(1995) 12 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 163 of 1987

Rameshchandra Mannalal APPELLANT

Vs

Commissioner of Wealth Tax RESPONDENT

Date of Decision : 12-12-1995

Acts Referred:
Wealth Tax Act, 1957 — Section 18(1), 27(3)

Citation : (1996) 221 ITR 716

Hon'ble Judges : Subhash Balwant Sakrikar, J;Asha Ram Tiwari, J

Bench : Division Bench

Advocate : None, for the Appellant; D.D. Vyas, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sakrikar, J.—The applicant/assessee has filed this application seeking direction to the Income Tax Tribunal, Indore, to refer the following questions of law to be answered by this court in connection with order dated April 24, 1987, passed in Appeal No. 10/(Ind) of 1986 ;

" (i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in confirming the levy of penalty u/s 18(1)(c) of the Wealth-tax Act, 1957 ?

(ii) Whether, on the facts and in the circumstances of the case, the finding of the Tribunal that the assessee had deliberately concealed the particulars of its wealth in spite of the fact that the impugned deposit was taxed twice over, once in the hands of the Hindu undivided family and then in the hands of an individual ?

(iii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in coming to the conclusion that the assessee had concealed the net wealth ignoring the material and/or evidence regarding the bona fide conduct of the assessee and as such the finding of the Tribunal is perverse and vitiated in law ?

(iv) Whether, on the facts and in the circumstances of the case, the Tribunal was right in confirming the levy of penalty in spite of the fact that the same amount had been taxed twice over without any loss to the Revenue ?"

The facts of the case lie in a narrow compass. The applicant/assessee is a Hindu undivided family and is assessable to wealth-tax under the Wealth-tax Act. The applicant filed its return for the assessment year 1974-75 on July 29, 1974, in the status of the Hindu undivided family declaring net wealth of Rs. 2,62,787. This net wealth included the assessee''s amount deposited with one, Chunnilal Onkarmal (P.) Ltd. at Rs. 61,352. The assessment was completed on the basis of the return on March 18, 1975, u/s 16(3) of the Wealth-tax Act.

2. The Wealth-tax Officer assessed both the Hindu undivided family as also individual, i.e., the applicant, Rameshchandra Agarwal, karta, of the family in his individual assessment on the basis of the above disclosure. The Wealth-tax Officer subsequently noticed that the above disclosure was not correct and on correct accounting it was found that the balance to the credit of the Hindu undivided family should have been Rs. 76,752 in place of Rs. 61,352. Thus, a short disclosure of Rs. 15,400 was noticed by him. The Wealth-tax Officer, therefore, issued notice u/s 17 of the Wealth-tax Act to the Hindu undivided family-assessee requiring them to file a return. The applicant/assessee filed its return in response to the said notice, on February 17, 1982, declaring net wealth at Rs. 2,62,787. The Wealth-tax Officer completed the reassessment of the Hindu undivided family determining the total wealth at Rs. 2,78,187. The Wealth-tax Officer also initiated proceedings for the levy of penalty u/s 18(1)(c) of the Wealth-tax Act, and levied penalty of Rs. 16,000 for the reasons stated by him in the order of penalty (annexure "A-2").

3. Aggrieved by the order of the Wealth-tax Officer, the assessee-applicant preferred an appeal before the Appellate Assistant Commissioner of Wealth-tax, A-Range, who confirmed the levy of penalty by its order dated August 19, 1985, passed in Appeal No. WRO-40 of 1985-86 (annexure "A-3"). Aggrieved by the said order of the Appellate Assistant Commissioner of Wealth-tax, the assessee filed an appeal to the Income Tax Appellate Tribunal, Indore Bench, Indore. The appeal was registered as W. T. A. No. 319/(Ind) of 1985 for the assessment year 1974-75. The Tribunal dismissed the appeal of the assessee, vide its order dated April 24, 1987 (annexure "A-7"). Thereafter, the applicant moved the Tribunal u/s 27(1) of the Wealth-tax Act for making a reference to this court on questions of law as stated above.

4. The Tribunal refused to make a reference u/s 27(1) of the Wealth-tax Act and rejected the application of the applicant by its order dated April 24, 1987, in R. A. No. 188/(Ind) of 1986 (annexure "A-9"). Aggrieved by the order of the Tribunal refusing to refer the questions of law, the applicant/assessee has filed this application u/s 27(3) of the Wealth-tax Act, 1957, with a prayer to require the Tribunal to make a reference as required by law.

5. None appeared for the applicant/assessee. Shri D.D. Vyas, learned counsel for the Department. He is heard.

6. Shri Vyas, learned counsel, submitted that the assessee has prayed for referring the case to the Tribunal but has chosen to remain absent an4 has, thus, not enabled the hearing of this application. Under these circumstances, this court is not under an obligation to consider the case. He, accordingly, prayed that we should decline to consider the matter. In support of his contention, Shri Vyas placed reliance on Jamunadas v. CST [1993] 38 MPLJ 462.

7. In the case of Jamunadas Khanchand Vs. Commissioner of Sales Tax, on considering the legal position of the point it is held as under :

"For the foregoing reasons, we are of the opinion that if the party at whose instance the reference is made, fails to appear at the hearing or fails in taking steps for preparation of paper books so as to enable hearing of the reference, this court is not bound to answer the reference. We refuse to answer the reference and also saddle the assessee with the costs of the Department quantified at Rs. 150."

The provisions of Section 27(3) of the Wealth-tax Act, 1957, and Section 44(2) of the M. P. General Sales Tax Act, 1958, are intended to serve the same purpose. The consequence remains the same. According to the aforesaid authority, the court is not under a legal obligation to answer the questions even when referred by the Tribunal at the behest of the assessee when the assessee elects to remain absent and does not enable the hearing. In the instant case, the assessee itself, after rejection of the application by the Tribunal, filed the case but has not appeared. The application is opposed by NA.

8. We, therefore, do not examine the merits and reject the application for want of prosecution with no orders as to costs.

