(2004) 12 GUJ CK 0093

In the Gujarat High Court

Case No : WT Ref. No. 106 of 1993 8 December 2004 A.Ys. 1978-79 and 1979-80

CWT APPELLANT

Vs

Maharaja Daljit Singhji RESPONDENT

Date of Decision : 08-12-2004

Acts Referred:
Income Tax Act, 1961 — Section 3
Wealth Tax Act, 1957 — Section 18(1)(a), 2(m), 2(q), 27(2), 3

Citation : (2005) 144 TAXMAN 355

Hon'ble Judges : H.N. Devi, J;H.N. Devani, J;D.A. Mehta, J

Bench : Full Bench

Advocate : Manish R. Bhatt, for the Revenue and None, for the Assessee, for the Appellant;

Judgement

D.A. Mehta, J.

The Tribunal, Ahmedabad Bench B, has referred the following question of law u/s 27(2) of the Wealth Tax Act, 1957 (hereinafter referred to as the Act), at the instance of the CWT, Gujarat-II, Ahmedabad :

"Whether the Tribunal is right in law and on fact in holding that no penalty u/s 18(1)(a) of the Wealth Tax Act for delay in submission of the wealth-tax return can be levied for the period till the date of furnishing of Income Tax return by the assessee?"

2. Heard Mr. M.R. Bhatt, learned senior standing counsel appearing on behalf of the applicant-revenue. Though served, there is no appearance on behalf of the respondent-assessee.

3. The assessment years under consideration are 1978-79 and 1979-80 and the relevant valuation dates are 31-3-1978 and 31-3-1979. For assessment year 1978-79, the return of wealth which was due on 31-7-1978 was filed on 8-3-1983. The Wealth Tax Officer held that the explanation offered by the

assessee was not acceptable and thus levied penalty at Rs. 26,606 u/s 18(1)(a) of the Act holding that the assessee did not have any reasonable cause for delay of 53 months in furnishing return of wealth.

For assessment year 1979-80, the return which was due on 31-7-1979 was filed on 9-8-1983. The Wealth Tax Officer levied the penalty of Rs. 19,008 u/s 18(1)(a) of the Act considering the period of default of 44 months.

4. The assessee carried the matter in appeal before the Appellate Assistant Commissioner who passed two separate orders and reduced the penalty by directing the Wealth Tax Officer to recomputed the penalty for the period 13-3-1981 to 8-3-1983 for assessment year 1978-79 and for the period 1-4-1982 to 9-8-1983 for assessment year 1979-80. The revenue challenged the orders of Appellate Assistant Commissioner before the Tribunal, who, for the reasons stated in its order dated 1-12-1989, upheld the orders of the Appellate Assistant Commissioner.

5. Mr. M.R. Bhatt, learned senior standing counsel urged on behalf of the applicant that the Appellate Assistant Commissioner and the Tribunal had incorrectly given the relief to the assessee upto the dates of filing of Income Tax returns for two assessment years under consideration. He submitted that the Tribunal had merely relied on decision in the case of Additional Commissioner of Wealth Tax, Madras II, Madras Vs. Babulal K. Shah and Another, for the purpose of upholding the orders of the Appellate Assistant Commissioner without assigning any independent reasons. That merely because the Income Tax returns for the assessment years under consideration were delayed, that by itself was not a reasonable cause for submitting wealth-tax returns belatedly. He urged that the orders imposing penalty made by the Wealth Tax Officer be restored by answering question referred for the opinion of this court in favour of the revenue.

6. u/s 3 of the Act, charge of wealth-tax is levied for every assessment year in respect of the net wealth of a person specified in the section on the corresponding valuation date. Section 2(q) of the Act defines "valuation date" to mean the last day of the previous year as defined in section 3 of the Income Tax Act. The definition of "net wealth" as appearing in section 2(m) of the Act means the amount by which the aggregate value of all the assets belonging to assessee on the valuation date exceeds the aggregate value of all the debts owed by the assessee on the valuation date. In the circumstances, on a plain reading of the provisions of the Act it is apparent that the filing of the wealth-tax return is dependent on filing of the Income Tax return, or at least the provisions of the Income Tax Act have some bearing. It is settled legal position that liability to pay tax under the Income Tax Act is a permissible deduction while computing net wealth of an assessee on the valuation date, and such liability is ascertainable only on the date when the Income Tax return is finalised.

7. In the light of the aforesaid scheme of the Act, there is no infirmity in the order made by the Tribunal upholding order of the Appellate Assistant

Commissioner whereunder penalty came to be reduced upto the date of filing of Income Tax returns for both the assessment years under consideration.

8. In the result, the question referred to the court is answered in the affirmative, i.e., in favour of the assessee and against the revenue. The reference stands disposed of accordingly. There shall be no order as to costs.