
(1995) 01 RAJ CK 0039

In the Rajasthan High Court

Case No : Wealth-tax Reference No. 66 of 1983

Commissioner of Wealth-tax

APPELLANT

Vs

Virendra Singh Ravindra Singh

RESPONDENT

Date of Decision : 10-01-1995

Acts Referred:

Wealth Tax Act, 1957 — Section 18(1), 20, 20(1), 20(2)

Citation : (1995) 3 WLC 250 : (1995) 1 WLN 500

Hon'ble Judges : Y.R. Meena, J; V.K. Singhal, J

Bench : Division Bench

Advocate : G.S. Bapna, for the Appellant;

Judgement

V.K. Singhal, J.—The Income Tax Appellate Tribunal has referred the following question of law arising out of its order dated March 18, 1992, in respect of the assessment year 1970-71 u/s 27(1) of the Wealth-tax Act, 1957 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the order of the Appellate Assistant Commissioner cancelling the penalty of Rs. 25,485 levied u/s 18(1)(a) of the Wealth-tax Act, 1957 ?"

2. The brief facts of the case are that the assessment of the assessee was completed ex parte on September 27, 1977, and penalty proceedings for late filing of the return were also initiated simultaneously. The return was filed on August 28, 1972, which was required to be filed on July 31, 1972, and as such notices were given to provide opportunity to the assessee as to why the penalty be not imposed. No reply was filed and the Wealth-tax Officer found that the assessee has committed default without any cogent reason and a penalty of Rs. 25,485 was imposed.

3. Against the order of the Wealth-tax Officer, an appeal was preferred to the Appellate Assistant Commissioner of Income Tax, Kota Range, Kota, and a contention was raised that the Hindu undivided family has totally been disrupted

on May 27, 1970. The Appellate Assistant Commissioner found that partition of the Hindu undivided family was effected by metes and bounds on May 27, 1970, and the same has been accepted by the order of the Income Tax Officer u/s 171(3) of the Act dated March 31, 1975. The existence of the Hindu undivided family on the date of initiation of the penalty proceedings as well as on the date of imposition was not found. It was also found that by the order dated February 7, 1981, passed u/s 20 of the Wealth-tax Act, the complete partition of the Hindu undivided family was accepted by the Wealth-tax Officer with effect from May 27, 1970. Since the Hindu undivided family was not in existence, the penalty was set aside. The second appeal by the Revenue before the Income Tax Appellate Tribunal was also unsuccessful and the Tribunal came to the conclusion that on a plain reading of Section 20 of the Wealth-tax Act, it is clear that there is no provision for imposing penalties in the case of disrupted Hindu undivided families on total partition of the family while there are specific provisions for imposing penalty in Section 20A(b) of the Wealth-tax Act and Section 171(8) of the Income Tax Act and in the absence of such provisions in Section 20, the order cancelling the penalty was upheld.

4. The submission of learned counsel for the Revenue is that penalty is in the nature of additional tax and if there is liability of tax, penalty could be levied for any default in not making the payment of such tax or other matters relating thereto. Reliance has been placed on the decision of the Madras High Court in the case of Commissioner of Gift-tax Vs. C. Muthukumaraswamy Mudaliar, . We have gone through that judgment and the principle enunciated by the Madras High Court is that the amendment in the Act would not be applicable to the defaults committed before the amendment came into force and the law applicable to the levy of penalty is such as it stood at the time when the default was committed and not as it stood when the assessment was made nor the law as it stood when the penalty proceedings were initiated or the penalty was imposed. This judgment is of no assistance because there is no amendment in the law on which reliance has been placed. The decision in the case of Commissioner of Wealth-tax Vs. Ram Narain Agrawal, has also been relied upon wherein the Allahabad High Court said that the penalty proceedings are quasi-criminal in nature and, as such, it is imperative that they should be construed strictly. The law operative on the date when the infringement takes place is the law applicable unless it is made applicable ex post facto. It is well-settled that fiscal statutes cannot be regarded as retrospective by implication. The rule against retrospective operation applies with greater rigour in the case of penal provisions. We have gone through this judgment, it was a matter with regard to levy of penalty u/s 18(1)(a) of the Wealth-tax Act in respect of the assessment years 1964-65 to 1967-68. The returns were filed after due date and penalty for filing the return late was incurred from April 1, 1969. The Revenue proposed to levy the penalty on the basis of the enhanced rate of penalty. The rate of penalty as prevailing when the default was committed was held applicable. It was not a case of disrupted Hindu undivided family. Reliance has also been placed on the cases of COMMISSIONER

OF WEALTH-TAX, MADRAS Vs. P. C. M. SUNDARAPANDIAN AND OTHERS., and Commissioner of Wealth Tax, Mysore Vs. C.S. Manvi and Others, .

5. The matter with regard to levy of penalty on the family after partition came up for consideration before the Madras High Court in the case of S. A. Raju Chettiar and Others Vs. Collector of Madras and Another, . This was a matter with regard to the penalty u/s 28 of the Income Tax Act. The Madras High Court came to the conclusion that the family must be in existence when the proceedings were initiated and it must also be in existence on the date the order is passed. Similarly, in the case of P.S. Kandaswamy Mudaliar Vs. Commissioner of Income Tax, it was held that the levy of penalties on the family after disruption was not valid. The Full Bench of the Allahabad High Court in the case of Commissioner of Income Tax Vs. Nathimal Gaya Lal, has held that before an order of penalty can be sustained, the assessable entity on which the penalty is being imposed must be in existence on the date of order. Inasmuch as on the date when the order was passed, the undivided family had ceased to exist, the imposition of penalty was invalid. A reference to the case of M.R. Chinnaswami Gounder Vs. Commissioner of Income Tax, Madras, was also made in this case. The Full Bench of the Andhra Pradesh High Court in the case of Commissioner of Income Tax Vs. Tatavarthy Narayanamurthy (Decd.) and Others, has also considered the legality of imposition of penalty u/s 28(1)(a) of the Income Tax Act and observed that in order to impose penalty u/s 28, the "person", which expression includes Hindu undivided family, must be in existence on the date of such imposition. In the case of Commissioner of Income Tax Vs. Suresh Gokuldas, it was observed by the Madras High Court that in order to attract penalty proceedings u/s 28, a Hindu undivided family should exist not only at their initiation but also at the point of levy. This court in the case of Commissioner of Wealth-tax Vs. Rani Sajjan Kumari, has held that no penalty u/s 18 can be imposed on the legal representatives on whom assessment has been made u/s 19 of the Wealth-tax Act.

6. Section 3 of the Wealth-tax Act has created a charge in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in the Schedule. Section 16 provides for assessment. Section 17 contains the provisions in respect of wealth escaping assessment and Section 17A contains the provisions in respect of the time-limit for completion of assessment and reassessment. The provisions of Section 17B were inserted by the Direct Tax Laws (Amendment) Act, 1987, with effect from April 1, 1989, for charging interest for default in furnishing a return of net wealth. This provision was not in existence during the relevant period and, therefore, has no application. It is only Section 18 where the penalty provisions are contained for default in submission of returns. The provisions of Section 18(1) (a) read as under :

"18. Penalty for failure to furnish returns, to comply with notices and concealment of assets, etc.--(1) If the Wealth-tax Officer, Appellate Assistant

Commissioner, Commissioner (Appeals), Commissioner or Appellate Tribunal in the course of any proceedings under this Act is satisfied that any person-

(a) has without reasonable cause failed to furnish the return which he is required to furnish under Sub-section (1) of Section 14 or by notice given under Sub-section (2) of Section 14 or Section 17, or has without reasonable cause failed to furnish within the time allowed and in the manner required by Sub-section (1) of Section 14 or by such notice as the case may be ; or"

7. Section 19 provides that the liability of tax of deceased person is payable by legal representatives. On the interpretation of that section this court in the case of Commissioner of Wealth-tax Vs. Rani Sajjan Kumari, came to the conclusion that the provisions of Section 18 have not been made applicable to the legal representatives and as such the penalty provisions as contained u/s 18 cannot be invoked against the legal representatives.

8. Section 19A contemplates the assessment in the case of executors. The relevant provisions with regard to assessment after partition of a Hindu undivided family are contained u/s 20. Section 20 reads as under:

"20. (1) Where, at the time of making an assessment, it is brought to the notice of the Assessing Officer that a partition has taken place among the members of a Hindu undivided family, and the Assessing Officer, after inquiry, is satisfied that the joint family property has been partitioned as a whole among the various members or groups of members in definite portions, he shall record an order to that effect and shall make assessment on the net wealth of the undivided family as such for the assessment year or years, including the year relevant to the previous year in which the partition has taken place, if the partition has taken place on the last day of the previous year and each member or group of members shall be liable jointly and severally for the tax assessed on the net wealth of the joint family as such.

(2) Where the Assessing Officer is not so satisfied, he may, by order, declare that such family shall be deemed for the purposes of this Act to continue to be a Hindu undivided family liable to be assessed as such."

9. Section 20A refers to the assessment after partial partition of a Hindu undivided family and Section 21 contains provisions regarding assessment when assets are held by courts of wards, administrators-general, etc.

10. After going through the provisions contained in the Wealth-tax Act, it is evident that the provisions of Sub-section (2) of Section 20 provides that where the Assessing Officer is not satisfied, he may, by order, declare that such family shall be deemed for the purposes of the Act to continue to be a Hindu undivided family liable to be assessed as such, but the power under Sub-section (2) has not been exercised by the Wealth-tax Officer in this case and an order u/s 20(1) has been passed from which it is evident that the Wealth-tax Officer was satisfied that the joint family property has been partitioned as a whole amongst the

members and an order to that effect has been passed. The charge must be clear and unambiguous. During the relevant period no such provision has been brought to our notice by which a charge with regard to the liability could be enforced against a disrupted Hindu undivided family. The provisions of Section 18(1)(a) have been deleted by the Direct Tax Laws (Amendment) Act, 1989, with effect from April 1, 1989. This amendment cannot be taken into consideration and in accordance with the law as it was in existence there being no specific provision creating liability of penalty on disrupted Hindu undivided family, the Wealth-tax Officer had no jurisdiction to levy the penalty.

11. Accordingly, we are of the opinion that the Tribunal was justified in upholding the order of the Appellate Assistant Commissioner cancelling the penalty of Rs. 25,485 levied u/s 18(1)(a) of the Wealth-tax Act.

12. Consequently, the reference is answered in favour of the assessee and against the Revenue. No order as to costs.