

(1982) 02 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 251 of 1979

Mohd. Shafi Khan

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 09-02-1982

Acts Referred:

Income Tax Act, 1961 — Section 132, 132(11), 132(12), 132(5), 139(2)
Wealth Tax Act, 1957 — Section 14(1), 14(2), 18, 18(1)(a), 18(5)

Citation : (1984) 16 TAXMAN 158

Hon'ble Judges : K.N. Shukla, J;G.G. Sohani, J

Bench : Division Bench

Advocate : Chaphekar, for the Appellant; R.C. Mukati, for the Respondent

Judgement

G.G. Sohani, J.—By this reference u/s 27(1) of the Wealth-tax Act, 1957 ("the Act"), the Tribunal, Indore Bench, has referred the following questions of law to this Court for its opinion: 1 Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that even in cases where the department issues notice u/s 14(2) of the Wealth-tax Act, the default u/s 14(1) still continued and penalty could be levied in respect of the same?

2. Whether, when the Tribunal was prima facie of the opinion that this was a fit case to be sent back to the WTO for giving another opportunity to the assessee, it was justified in cancelling the penalty instead of asking for a remand report or sending back the case to the WTO?

The material facts giving rise to this reference briefly are as follows:

The assessee is an individual and the assessment years in question are 1969-70 and 1970-71. The return of wealth for these assessment years were due to be filed on or before 30-6-1969 and 30-6-1970, respectively, u/s 14(1) of the Act. The WTO also issued notices u/s 14(2) to the assessee for these assessment years, which were served on the assessee on 9-7-1969 and 2-7-1970, requiring the assessee to furnish returns within 30 days of the service of the notice. The

assessee, however, filed the return for these assessment years on 28-2-1973. As there was delay in filing the returns and as the assessee failed to satisfy that there was reasonable cause for the delay, the WTO imposed penalties u/s 18(1) (a) of the Act. On appeal, the AAC rejected the contention advanced on behalf of the assessee that there was no proper service of notice issued u/s 14(2). The AAC passed the following order:

Since there was no reasonable cause, I am of the opinion that penalties u/s 18(1) (a) are rightly attracted for both the assessment years under appeal for default of not filing the return of wealth within the time prescribed u/s 14(1) as well as for defaults of not filing the returns of wealth within the time allowed under notices u/s 14(2). The period of both defaults is incidentally equal and is of 43 months for the assessment year 1969-70 and of 31 months for the assessment year 1970-71. Since by his orders u/s 35, the WTO has rectified the total wealth of the appellant, I hereby direct the WTO to recalculate the penalties on the basis of wealth-tax payable on the basis of the rectified total wealth and levy the penalty for the assessment year 1969-70 for a default of 43 months and for the assessment year 1970-71 for a default of 31 months.

In the result, the appeals are partly allowed.

2. Aggrieved by the order passed by the AAC, the assessee filed appeals before the Tribunal. The Tribunal held that there was no proper service of notices issued u/s 14(2) upon the assessee. The Tribunal then proceeded to consider the question as to whether in the absence of service of notice u/s 14(2), penalty could be levied on account of failure of the assessee to furnish returns, without reasonable cause, as required by section 14(1). It was urged on behalf of the assessee that the WTO had passed the impugned orders imposing penalty on the presumption that notices u/s 14(2) were served on the assessee and, therefore, the imposition of penalty could not be justified with reference to the default of the assessee to file returns u/s 14(1). Though the AAC had examined this aspect, the Tribunal was of the view that it was a fit case, which should be sent back to the WTO for giving another opportunity to the assessee to show cause against the imposition of penalty. The Tribunal, however, held that in view of the provisions of section 18(5), the WTO could not impose penalty as the order would be barred by limitation. In these circumstances, the appeals were allowed and the cases were not remanded to the WTO. Aggrieved by that order, the assessee as well as the department sought a reference and it is at the instance of the assessee that the first question has been referred to this Court for its opinion; while at the instance of the department, the second question has been referred to this Court for its opinion.

3. Now, as regards the first question, Shri Chaphekar, the learned counsel for the assessee, contended that as soon as notices u/s 14(2) were issued to the assessee, the operation of section 14(1) came to an end and no penalty could be imposed for default u/s 14(1). Reliance was placed upon a decision of this Court in Addl. Commissioner of Income Tax Vs. Rampratap Shankarlal, . The decision in

Rampratap Shankarlal's case (supra) is, however, distinguishable on facts. On behalf of the department, it was, however, urged that the decision of this Court in Rampratap Shankarlal's case (supra) needs reconsideration. In that case, it was found that the notice issued u/s 139(2) of the income tax Act, 1961 ("the 1961 Act") was served on the assessee. In the instant case, the finding of the Tribunal is that notices issued u/s 14(2) were not served on the assessee. Hence, it is not necessary for us in this case to consider as to whether the decision in Rampratap Shankarlal's case (supra) needs reconsideration. The only question for consideration in this case is whether after issuance of notice u/s 14(2), the operation of section 14(1) came to an end with the result that no action for imposition of penalty can be taken u/s 18(1)(a) of the Act for default u/s 14(1).

4. A penalty is imposed on account of the commission of a wrongful act. One of the wrongful acts specified in section 18(1)(a), which attracts penalty, is the failure of the assessee to furnish the return, which he is required to furnish u/s 14(1), without reasonable cause. No provision in the Act was brought to our notice, which lays down that on the issuance of a notice u/s 14(2), the operation of section 14(1) comes to an end. Therefore, as soon as there is failure on the part of the assessee to furnish a return, as required by section 14(1), before the 30th day of June of the relevant assessment year, without reasonable cause, the wrongful act attracting penalty u/s 18(1)(a) takes place and as held by the Supreme Court in Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth, , it is the law operating on the date, on which the wrongful act is committed, which determines the penalty. The wrongful act so, committed, does not cease to be a wrongful act by the issuance of a notice u/s 14(2). We do not find any provision in the Act, nor was such brought to our notice as would have the effect of condoning the said wrongful act as soon as notice was issued u/s 14(2). In our opinion, therefore, the Tribunal was justified in law in holding that even in cases where the department issues notices u/s 14(2), the default u/s 14(1) did not come to an end and penalty could be levied in respect of that default. Our answer to the first question is, therefore, in the affirmative and against the assessee.

5. As regards the second question referred to us, Shri Chaphekar, the learned counsel for the assessee, contended that the Tribunal was right in holding that the bar of limitation prescribed by section 18(5) applied, not only to proceedings which were completed for the first time by the WTO, but also to proceedings which would ensue pursuant to the remand order passed by the Tribunal if the matter was remanded by the Tribunal to the WTO. Reliance was placed upon the decision in Additional Commissioner of Income Tax Vs. K.S.G. Panicker, Kerala Produce Exporting Co., The learned counsel for the assessee also referred to the following observation of the Supreme Court in The Director of Inspection of Income Tax (Investigation), New Delhi and Another Vs. Pooran Mal and Sons and Another,

...There is no doubt that there is no equity about limitation. Most of the decisions

relied on relate to provisions which laid down a period of limitation for taking one kind of action or other in order to assess to tax the person concerned. Naturally, after the period of limitation has expired no proceedings can be taken to assess nor could any period of limitation laid down by the Act be extended merely by a superior Tribunal directing an inferior Tribunal to make an assessment or to take proceedings which result in assessment after the period of limitation is over...." (p. 397).

6. The learned counsel for the assessee further contended that the statute of limitation was a statute of repose and this salutary principle, which was recognised by section 18(5), would be set at naught if we were to hold that those provisions would not be attracted to an order passed by the WTO, on remand by the Tribunal.

7. To appreciate the contentions advanced on behalf of the assessee, it would be useful to refer to the relevant provisions of sub-section (5) of section 18, which read as under:

(5) No order imposing a penalty under this section shall be passed-

(a) in a case where the assessment to which the proceedings for imposition of penalty relate is the subject-matter of an appeal to the Appellate Assistant Commissioner or Commissioner (Appeals) u/s 23 or an appeal to the Appellate Tribunal under sub-section (2) of section 24, after the expiration of a period of-

(i) two years from the end of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed, or

(ii) six months from the end of the month in which the order of the Appellate Assistant Commissioner or Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Commissioner,

whichever period expires later;

(b) in any other case, after the expiration of two years from the end of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed.

Explanation: In computing the period of limitation for the purposes of this section,-

(i) any period during which the immunity granted u/s 22H remained in force;

(ii) the time taken in giving an opportunity to the assessee to be re-heard under the proviso to section 39; and

(iii) any, period during which a proceeding under this section for the levy of penalty is stayed by an order or injunction of any Court, shall be excluded.

8. Dealing with a similar provision occurring in section 275 of the 1961 Act. it

was observed by the Gujarat High Court in *Vasani and Co. Vs. Commissioner of Income Tax, Gujarat-III*, as follows:

On a plain reading of this provision where the Legislature had laid down a bar of limitation for imposition of penalty, it is obvious that the term "no order imposing a penalty under Chapter XXI" would refer prima facie to the initial order or the first order, which would have to be passed by the competent authority. When the Legislature has enacted the provisions providing for appeal or revision where the appellate or revisional authority could interfere with the original imposition of penalty, the very scheme enacted by the Legislature for such appeal or revision would be frustrated, if the provision in section 275 is literally read so that all these appeals, revision and even reference proceedings to this Court and even an appeal to the Supreme Court would be governed by this period of two years" limitation....

We respectfully agree with the aforesaid observations.

9. The decision in *K.S.G. Panicker, Kerala Produce Exporting Co's. case (supra)*, no doubt, supports the contention advanced on behalf of the assessee. The Kerala High Court in *K.S.G. Panicker, Kerala Produce Exporting Co's. case (supra)*, differed from the view taken by the Bombay High Court in *Commissioner of Income Tax, Bombay North Vs. Kishoresinh Kalyansinh Solanki*, that the period of two years mentioned in section 33B(2)(b) of the Indian income tax Act, 1922, would not apply when the Commissioner acted pursuant to the directions of the Tribunal. However, the view taken by the Bombay High Court in *Kishoresinh Kalyansinh Solanki (supra)*, has been approved by the Supreme Court in *Commissioner of Income Tax, Central, Calcutta Vs. National Taj Traders*, . The question that arose for consideration in that case was whether a direction to dispose of the case afresh could be given to the Commissioner by the Tribunal when the prescribed period of limitation under sub-section (2) of section 33B had expired. Dealing with this question, the Supreme Court observed that the view taken by the Bombay High Court in *Kishoresinh Kalyansinh Solanki's case (supra)* was the correct view. In these circumstances, the view of the Kerala High Court in *K.S.G. Panicker, Kerala Produce Exporting Co's. case (supra)*, differing from the view taken in *Kishoresinh Kalyansinh Solanki's case (supra)*, does not appear to be correct.

10. The observations in *Pooran Mall & Sons' case (supra)* reliance on which was placed on behalf of the assessee, have to be read in the context of the argument advanced on behalf of the assessee that after the period of limitation has expired, no proceedings could be taken to assess, which would result in an assessment after the period of limitation was over. These observations must be read as referring to the first or initial assessment by an inferior Tribunal on directions by a superior Tribunal. This has been made clear in the earlier part of the judgment, where the Supreme Court has observed as follows:

Even if the period of time fixed u/s 132(5) is held to be mandatory that was

satisfied when the first order was made. Thereafter, if any direction is given u/s 132(12) or by a Court in writ proceedings, as in this case, we do not think that an order made in pursuance of such a direction would be subject to the limitations prescribed u/s 132(5). Once the order has been made within ninety days the aggrieved person has got the right to approach the notified authority u/s 132(11) within thirty days and that authority can direct the income tax Officer to pass a fresh order. We cannot accept the contention on behalf of the respondents that even such a fresh order should be passed within ninety days. It would make the sub-sections (11) and (12) of section 132 ridiculous and use less....

11. In view of the aforesaid decision, it must be held that the bar of limitation specified in section 18(5) would apply to the first or initial order to be passed by the WTO. When the order passed by the WTO is pending for consideration before the appellate authorities and those authorities, it was not disputed before us, have the power to remand the matter for deciding it afresh, the bar of limitation u/s 18(5) would not be operative. In our view, therefore, the Tribunal was not justified in cancelling the penalty instead of asking for a remand report or sending the case back to the WTO. Our answer to the second question is, therefore, in the negative and against the assessee. In the circumstances of the case, parties shall bear their own costs. Reference answered accordingly.