(1979) 08 AHC CK 0008

In the Allahabad High Court

Case No : Wealth-tax Reference No. 239 of 1976

P.N. Banerjee APPELLANT

Vs

Commissioner of Wealth-tax RESPONDENT

Date of Decision : 13-08-1979

Acts Referred:
Wealth Tax Act, 1957 — Section 18

Citation : (1980) 125 ITR 658 : (1980) 3 TAXMAN 71

Hon'ble Judges : R.R. Rastogi, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : K.B. Bhatnagar, for the Appellant; R.K. Gulati and A. Gupta, for the Respondent

Judgement

C.S.P. Singh, J.—The two assessment years involved in this reference are 1967-68 and 1970-71. The assessee''s returns should have been filed on or before 30th June, 1967, and 30th June, 1970, respectively, for the two years in question. No return was, however, filed by the assessee and, accordingly, the WTO issued notice u/s 14(2) of the Wealth-tax Act, 1957 (hereinafter referred to as " the Act "). The notice u/s 14(2) for the assessment year 1967-68 was served on the assessee on 25th of December, 1967, and that for the other year on the 12th of June, 1970. The assessee, however, filed first a return for the assessment year 1967-68, on the 12th of June, 1971, and for 1970-71, on 4th June, 1971. The WTO being of the view that the assessee had failed to file the returns in time without any reasonable excuse issued notice u/s 18(1)(a). The assessee''s explanation was that one K. P. Chaterji, advocate, had been looking after his affairs from the period of his minority and had also been maintaining accounts and valuation of the property. The assessee was not aware of all the facts necessary for evaluation of the property as he relied upon Sri K. P. Chaterji exclusively in these matters. An affidavit of Sri K. P. Chaterji was also filed stating, inter alia, that an appeal regarding valuation for the assessment year 1961-62 had been filed before the Tribunal and there was a dispute as regards the quantum of valuation between the assessee and the department. The

Tribunal disposed of the appeal on January 24, 1970, and during the period, the assessee did not file the return as he was not sure of the valuation. In para. 8 of the affidavit, Sri K. P. Chaterji stated that as he was practising solely on the civil side he was not aware of the vast changes in the W.T. Act and the Rules framed thereunder and was unaware that any penalty was eligible for late submission of returns. The WTO did not accept this explanation and imposed penalty for delayed submission of return in respect of both the assessment years. The AAC confirmed the penalties; on appeal, the Tribunal held that as the matter of valuation was sub judice before the Tribunal up to 24th of January, 1970, the assessee was in a genuine difficulty about fixing the valuation of his property and as such the delay up to 30th June, 1970, could be said to be due to a reasonable cause, but not for the period subsequent thereto. One other question that the Tribunal considered was as to whether the rate at which penalty to be imposed for the year 1967-68, should be in accordance with the law as prevailing before April 1, 1969, that is the date on which the rates of penalty were increased. Following the view taken by the Kerala High Court in the case of HAJEE K. ASSAINAR Vs. COMMISSIONER OF Income Tax, KERALA., , the Tribunal held that the penalty should be imposed at the rate prevailing before the amendment, as it related to an assessment year falling earlier than when the amendment was effected in the statute. Both the revenue and the assessee sought reference of certain questions of law to this court and acceding to the request, the Tribunal has referred the following two questions for the opinion of this court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in ignoring the deposition of Shri K. P. Chaterji, advocate, contained in para. 8 of his affidavit thereby upholding the penalty for the assessment years 1967-68 and 1970-71 ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the penalty should be calculated on the basis of the law prevailing prior to April 1, 1969, for the assessment year 1967-68 ? "

2. At the outset we may dispose of the second question as the matter stands covered by a decision of our own High Court in Commissioner of Wealth-tax Vs. Ram Narain Agrawal, , wherein it has been held that for assessment years earlier to the 1st April, 1969, the rate of penalty would be governed by the Act as it stood in the relevant assessment year. The Tribunal was thus correct in imposing penalty at the lower rate.

3. So far as the first question is concerned, Dr. K. B. Bhatnagar, appearing on behalf of the assessee, contended that the Tribunal was in error in not holding that there was a reasonable cause for the delayed return as it was amply established by the affidavit of Sri K. P. Chaterji that the returns had been delayed on account of the wrong advice given by him. He drew our attention to two decisions of the Supreme Court, namely, Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others, , wherein the Supreme Court has held that a mistaken advice by counsel may in certain circumstances afford a good ground

for condonation of delay and, secondly, it was urged on the strength of the well-known decision of the Supreme Court in the case of Hindustan Steel Ltd. Vs. State of Orissa, , that as the assessee was not guilty of any contumacious or dishonest conduct, and as he had not acted in conscious disregard of his obligations the penalty imposed was unjustified. The substratum for argument on this question is that there was delay in filing the returns on account of the mistaken advice of Sri K. P. Chaterji, advocate, who was looking after the cases of the assessee. Unfortunately, for the assessee, on the frame of the question as submitted, it is not possible to go into this aspect of the controversy, for, the question invites our opinion about the correctness of the order of the Tribunal on the basis that the Tribunal has ignored para. 8 of the affidavit of Sri K. P. Chaterji. In para. 8 of the affidavit of Sri K. P, Chaterji it has been stated that he was practising solely on the civil side and was not aware of the changes in the W.T. Act and the Rules and that penalty was eligible for late filing of returns. When one refers to the order of the Tribunal one finds that the Tribunal has, while noting the submissions made on behalf of the assessee, expressly referred to this part of the affidavit. On a fair reading of the order of the Tribunal it appears that while confirming the penalty for the period after June, 1970, they have taken note of this fact, for they stated :

" Thus, in view of the ratio decided by the above quoted authorities we are convinced that up to the month of June, 1970 the assessee had a reasonable cause for not filing the return in time as he was entertaining a bona fide belief that the valuation of the property is under dispute, that the matter has been entrusted to its lawyer who was looking after his case even prior to the attainment of majority by the assessee, that the assessee was not aware of the latest amendment in law. In this view of the matter, we may hold that for the period ending June, 1970, he cannot be held liable for filing the return late and hence the penalty imposed for the year 1967-68 up to June, 1970, will not be sustainable in the eye of law."

4. In the context, in which the Tribunal was considering the reasonable cause for delay in filing the return, when they referred to the fact that the assessee was not aware of the latest amendment in the law, they were obviously referring to the affidavit of Sri K. P. Chaterji, assessee''s counsel, for he alone had stated this fact.

5. Thus, it cannot be said that the Tribunal ignored the deposition of Sri K. P. Chaterji, advocate, as contained in para. 8 of the affidavit.

6. We, accordingly, answer both the questions in the affirmative, one against the assessee and the other in his favour. In view of the partial success and failure, the parties shall bear their own costs.