(1985) 01 AHC CK 0057

In the Allahabad High Court

Case No : Wealth-tax Reference No. 864 of 1977

Ram Swaroop APPELLANT

Vs

Commissioner of Wealth-tax RESPONDENT

Date of Decision : 29-01-1985

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

Citation : (1985) AWC 434 : (1985) 156 ITR 677

Hon'ble Judges : N.D. Ojha, J;A.N. Dikshita, J

Bench : Division Bench

Advocate : R.K. Gulati, for the Appellant; M. Katju and Bharatji Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

N.D. Ojha, J.—In pursuance of the direction of this court dated October 4, 1976, in Wealth-tax Application No. 733 of 1976 made u/s 27(3) of the Wealth-tax Act, 1957 (hereinafter referred to as ''the Act''), the Income Tax Appellate Tribunal, Allahabad Bench, Allahabad, has made this reference for the assessment years 1967-68 to 1965, 70.

2. Sri R.K. Gulati, counsellor the applicant, has made a statement before us that since an application u/s 18B of the Act made by the applicant before the Commissioner of Wealth-tax in respect of the assessment year 1969-70 has already been allowed, this reference as regards the assessment year 1969-70 is not pressed. In this view of the matter, this reference is being considered in regard to the assessment years 1967-68 and 1968-69 only. The assessee-applicant is an individual. The valuation date is 31st of March of each year. The assessee-applicant submitted his returns pertaining to these two years on July 2, 1970, even though the returns were due on or before June 30, 1967, and August 31, 1968, respectively. The Wealth-tax Officer completed the assessment for the aforesaid two years on total wealth of Rs. 1,66,623 and 1,67,002, respectively, and initiated penalty proceedings u/s 18(1)(a) of the Act. Notices were issued to

the assessee who submitted his explanation which, however, did not find favour with the Wealth-tax Officer and penalties in the sum of Rs. 5,130 and Rs. 5,085, respectively, were imposed. The appeals preferred by the assessee before the Appellate Assistant Commissioner and thereafter to the Tribunal were dismissed. Application made by the assessee u/s 27(1) of the Act was also dismissed by the Tribunal. But, as has already been pointed above, the application made by the assessee before this court u/s 27(3) was allowed and the following questions of law were required to be referred to this court for its opinion:

" 1. Whether the Income Tax Appellate Tribunal was right in holding that the applicant was not entitled to raise the plea in respect of the exemption on Value of the residential building and deduction of 15% on the amount of sundry debtors in determining the quantum of penalty and the net wealth which had not been taken into account by Wealth-tax Officer-while making the assessment ?

2. Whether the calculation of the penalty for the assessment years 1967-68 and 1968-69 with reference to the amended Act for parts of the period of default was justified and sustainable in law ?

3. Whether the amended provisions of Section 18(1)(a) which came into being with effect from April 1, 1969, could retrospectively be applied for the defaults committed before the amended Act came into being when returns had been filed after April 1, 1969 ? "

3. Having heard counsel for the parties, we are of the opinion that the questions Nos. 2 and 3 stand answered in favour of the assessee-applicant in view of the decision of the SupremeCourt in Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth, . In view of that decision, therefore, questions Nos. 2 and 3 deserve to be answered in the negative and in favour of the assessee. Counsel for the assessee made a statement before us that as questions Nos. 2 and 3 are being answered in favour of the assessee, question No. 1 may be returned unanswered, inasmuch as the amount of penalty payable will be negligible.

4. In the result, the reference in so far as question No. 1, is concerned is returned unanswered and questions Nos. 2 and 3 are answered in the negative and in favour of the assessee. A copy of this order may be sent to the Tribunal concerned for passing suitable consequential orders. In the circumstances of the case, there shall be no order as to costs.

