(1987) 05 PAT CK 0030

In the Patna High Court

Case No : Taxation Case No''s. 57 to 60 of 1978

H.P. Agarwalla and Sons APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 13-05-1987

Acts Referred:
Wealth Tax Act, 1957 — Section 18(1)

Citation : (1987) 167 ITR 822

Hon'ble Judges : Uday Sinha, J;B.N. Agrawal, J

Bench : Division Bench

Advocate : None, for the Appellant; B.P. Rajgarhia and S.K. Sharan, for the Respondent

Judgement

1. This is a reference u/s 27(1) of the Wealth-tax Act, 1957, in relation to the assessment years 1965-66 to 1968-69. A consolidated statement of facts has been submitted to this court by the Income Tax Appellate Tribunal.

2. At the time of assessment, the Wealth-tax Officer finding that the assessee had filed returns beyond time without any reasonable cause levied penalty for the relevant assessment years in terms of Section 18(1) of the said Act. The penalties levied for the respective years were as follows :

Assessment years Rs.

1965-66 2,364.00

1966-67 3,059.00

1967-68 6,065.00

1968-69 6,661.00

3. Due dates for filing the return for the respective years were as follows :

Assessment years

1965-66 June 30, 1965

1966-67 June 30, 1966

1967-68 June 30, 1967

1968-69 June 30, 1968

4. The returns were in fact filed for all the four years on February 28, 1970. Obviously, the returns were filed beyond the time prescribed by law. The assessee appealed against the orders levying penalty. The Appellate Assistant Commissioner held that the assessee had no reasonable cause for filing the returns beyond the due date. He, however, directed the Wealth-tax Officer to impose penalty on the assessee u/s 18(1)(a) of the Wealth-tax Act as it stood before its amendment with effect from April 1, 1969, by the Finance Act, 1969. The Department went up in appeal against the order of the Appellate Assistant Commissioner in so far as the Appellate Assistant Commissioner had directed the imposition of penalty u/s 18(1)(a) as it stood prior to its amendment with effect from April 1, 1969. The Tribunal set aside the order of the Appellate Assistant Commissioner and restored the order of the Wealth-tax Officer. The assessee, being aggrieved by the order of the Tribunal, claimed reference u/s 27(1) of the Wealth-tax Act. Hence, the present references before us.

5. The questions referred to us for our opinion are the following :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal has rightly held that the omission to file the return of wealth u/s 14(1) of the Wealth-tax Act, 1957, is a continuing default ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal has rightly held that that for the period of default after April 1, 1969, penalty is leviable on the assessee u/s 18(1)(a) of the Wealth-tax Act, as amended by the Finance Act, 1969, with effect from April 1, 1969?"

6. The first question is whether the omission to file the return of wealth u/s 14(1) of the Wealth-tax Act, 1957, was a continuing default. We need not waste time over this proposition as the matter has been settled finally by the Supreme Court in Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, , In Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth, , the Supreme Court had held that failure to file return on due date was not a continuing default. That decision of the Supreme Court was overruled in the case of Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, , where their Lordships held that failure to file return on due date was a continuing default. In that view of the matter, the first question referred to us must be answered in favour of the Revenue and against the assessee.

7. In regard to the second question, the law which will apply to the levy of penalty in this case had been amended by the Finance Act, 1969. The proceeding for levy of penalty had been initiated in 1971. The delinquency, however, had

taken place prior to 1969. Therefore, the stand of the assessee was that the law which came into effect on April 1, 1969, would not govern the measure of penalty to be imposed upon it. This question also now has been answered by a Full Bench of this court in Taxation Cases Nos. 269, 270, 280 and 281 of 1976 (disposed of on 27-4-1987-- COMMISSIONER OF WEALTH-TAX Vs. DALIP KUMAR WORAH AND ANOTHER.,) to which both of us were parties. The Full Bench of this court, following the decision of the Supreme Court in Jain Bros. and Others Vs. The Union of India (UOI) and Others, , held that in the matter of levy of penalty, the law to be applied would be the law which existed on the day the satisfaction of the taxing officer was arrived at for imposing penalty. The decision of the Supreme Court had been affirmed by the Supreme Court in the case of Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, . Following those decisions, the Full Bench held that the penalty would be levied in accordance with the law prevailing on the day of satisfaction to initiate penalty proceeding. Since the proceedings in this case were initiated in 1971, the penalty would be levied in terms of the Finance Act, 1969. The second question also must, therefore, be answered in favour of the Revenue and against the assessee.

8. For the reasons stated above, the Tribunal was right on both the points and both the questions are thus answered in favour of the Revenue and against the assessee. Since no one has appeared on behalf of the assessee, there shall be no order as to costs.

9. Let a copy of this judgment be transmitted to the Assistant Registrar, Income Tax Appellate Tribunal, "A" Bench, Patna, in terms of Section 27(6) of the Wealth-tax Act.

