(1982) 06 GAU CK 0016

In the Gauhati High Court

Case No : WT Reference No. 10 of 1975

Dhan Kaur and Sons APPELLANT

Vs

Commissioner of Wealth Tax RESPONDENT

Date of Decision : 25-06-1982

Acts Referred:

Finance Act, 1969 — Section 24
Wealth Tax Act, 1957 — Section 14, 14(1), 14(2), 15, 16(3)

Citation : (1982) 06 GAU CK 0016

Hon'ble Judges : Pathak, Acting C.J.

Bench : Single Bench

Advocate : R.P. Agarwalla and R.L. Jain, for the Appellant; G.K. Talukdar, D.K. Talukdar and Standing Counsel, for the Respondent

Judgement

Pathak , C.J. (Actg.)

1. The IT Appellate Tribunal, Gauhati Bench has referred the following question at the instance of the assessee u/s 27(1) of the Wealth-tax Act, 1957, (hereinafter referred to as ''the Act''), for a decision of this Court. The question reads:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the calculation of penalty relating to the assessment years 1965-66 to 1968-69 for the period upto 31-3-1969 was to be made u/s 18(1)(i) of the Wealth-tax Act, 1957, as substituted with effect from 1-4-1965 by section 18 of the Wealth-tax (Amendment) Act, 1964, and thereafter u/s 18(1)(i) as substituted by section 24 of the Finance Act, 1969?

The facts leading to the present reference appear from the statement of the case in the following way:

The assessment years involved are 1965-66, 1966-67, 1967-68 and 1968-69. u/s 14(1) of the Act the assessee was required to file the return of his net wealth by 30-6-1965, 30-6-1966, 30-6-1967 and 30-6-1968 for the assessment years

1965-66, 1966-67, 1967-68 and 1968-69 respectively. The WTO served notice u/s 14(2) of the Act on the assessee and then the assessee filed returns for the assessment years 1965-66 on 26-5-1969 and for the other assessment years on 5-6-1969. There was delay in filing the returns of wealth by 45 months, 35 months, 23 months and 11 months respectively. The assessments were made u/s 16(3) of the said Act on total wealth of Rs. 9,56,000, Rs. 9,55,429, Rs. 10,07,920 and Rs. 10,45,299 in the four assessment years respectively and the net tax payable was determined at Rs. 4,060, Rs. 3,088, Rs. 6,654 and Rs. 7,406 respectively.

2. The WTO also initiated penalty proceedings u/s 18(1)(a) of the Act or late submission of the returns as he was of opinion that the failure of furnishing the returns by the assessee was without any reasonable cause. Notices issued u/s 18(2) of the Act were served on the assessee and the assessee pleaded in all the years in the written explanation that all the materials in connection with the wealth could not be collected in time and hence the delay in submission of the returns. The WTO also gave a personal hearing to the assessee. The WTO came to a finding in all the assessment years that he did not find any material that was not in possession of the assessee for submission of the return of wealth timely. The WTO pointed out that in all the years the assessee was the owner of the property, the particulars of which were always in the possession of the assessee. He also found that the assessee did not even engage any valuer for valuation of the property which might have been the cause of delay and that the valuation of property was made by the assessee on his own estimate which valuation could have been made earlier and the return of wealth could have been filed in time. "He also found that besides the landed property in regard to immovable property the assessee had investments in M/s. National Engineering & Electrical Co., Jorhat which is a sister concern and the value of such investment was always available to the assessee. He also took the view that the bank balance and value of vehicles could have been ascertained at the appropriate time. He, therefore, rejected the explanation of the assessee and held that the default was deliberate. The penalties in all the assessment years were imposed @ 2 per cent of the tax for every month for which the default continued upto 31-3-1969, but not exceeding in the aggregate 50 per cent of the tax and @ 1/2 per cent of the net wealth assessed for the period after 1-4-1969 for which the default continued, but not exceeding, in the aggregate, an amount equal to the net wealth assessed. The penalties imposed came to Rs. 5,810, Rs. 9,098, Rs. 10,874, and Rs. 9,783 in the assessment years 1965-66, 1966-67, 1967-68 and 1968-69 respectively.

3. The assessee preferred appeals before the AAC. The AAC disposed of the appeal for the assessment year 1965-66 by a separate order dated 27-11-1972 and he disposed of the appeals for the assessment years 1966-67, 1967-68 and 1968-69 by a consolidated order dated 27-11-1972. The AAC in the consolidated order held that for all the years the properties were valued by the assessee itself which could have been done earlier. He, therefore, held that there was no reason

for delaying the returns and the penalties were correctly leviable. However, before the AAC an objection was taken on behalf of the assessee to the combining of the two methods of penalties, namely, at 2 per cent of the tax upto 31-3-1969, and @ 1/2 per cent of wealth for the period thereafter. The AAC held that the Act is clear on this point and that section 18(1)(a) of the Act as it stood before contemplated penalty at 2 per cent of the tax for each completed month of delay and that after amendment the penalty is at 2 per cent of the wealth for each completed month of delay and that nowhere time-limit was mentioned. He, therefore, held that the WTO was not at liberty to adopt either method advantageous to revenue nor can he adopt both the methods and so he has to levy penalty under the amended section and, therefore, he cannot go prior to 1-4-1969. Thus he held that no penalty was imposable for the period upto 31-3-1969. He, therefore, deleted the penalties imposed on the basis of calculation of tax at 2 per cent of the tax for each month of delay prior to 31-3-1969 and he maintained the balance penalties imposed for default after 1-4-1969 for the assessment years 1966-67, 1967-68 and 1968-69. In the assessment year 1965-66, the AAC on the basis of his consolidated order held that the penalty should be only 1/2 per cent of the net wealth for one month from 1-4-1969 to 30-4-1969. He, therefore, reduced the penalty of Rs. 5,810 to Rs. 1,890.

4. Against the orders of the AAC both the assessee and the department filed appeals. The assessee''s appeals were relating to the assessment years 1966-67 to 1968-69. The assessee also filed appeal relating to the assessment year 1965-66. In the appeals the assessee pleaded that the orders passed by the WTO and the AAC of Wealth-tax were unjust and bad in law as well as on facts and that the penalty should not have been imposed and at any rate the amount of penalty imposed was too high. In the cross-objection the assessee pleaded that the penalty should not have been imposed and that there ought not to be two rates of penalty but it should be at the rates as prescribed in the Act of the assessment year concerned. The Department in all the appeals for all the years pleaded that the AAC was not correct in reducing the penalty imposed by the WTO u/s 18(1)(a) of the Act.

5. The Tribunal first considered whether there was any reasonable cause for delay in submission of the returns in these years and ultimately agreed with the WTO and the AAC that there was no reasonable cause for the assessee in the delayed filing of the returns and so the penalties were leviable. The Tribunal also considered the legal contention of the parties relating to the imposition of penalties. The contention of the assessee in the appeals was that the imposition of penalty under the new Act was illegal. The contention of the department on the other hand was that the AAC was not justified in reducing the quantum of penalties by reducing the period of default. Ultimately, the Tribunal upheld the orders of the WTO in all the assessment years.

6. It is the settled principle of law that-

The law operative on the date when the infringement takes place is the law applicable unless it is made punishable ex post facto. If the argument of the department is accepted it shall make the operation of the amended law retrospective when there are no such words in the statute itself. There is no scope for culling out an intention of the Legislature as the language is explicit and unambiguous. It is well settled both by English and Indian courts that a fiscal statute cannot be regarded as retrospective by implication. We cannot read any intention of retrospective operation by implication. Moreover, we are concerned with a penal provision and the rule against the retrospectivity applies with greater rigour in such cases.

Commissioner of Wealth-tax Vs. Ram Narain Agrawal, .

The Punjab & Haryana High Court in Suresh Seth v. CWT [1977] 108 ITR 86 (P&H) had to consider the scope, intent, reach and interpretation of section 18 of the Act. That Court following the decision of CWT v. Ram Narain Agarwal (supra) and Commissioner of Gift-tax Vs. C. Muthukumaraswamy Mudaliar, , observed as follows:

A fiscal statute cannot be construed retrospectively unless there are clear words to that effect in the statute itself. Section 18(1)(a) of the Wealth-tax Act, 1957, as amended by the Finance Act, 1969, is not retrospective in its operation.

Under section 18 the wrongful act on the part of an assessee becomes complete as soon as he does not file the return of his wealth on the stipulated date. His omission to do so does not make the wrongful act a continuing one, merely because the penalty on him may either continue or get enhanced. Penalty can be imposed on an assessee for failure to file a return on the due date only on the basis of the law which was prevalent on that date.

In Commissioner of Wealth-tax Vs. R.D. Chand and V.R. Desai, , the Andhra Pradesh High Court had to consider the scope of section 18(1)(a) as amended by the Wealth-tax (Amendment) Act of 1964 and the Finance Act of 1969, where it was observed:

It is a cardinal principle of criminal jurisprudence that, unless otherwise provided expressly or by necessary implication, the penalty that was provided for at the time of the commission of the offence would be the proper penalty to be levied, and not the penalty that was provided for at the time of conviction of the offender. In other words, penalty for infraction takes place not when it is detected but when it actually has been committed.

The Court further held-

....when clause (a) to section 18(1) r/w section 18(1)(i) of the Act does not expressly or by necessary implication treat the default as a continuing default, it would, in our opinion, be stretching the point too far to hold that from the scale of penalty provided in clause (i) it should be assumed that the legislature intended that the default in not filing the return on the due date would be a continuing default.

In Suresh Seth (supra), the following observation of the Punjab and Haryana High Court is also worth quoting. It reads:

If section 18 of the Act is tested on the touchstone of the aforementioned principle, it becomes obvious that the wrongful act on the part of an assessee becomes complete as soon as he does not file the return of his wealth on the stipulated date. His omission to do so does not make the wrongful act a continuing one, merely because the penalty imposable on him may either continue or get enhanced.

7. Mr. G.K. Talukdar, the ld. Standing Counsel for the Department as well as Mr. R.L. Jain, the ld. counsel for the assessee submit that this reference is covered by a decision of this Court in T. K. ROY Vs. COMMISSIONER OF WEALTH-TAX. S. KARAM SINGH v. COMMISSIONER OF WEALTH-TAX S. N. ROY v. COMMISSIONER OF WEALTH-TAX., where one of us Pathak, CJ. (Acting) was a party. In that case, it was held that:

The infringement is complete once and for all as and when there is failure on the part of the assessee to file a return as required u/s 14 of the Act. Such infringement is complete and it cannot be stopped by filing of any subsequent return. If any return filed is subsequently that would not be a return u/s 14, but it may be a return u/s 15 which may reduce the period of default, but would not absolve the assessee of the offence committed by him by not filing the return on the crucial date, namely, on 30th June of each corresponding year. Accordingly, I am of the firm opinion that the penalty imposable u/s 18 would be on the basis of the law as it stood on the date of the failure of the assessee to file the return on the crucial date as aforesaid. In other words, if there is default for a particular assessment year, before the 1964 Amendment, the penalty that can be imposed would be according to the provision of the law prior to 1-4-1965. In such a case although the return is filed u/s 15 or the assessment is made after the 1964 Amendment or 1969 Amendment, the amended provisions of clause (i) of sub-section (1)(a) of section 18 would not apply. Similarly, if the failure of the assessee to furnish the return is after the 1964 Amendment, the penalty that can be imposed on him would be on the basis of law as it stood on the date of his failure to file the return. It would not attract the provision of clause (i) of section 18(1)(a) of the 1969 Amendment although the assessment for that year is not complete or no return is filed before that amendment. From the above discussion and also on a perusal of section 18(1)(a), before and after amendments, it shows that there was no change in the clause levying penalty, but the rate of penalty was vitally altered by the two amendments with effect from 1-4-1965 and 1-4-1969. If the contention of the ld. counsel for the department is accepted, that would have the effect of operating the penal clause retrospectively. But reading section 18, I do not find such retrospective operation intended by the legislature. Indeed, it is difficult to see on what principle we can refuse to give its plain natural meaning to the expression "has failed...." as used in section 18(1)(a) and to read it in a sense so as to have in its sweep retrospective effect. I do not think that this would be the correct way of interpreting the provision of a section where no such retrospective operation is expressly enacted.

Even if there was any controversy in this matter that has been set at rest by the decision of the Supreme Court in Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth, . We have already noted above the decision of the Punjab and Haryana High Court in Suresh Seth (supra), out of which the present appeal arose before the Supreme Court. In the appeal, their Lordships of the Supreme Court held that-

Where the default complained of is one falling u/s 18(1)(a) of the Wealth-tax Act, 1957 (e.g., failure to file the return of wealth before the due date without reasonable cause), the penalty has to be computed in accordance with the law in force on the last day on which the return in question had to be filed. Neither the amendment made in 1964 nor the one made in 1969 to clause (i) of section 18(1) has retrospective effect.

It was further held by their Lordships:

Non-performance of any of the acts mentioned in section 18(1)(a) gives rise to a single default and to a single penalty, the measure of which, however, is geared up to the time-lag between the last date on which the return has to be filed and the date on which it is filed. The default, if any, committed, is committed on the last date allowed to file the return. The default cannot be one committed every month thereafter. The words "for every month during which the default continued" indicate only the multiplier to be adopted in determining the quantum of penalty and do not have the effect of making the default in question a continuing one. Nor do they make the amended provisions modifying the penalty applicable to earlier defaults in the absence of necessary provisions in the amending Acts.

Their Lordships have further observed:

The distinctive nature of a continuing wrong is that the law that is violated makes the wrong doer continuously liable for penalty. A wrong or default which is complete but whose effect may continue to be felt even after its completion is, however, not a continuing wrong or default.

For the reasons stated above, we answer the question referred to us in favour of the assessee and against the revenue. In the facts and circumstances of the case, we pass no order as to costs.

