

(1993) 02 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No's. 4676, 4679 and 4682 of 1992

Smt. Ram Piari

APPELLANT

Vs

Wealth-tax Officer and Another

RESPONDENT

Date of Decision : 04-02-1993

Acts Referred:

Wealth Tax Act, 1957 — Section 17, 35B

Citation : (1994) 205 ITR 417

Hon'ble Judges : J.B. Garg, J

Bench : Single Bench

Advocate : P.S. Hundal, for the Appellant; R.P. Sawhney, for the Respondent

Judgement

J.B. Garg, J.—Ram Piari, widow of late Shri Amar Nath, resident of Chandigarh, has moved this petition u/s 482 of the Code of Criminal Procedure, challenging her prosecution launched u/s 55B of the Wealth-tax Act, 1957, pertaining to the assessment year 1980-81.

2. Briefly, the facts as alleged are that the Wealth-tax Officer, Ward-2, Chandigarh, has instituted a complaint on March 27, 1991, which is pending in the Court of the Chief Judicial Magistrate, Chandigarh, wherein it has been alleged that, during the year previous to the assessment year 1980-81, Ram Piari who alleges herself to be an illiterate lady enjoyed taxable wealth. She was expected to file a return on or before June 30, 1980, but in reality it has been filed after more than four years, i.e., on August 23, 1984. causing a delay of 49 months. It was found that she was liable to pay wealth-tax in the sum of Rs. 5,666 and in this regard an order was passed on February 29, 1988 ; that since there was a default or delay, a penalty of Rs. 5,550 was imposed. The wealth-tax as well as the penalty has been affirmed by the Deputy Commissioner of Wealth-tax (Appeals), Chandigarh, on August 17, 1988 ; that since return was not filed for the assessment year 1980-81, within the statutory period, the prosecution of the assessee has been launched u/s 35B of the Wealth-tax Act, 1957.

3. In the present petition, it has been alleged that the petitioner is a widow aged 62 and has been assessed to Income Tax, but she was never advised by her counsel that she was liable to pay any wealth-tax ; that when a notice was received u/s 17 of the Wealth-tax Act, she engaged Shri Mastan Singh, advocate, and the wealth-tax as well as the penalties imposed upon her have been paid ; that it was a surprise that now u/s 35B of the Wealth-tax Act, her prosecution has also been launched on March 27, 1991. It has further been averred that the petitioner filed the returns relating to the years 1975-76 to 1981-82 and there has been no wilful failure on the part of the petitioner, that the complaint has been filed on March 27, 1991, and that it is liable to be quashed on account of undue delay, though according to the version of the complainant, the alleged offence was completed on July 1, 1980 ; that no notice was served on the petitioner u/s 14(2) of the Wealth-tax Act, 1957 ; that a notice u/s 35B of the Wealth tax Act was received on October 25, 1990, and that the petitioner was required to file its reply by October 30, 1990, i.e., within five days, and it could not be deemed to be sufficient notice ; that no opportunity of hearing was given to the petitioner before launching her prosecution.

4. A chart regarding assessment of wealth given in annexure P-3 is reproduced as under :

Assessment year

Wealth declared

Wealth assessed to tax

Returned wealth-tax

Assessed wealth-tax

Rs.

Rs.

Rs.

Rs.

1980-81

4,89,764

5,80,760

3,600

5,260

1981-82

5,09,580

6,10,580

3,864

5,840

1982-83

5,37,290

6,76,520

4,514

7,140

5. By means of the Direct Tax Laws (Amendment) Act, 1987, which was applicable with effect from April 1, 1989, an amendment regarding requirement of notice has been incorporated in Section 17 of the Act. Section 17(1) of the Wealth-tax Act, 1957, as incorporated with effect from April 1, 1989, reads as under ;

"If the Assessing Officer has reason to believe that the net wealth chargeable to tax in respect of which any person is assessable under this Act has escaped assessment for any assessment year (whether by reason of underassessment or assessment at too low a rate or otherwise), he may, subject to the other provisions of this section and Section 17A, serve on such person a notice requiring him to furnish within such period, not being less than thirty days, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth the net wealth in respect of which such person is assessable as on the valuation date mentioned in the notice, along with such other particulars as may be required by the notice, and may proceed to assess or reassess such net wealth and also any other net wealth chargeable to tax in respect of which such person is assessable, which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section for the assessment year concerned (hereafter in this section referred to as the relevant assessment year), and the provisions of this Act shall, so far as may be, apply as if the return were a return required to be furnished u/s 14."

6. A perusal of this section shows that an assessee requires a notice which should not be of less than, thirty days.

7. In respect of the assessment year 1980-81 and the year 1982-83, the notice does not carry any date. As regards the petition, which relates to the year 1981-82, the notice is dated October 19, 1990, and it wanted a reply of the assessee by October 30, 1990. This itself shows that the notice was not in accordance with the statutory provision contained in Section 17 of the Act and a mandatory provision was not fulfilled.

8. On behalf of the petitioner, attention has been invited to Shree Singhvi Brothers and Others Vs. Union of India (UOI) and Others, , wherein it was

observed that, before launching prosecution against the assessee, an opportunity of hearing has to be given otherwise it will amount to violation of the principles of natural justice rendering the prosecution liable to be quashed. In *S. Harnam Singh Suri Vs. Central Board of Direct Taxes*, , the prosecution of an assessee was not liked where, after receiving a notice, a return was filed and the second return too was filed by the assessee. The requirement of a valid notice also came into consideration in *Commissioner of Wealth Tax Vs. J.K. Srivastava and Sons*, , referred to by learned counsel for the petitioner.

9. On behalf of the respondents, attention has been invited to *Sant Parkash and Others Vs. Commissioner of Income Tax and Others*, , where the complaint was filed earlier to the decision of the Income Tax Department and the allegations were that there was an undisclosed income of Rs. 16,50,000 which was noticed by the assessing authority whereas in the case now in hand, the wealth-tax was Rs. 5,666 according to the order dated February 29, 1988, and the penalty imposed was Rs. 5,550, and that too was deposited on February 29, 1988.

10. The respondent proposes to prosecute the petitioner long after the passing of the assessment orders and depositing of the wealth-tax together with the penalties imposed and that too without fulfilling the conditions laid down in Section 17 of the Act. In view of these reasons, the present petition is accepted and the complaint lodged against the petitioner and all subsequent proceedings in respect thereof are hereby quashed.

11. This also disposes of Criminal Miscellaneous Nos. 4676-M and 4679-M of 1992.