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**(1996) 04 PAT CK 0024**

**In the Patna High Court**

**Case No : Tax Case No's. 2 and 3 of 1983**

Commissioner of Wealth Tax

APPELLANT

Vs

Smt. Sudha Devi Khaitan

RESPONDENT

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**Date of Decision : 09-04-1996**

**Acts Referred:**

Voluntary Disclosure of Income and Wealth Act, 1976 — Section 15, 15(1), 15(5), 5  
Wealth Tax Act, 1957 — Section 17, 18, 27

**Citation :** (1997) 139 CTR 83 : (1997) 223 ITR 740

**Hon'ble Judges :** Sachchidanand Jha, J;Aftab Alam, J

**Bench :** Division Bench

**Advocate :** K.K. Vidyarthi and S.K. Sharan, K.N. Jain, Amicus Curiae, for the Appellant;

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## **Judgement**

Aftab Alam, J.—Tax Cases Nos. 2 and 3 of 1983 relate to the assessment years 1970-71 and 1971-72, respectively. They have come to this court on reference made u/s 27(1) of the Wealth-tax Act, 1957. In both cases an identical question arises from the same set of facts and law. These two cases, therefore, have been heard together and are being disposed of by this common judgment.

2. On September 9, 1975, notices u/s 17 of the Wealth-tax Act were issued to the assessee for the two assessment years. She filed her returns for the two years on September 17, 1975. The question as to whether the returns were filed in response to the notices has been a matter of some controversy ; according to the assessee she did not receive the notices and the returns were filed by her on her own.

3. In the returns filed she declared wealth valued at Rs. 1,34,228 for the assessment year 1970-71 and Rs. 1,46,142 for the assessment year 1971-72.

4. Soon thereafter the Voluntary Disclosure of Income and Wealth Ordinance, 1975, was promulgated with effect from October 8, 1975. The assessee then filed before the Commissioner of Income Tax further returns for the assessment

years in question on December 31, 1975. In the later returns she declared wealth amounting to Rs. 1,94,832 for the assessment year 1970-71 and Rs. 2,08,955 for the assessment year 1971-72. The assessment proceedings were taken up at the conclusion of which the net value of her wealth was assessed at Rs. 1,97,200 for the year 1970-71 and Rs. 2,11,300 for the year 1971-72.

5. The Assessing Officer thereafter initiated a penalty proceeding against the assessee in terms of Section 18(3) of the Wealth-tax Act. She filed an appeal against the initiation of the penalty proceeding. The appellate authority, however, held that no appeal was maintainable against the order initiating a proceeding u/s 18(3) of the Act and accordingly declined to interfere in the matter at that stage. The Assessing Officer thereafter passed two orders on March 28, 1979, imposing a penalty of Rs. 30,132 for the assessment year 1970-71 and Rs. 27,825 for the assessment year 1971-72. Against these orders the petitioner filed appeals before the Appellate Assistant Commissioner of Income Tax, Ranchi Bench, Ranchi. She assailed the imposition of penalty, claiming immunity u/s 15(1) of the Voluntary Disclosure Act, 1976. The appellate authority, by his order dated March 14, 1980, rejected the appeals. He held that the assessee was not entitled to immunity in terms of Section 15(1) of the Voluntary Disclosure Act. According to the appellate authority, the assessee had not fulfilled the conditions laid down in Section 5 of the Voluntary Disclosure Act and was, therefore, not entitled to the protection of Section 15(1) as provided u/s 15(5) of the Act, It was further held that the assessee had filed the returns after the issuance of the notices on September 9, 1970, and in response to those notices and hence her case was also hit by proviso (i) to Sub-section (1) of Section 15 of the Act.

6. The assessee then went in appeal before the Income Tax Appellate Tribunal where her claim was allowed by order dated March 9, 1981. The Appellate Tribunal set aside the orders imposing penalty against the assessee and held that the assessee was fully protected by Section 15(1) of the Voluntary Disclosure Act. As regards the requirements of Section 5, the Appellate Tribunal found that though the tax payable on the admitted wealth had not been paid by the assessee by December 31, 1975, before the filing of the declaration, in the facts and circumstances of the case it would be deemed that the period for the payment of the tax was extended by the Commissioner in the exercise of his power under Sub-section (2) of Section 5 of the Act. The Tribunal further observed that the amount of tax payable was quite insignificant as compared to the amount of penalty and went on to hold that in the facts and circumstances of the case any delay in the payment of the tax by the assessee was wholly unintentional and there had been sufficient reasons preventing her from making payment of the tax before the filing of the declaration.

7. I feel compelled to observe here that the reasons assigned by the Tribunal for holding that the disclosures made by the assessee in her returns filed on December 31, 1975, were not hit by the provisions of Section 15(5) of the Act are quite unsatisfactory. However, the controversy arising from non-payment of

tax as provided u/s 5(1) seems to be wholly misconceived and unnecessary. Both the appellate authority (who disallowed the assessee's claim on the ground of non-payment of tax in terms of Section 5(1) and the Tribunal (which condoned the non-payment of tax by overstressing Section 5(2)) appear to have curiously overlooked the provisions later inserted as Sub-section (5A) in Section 15 of the Act. In my opinion, a mere perusal of Sub-section (5A) provides a complete answer to the exclusion of the petitioner from the protection of Section 15(1) on the ground that she had not made payment of the tax payable by her before filing the returns on December 31, 1975.

8. As regards the question as to whether the returns filed by the assessee on September 17, 1975, were in response to the notices issued to her u/s 17 of the Wealth-tax Act and hence, her claim for immunity was hit by the first proviso to Section 15(1) of the Act, it appears to be concluded by a finding of fact recorded by the Appellate Tribunal. In paragraph 5 of its order, the Appellate Tribunal states as follows :

" The records of the Department and the grounds taken by the assessee before the Appellate Assistant Commissioner were perused in order to establish the correct fact. It was not proved on the basis of the record that the notices issued u/s 17 of the Act for the assessment years 1970-71 and 1971-72 were served upon the assessee. Under the above circumstances, it could not be said that the returns filed by the assessee on September 17, 1975, were the returns u/s 17 of the Wealth-tax Act."

9. The Department then made an application for making a reference to the High Court in terms of Section 27(1) of the Wealth-tax Act. From a perusal of the petition filed before the Appellate Tribunal u/s 27(1) of the Act, it appears that the Department took the stand that in any event the assessee would not be entitled to a complete exemption from the penalty. It was submitted that only that much value of the wealth can be said to have been declared under the Voluntary Disclosure Scheme by which the assessee's later returns exceeded its initial returns dated September 17, 1975. In other words, the returns filed on September 17, 1975, that is to say, before the coming into force of the Ordinance regarding the voluntary disclosure of the assets would not be covered by the protection under the provisions of the Ordinance/Act and it was only the difference between the later returns and the initial returns which would thus represent the value of wealth "voluntarily disclosed" and, therefore, protected by the provisions of Section 15(1) of the Voluntary Disclosure Act. The sum and substance of the Department's stand was that the penalty imposed against the assessee in so far as it related to the wealth shown in her earlier returns dated September 17, 1975, was, therefore, justified and legally sustainable. On such a plea being taken the Tribunal accepted the prayer made by the Department and referred the following question for the opinion of this court :

" Was the Tribunal correct in law in setting aside the penalty u/s 18(1)(a) of the Wealth-tax Act in toto, even though the assessee was entitled to immunity u/s

15(5) of the Voluntary Disclosure of Income and Wealth Ordinance, 1975, in respect of only the wealth disclosed under the scheme ?"

10. Mr. Vidyarthi, learned counsel appearing on behalf of the Department initially sought to assail the finding of the Appellate Tribunal that the notices issued u/s 17 of the Wealth-tax Act were not served on the assessee. He challenged the finding on the sole ground that in arriving at its finding the Appellate Tribunal had not taken into consideration one of the grounds taken in the memo of appeal filed by the assessee before the appellate authority. The assessee's memo of appeal is not before us but learned counsel referred to the appellate order in which was quoted one of the grounds from the memo of appeal and submitted that the statement made there amounted to an admission by the assessee regarding the service of notice on her.

11. I am unable to read the brief passage quoted in the appellate order in the manner urged by learned counsel. Moreover, I am of the opinion that the finding recorded by the Appellate Tribunal is no longer open to challenge in this case coming to this court as a reference u/s 27 of the Wealth-tax Act. In this regard, it may also be noted that the Department neither raised this question in its petition filed before the Appellate Tribunal u/s 27(1) of the Act nor did it agitate this question before this court by filing an application u/s 27(2) of the Act. Any challenge to this finding of fact would, therefore, amount to going beyond the question of law referred for this court's opinion and for this reason alone, I am not inclined to examine the Tribunal's finding and reject the Department's challenge to the finding that the Section 17 notices were not served on the assessee.

12. Now, coming to the question under reference, it is to be noted that Section 15(1) of the Act envisages two kinds of cases ; the first kind, as provided in Clause (a), is where the assessee has not furnished a return at all u/s 14 of the Wealth-tax Act ; the second kind of case, as contemplated under Clause (b), is where a return though furnished by the assessee, either does not show all the wealth or declares a lower value of the wealth shown therein.

13. Each of the two kinds of cases, contemplated under Clauses (a) and (b) are subject to certain exceptions provided in the two provisos ; proviso (i) relates to Clause (a), whereas proviso (ii) is referable to Clause (b). In so far as a case under Clause (a) is concerned, where the assessee has not furnished the return for the assessment year, he would not be entitled to protection u/s 15(1) in case a notice u/s 14 or Section 17 of the Wealth-tax Act had been served upon him before the commencement of the Act and it was in this background that the question whether the returns dated September 17, 1975, were filed by the assessee in response to the notices dated September 9, 1975, and after the service of notices on her assumed significance. However, as we have seen above this controversy is now concluded by a finding of fact recorded in favour of the assessee, and on this score she cannot be excluded from the protection of Section 15(1) of the Act.

14. Now, the question of any apportionment of penalty takes us to the kind of cases covered by Clause (b). As noted, Clause (b) deals with cases where the assessee though filing a return, does not show all the wealth in the return or gives a lower value of the wealth shown in the return. It is actually this clause on which the Department has placed reliance for making a claim for apportionment of penalty. It may, however, be noted that proviso (ii) to Section 15(1) is in the following terms :

"(ii) nothing contained in Clause (b) shall apply in relation to so much of the value of such assets as has been assessed in any assessment for the relevant assessment year made by the Wealth-tax Officer before the date on which the declaration under this sub-section is made."

15. A mere perusal of the proviso abovequoted makes it obvious that the question of apportionment could arise only if the value of the wealth for that assessment year had been finally assessed by the Wealth-tax Officer, that is to say, in case the assessment proceedings had been completed on the basis of the returns filed by the assessee on September 17, 1975. In that case the position would have been indeed different. By filing a second return for the same assessment year the assessee could not have possibly reopened the assessment of wealth finally made on the basis of the earlier return. She would have got the benefit and the protection of the Voluntary Disclosure Scheme only in respect of the additional wealth shown in the later return. And the Department could have validly imposed penalty on the basis of the initial return. In this case, however, it is an admitted position that the assessment had not been completed on the return filed by her on September 17, 1975, and before the assessment had been completed she had filed the second return on December 31, 1975, and hence there can be no question of apportionment in this case in terms of the proviso (ii) to Section 15(1) of the Act.

16. For the reasons stated above, it would be wrong to suggest that the assessee was entitled to immunity u/s 15(5) of the Voluntary Disclosure of Income and Wealth Ordinance, 1975, only in respect of the additional wealth disclosed by her after the Ordinance came into force. I, accordingly, answer the reference in the affirmative, that is to say, in favour of the assessee and against the Revenue.

17. Before parting with the case, we would like to record our appreciation of the assistance rendered to the court by Mr. K.N. Jain who appeared in this case as *amicus curiae* on our request.

Sachchidanand Jha, J.

18. I agree.