
(2004) 09 AHC CK 0222

In the Allahabad High Court

Case No : WT Reference No. 114 of 1984 22 September 2004

CWT

APPELLANT

Vs

Rani Laxmi Devi

RESPONDENT

Date of Decision : 22-09-2004

Acts Referred:

Citation : (2005) 142 TAXMAN 586

Hon'ble Judges : R.K. Agrawal, J;K.N. Ojha, J

Bench : Full Bench

Advocate : Shambhoo Chopra, for the Appellant;

Judgement

R.K. Agrawal, J.

The Income Tax Appellate Tribunal, Allahabad has referred the following question of law u/s 27(1) of the Wealth Tax Act, 1957 (hereinafter referred to as "the Act") for opinion to this court :

"Whether, on the facts and in the circumstances of the case, the I.T.A. Tribunal was legally justified in cancelling the various penalties levied by the Wealth Tax Officer?"

2. Briefly stated, the facts giving rise to the present reference are as follows :

The reference relates to the assessment years 1967-68 to 1975-76. The respondent assessee had made a disclosure of a net wealth in terms of section 15(1) of the Voluntary Disclosure of Income and Wealth Ordinance, 1975, subsequently replaced by the Voluntary Disclosure of Income and Wealth Act, 1976 (hereinafter referred to as "the Disclosure Act"). As required under rule 5 of the Voluntary Disclosure of Income and Wealth Rules, 1975, the respondent assessee had made the declaration in duplicate in Form C and were accompanied by return of net wealth in the form prescribed u/s 14 of the Act. She made a declaration for the assessment years 1967-68 to 1975-76 before the Commissioner of Wealth Tax. Alongwith the declaration, she had submitted a

letter that she had no liquid asset to pay the huge demand of wealth tax for the above years and that it was also not possible for her to sell the properties due to various restrictive laws and therefore, it was requested that the entire demand be stayed till the orders regarding the sale of the property by the Government are received. She, however, as a token, paid a sum of Rs. 200 as wealth tax. The declarations were forwarded by the Commissioner of Wealth Tax to the Wealth Tax Officer alongwith the relevant enclosures, who, on the basis of return so filed, completed the assessment on 13-2-1979 by, passing a common order. The quantum of wealth had been modified to some extent which had not been disputed by the respondent assessee. The Wealth Tax Officer also directed for issuance of notice u/s 18(1)(a) of the Act for late filing of return. In response to the notice issued u/s 18(1)(a) of the Act, the respondent assessee submitted her reply stating therein that no penal action can be initiated as she had filed her return under the Disclosure Act. She further submitted that she was not able to pay her taxes because of the non-availability of liquid fund and inability to sell her property and requested the Wealth Tax Officer to attach the property disclosed under the Disclosure Act to satisfy the tax demand. In this view of the matter, it was requested that the Penalty proceedings be dropped. The Wealth Tax Officer was not satisfied with the explanation submitted by the respondent assessee and imposed various amount of penalty u/s 18(1)(a) of the Act. Feeling aggrieved, the assessee preferred separate appeals before the Appellate Assistant Commissioner who, however, confirmed the order imposing the penalty. Still feeling aggrieved, the assessee preferred separate appeals before the Tribunal. The Tribunal while allowing the appeal has held that the action of the Wealth Tax Officer in taking recourse to section 18(1)(a) of the Act for imposing the penalties because of the alleged failure on the part of the assessee to pay the tax found payable in consequence of her having voluntarily disclosed certain wealth, is totally erroneous and in their opinion all that the Wealth Tax Officer was entitled to u/s 15(4) of the Disclosure Act was to make an assessment of tax leviable on the voluntarily disclosed wealth and could not proceed further to impose penalty on the basis of the information furnished in that particular proforma. The Tribunal has further held that even if the assessee has not paid the tax on the wealth voluntarily disclosed as provided in the Disclosure Act, the question of validity or otherwise of the immunity from the penalty and the proceedings under the Act had to be considered in the relevant proceedings under the Act but not in the process of quantification of the assessee's liability of tax on the voluntarily disclosed wealth.

3. We have heard Sri Shambhoo Chopra, the learned counsel for the revenue.

The learned counsel for the revenue submitted that as the respondent had not paid the due taxes on her voluntarily disclosed wealth, she was not entitled for any immunity. Thus, the Wealth Tax Officer was perfectly justified in initiating and imposing penalty u/s 18(1)(a) of the Act. He relied upon the following two decisions

(i) Banaras Chemical Factory Vs. Commissioner of Income Tax,

(ii) Jaswant Rai v. CBDT(1982)133 ITR 191.

4. It is not in dispute that the respondent while voluntarily disclosing her wealth under the Disclosure Act had not paid the amount of tax due on the net wealth nor had invested any amount in securities as provided in sub-section (3) of section 3 of the Disclosure Act. Section 15 of the Disclosure Act reads as follows

"15. Voluntary disclosure of wealth.(1) Subject to the provisions of this section, where any person makes, on or after the date of commencement of this Act but before the 1-1-1976, a declaration in respect of

(a) the net wealth chargeable to wealth-tax for any assessment year for which he has failed to furnish a return u/s 14 of the Wealth Tax Act; or

(b) the value of the assets which has not been disclosed, or the value of the assets which has been understated, in any return of net wealth for any assessment year,

then, notwithstanding anything contained in that Act, the net wealth, or, as the case may be, the value so declared shall not be taken into account for the purposes of any proceeding relating to imposition of penalty on the person making the declaration under this sub-section (hereafter in this section referred to as the declarant) or for the purposes of the prosecution of the declarant under that Act :

Provided that

(i) nothing contained in clause (a) shall apply in relation to the net wealth assessable for any assessment year for which a notice u/s 14 or section 17 of that Act has been served upon the declarant before the commencement of this Act;

(ii) nothing contained in clause (b) shall apply in relation to so much of the value of such assets as has been assessed in any assessment for the relevant assessment year made by the Wealth Tax Officer before the date on which the declaration under this sub-section is made.

(2) The declaration under sub-section (1) shall be made to the Commissioner and shall be in such form and shall be verified in such manner as may be prescribed by rules made by the Board.

(3) A declaration under sub-section (1) shall be signed by the person specified in sub-section (2) of section 4 as if the declaration had been made under that section.

(4) A copy of the declaration made by the declarant under sub-section (1) shall be forwarded by the Commissioner to the Wealth-tax Officer and the information contained therein may be taken into account for the purposes of the proceedings relating to assessment or re-assessment of the net wealth of the declarant under

the provisions of the Wealth Tax Act.

(5) The immunity provided under sub-section (1) shall not be available to the declarant unless the wealth-tax chargeable in respect of the net wealth for the assessment year or years for which the declaration has been made is paid by the declarant in accordance with the provisions of section 5 and the declarant invests in the securities referred to in sub-section (3) of section 3 within the time specified in sub-section (4) of section 5 the sum specified in sub-section (6) of this section.

Explanation. For the purposes of this sub-section, wealth tax chargeable in respect of the net wealth for any assessment year for which the declaration is made shall be

(a) in a case falling under clause (a) of sub-section (1), the wealth tax payable in respect of net wealth declared under that clause for that year;

(b) in a case falling under clause (b) of sub-section (1),

(i) where no assessment has been made in pursuance of the return of the net wealth furnished by the declarant, the wealth tax payable on the aggregate of the net wealth, returned and the value declared under that clause for that year as if such aggregate were the net wealth, as reduced by the wealth tax payable on the basis of the net wealth returned;

(ii) where an assessment has been made in pursuance of the return of the net wealth furnished by the declarant, the wealth tax payable on the aggregate of the net wealth as assessed and the value declared under that clause for that year as if such aggregate were the net wealth as reduced by the wealth tax payable on the net wealth as assessed.

(6) The sum referred to in sub-section (5) shall be,

(a) where the declaration has been made in respect of one assessment year, a sum equal to two and a half per cent of the amount of net wealth declared under clause (a) of sub-section (1), or, as the case may be, the value declared under clause (b) of that sub-section;

(b) where the declaration has been made in respect of more than one assessment year, a sum equal to two and a half per cent of the net wealth declared under clause (a) of sub-section (1) or, as the case may be, the value declared under clause (b) of that sub-section in respect of the last of such assessment year.

(7) Where any wealth tax is paid by the declarant for any assessment year in accordance with the provisions of section 5, read with sub-section (5) of this section, credit therefore shall be given to the declarant in the assessment made under the Wealth Tax Act for that year."

From a perusal of the aforesaid section, it will be seen that the immunity

provided under sub-section (1) is not available to the declarant where the wealth tax chargeable has not been paid and the investment in the securities referred to in section 3(3) of the Disclosure Act has not been made. Under the Rules framed under the Disclosure Act, the declaration has to be made in duplicate in the prescribed Form C. It has also to accompany with the return of net wealth for the years for which the declaration has been made as prescribed u/s 14 of the Act. The respondent had declared her net wealth under the Disclosure Act by filing the prescribed Form C in duplicate as also the return of net wealth as required under the Act. All these returns were filed after the due date for filing the return under the Act had expired. As the respondent had not paid the due taxes nor had invested the requisite amount in specified securities, she was not entitled for any immunity. Under sub-section (4) of section 15 of the Disclosure Act, the Wealth Tax Officer is enjoined to process the declaration made by the declarant and he has to take into consideration such a declaration for the purpose of proceeding relating to assessment or re-assessment of the net wealth of the declarant under the provisions of the Act. Thus, all the provisions of the Act are attracted and if a declarant fulfils the requirement of sections 15(1) and (5) of the Disclosure Act, the declarant is entitled for immunity provided u/s 15(1) of the Disclosure Act. In the present case, we find that the respondent had filed the return of net wealth alongwith the declaration on which the assessment orders have been passed by the Wealth Tax Officer. Since she had not paid the tax, she was not entitled for any immunity from the penalty. Thus, the provision of section 18(1)(a) of the Act were attracted as the return of net wealth had been filed beyond time. In this view of the matter, we are of the opinion that the Tribunal was not justified in holding that the penalty for late filing of the return u/s 18(1)(a) of the Act was not attracted.

5. In the case of Banaras Chemical Factory (*supra*), this court has held that the law does not provide that if the assessee made a voluntary disclosure of its concealed income, it has to be absolved from penalty.

Similar view has been taken by the Delhi High Court in the case of Jaswant Rai (*supra*).

6. In view of the foregoing discussion, we answer the question of law referred to us in the negative, i.e., in favour of the revenue and against the assessee. However, there shall be no order as to costs.