(1983) 07 MAD CK 0036

In the Madras High Court

Case No : Tax Case No''s. 294 to 296 of 1978

Commissioner of Wealth Tax APPELLANT

Vs

V. Venugopal RESPONDENT

Date of Decision : 05-07-1983

Acts Referred:

Income Tax Act, 1961 — Section 14, 18, 18(1), 18(1)(a), 271(1)(a)
Wealth Tax Act, 1957 — Section 14(1), 18(1)(a)

Citation : (1984) 19 TAXMAN 579

Hon'ble Judges : V. Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : J. Jayaraman and Mrs. Nalini Chidambaram, for the Appellant; P. Veeraraghavan, for the Respondent

Judgement

G. Ramanujam, J.—The following three questions have been referred to this Court for its opinion at the instance of the revenue :

" 1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the period of delay for the purpose of levy of penalty u/s 18(1)(a) of the Wealth-tax Act should be computed from 2-11-1965 and, accordingly, cancelling the penalty of Rs. 4,816 for the assessment year 1965-66?

2. Whether, on the facts and in the circum stances of the case, the Tribunal was right in holding that the period of delay for the purpose of levy of penalty u/s 18(1)(a) of the Wealth-tax Act should be computed from 18-2-1967 and, accordingly, reducing the penalty levied for the assessment year 1966-67?

3. Whether, on the facts and in the circum stances of the case, the Tribunal was right in holding that the period of delay for the purpose of levy of penalty u/s 18(1)(a) of the Wealth-tax Act should be computed from 2-3-1968 and, accordingly, reducing the penalty levied for the assessment year 1967-68 ?"

A look at the three questions will indicate that all the questions involve the same issue as to whether the Tribunal was right in directing the recomputation of the period of delay in filing the wealth-tax returns for the assessment years 1965-66, 1966-67 and 1967-68 ? The assessee filed his returns u/s 14(1) of the Wealth-tax Act, 1957 (''the Act'') belatedly. For the filing of the delayed returns, penalty was levied under the Act by the WTO. The date on which the return was due u/s 14(1), the date on which the return was filed, the period of delay in filing the return and the penalties levied for all the three assessment years referred to above are given below:

Assessment years

1965-66

1966-67

1967-68

Date on which return was due u/s 14(1)

30-6-1965

30-6-1966

30-6-1967

Date on which return of wealth-tax was filed

2-11-1966

31-3-1969

31-3-1969

Period of delay

16 months

33 months

21 months

Penalty levied

Rs. 4,816

Rs. 1,787

Rs. 997

the delayed submission of the wealth-tax returns for the other year, penalties have been levied for all the assessment years. The levy of penalty was also confirmed by the AAC. The matter was taken to the Tribunal by the assessee contending that the income tax return was filed on 2-11-1966 for the assessment year 1965-66 on 18-2-1967 for the assessment year 1966-67 and on 2-3-1968 for the assessment year 1967-68 and without finalising the income tax returns, he was not in a position to file the wealth-tax returns. The said contention of the assessee has been accepted by the Tribunal. The Tribunal took the view that unless there is a finalisation of the income tax returns, the assessee will be handicapped in filing the wealth-tax returns and, therefore, the non-filing of the wealth-tax returns till the filing of the income tax returns can be taken to be a reasonable cause for not filing the wealth-tax returns. The Tribunal, therefore, took the dates of filing the income tax returns as the basis for computing the delay in filing the wealth-tax returns for the purpose of imposition of penalty u/s 18 of the Act. Since the income tax return was filed by the assessee on 2-11-1966 for the assessment year 1965-66, on 18-2-1967 for the assessment year 1966-67 and on 2-3-1968 for the assessment year 1967-68, the Tribunal directed the recomputation of the delay on the basis of the above dates on which the assessee filed the income tax returns. Aggrieved by the decision of the Tribunal, the revenue has sought and obtained this reference on the three questions set out above.

2. We are of the view that no interference is called for on the facts and in the circumstances of this case with the view expressed by the Tribunal. Section 18 enables the various authorities in the proceedings before them to levy penalty for failure to furnish the returns. Section 18(1)(a) provides for the levy of penalty if there has been delay in the filing of the return u/s 14. But that section contemplates the levy of penalty for the delay in filing the return without reasonable cause. That means, wherever the assessee is able to establish that the delay was due to reasonable cause, the penalty is not contemplated under that section. In this case, the Tribunal felt that the assessee could file the wealth-tax returns only after the finalisation of his income tax returns and, therefore, the entire delay in the filing of the returns for the various years cannot be said to be without reasonable cause and that portion of the delay before the filing of the income- tax returns should not be taken into account for the levy of penalty u/s 18(1)(a). Though the Tribunal refers to the fact that assessee has paid penalty for the delayed filing of income tax returns, it cannot be a relevant factor for the purpose of the application of section 18(1). However, the Tribunal appears to take the view that the assessee could not file the wealth-tax returns before he finalised the income tax returns and, therefore, the delay after the filing of the income tax returns should alone be taken for the purpose of section 18(1)(a).

3. It cannot be said that section 18(1) creates an absolute liability to pay penalty for delayed filing of the returns. The section, as already stated, penalises only the delays which are not for reasonable cause. Therefore, discretion is given to the authorities u/s 18(1) to find out whether the delay is due to a reason able cause and if the assessee establishes that the delay is for a reasonable cause, not to levy penalty. As a matter of fact this Court in V.L. Dutt Vs. Commissioner of Income Tax, has pointed out :

"...Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute..."

In that case, the Court further pointed out that the levy of penalty u/s 271(1)(a) of the income tax Act, 1961, is not a mere concomitant of a delay in filing the return and, therefore, even if there is any delay in filing the return, the assessee is not liable to be penalised unless the department established that he had acted in deliberate disregard of his statutory obligations and that his conduct is contumacious.

Having regard to the opinion expressed in the above case, we find that the Tribunal has properly exercised its discretion in treating a portion of the period of delay as being for a reasonable cause and excluding that portion for the computation of the penalty. The Tribunal''s decision, therefore, does not call for any interference . The questions are, therefore, answered in the affirmative and against the revenue. There will, however, be no order as to costs.