**(1985) 08 RAJ CK 0033**

**In the Rajasthan High Court**

**Case No :** Income Tax Reference No. 1 of 1977

Jayendra Singh — APPELLANT

Vs

Commissioner of Income Tax — RESPONDENT

**Date of Decision :** 05-08-1985

**Acts Referred:**

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

**Citation :** (1986) 160 ITR 866

**Hon'ble Judges :** Pana Chand Jain, J;D.P. Gupta, J

**Bench :** Division Bench

**Advocate :** V.K. Singhal, for the Appellant; R.N. Surolia, for the Respondent

## Judgement

D.P. Gupta, J.—The Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, has referred the following question of law for the opinion of this court:

" Whether, on the facts and circumstances of the case, the Appellate Tribunal was justified in law in sustaining the penalty of Rs. 19,602 calculated on the basis of the law prevailing on April 1, 1969 ? "

2. The assessee was required to file his return of wealth for the assessment year 1966-67 on or before June 30, 1966. The return was, however, filed on October 25, 1971. The assessee tried to explain the delay in filing the return. The Wealth-tax Officer did not accept the explanation furnished by the assessee and held that the delay in filing the return was without reasonable cause and imposed a penalty of Rs. 1,02,926 upon the assessee for the delay in filing the return of wealth. On appeal, the Appellate Assistant Commissioner held that the assessee had sufficiently explained the delay in filing the return up to September 30, 1970, but beyond that period, there was no reasonable cause for not filing the return of wealth and, as such, the assessee was liable for imposition of penalty for the period from October 1, 1970, to October 25, 1971, u/s 18(1)(a) of the Wealth-tax Act, as it was amended from April 1, 1969. On further appeal to the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, it was held that the penalty

imposable upon the assessee for late filing of the return should be calculated in accordance with the provisions of Section 18(1)(a), as they stood on the date the assessment order was passed and the law which was in force earlier thereto, could not govern the computation of penalty.

3. On an application of the assessee, the Income Tax Appellate Tribunal referred the aforesaid question of law to this court by its order dated April 30, 1976, as one arising out of its order.

4. It is not necessary for us to make a detailed consideration of the law on the subject as the question which has been referred to us by the Tribunal stands decided by our decision in Prithvi Singh Vs. Commissioner of Wealth-tax, following the decision of their Lordships of the Supreme Court in Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth, . It was held by this court in Prithvi Singh Vs. Commissioner of Wealth-tax, that if the assessee failed to file the return of his net wealth on the due date, he exposed himself to imposition of penalty u/s 18(1)(a), and that the default under that provision was committed as soon as the assessee failed to file a return on his net wealth on the last date specified u/s 14(1) of the Wealth-tax Act, namely, 30th day of June of the relevant assessment year. If the return is filed subsequently (at a later point of time) or if no return is filed at all, the same would not affect the default committed by the assessee and the penalty has to be computed in accordance with the law which was in force on the due date by which the return of net wealth ought to have been filed by the assessee. Thus, in the present case, where the last date for filing the return was 30th day of June, 1966, the law prevailing on April 1, 1966, would govern the calculation of quantum of penalty. In this view of the matter, in respect of the assessment years prior to April 1, 1969, the provisions of Section 18(1)(a) of the Wealth-tax Act, as they stood prior to April 1, 1969, would govern the quantification of penalty payable by the assessee and the amended provisions of Section 18(1) which came into force with effect from April 1, 1969, could not affect the determination of quantum of penalty imposable upon the assessee. It may be pointed out that earlier, there was some difference of opinion between the various High Courts on this question, but the controversy was set at rest by the decision of their Lordships of the Supreme Court in Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth, , which was followed by us in Prithvi Singh Vs. Commissioner of Wealth-tax, This case is squarely covered by the aforesaid decisions and the question referred to us must be answered accordingly.

5. We, therefore, hold that the Tribunal was not justified in sustaining the penalty calculated on the basis of amended provisions of Section 18(1) which came into force on April 1, 1969. On the other hand, the penalty should be calculated in the present case on the basis of law which prevailed on June 30, 1966, i.e., prior to its amendment which came into force with effect from April 1, 1969. The question is answered in favour of the assessee and against the Revenue. The penalty imposable upon the assessee should now be calculated afresh on the

 

basis of the provisions of Section 18(1)(a) of the Wealth-tax Act as they stood on June 30, 1966, The parties are left to bear their own costs.

 