
(2006) 11 AHC CK 0034
In the Allahabad High Court

Commissioner of Wealth Tax

APPELLANT

Vs

Smt. Radha Devi Kela

RESPONDENT

Date of Decision : 16-11-2006

Acts Referred:

Wealth Tax Act, 1957 — Section 27(3)

Citation : (2008) 296 ITR 404

Hon'ble Judges : Vikram Nath, J; R.K. Agrawal, J

Bench : Division Bench

Judgement

1. The Income Tax Appellate Tribunal, Allahabad, has referred the following two questions of law u/s 27(3) of the Wealth-tax Act, 1957, (hereinafter referred to as "the Act"), for the opinion to this court:

(i) Whether, on the facts and in the circumstances of the case, there was evidence before the Tribunal to come to the conclusion that the assessee was under a bona fide belief that she was not assessable to wealth-tax and no return was required to be filed by her?

(ii) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in cancelling the penalty of Rs. 4,900 u/s 18(1)(a) as sustained by the Appellate Assistant Commissioner of Wealth-tax?

2. The present reference relates to the assessment years 1973-74 and 1974-75.

3. Briefly stated the facts giving rise to the present reference are as follows:

The assessee is an individual. In respect of the assessment years 1973-74 and 1974-75 her wealth-tax returns were due on August 15, 1973, and July 31, 1974, respectively, but the returns were filed by the assessee on November 12, 1981, in respect of both the aforesaid assessment years, declaring wealth of Rs. 2,39,200 for the assessment year 1973-74 and Rs. 2,61,330 for the assessment year 1974-75 whereon tax due was Rs. 2,500 and Rs. 2,640 respectively.

4. As the said returns had been filed late by 98 months in the case of the

assessment year 1974-75, penalties u/s 18(1)(a) of the Act were imposed on the assessee as follows, as in the opinion of the Wealth-tax Officer, there was no reasonable cause for the late submission of the returns in question:

Assessment year Penalty imposed 1973-74 Rs. 69,433 1974-75 Rs. 71, 327 5. The assessee appealed against the aforesaid orders to the Appellate Assistant Commissioner of Wealth-tax and submitted before him, inter alia, that the returns in question were filed by the assessee voluntarily, that earlier the assessee could not file the returns in time, because she was under a bona fide belief that her wealth was below the taxable limit as most of her investments consisted of National Savings Certificates, which, in her opinion, were exempt from the wealth-tax as income there from was, in any case, exempt from the Income Tax. That in the previous year relevant for the assessment year 1973-74, the National Savings Certificates of Rs. 1,86,280 had been encashed by the assessee and the realisation was lying with the agent for investment, who had also made investment without the knowledge of the assessee; that, in any case, without prejudice to the above submissions, the law governing the imposition of penalty stood modified with effect from April 1, 1977 and according to the law, penalty was to be calculated with reference to tax and not with reference to the wealth and that, therefore, necessary relief should be granted to the assessee. The Appellate Assistant Commissioner, however, rejected the above submissions of the assessee.

6. The assessee appealed against the aforesaid order to the Tribunal and the same pleas which were taken by the assessee before the Appellate Assistant Commissioner and the Wealth-tax Officer were reiterated before the Tribunal and it was pointed out to the Tribunal by the assessee's learned Counsel that in identical circumstances the Tribunal had deleted the penalties in W.T.A. No. 187. The Tribunal had deleted the penalty with the following observation:

...The question now remains whether the explanation given by the assessee before the Wealth-tax Officer was sufficient to hold that the assessee was under a bona fide belief that her income was below taxable limit. In this connection, the statement of the assessee recorded after the search is very relevant. In reply to question No. 9, the assessee stated that she did not disclose the income and investment because from 1960 to 1969 the same was exempt from tax. The Departmental Representative candidly stated that a judicial notice of this fact can be taken. Moreover, in the assessment year 1975-76, in the similar circumstances, penalty imposed u/s 18(1)(c) of the Act was deleted and in the subsequent assessment years, i.e., 1977-78 and 1979-80, the penalties were cancelled by the Appellate Assistant Commissioner and the Department accepted the said decision. The aforesaid facts are manifest and lead us to the conclusion that the assessee was under a bona fide belief that the investment made in the NSCs out of the disclosed income was less than the taxable limit and was not required to file the wealth-tax returns. Besides, the contents of the affidavit filed by the assessee before the Wealth-tax Officer were also not controverted by the

Department. In the case of RANI INDRA DEVI Vs. COMMISSIONER OF WEALTH TAX., it was held that even if the assessee's explanation was unacceptable, Department has to produce material to show that late filing of the return was deliberate and the initial burden was always on the Department and only after this burden was discharged that the assessee was required to prove the facts which are in her special knowledge. In our opinion, the Department has failed to discharge its burden in this case. The finding of the Tribunal in the assessment year 1975-76 cancelling penalty imposed u/s 18(1)(c) of the Act is indicative of the fact that the assessee was prevented by reasonable cause on the basis of bona fide belief in filing belated returns for the assessment years under appeal. The issue in controversy is, in our opinion, squarely covered by the decisions of the Tribunal dated December 4, 1986, in W.T.A. Nos. 263 and 264 (Alld) of 1984? Balram Prasad v. Wealth-tax Officer, Wealth-tax Officer v. Swatamber Das [1985] 23 TTJ (Delhi) 55 and other decisions, copies of which appear in the assessee's paper book from pages 6 to 10. The assessee was under the bona fide belief that she was not assessable under the Wealth-tax Act and no return was required to be filed for the assessment years under appeal. Thus, in our opinion, the delay in filing the belated returns is explained and the delay was on account of bona fide and no case for levying penalties u/s 18(1)(c) is made out in this case. We, therefore, hold that the Appellate Assistant Commissioner was not at all justified in partly sustaining the penalties imposed by the Wealth-tax Officer and accordingly quash his order. The amounts of penalty, if already paid, are directed to be refunded to the assessee.

7. We have heard Sri Shambhu Chopra, learned standing counsel for the Revenue and have perused the order of the Tribunal. We find that the Tribunal has recorded a categorical finding of fact that the respondent-assessee was under a bona fide belief that the investment made in National Savings Certificates was exempt from wealth-tax and that it was below the taxable limit. In this view of the matter she had not filed the return; moreover the penalties imposed u/s 18(1)(c) of the Act in respect of the assessment years 1975-76, 1977-78 and 1979-80 have been cancelled, which orders have become final. We do not find any legal infirmity in the order of the Tribunal and it was justified in deleting the penalty.

8. In view of the aforesaid discussion, we answer both the questions referred to us in the affirmative, i.e., in favour of the assessee and against the Revenue. However, there shall be no order as to costs.