(1979) 09 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : WT Reference No. 2 of 1979

Om Parkash Aggarwal APPELLANT

Vs

Commissioner of Wealth Tax RESPONDENT

Date of Decision : 27-09-1979

Acts Referred:

Income Tax Act, 1961 — Section 271(1)(a)
Wealth Tax Act, 1957 — Section 14, 17, 18(1)(a)

Citation : (1992) 63 TAXMAN 185

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 the return, where lies 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 (''the Act'') in the context of the provisions of section 18(1)(a) thereof. The due date for the filing of the return for the assessment year 1969-70 was 30-6-1969. This was not, however, filed by the assessee till 23-3-1970, whereupon the WTO, by his order of 19-2-1974 imposed a penalty of Rs. 5,033. The AAC in appeal, however, set aside this penalty by his order of 11-3-1976, but the Tribunal accepted the appeal of revenue on 23-9-1977 and the assessee was, consequently, held liable to penalty as imposed by the WTO.

2. 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 not 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?

3. The provisions of section 18(1)(a) of the Act read as under:

18. Penalty for failure to furnish returns, to comply with notices and concealment of assets, etc. - (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

4. 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 is being observed in this behalf that it cannot be said that initially the onus lay upon 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 the 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 the revenue.

5. It follows, therefore, that it was for the assessee to show ''reasonable cause'' for late filing of the return and not for revenue to prove the lack of it. Respectfully, agreeing with the view expressed in Haryana Iron and Steel Rolling Mills'' case (supra), 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.

