(1991) 08 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Wealth-tax Reference No''s. 18 and 19 of 1981

Commissioner of Wealth Tax APPELLANT

Vs

Swadesh Kumar RESPONDENT

Date of Decision : 06-08-1991

Acts Referred:
Wealth Tax Act, 1957 — Section 18(1), 18B, 25, 25(2), 27

Citation : (1992) 103 CTR 149 : (1992) 195 ITR 431

Hon'ble Judges : S.S. Sodhi, J;Ashok Bhan, J

Bench : Division Bench

Advocate : Ajay Mittal, for the Appellant; S.P. Gupta, Senior Advocate and Bhupinder Singh, for the Respondent

Judgement

Ashok Bhan, J.—This order shall dispose of Wealth-tax References Nos. 18 and 19 of 1981 which arise out of a consolidated order of the Tribunal whereby the following three questions of law have been referred to this court for its opinion :

"(i) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal erred in law in holding that the Commissioner did not have jurisdictional facts for assumption of jurisdiction u/s 25 of the Wealth-tax Act, 1957 ?

(ii) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal erred in law in holding that the Commissioner cannot cancel the penalty order made by the Wealth-tax Officer as well as levy penalty by making fresh orders of his own u/s 25(2) of the Wealth-tax Act, 1957 ?

(iii) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal erred in law in holding that the phrase '' modification of an order (used in the show-cause notice u/s 25(2) of the Wealth-tax Act, 1957, does not connote its cancellation and resurrection of fresh order in its place ?"

2. The facts, shortly stated, are as under :

The assessee, Swadesh Kumar, filed his return of wealth as an individual for the two years 1969-70 and 1970-71 under the Wealth-tax Act, 1957 (hereinafter referred to as "the Act"). The data for the two relevant assessment years giving the due date of return, date of filing the return, net wealth returned and the net wealth computed is given below :

Sl. No.	Assessment year	Due date of return	Date of filling return	Net wealth returned	Net wealth computed
				Rs.	Rs.
1.	1969-70	3-6-1969	7-1-1974	85,402	1,12,505
2.	1970-71	28-2-1972	7-1-1974	97,380	1,40,300

3. The Wealth-tax Officer computed the tax payable to be Rs. 62 and Rs. 202 for the assessment years 1969-70 and 1970-71, respectively. The Wealth-tax Officer also issued a notice u/s 18(2) of the Act and u/s 18(1)(a) of the Act for each of the assessment years for late filing of returns. The Wealth-tax Officer initialed penalty proceedings for the assessment year 1969-70 on February 7, 1977, and for the assessment year 1970-71 he levied penalty u/s 18(1)(a) of the Act amounting to Rs. 101 on the same date.

4. The Commissioner of Wealth-tax, in exercise of his revisional powers u/s 25 of the Act, called for and examined the record relating to the assessment years

1969-70 and 1970-71. The Commissioner of Wealth-tax, in his revisional jurisdiction u/s 25 of the Act, has the power to call for and examine the record of any proceedings under the Act if he considers that any order passed therein by an Assessing Officer is erroneous in so far as it is prejudicial to the Revenue. He may, after giving the assessee an opportunity of being heard and after holding such enquiry as he deems necessary, pass an order as in the circumstances of the case justifiable including an order enhancing or modifying the assessment or cancelling it and directing a fresh decision. In this particular case, the Commissioner of Wealth-tax considered the orders of the Wealth-tax Officer as erroneous and prejudicial to the interests of the Revenue and held that the Wealth-tax Officer has erred in dropping the penalty proceedings for the assessment year 1969-70 solely on the ground that the penalty leviable u/s 18(1)(a) of the Act was nominal. It was held that, for both the years, i.e., 1969-70 and 1970-71, the Wealth-tax Officer misapplied the law under which the penalty was leviable for these two assessment years. The law applicable for the levy of penalty for the relevant assessment years for late filing of the return was at the rate of half per cent, of the net wealth assessed u/s 16 of the Act as reduced by the amount specified u/s 18(1)(a)(i)(A) of the Act, i.e., Rs. 1,00,000 in the case of individual and Rs. 2,00,000 in the case of Hindu undivided family while the Wealth-tax Officer, in his order, had levied the penalty as per the Taxation Laws (Amendment) Act, 1975, which came into force with effect from April 1, 1976 and, on that basis, levied the penalty at the rate of 2% of the tax for each month of the default subject to 50% of the tax levied. It was held by the Commissioner of Wealth-tax that the Wealth-tax Officer, while levying the penalty for the assessment years 1969-70 and 1970-71, applied the law which was not applicable to the proceedings for those years. He, therefore, considered and held that the two orders passed by the Wealth-tax Officer for the assessment years 1969-70 and 1970-71 were erroneous and prejudicial to the interests of the Revenue. The Wealth-tax Commissioner levied a penalty of Rs. 3,376 and Rs. 4,433 respectively for the years 1969-70 and 1970-71.

5. The assessee carried a second appeal before the Income Tax Appellate Tribunal, Chandigarh Bench (hereinafter referred to as "the Tribunal"). The Tribunal accepted the appeal and cancelled the penalty in its entirety for each year and restored the order of the Wealth-tax Officer for each of the years. The Commissioner of Wealth-tax sought reference and the Tribunal referred the three questions of law which have been, reproduced in the earlier part of this order.

6. The questions of law which have been referred to this court for its opinion are being returned unanswered because of the later developments which have been brought on record by the assessee by filing C. M. No. 5664/CIT of 1991. The assessee had placed on record a certified copy of the consolidated order passed by the Commissioner of Wealth-tax, Jalandhar Division, u/s 18B as annexure PX & PY for the assessment years 1969-70 and 1970-71 respectively, whereby the penalty imposed u/s 18(1)(a) of the Act for the assessment year 1970-71 was ordered to be waived and for the assessment year 1969-70, it was held that the

penalty proceedings had been rendered infructuous because the Wealth-tax Officer, for the assessment year 1969-70, had himself dropped and filed the proceedings.

7. u/s 18B of the Act, the Commissioner of Wealth-tax had been invested with the powef to reduce or waive the amount of penalty imposed or imposable on a person if he is satisfied that such person, has, prior to the detection by the Assessing Officer, of the concealment of particulars of assets or of the inaccuracy of particulars furnished in respect of any asset or debt in respect of which the penalty is leviable, made a full disclosure of such particulars and has also co-operated in any inquiry relating to the assessment of his net wealth and has further paid or made satisfactory arrangement for payment of any tax or interest payable in consequence of an order passed under this Act in respect of the relevant assessment year. The assessee, in the present case, made an application u/s 18B of the Act to the Commissioner of Wealth-tax for waiver of penalty for the assessment years 1969-70 and 1970-71. The Commissioner of Wealth-tax ordered the waiver of penalty, vide his order dated October 27, 1987, for the assessment year 1970-71, and declared the petition of the assessee as infructuous relating to the year 1969-70 as the Wealth-tax Officer had already waived the penalty for the said assessment year, Annexures PX and PY on this record (which we understand have become final) are the copies of the applications filed by the assessee and orders passed thereon by the Commissioner of Wealth-tax. Since the penalty levied u/s 18(1)(a) of the Act for late filing of return has been ordered to be waived, the order of the Commissioner of Wealth-tax passed u/s 25(2) of the Act on January 16, 1979, for the relevant assessment years which gives rise to the questions of law referred to this court for opinion is rendered infructuous and cannot be said to be in operation. The questions of law referred to this court ore, therefore, returned unanswered. No costs.

