee was able to discharge the initial onus which lay upon him and that on behalf of the Revenue, no material or circumstances were brought on record from which it could be established that the conduct of the assessee had been contumacious and the assessee in conscious disregard of his obligations failed to furnish correct particulars of his assets and that on the other hand, the preponderance of probabilities and the circumstances of the case were in favour of holding that the original returns were bona fide filed- The Tribunal, therefore, cancelled the orders passed by the Inspecting Assistant Commissioner imposing penalties on the assessee.

5. Thereupon, the Commissioner of Income Tax moved applications before the Tribunal u/s 27(1) of the Act to draw up the statement of the case and to refer certain questions of law arising out of the Tribunal's order dated September 15, 1978, for the opinion of this court. The Tribunal, by its order dated September 11, 1979, rejected the said applications on the view that the Tribunal, in its order dated September 15, 1978, had given a finding of fact and that there was no fraud or gross or wilful neglect on the part of the assessee in

not returning the assessed net wealth in respect of the years under consideration. According to the Tribunal, the said finding of fact recorded by the Tribunal could not be said to be contrary to the weight on the record or having been arrived at without considering the entire evidence on record. The Tribunal has held that the said finding was arrived at after considering all the facts and material evidence on record. The Tribunal further held that the question whether the statutory presumption is rebutted by evidence or not, is always a question of fact. The Tribunal, therefore, held that no question of law arises out of the Tribunal's order and, therefore, rejected the application submitted by the Commissioner of Wealth-tax. Thereupon the Commissioner has filed these applications.

6. In Wealth-tax Reference Case No. 103 of 1980, it is prayed that the Tribunal may be directed to refer the following questions for the opinion of this court:

" 1. Whether, on the facts and in the circumstances of the case, the order of the Tribunal setting aside the penalty in respect of the assessment year 1967-68 is based on mere conjectures and surmises and no reasonable man will come to the conclusion to which the Tribunal has arrived at in setting aside the penalty imposed by the Inspecting Assistant Commissioner ?

2. Whether, on the facts and in the circumstances of the case and without satisfactorily meeting the reasons advanced by the Inspecting Assistant Commissioner in imposing the penalty on the assessee in respect of the assessment year 1967-68, amounting to Rs. 97,800 u/s 18(1)(c) of the Wealth-tax Act, the Tribunal was justified in setting aside the penalty ? "

7. In Wealth-tax Reference Case No. 104 of 1980, the questions are the same except that the assessment year in question is 1968-69, and the amount of penalty in question No. 2 is Rs. 3,30,000 instead of Rs. 97,800.

8. We have heard Shri R.N. Surolia, the learned counsel for the Revenue, and Shri S. K. Keshote, the learned counsel for the assessee. We have also carefully perused the orders passed by the Inspecting Assistant Commissioner as well as the order dated September 5, 1978, passed by the Tribunal allowing the appeals of the assessee and the order dated September 11, 1979, passed by the Tribunal rejecting the applications submitted by the Commissioner of Wealth-tax u/s 27(1) of the Act.

9. The Inspecting Assistant Commissioner has placed reliance on the Explanation to Section 18(1)(c) of the Act as it stood at the relevant time. The said Explanation provided that in case where the net wealth returned by any person was less than 75% of the net wealth as assessed u/s 16 or Section 17, then such person shall, unless he proves that the failure to return the correct value of the asset or, as the case may be, the correct value of the debt or correct net wealth, did not arise from any fraud or from any gross or wilful neglect on his part, be deemed to have concealed the particulars of assets or furnished inaccurate particulars of assets or debts for the purpose of Clause (c) of this Sub-section (I)

of Section 18. According to the Inspecting Assistant Commissioner, the assessee was guilty of gross and wilful neglect in giving inaccurate particulars of his wealth in the original returns. The Tribunal, after considering the material on record, has arrived at the finding that the assessee cannot be found guilty of fraud or gross or wilful neglect in submitting the original returns and the said returns were submitted bona fide. The said finding recorded by the Tribunal is a finding of fact and it has been arrived at after considering the material on record. In our opinion, no question of law arises out of the aforesaid finding recorded by the Tribunal and this is not a case in which the finding recorded by the Tribunal can be said to have been arrived at without considering the entire evidence on record or that the said finding is perverse or contrary to the weight on record. In the questions that have been raised in the applications, it has been suggested that the finding arrived at by the Tribunal is based on mere conjectures and surmises and that no reasonable man would come to the conclusion to which the Tribunal has arrived. In our opinion, it cannot be said that the findings arrived at by the Tribunal are based on mere conjectures and surmises and that no reasonable man will come to the conclusion which the Tribunal had arrived at. In our opinion, therefore, the questions suggested in these applications do not arise out of the order dated September 15, 1978, passed by the Tribunal. There is thus no merit in these applications and the same are, therefore, dismissed. There will be no order as to costs.