

(1979) 05 PAT CK 0011
In the Patna High Court
Case No : Tax Case No. 21 of 1974

Jagannath Singh

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 08-05-1979

Acts Referred:

Income Tax Act, 1922 — Section 28(1)(c)

Income Tax Act, 1961 — Section 271(1)(a)

Wealth Tax Act, 1957 — Section 14, 17, 18, 18(1)(a), 25(1)(a)

Citation : (1980) 4 TAXMAN 38

Hon'ble Judges : S. Sarwar Ali, Acting C.J.; Brishketu Saran Sinha, J

Bench : Division Bench

Advocate : Rameshwar Pd. No. 2 and Manindra Nath Verma, for the Appellant;
B.P. Rajgarhia and S.K. Sharan, for the Respondent

Judgement

Brishketu Saran Sinha, J.—By an order dated 26th February, 1975, this court framed the following question:

Whether, on the facts and in the circumstances, of the case, the imposition of penalty and the quantum of penalty levied for the late filing of return is legal and proper?

and directed the income tax Appellate Tribunal, Patna Bench (hereinafter referred to as "the Tribunal"), to state a case u/s 27(3) of the Wealth-tax Act, 1957. It has been done. For the assessment year 1969-70, the wealth-tax return of the assessee was due by 30th June, 1969. It was filed on 3rd February, 1970. The return being late by seven months the WTO issued show-cause notice u/s 18(1) (a) of the Wealth-tax Act to the assessee. In the cause shown in response to the notice, the assessee submitted that he had furnished the return of the wealth-tax voluntarily and had paid the amount soon after filing the return. He further stated that although the return was filed late, he filed the return as soon as he came to know about his liability and accordingly prayed that no penal action be taken as it was not called for. The WTO, having found the explanation not

satisfactory, held the assessee to be in default and imposed a penalty as provided u/s 18(1)(a) of the Act which was to the tune of Rs. 6,825.

2. It appears that for the assessment years 1964-65, 1965-66, 1966-67, 1967-68, 1968-69 and 1969-70, the assessee had filed the returns after delay on February 3, 1970, under the Wealth-tax Act for which six separate proceedings u/s 18 had been initiated. As the WTO had imposed penalties for all the six years, appeals filed by the assessee against such penalties were heard together by the AAC of Wealth-tax, "A" Range, Patna, and disposed of by a common order, copy of which is annex. "B". On behalf of the assessee it was submitted before the AAC that, in the absence of any directive from the WTO, the assessee also lost sight of the fact that he was liable to pay wealth-tax and as soon as he came to know of his responsibility to file his returns, he did so and also paid the taxes due after assessment, and this circumstance deserved due consideration. It was also submitted that, in any event, a token penalty was sufficient for meeting the ends of justice and the penalties imposed by the WTO were severe and excessive. The AAC held that under the W.T. Act, it was not the duty of the WTO to have apprised the assessee of his responsibility for filing returns. He further held that by looking at the balance-sheet of the company of which the assessee was a shareholder, the WTO was not in a position to determine that the assessee was liable to wealth-tax. He also held that the WTO knew that the assessee was liable to wealth-tax. It was, however, clarified that even if the WTO knew about the assessee's liability, there was no obligation on the WTO to inform the assessee to furnish the wealth-tax returns. The AAC, therefore, dismissed the appeals after holding that the assessee had, without reasonable cause, failed to furnish returns in time. However, certain reliefs were granted to him for the year 1964-65 and some reduction was made in the penalty. No relief was given for the other periods including that of 1969-70.

3. The assessee, therefore, filed six appeals before the Tribunal which were heard along with five appeals filed by one Srimati Saraswati Devi. All these appeals were heard together and the main order of the Tribunal was passed in the appeals filed by Srimati Saraswati Devi, As the counsel for the assessee adopted those very arguments in the case of the assessee, the Tribunal dismissed the appeals of the assessee with certain modifications in the amount of penalty for the other years except that for the year 1969-70.

4. Therefore, in order to consider the reasonings given by the Tribunal in rejecting the appeals of the assessee, the order passed by the Tribunal in Srimati Saraswati Devi's case has to be taken into account. It was urged before the Tribunal that the explanation given by the assessee that she was under a bona fide belief that her wealth was not taxable should have been accepted by the AAC. The Tribunal, however, also came to the conclusion that the explanation given by the assessee could not be considered to be reasonable for the delay in filing the return. The plea of the assessee that the department had not issued notice to the assessee to file the return was also negated. It was, however, held

by the Tribunal that there was nothing to show as to how the assessee came to know about the wealth-tax liability only on 3rd February, 1970, when the returns for all the years were filed. The Tribunal further held:

No doubt the penalty cannot be levied only because there is delay but what is to be seen is whether there was any reasonable cause which prevented the assessee from filing the return. We agree with the reasoning given by the Appellate Assistant Commissioner that no such reasonable cause has been shown and was therefore, uphold that the penalty was leviable.

5. The Tribunal, however, made certain reductions in the penalty imposed on the basis of the law as it was for imposing penalties in the relevant year. However, having come to the conclusion that the penalty imposed for the year 1969-70 was in accordance with the amended law applicable for the assessment year, no reduction was given for this year.

6. The main question that falls for consideration in this reference is as to when a penalty can be imposed u/s 18(1)(a) of the Wealth-tax Act. It would, at this stage, be convenient to quote it, which runs thus:

18. (1) If the Wealth-tax Officer, Appellate Assistant Commissioner, Commissioner or Appellate Tribunal in the course of any proceedings under this Act is satisfied that any person--

(a) has without reasonable cause failed to furnish the return which he is required to furnish under sub-section (1) of section 14 or by notice given under sub-section (2) of section 14 or section 17, or has without reasonable cause failed to furnish within the time allowed and in the manner required by sub-section (1) of section 14 or by such notice, as the case may be; or...

he or it may, by order in writing, direct that such person shall pay by way of penalty-

(i) in the cases referred to in clause (a), in addition to the amount of wealth-tax, if any, payable by him, a sum equal to two per cent, of the assessed tax for every month during which the default continued.

On a plain reading of this provision it seems that penalty can only be imposed if a person has without reasonable cause failed to furnish the, return within the time as prescribed therein. Admittedly, in the instant case, the return was not filed within the time allowed and, therefore, it has to be considered further whether it was filed beyond time without reasonable cause.

In the case of Hindustan Steel Ltd. Vs. State of Orissa, , the provisions of the Orissa Sales Tax Act providing for penalty under certain circumstances fell for consideration before the Supreme Court. u/s 9(1) of the Orissa Sales Tax Act, no dealer who was liable u/s 4 of the Act to pay tax could carry on business as a dealer unless he has been registered under the Act and possessed a registration certificate. Section 12(5) of that Act further provided that if the authorities were

satisfied that a dealer without sufficient cause failed to apply for registration, the authorities after giving the dealer a reasonable opportunity of being heard, assess the dealer for the amount of tax and may further direct that the dealer shall pay by way of penalty, in addition to the amount so assessed, a sum not exceeding 1? times that amount. Section 25(1)(a) provided that whoever carried on business in contravention of section 9(1) shall be punishable with imprisonment for a certain period and fine as provided therein. Penalties had been imposed on the directors of the Hindustan Steel Ltd. for failure to get itself registered as a dealer. One of the questions formulated by the Supreme Court was whether imposition of penalties for failure to register as a dealer was justified. In answering this question, Shah, Acting C.J., observed as follows (p. 29 of 83 ITR):

Under the Act penalty may be imposed for failure to register as a dealer: section 9(1), read with section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of conduct, contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.

From what I have quoted above it follows:

(a) that a proceeding for imposing a penalty for failure to carry out a statutory obligation is a quasi-criminal proceeding;

(b) penalty will not ordinarily be imposed unless a party obliged, either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation; and (c) when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by statute, it would be justified in refusing to impose penalty.

7. However, reading the decision as a whole, I am inclined to take the view that when the Supreme Court pointed out the conclusion as stated by me above under item (b), it was not intended to state exhaustively the circumstances in which a penalty could be imposed. What was stated under item (b) was some of the circumstances in which a penalty could be imposed and it may be quite possible that, in the facts of a particular case, there might be some other

considerations in which penalty may be imposed, for example, where the delay in filing the return could be attributed to an act of fraud or gross or wilful neglect on the part of the assessee.

8. In the case of Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, Grover J., speaking for the court, in a case for penalty imposed u/s 28(1)(c) of the Indian income tax Act, 1922, quoted with approval the decision of the Supreme Court in the case of Hindustan Steel Ltd. Vs. State of Orissa, that an order imposing penalty is the result of a quasi-criminal proceeding. It was further observed that, in England also, it has never been doubted that such proceedings are penal.

9. In the case of Fattorini (Thomas)(Lancashire) Ltd. v. IRC [1942] AC 643 : [1943] 11 ITR (Suppl) 50 (HL), section 21 of the Finance Act, 1922 (U.K.) and section 14 of the Finance Act, 1937 (U.K.), fell for consideration by the House of Lords. These sections provided that if an investment company has not within any year of assessment distributed to its members, in such manner as to make the amount distributed liable to be included in the statements to be made by them of their income for the purposes of surtax, a reasonable part of its actual income, the Commissioners may direct that, for purposes of assessment to surtax, be deemed to be the income of the members. Lord Atkin observed (p. 60 of 11 ITR (suppl.)):

The section is highly penal and I feel no doubt that the onus is originally and remains on the revenue to show that the company acted unreasonably in withholding part of its income from distribution.

10. Lord Wright, in the same case, also observed that the section being penal in character, the onus was on the Crown to prove its right to impose penalty and it was for the Crown to establish facts necessary, to show want of reasonableness on the part, of the company. Observations to that extent were also made by Lord Macmillan.

11. From what I have stated above, it seems that u/s 18(1)(a) of the Wealth-tax Act, failure, without reasonable cause, to furnish the returns within the time prescribed is necessary before penalty can be imposed; and what is without reasonable cause is a matter which has to be determined on the facts and in the circumstances of each case.

12. The question that still remains to be considered is as to what is the burden upon the department for establishing that the assessee is liable to payment of penalty. In other words, when can it be said that the return was not furnished in time without a reasonable cause. In the case of Commissioner of Income Tax, Ahmedabad Vs. Gokuldas Harivallabhdas, , Chagla C.J., while dealing with a case u/s 28(1)(c) of the Indian income tax Act, 1922, observed as follows (p. 105):

Now it does not follow that because the particular explanation given by the assessee is false, therefore, necessarily, the receipt of Rs. 15,203 constitutes a

taxable income of the assessee. There may be a hundred and one other possibilities as to how this receipt came into the books of account of the assessee..... Therefore, it becomes obvious that when you eliminate the explanation of the assessee, which it is open to the department to do, something must be left which will lead to the inference that the receipt of Rs. 15,203 constitutes as income. Now, if you wipe off from the slate this evidence, nothing whatever remains, and as we have just said, the very basis of the decision against the assessee is that the explanation he gave was a false one.

13. This decision has been quoted with approval by the Supreme Court in Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, . Therefore, merely because the explanation given by the assessee is unsatisfactory or false, it will not lead to the irresistible conclusion that there has been want of reasonable cause. However, as I have pointed out earlier, a negative fact can be proved by preponderance of probabilities and, in certain cases, lack of explanation or false explanation given by the assessee may be a circumstance to show that there has been want of sufficient cause.

14. As a penalty can only be imposed if the return was not filed within the time prescribed without sufficient cause and such proceedings are quasi-criminal in nature, it must follow that the legal burden is on the department to establish by leading some evidence that prima facie the assessee has, without reasonable cause, failed to furnish the return within the prescribed time.

15. Therefore, once the initial burden has been discharged by the department, it is for the assessee to show on the balance of probabilities that he had reasonable cause in failing to file the return within the prescribed time.

16. In the instant case the assessee had not filed his return for a number of years within the prescribed time and when notices to show cause were issued, the only explanation that he gave was that he filed the returns when he came to know about the liability. I am, therefore, of the view that, in the instant case, the Tribunal was justified in holding that the delay by the assessee in filing the return was without reasonable cause and, in the circumstances of the case, the inference was that the delay was the result of wilful or gross negligence on the part of the assessee.

17. On behalf of the assessee, it was urged that as there was no finding by the Tribunal of any mens rea, the imposition of the penalty was invalid. In support of this contention certain decisions were cited to which I shall refer. Although it is settled law that penalty proceedings are in the nature of quasi-criminal proceedings it cannot be said that all the principles of a criminal trial are imported in such proceedings. To initiate the proceedings, as I have said above, it is not enough that there has been a default in furnishing the return. There should be some material to show that the default is without reasonable cause. In the case of Commissioner of Income Tax Vs. Gujarat Travancore Agency, , it was held by reference to section 271(1)(a) of the income tax Act, 1961, which is in

the same terms as section 18(1)(a) of the Wealth-tax Act, that the expression "without reasonable cause" cannot import a mental element or mens rea.

18. Mr. Rameshwar Prasad for the assessee had, in support of his submission, relied upon the case of Michael Fernandes Vs. Commissioner of Wealth Tax, Mysore and Another, , which was a case u/s 18(1)(a) of the Wealth-tax Act. In that case all that was held was that the Commissioner should rehear the petition and decide whether the petitioner had failed to submit the return without reasonable cause in the light of the observations of the Supreme Court in Hindustan Steel Ltd. Vs. State of Orissa, . Similarly, in the case of Shakuntla Mehra Vs. Commissioner of Wealth Tax and Others, , there is nothing to indicate that penalty u/s 18(1)(a) can only be based on the finding that mens rea is a necessary element before penalty can be levied u/s 18(1)(a) of the Wealth-tax Act, apart from emphasising the principles as stated in the case of Hindustan Steel Ltd. Vs. State of Orissa, . Even in the case of V.L. Dutt Vs. Commissioner of Income Tax, , relied upon by Mr. Prasad, it was held that the rigour of the principles applicable to a criminal prosecution will not apply to a proceeding u/s 271(1)(a) of the income tax Act, 1961. In the case of All India Sewing Machine Co. Vs. Commissioner of Income Tax, , it was held that the liability to penalty does not arise merely upon proof of default; an order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct, contumacious or dishonest, or acted in conscious disregard of its obligation. This conclusion was again based upon the decision in the case of Hindustan Steel Ltd. Vs. State of Orissa, . In my opinion, therefore, the submission of Mr. Prasad has got to be rejected.

19. It has also been contended on behalf of the assessee that as the default in the instant case was for the period ending 31st March, 1969, the law applicable for the imposition of penalty on the assessee would not be on the basis of the law as it stood from 1st April, 1969, but would be in accordance with the law as was enforceable on 31st March, 1969. In support of this submission reliance was placed on sections 3 and 14 of the Wealth-tax Act. Section 3 is the charging section which provides that wealth-tax shall be charged for every assessment year commencing from 1st April, 1957, and section 14 provides that every assessee who is liable on the valuation date to pay wealth-tax shall furnish his return by the 30th of June of the corresponding assessment year. However, by going through section 18(1)(a) which I have quoted above, penalty has to be imposed if the return is not filed within the time prescribed therein and it has got to be imposed on the basis of assessability as on the valuation date. In the instant case, the return had to be filed on 30th June, 1969. It is obvious, therefore, that penalty had to be imposed by taking into account the date by which the return had to be filed and not by taking into account the valuation date. The penalty having been imposed in accordance with the law as it stood on 1st April, 1969, it cannot be said that the penalty imposed is not in accordance

with law. In the result, the reference is answered in the affirmative in favour of the department and against the assessee. I would, however, make no order as to costs.

S. Sarwar Ali, Actg. C.J.

I agree.