(1989) 03 KL CK 0023

In the High Court Of Kerala

Case No : Income-tax Reference No''s. 43 and 44 of 1983

N. Velappan APPELLANT

Vs

Commissioner of Wealth-tax RESPONDENT

Date of Decision : 16-03-1989

Acts Referred:

Income Tax Act, 1961 — Section 139(1), 139(2), 271(1)
Wealth Tax Act, 1957 — Section 14(1), 14(2)

Citation : (1989) 2 ILR (Ker) 478 : (1989) 179 ITR 423

Hon'ble Judges : K.S. Paripoornan, J;K.A. Nayar, J

Bench : Division Bench

Advocate : S.A. Nagendran, for the Appellant; P.K.R. Menon, for the Respondent

Judgement

K.S. Paripoornan, J.—At the instance of the assessee, the Income Tax Appellate Tribunal has referred the following question of law for the decision of this court ;

"Whether, on the facts and in the circumstances of the case, the Tribunal is justified in sustaining the penalty holding that penalty exigible in a case where return is filed in response to the notice u/s 14(2) of the Wealth-tax Act, 1957, within the time allowed after committing a default u/s 14(1) ?"

2. The matter arises under the Wealth-tax Act. The applicant is an asses-see to wealth-tax. The respondent is the Revenue. The matter involved herein relates to the levy of penalty u/s 18(1)(a) of the Wealth-tax Act for the years 1973-74 and 1974-75. Return was due from the assessee u/s 14(1) of the Wealth-tax Act, for the year 1973-74 on July 31, 1973, and for the year 1974-75 on July 31, 1974, In conformity with the said statutory obligation, the assessee did not file the return. However, the Wealth-tax Officer issued notices u/s 14(2) of the Wealth-tax Act. In response to the said notices, the assessee filed the returns for the year 1973-74 on March 6, 1974, and for the year 1974-75 on June 23, 1975. For the failure or default to file the returns, as enjoined by Section 14(1) of the Wealth-tax Act, the Wealth-tax Officer initiated penalty proceedings u/s 18(1)(a) of the Act. By order dated March 19, 1979, he levied a penalty of Rs. 10,248 for

each assessment year. It was confirmed in appeal by the Appellate Assistant Commissioner and in second appeal by the Appellate Tribunal. Thereafter, at the instance of the assessee, the question of law, formulated hereinabove, has been referred by the Appellate Tribunal for the decision of this court.

3. We heard counsel for the applicant/assessee, Mr. S. A Nagendran, as also counsel for the Revenue. It is common ground that Section 14(1) of the Wealth-tax Act imposes an obligation on the assessee to file the return of wealth-tax within the statutory period. For both the years, the assessee did not comply with the said requirement. There was failure on the part of the assessee to file the returns. Subsequently, the Wealth-tax Officer issued notices u/s 14(2) of the Act. The assessee filed returns in obedience to the said notices. The plea of the assessee is that once the returns are filed in pursuance of the individual notices issued u/s 14(2) of the Act, it wipes out the earlier default incurred by non-filing of the returns as enjoined in Section 14(1) of the Act. The short question that arises for consideration is, whether the issue of a notice u/s 14(2) of the Act will have the effect of wiping out or condoning the earlier default which occurred or arose, in not filing the returns as per Section 14(1) of the Act. The Income Tax Appellate Tribunal held that the mere fact that the returns were filed in response to the notices issued u/s 14(2) of the Act will not wipe out or obliterate the earlier default incurred for failure to file the returns u/s 14(1) of the Act. We are of the view that the conclusion of the Appellate Tribunal is justified in law. The Punjab and Haryana High Court in Commissioner of Wealth-tax Vs. Daljit Singh, and the Madhya Pradesh High Court in Mohd. Shafi Khan Vs. Commissioner of Wealth-tax, have taken the said view. Even-though the returns were filed in pursuance of the notices issued u/s 14(2) of the Wealth-tax Act, the default that was committed and the liability incurred for failure to file the returns as enjoined by Section 14(1) of the Act will continue. The levy of penalty for failure to file the returns as enjoined by Section 14(1) of the Act will be proper and authorised. Substantially similar provisions in the Income Tax Act, namely, Section 139(1) and (2) read with Section 271(1)(a) of the Act, came up for consideration before several High Courts. The courts have held that failure to furnish the return within the time prescribed under Sub-section (1) of Section 139 is liable to attract Section 271(1)(a) of the Income Tax Act even if the assessee files a return for the assessment year in question u/s 139(2) of the Income Tax Act. (See Law of Income Tax by Sampath Iyengar, Vol. V, page 4726). The decisions of the Andhra Pradesh, Allahabad, Delhi, Gujarat, Kerala, Madras and Rajasthan High Courts, are relevant in this context -- Mullapudi Venkatarayudu Vs. Union of India (UOI), , Laxmi and Co. Vs. Commissioner of Income Tax, , The Commissioner of Income Tax, Delhi Vs. Hindustan Industrial Corporation, New Delhi, , SHIV SHANKAR LAL Vs. COMMISSIONER OF GIFT-TAX., , P.N. Sikand Vs. Commissioner of Income Tax, New Delhi, , S. Balaram Vs. Commissioner of Income Tax, Gujarat I, , Dawn and Co. Vs. Commissioner of Income Tax, , R. Lakshminarayana Reddiar Vs. Commissioner of Income Tax, and The Commissioner of Income Tax, Rajasthan, Jaipur Vs. Indra and Co., Jodhpur, The Appellate Tribunal was justified

in sustaining the penalty levied for both the years for default incurred by non-filing of the returns u/s 14(1) of the Wealth-tax Act.

4. We, therefore, answer the question referred to us, for both the years, in the affirmative, against the assessee and in favour of the Revenue.

5. A copy of this judgment under the seal of this court and the signature of the Registrar, will be forwarded to the Income Tax Appellate Tribunal, Cochin Bench, as required by law.

