
(1990) 11 AHC CK 0074

In the Allahabad High Court

Case No : Wealth-tax Reference No. 199 of 1978

Narain Das Jain

APPELLANT

Vs

Commissioner of Wealth-tax

RESPONDENT

Date of Decision : 26-11-1990

Acts Referred:

Wealth Tax Act, 1957 — Section 14, 14(1), 14(2), 18, 18(2)

Citation : (1991) 191 ITR 126

Hon'ble Judges : B.P. Jeevan Reddy, C.J;V.N. Mehrotra, J

Bench : Division Bench

Advocate : Vikram Gulati, for the Appellant; B. Dayal, for the Respondent

Final Decision : Disposed Of

Judgement

1. u/s 27(1) of the Wealth-tax Act, 1957, the Income Tax Appellate Tribunal has referred the following four questions :

"1. Whether, on the facts and circumstances of the case, the Hon''ble Tribunal was justified in holding that the penalty proceedings u/s 18(2) were validly initiated ?

2. Whether, on the facts and circumstances of the case, the Hon''ble Tribunal was correct in holding that there was no defect in the notice issued by the Wealth-tax Officer u/s 18(2) ?

3. Whether, on the facts and circumstances of the case, the Tribunal was justified in holding that penalty could be imposed for default u/s 14(1) of the Wealth-tax Act although proceedings were started u/s 18(2) only ?

4. Whether, on the facts and circumstances of the case, the Tribunal was justified in imposing the penalty without affording an opportunity of being heard in spite of a specific request ?"

2. The assessee is an individual. The assessment year concerned is 1971-72. The return was due on or before June 30, 1971. It was actually filed on February 28,

1973. For this delay in filing the return, proceedings were initiated u/s 18(1)(a) of the Wealth-tax Act for levy of penalty. The assessee submitted his explanation after considering which the Wealth-tax Officer levied the penalty.

3. The assessee preferred an appeal. The appeal was allowed by the Appellate Assistant Commissioner. He held that there was reasonable cause for the assessee in not filing the return in time. The Department carried the matter in appeal to the Tribunal. The Tribunal reversed the judgment of the Appellate Assistant Commissioner and held that there was unexplained delay commencing from the inception of the year 1972 and that accordingly, the penalty proceedings were not illegal. Thereupon, the present reference is obtained.

4. The contention of the assessee is that the proceedings u/s 18(2) were invalid inasmuch as there was a valid explanation for the delay. It is pointed out that the assessee was a partner in a firm, that there were disputes between the partners with respect to the dissolution of the firm and settlement of accounts which remained unresolved for a long time. It is in those circumstances that the assessee said that he could not file his return in time. But the Tribunal found as a fact that the accounts of the firm were settled before the end of 1971 and there was no reason why the assessee could not file the return by the end of that year. It also pointed out that another partner of the same firm has filed the return at the end of 1971. This is a finding of fact and we see no reason to disturb or doubt the correctness of the said finding. We may mention that the firm was dissolved on August 31, 1966, and that its accounts were settled towards the end of year 1971. The return in this case was filed only in February, 1973. The delay of fourteen months has remained unexplained. Question No. 1 is, accordingly, answered in the affirmative, i.e., in favour of the Revenue and against the assessee.

5. The second question relates to the alleged defect in the notice issued u/s 18(2). The argument is that the notice does not specify whether the default was under Sub-section (1) or (2) of Section 14. We do not think that the notice can be termed as invalid or void on the ground. Learned counsel relies on a decision of the Kerala High Court in N.N. Subramania Iyer Vs. Union of India (UOI) and Another, , but, as rightly pointed out by the Tribunal, the contents of the notice concerned in that case are different from the contents of the notice in this case. In that case, the notice contained several alternative grounds and the irrelevant grounds were not scored out. There is no such defect in the notice in this case nor is it shown that the assessee has suffered any prejudice or handicap on that account. It cannot, therefore, be said that either the notice was defective or that the order passed in pursuance thereof is illegal on that ground. Question No. 2 is, accordingly, answered in the affirmative, i.e., in favour of the Revenue and against the assessee.

6. Question No, 3 is such an obvious question that it does not require a detailed discussion. The default in not filing the return in pursuance of Section 14(1) is not effaced by the issuance of a notice u/s 14(2). The default remains a default.

Learned counsel for the assessee relies on a decision of the Patna High Court in *Additional Commissioner of Income Tax Vs. Bihar Textiles*, . The said decision has, however, been overruled later as pointed out fairly by learned counsel for the assessee himself. On the other hand, we are supported by the decisions in *Commissioner of Income Tax, Andhra Pradesh Vs. Chandulal, and Srinivasa Pitti and Sons v. CIT* [1989] 173 ITR 306. This question is, accordingly, answered in the affirmative, i.e., in favour of the Revenue and against the assessee.

7. Coming to the last question, it is necessary to notice the language of Sub-section (2) of Section 18. This says that no order shall be made, under Sub-section (1) unless the person concerned has been given a reasonable opportunity of being heard. This sub-section does not provide for a personal hearing. It only provides a reasonable opportunity of being heard. Once a show-cause notice is issued and an opportunity to file an explanation is afforded, the sub-section is satisfied. Personal hearing is not a principle of natural justice. Where, however, complicated questions of fact or law are involved and an opportunity of oral hearing is asked for, its refusal may amount to violation of the principles of natural justice but that depends upon the facts of each case. In this case, it is not shown that the facts of the case are so complicated as to warrant affording of an opportunity of personal hearing. In any event, it may be noticed that the assessee had the opportunity of two appeals where he was heard in full. The defect, if any, in the procedure adopted by the Wealth-tax Officer must be taken to have been cured by affording an opportunity of personal hearing at the stages of first and second appeals.

8. Learned counsel for the assessee relied upon two decisions in *Ram Saran Dass Kapur Vs. Commissioner of Income Tax, Patella, and SATPRAKASH RAM NARANJAN Vs. COMMISSIONER OF Income Tax*, . The first case was one where an opportunity of personal hearing was asked for and it was granted by the Income Tax Officer but, before he could give a decision, he was transferred. The new Income Tax Officer passed orders without giving an opportunity of oral hearing. It was thus held that the order passed must be deemed to have been arrived at without giving a reasonable opportunity of hearing. That was a case where the Income Tax Officer thought that an opportunity of personal hearing was called for and gave it. The succeeding Income Tax Officer could not have departed from the order. The second decision is one where the penalty proceedings were kept in abeyance pending the appeal against the assessment order. After the appeal was disposed of, penalty proceedings were finalised without giving any opportunity whatsoever. It was under those circumstances that it was held that the order was bad.

9. For the above reasons question No. 4 is also answered in the affirmative, i.e., in favour of the Revenue and against the assessee.

10. Reference is answered accordingly.

11. There will be no order as to costs.