(1991) 09 P&H CK 0105

In the Punjab And Haryana At Chandigarh

Case No : Wealth-tax Reference No. 2 of 1979

Om Parkash Aggarwal — APPELLANT

Vs

Commissioner of Wealth-tax — RESPONDENT

Date of Decision : 27-09-1991

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

Citation : (1992) 196 ITR 596

Hon'ble Judges : S.S. Sodhi, J;Ashok Bhan, J

Bench : Division Bench

Advocate : R.P. Sahney, for the Appellant; A.K. Mittal, for the Respondent

Judgement

S.S. Sodhi, J.—In the event of delay in the filing of a return, where does lie the onus, to show that it was with or without reasonable cause, upon the assessee or the Revenue ? Herein lies the controversy raised. This matter arises under the Wealth-tax Act, 1957, in the context of the provisions of Section 18(1)(a) thereof.

2. The due date for the filing of the return for the assessment year 1969-70 was June 30, 1969. It was not, however, filed by the assessee till March 23, 1970, whereupon the Wealth-tax Officer, by his order of February 19, 1974, imposed a penalty of Rs. 5,033. The Appellate Assistant Commissioner in appeal, however, set aside this penalty by his order of March 11, 1976, but the Tribunal accepted the appeal of the Revenue on September 23, 1977, and the assessee was, consequently, held liable to penalty as imposed by the Wealth-tax Officer.

3. One of the contentions raised on behalf of the assessee before the Tribunal was that the onus lay upon the Revenue to prove that the failure to file the return was without reasonable cause. This was, however, negatived by the Tribunal, but it was later held that this raised a question of law resulting in the present reference. The question referred reads as under :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that penalty is leviable u/s 18(1)(a) of the Wealth-tax

Act ?"

4. The provisions of Section 18(1)(a) of the Wealth-tax Act read as under :

"(1) If the Wealth-tax Officer, Appellate Assistant Commissioner, Commissioner (Appeals), Commissioner or Appellate Tribunal in the course of any proceedings under this Act is satisfied that any person--

(a) has without reasonable cause failed to furnish the return which he is required to furnish under Sub-section (1) of Section 14 or by notice given under Sub-section (2) of Section 14 or Section 17, or has without reasonable cause failed to furnish within the time allowed and in the manner required by Sub-section (1) of Section 14 or by such notice, as the case may be ; or ...

5. These provisions are similar to those of Section 271(1)(a) of the Income Tax Act, 1961. In dealing with them, the Division Bench of our court in Haryana Iron and Steel Rolling Mills Vs. Commissioner of Income Tax, held that "reasonable cause" being within the personal knowledge of the assessee, it would be for him to show it. It was observed in this behalf that it cannot be said that initially the onus lay upon the Revenue to show that the failure to file the return in time was without "reasonable cause". It was held that it is only when the assessee shows cause that an opinion can be formed regarding its reasonableness or otherwise. Liability for payment of penalty, it was further observed, arises immediately upon the failure of the assessee to furnish the return within the time prescribed and, consequently, the burden of proof to show that he had "reasonable cause" for not filing it within time, would be upon the assessee and not on the Revenue.

6. It would follow, therefore, that it was for the assessee to show "reasonable cause" for late filing of the return and not for the Revenue to prove the lack of it.

7. Respectfully agreeing with the view expressed in Haryana Iron and Steel Rolling Mills Vs. Commissioner of Income Tax, , we dispose of the reference by answering the matter referred in the affirmative, in favour of the Revenue and against the assessee. There will, however, be no order as to costs.

