(1987) 04 BOM CK 0032

In the Bombay High Court

Case No : Wealth-tax Reference No. 86 of 1975

Commissioner of Wealth-tax APPELLANT

Vs

S.N. Tarawia RESPONDENT

Date of Decision : 02-04-1987

Acts Referred:

Income Tax Act, 1961 — Section 271(1)
Wealth Tax Act, 1957 — Section 16, 17, 18(1)

Citation : (1987) 63 CTR 64 : (1988) 170 ITR 569

Hon'ble Judges : T.D. Sugla, J;Bharucha, J

Bench : Division Bench

Judgement

Bharucha, J.—The wealth-tax returns of the assessee for the assessment years 1965-66 and 1966-67 were due on June 30, 1965, and June 30, 1966, respectively. The assessee filed the returns for both the assessment years only on July 31, 1970. The assessee was called upon to show cause why penalty should not be imposed upon him for the delay. The assessee''s explanation was rejected by the Wealth-tax Officer and he imposed upon the assessee a penalty in the sum of Rs. 1,620 for the assessment year 1965-66 and in the sum of Rs. 1,649 for the assessment year 1966-67. In so doing, the Wealth-tax Officer applied, for the period of default up to March 31, 1969, the provisions of section 18(1)(a) of the Wealth-tax Act, 1957, as they stood before the amendment thereof, effective on and from April 1, 1969, made by section 24(2)(c) of the Finance Act, 1969, and, for the period of default subsequent to April 1, 1969, the amended provision. On appeal, the Appellate Assistant Commissioner rejected the assessee''s contentions. The Income Tax Appellate Tribunal, however, in further appeal, found no words in section 24(2)(c) of the Finance Act, 1969, or in the amended section 18(1)(a) to indicate that this amendment had retrospective operation. The Tribunal held that the amended provision did not apply to defaults which had taken place before April 1, 1969. It held that the penalty for the entire period of the delay had to be computed under the provisions operative on the day on which the defaults occurred. The defaults had, it said, occurred once and for all on the last day prescribed for filing the returns. Accordingly, the Tribunal allowed the assessee''s appeal.

2. The question that is posed to us arises out of the Tribunal''s order. It reads thus :

"Whether penalty u/s 18(1)(a) of the Wealth-tax Act, 1957, was imposable in the case, as per the said provision as it existed on 1st April, 1965, and 1st April, 1966, or whether it was imposable under the provision as it existed on 31st July, 1970, or whether it was imposable for the period of delay prior to 1st April, 1969, under the unamended section 18(1)(a) and for the period of delay subsequent to 1st April, 1969, under the amended section 18(1)(a) ?"

3. Prior to 1969, the penalty leviable was, in addition to the amount of wealth-tax payable by the assessee, a sum equal to 2% of the tax for every month during which the default continued but not more than 50% of the tax. After the amendment of section 18(1)(a) in 1969, the penalty leviable became, in addition to the amount of wealth-tax payable by the assessee, a sum, for every month during which the default continued, equal to one-half per cent. of -

"(A) the net wealth assessed u/s 16 as reduced by the amount of net wealth on which, in accordance with the rates of wealth-tax specified in Paragraph A of Part I of the Schedule or Part II of the Schedule, the wealth-tax chargeable is nil, or

(B) the net wealth assessed u/s 17, where assessment has been made under that section, as reduced by -

(1) the net wealth if any, assessed previously u/s 16 or section 17, or

(2) the amount of net wealth on which, in accordance with the rates of wealth-tax specified in Paragraph A of Part I of the Schedule or Part II of the Schedule, the wealth-tax chargeable is nil,

whichever is greater,

but not exceeding, in the aggregate. an amount equal to the net wealth assessed u/s 16, or, as the case may be, the net wealth assessed u/s 17, as reduced in either case in the manner afore-said."

4. Mr. Jetly, learned counsel for the Revenue, invited our attention to the judgment of the Supreme Court in Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, . This was a case of penalty under the Income Tax Act, 1961. The assessee''s return of income for the assessment year 1961-62 had to be filed by September 28, 1961. It was filed only on May 3, 1962, after the Income Tax Act, 1961, had come into force. The Income Tax Officer initiated proceedings u/s 271(1)(a) of the 1961 Act and, ultimately, imposed a penalty of Rs. 4,060. The Tribunal held that the penalty ought to have been quantified under the provisions of section 28 of the Indian Income Tax Act, 1922, and reduced the penalty to Rs. 400 The Supreme Court held that though default had occurred in September; 1961, the date relevant for the purpose of initiating proceedings for imposition of

penalty was the date upon which the Income Tax Officer decided to impose it and that the proper provision to apply was section 271(1)(a) of the 1961 Act. The Supreme Court considered the earlier judgment in Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth, , and held that the conclusion reached therein was contrary to law. It noted that the case of Jain Bros. and Others Vs. The Union of India (UOI) and Others, had not been referred to in Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth, . As had been pointed out in Jain Bros. and Others Vs. The Union of India (UOI) and Others, , the question of imposition of penalty would arise only after the assessment of tax was made and, therefore, in Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth, , on the analogy of the ratio accepted in Jain Bros. and Others Vs. The Union of India (UOI) and Others, , the amended provisions for the imposition of penalty would have become applicable. The imposition of penalty not confined to the first default but with reference to the continued default was on the footing that noncompliance with the obligation of making a return was an infraction as long as the default continued. The position that penalty was imposable not only for the first default but as long as the default continued and such penalty was to be calculated at a prescribed rate on monthly basis was indicative of the legislative intention in unmistakable terms and, as long as the assessee did not comply with the requirements of law, he continued to be guilty of the infraction and exposed himself to the penalty provided by law.

5. Having regard to the judgment of the Supreme Court in Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, , the Tribunal appears to have been, in the instant case, in error.

6. Mr. Rajgopal, learned counsel for the assessee, however, pointed out that the case of Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, was under the Income Tax Act, 1961, while the case of Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth, was under the Wealth-tax Act, 1957. It was his submission that the case of Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth, had not been properly dealt with in the case of Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, . The case of Jain Bros. and Others Vs. The Union of India (UOI) and Others, , he said, was rightly not cited in the case of Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth, , because the latter was under the Wealth-tax Act. Without reference to Jain Bros. and Others Vs. The Union of India (UOI) and Others, , he averred that the case of Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth, is rightly decided.

7. As far as we are concerned, the law laid down by the Supreme Court in the case of Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, is binding and it holds that the case of Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth, was contrary to law. Following the case of Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, , the ratio of which applies to section 18(1)(a) of the Wealth-tax Act, 1957, we must hold that penalty was imposable upon the assessee under the unamended section 18(1)(a) for the period of delay prior to April 1,

1969, and under the amended section 18(1)(a) for the period of delay subsequent thereto. The question is answered accordingly.

8. No order as to costs.

