(1993) 02 P&H CK 0001

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:
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1993) 112 CTR 325 : (1993) 205 ITR 417 : (1993) 69 TAXMAN 297

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

Bench : Division Bench

Judgement

J. B. GARG J.- Ram Piari, widow of the 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 35B of the Wealth-tax Act, 1957, pertaining to the assessment year 1980-81.

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 allege 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 on the sum of Rs. 5,666 and in this regard an order was passed 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.

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 averred that the petitioner failed the returns relating to the years 1975-76 to 1981-82 and there has been no willful 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, thought 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 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.

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

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 if 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 to 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 with such other particulars as may be required by the notice, and may proceed to assess or reassess such net wealth and also 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 his section referred to as the relevant assessment year), and the provision of this Act shall, so far as may be, apply as if the return were a return required to be furnish u/s 14."

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

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 assess by October 30, 1990. This itself shows that the notice was not in accordance with the statutory provisions contained in section 17 of the Act and a monetary provision not fulfilled.

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 CWT v. J. K. Srivastava and Sons [1983] 142 ITR referred to by learned counsel for the petitioner.

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 filled 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.

The respondent proposes to prosecute the petitioner along after the passing of the assessment order and depositing of the wealth-tax together with the penalties imposed that too without fulfilling the condition laid done in section 17 of the Act. In view of these reason, the present petition is accepted and the complaint lodged against the petitioner and all subsequent proceeding in respect thereof hereby quashed.

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

