**(1976) 10 AHC CK 0007**

**In the Allahabad High Court**

**Case No :** W.T.A. No. 733 of 1976

RAM SWAROOP — APPELLANT

Vs

WEALTH TAX COMMISSIONER. — RESPONDENT

**Date of Decision :** 04-10-1976

**Acts Referred:**

**Citation :** (1977) 6 CTR 69

**Hon'ble Judges :** D. M. Chandrashekhar, J

**Bench :** Division Bench

## Judgement

D. M. Chandrashekhar, J. - In this application under sub-s. (3) of S. 27 of the Wealth Tax Act 1957, the applicant-assessee has prayed that the Income Tax Appellate Tribunal (hereinafter referred to as the Tribunal) should be directed to refer to this Court the five questions set out in the application.

2. After hearing the learned counsel for the applicant-assessee and the learned Standing Counsel for the Revenue, we are satisfied that questions Nos. 1, 2 and 3 as set out in the arise out of the order of the Tribunal.

3. Question No. 4, as set out in the application, does arise out of the order of the Tribunal because that question was not raised by the assessee in the appeal before the Tribunal.

4. Question No. 5, as set out in the application, is whether in the absence of any finding that there was an intentional default on the part of the assessee in not submitted the return or before the due date, any penalty could be sustained merely because the explanation given by him was not found to be satisfactory by the Tribunal.

5. In para 4 of its order, the Tribunal observed thus :

"On perusal of the balance sheet of the assessee it is hard to believe that for preparing such a balance sheet the assessee would need the time ranging between 24 months to 36 months. As such, in the absence of any material the plea of the assessee that he was prevented from reasonable cause is not accepted."

Sri R. K. Gulati, learned counsel for the applicant-assessee, argued that the Tribunal has merely held that the explanation given by the applicant for the delay in filing the return, was not satisfactory, but that there was no positive finding by the Tribunal that there was any intentional default on his part in filing this return on or before the due date.

7. Though the Tribunals not accepting the explanation offered by the assessee for his not submitting the return in time, is not the same thing as the Tribunals holding that there was intentional default on his part in filing the return in time, in the particular facts and circumstances of this case the difference between the two is too thin to be of any substance. The Tribunal held that it did not require such a long time for the assessee to prepare the balance sheet. This conclusion would also support the conclusion that there was intentional default in submitting the return. Hence question No. 5 as formulated in the application, does not, in our opinion, merit reference.

8. In the result, we allow this application partly and direct the Income Tax Appellate Tribunal, Allahabad Bench, to refer to this Court the following three question of law :

"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 the Wealth Tax Officer while making the assessment.

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

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

9. As this application is partly allowed and partly rejected, we direct the parties to bear their own costs.