(1981) 11 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 430 of 1978

Jagdish Agarwal APPELLANT

Vs

Commissioner of Wealth-tax RESPONDENT

Date of Decision : 23-11-1981

Acts Referred:
Wealth Tax Act, 1957 — Section 14(2), 18(1), 18(2A)

Citation : (1982) 31 CTR 280 : (1983) 143 ITR 941

Hon'ble Judges : G.P. Singh, C.J;Faizanuddin, J

Bench : Division Bench

Advocate : B.L. Nema, for the Appellant; B.K. Rawat, for the Respondent

Judgement

G.P. Singh, C.J.—The question of law referred in this reference u/s 27(1) of the W.T. Act, 1957, is as follows :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the Appellate Assistant Commissioner of Wealth-tax was not competent to entertain the appeal against the order passed u/s 18(1)(a)? "

2. The facts briefly stated are that the return under the W.T. Act, for the assessment year 1971-72, was filed on 19th June, 1972. The WTO imposed penalty u/s 18(1)(a) amounting to Rs. 10,660 for late filing of the return without reasonable cause. The assessee made an application u/s 18(2A) to the CWT for waiver of penalty. That application was rejected by order of the Commissioner dated 31st July, 1974. The assessee also filed an appeal against the order of the WTO, which was allowed by the AAC by his order dated 12th March, 1976, on the ground that there was reasonable cause for late filing of the return. In further appeal before the Tribunal, it was held that as the Commissioner had refused to waive the penalty, the AAC had no jurisdiction to entertain the appeal. The Tribunal, on this reasoning, set aside the order of the AAC and restored the order of the WTO.

3. An assessee is liable for penalty u/s 18(1)(a) when he has without reasonable

cause failed to furnish the return within time. The WTO who passes an order imposing penalty under this section has to decide the questions whether the return is late and whether there was reasonable cause for the delay in furnishing the return. He can impose penalty after he decides on these two points against the assessee. The Commissioner''s jurisdiction to waive or reduce penalty u/s 18(2A) is entirely different. This provision reads as follows:

" 18. (2A) Notwithstanding anything contained in Clause (i), or Clause (iii) of Sub-section (1), the Commissioner may, in his discretion,--

(i) reduce or waive the amount of minimum penalty imposable on a person under Clause (i) of Sub-section (1) for failure, without reasonable cause, to furnish the return of net wealth which such person was required to furnish under Sub-section (1) of Section 14, or

(ii) reduce or waive the amount of minimum penalty imposable on a person under Clause (iii) of Sub-section (1), if he is satisfied that such person,--

(a) in the case referred to in Clause (i) of this sub-section has, prior to the issue of notice to him under Sub-section (2) of Section 14, voluntarily and in good faith, made full disclosure of his net wealth ; and in the case referred to in Clause (ii) of this sub-section has, prior to the detection by the Wealth-tax Officer of the concealment of particulars of assets or of the inaccuracy of particulars furnished in respect of the assets or debts in respect of which the penalty is imposable, voluntarily and in good faith, made full and true disclosure of such particulars ;

(b) has co-operated in any enquiry relating to the assessment of the wealth represented by such assets; and

(c) has either paid or made satisfactory arrangements for payment of any tax or interest payable in consequence of an order passed under this Act in respect of the relevant assessment year. "

4. A perusal of Section 18(2A) will go to show that it proceeds upon the assumption that the assessee has become liable for penalty on his failure to furnish the return within time without reasonable cause. The waiver of penalty is ordered by the Commissioner not on the ground that there was reasonable cause for late filing of return or that the return was not filed late, but upon entirely different considerations. These considerations briefly stated are that the assessee had made full disclosure of his net wealth voluntarily and in good faith prior to the issue of notice u/s 14(2), has co-operated in any enquiry relating to the assessment and has either paid or made satisfactory arrangements for payment of the tax or interest in consequence of an order passed in respect of the relevant assessment year. The circumstances which the Commissioner has to take into account in passing an order of waiver of penalty are not to be considered by the WTO and, similarly, the facts which the WTO has to examine are not to be examined by the Commissioner. The two jurisdictions are entirely

different and distinct. Therefore, if the Commissioner refuses to waive the penalty, it cannot be said that there was no reasonable cause for late filing of the return. That question, which is the subject-matter of enquiry before the WTO, still remains open and if the WTO decides against the assessee, his finding can be challenged in appeal before the AAC. In our opinion, the right of going up in appeal for challenging an order imposing penalty passed by the WTO remains effective and is not waived simply because the assessee approaches the Commissioner for waiver of penalty and he refuses to waive penalty u/s 18(2A). The Tribunal, in our opinion, was wrong in holding that the AAC had no jurisdiction to entertain the appeal. The view that we are taking is fully supported by the decisions of the Karnataka, Madras and Delhi High Courts: (see Commissioner of Wealth Tax, Karnataka-II Vs. B. Kempanna, , Commissioner of Wealth Tax Vs. M.K.S. Vanavarayar, and Shakuntla Mehra Vs. Commissioner of Wealth Tax and Others, .

5. For the reasons given above, our answer to the question referred is that the Tribunal was not justified in holding that the AAC was not competent to entertain the appeal. There will be no order as to costs of this reference.

