
(1979) 12 MAD CK 0012

In the Madras High Court

Case No : Tax Case No"s. 165 to 167 of 1975 (Reference No"s. 148 to 150 of 1975)

Commissioner of Wealth-tax (Central)

APPELLANT

Vs

G. Savithri

RESPONDENT

Date of Decision : 17-12-1979

Acts Referred:

Wealth Tax Act, 1957 — Section 18(1), 18(5)

Citation : (1983) 141 ITR 697

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Judgement

Sethuraman, J.—The Tribunal dealt with two wealth-tax appeals for the assessment years 1968-69 and 1969-70. Against the order of the

Tribunal for the assessment year 1968-69, the Commissioner of Wealth-tax has come up on reference, on the following question :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that Section 18(1)(a) as amended by

Clause 24(6) of the Finance Act, 1969, should not be applied to reckon the penalty for the period of default after 1-4-1969 for the assessment year 1968-69?

2. The facts relating to this question are as follows :

3. The assessee, a cine-artist, should have filed a wealth-tax return for the year 1968-69 by 30th June, 1968. She, however, filed the return only

on 23rd March, 1970. The Wealth-tax Officer completed the assessment on 27th April, 1970, and initiated penalty proceedings u/s 18(1)(a) of

the W.T. Act, for delay in submission of return. The assessee gave an explanation that she was not well and that her secretary, who was in charge

of the Income Tax matters for 15 years, had left her some months previously. She has also stated that her chartered accountant was not in Madras

for a couple of months, and that she filed the return, subsequently with the help of the said chartered accountant. The explanation was not accepted

and a penalty of Rs. 42,974 was levied. The penalty levied was confirmed, on appeal, by the AAC. One of the contentions taken before the

Tribunal was that the penalty should have been assessed only with reference to the provisions that were in force on the date when the return was

due, namely, 30th June, 1968. The Appellate Tribunal accepted this contention urged on behalf of the assessee and that is why the Commissioner

has brought the matter under reference.

4. The question has now been concluded by a decision of the Supreme Court in Brij Mohan Vs. Commissioner of Income Tax , New Delhi, , in

which it has been held that the law in force at the time when the default was committed would govern the quantum of penalty to be levied. As seen

already, in the present case, the default was committed on 1st July 1968, and the law as on that date was the one applicable, and the Tribunal has

acted rightly, in confirming the levy of penalty, only in accordance with the provisions as then in force. The result is that the question referred has to

be answered in the affirmative and in favour of the assessee. It is accordingly answered.

5. At the instant of the assessee, the following question has been referred to this court:

Whether, on the facts and circumstances of the case, the levy of penalty was not barred by time, in view of the provisions u/s 18(5) prior to its

amendment, with effect from 1st April, 1971 ?

6. For the assessment years 1968-69 and 1969-70, the assessee filed the relevant returns on 23rd March, 1970, and 27th April, 1970,

respectively. The assessments were completed on 27th April, 1970. u/s 18(5) of the W.T. Act, at the time of completion of the assessment, no

order imposing a penalty could be passed after the expiry of 2 years from the date of completion of the proceedings in the course of which the

proceedings for the levy of penalty were commenced. Judged by this criterion, the penalty orders should have been passed by April 26, 1972.

However, they were passed only on 30th June, 1972.

7. In the meantime, there was an amendment to Section 18(5) of the W.T. Act, which was brought into force from 1st April, 1971. According to

the amended section, no penalty order could be passed after the expiry of a period of two years from the end of the financial year, in which the

proceedings, in the course of which action for imposition of penalty had been initiated, are completed. In the light of this provision, the WTO had

power to pass the relevant penalty orders by 31st March, 1973. The penalty orders were actually passed earlier, i.e., on 30th June, 1972. The

Tribunal, before which alone this contention was taken, confirmed the penalty orders on the ground that it was not barred by limitation. It is against

this part of the order of the Tribunal, that the assessee has brought the matter on reference to this court, on the question mentioned above.

8. When the matter came before this court, on an earlier occasion, the learned counsel for the Commissioner was required to serve the assessee as

the assessee was not present. He has effected service through the ITO, Head Quarters, Judicial, and there is an affidavit of the ITO to that effect.

The name of the assessee was called. She is not represented either in person or through counsel. We, therefore, heard the learned counsel for the

Commissioner and proceed to dispose of the reference at the instance of the assessee on merits.

9. As indicated earlier, though, in accordance with the provisions in force at the time when the assessment was completed, the orders levying

penalty could have been passed only by 26th April, 1972, there was an amendment of the law, in the meantime, that is, before the expiry of the

said period of limitation. It is now well settled that if before the limitation period expired, the period of limitation is extended, the limitation

provision, being a procedural one, the extended period of limitation would apply to such proceedings. This has been laid down in S.C. Prashar,

Income Tax Officer, Market Ward, Bombay and Another Vs. Vasantsen Dwarkadas and Others, , which has been recently followed by the

Andhra Pradesh High Court, in The Additional Commissioner of Income Tax, Andhra Pradesh, Hyderabad Vs. Watan Mechanical and Turning

Works, Hyderabad, .

10. The result is that the question referred, at the instance of the assessee, is to be answered as follows :

11. The levy of penalty is not barred by time, in view of the amendment of Section 18(5) of the W.T. Act.

12. There will be no order as to costs in both matters.