(1981) 08 AHC CK 0027

In the Allahabad High Court

Case No : Wealth-tax Reference No. 386 of 1977

Smt. Usha Agarwal — APPELLANT

Vs

Commissioner of Wealth-tax — RESPONDENT

Date of Decision : 10-08-1981

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

Citation : (1982) 136 ITR 184

Hon'ble Judges : Satish Chandra, C.J;R.R. Rastogi, J

Bench : Division Bench

Advocate : S.K. Yogeshwar, for the Appellant; M. Katju, for the Respondent

Judgement

Rastogi, J.—The Income Tax Appellate Tribunal, Delhi Bench-A, has referred the following questions at the instance of the assessee, for the opinion of this court:

"1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that Section 18(1)(a) of the Wealth-tax Act, as amended w.e.f. April 1, 1969, would apply in imposing the penalty ?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in sustaining the penalty u/s 18(1)(a) more than half of the tax levied ?"

2. The assessee is an individual. For the assessment year 1967-68, the assessee should have filed her return of wealth-tax by June 29, 1967, and for the assessment year 1 968-69, by 29th of June, 1968. The returns were not filed by those dates, but were filed on November 15, 1969, that is, after a delay of 29 complete months for 1967-68 and of 17 months for 1968-69.

3. The WTO initiated penalty proceedings u/s 18(1)(a) of the W.T. Act and, after hearing the assessee, imposed penalties in the sums of Rs. 4,896 and Rs. 5,663 for these two years, respectively.

4. The assessee filed appeals against those orders. She did not challenge the

levy of penalty, but challenged only the quantum of penalty imposed. The AAC reduced the penalty to Rs. 279 and Rs. 359 for the two years, respectively. Aggrieved, the department filed appeals before the Appellate Tribunal. The Tribunal has taken the view that a default u/s 18(1)(a) is a continuing default attracting the law as applicable from time to time during the period the default continues. On that view, the penalties imposed by the WTO have been restored. Hence this reference.

5. It has been submitted before us on behalf of the assessee that the default u/s 18(1)(a) is not a continuing one. The default takes place when on the due date for the filing of a return, the return is not filed and the law as applicable on that date will be relevant for consideration. In other words for the years under consideration the law as it existed prior to the amendment introduced in the Act with effect from April 1, 1969, would be applicable. Reliance has been placed on two decisions of this court in support of this contention. In Commissioner of Wealth-tax Vs. Ram Narain Agrawal, it has been laid down that the penalty proceedings are quasi-criminal in nature and as such it is imperative that they should be construed strictly. The law operative on the date when the infringement takes place is the law applicable unless it is made applicable ex-post facto. Similarly, in Commissioner of Income Tax Vs. Smt. Raj Rani Devi, the same view has been taken.

6. Following these decisions we hold that the law as applicable on June 29, 1967, and June 29, 1968, for the two years under consideration was applicable and the view taken by the AAC was correct.

7. We, therefore, answer question No. 1 by saying that even for the period of default subsequent to March 31, 1969, the provisions of Section 18(1)(a) of the W.T. Act as they stood prior to their amendment with effect from April 1, 1969, will be applicable for the years 1967-68 and 1968-69.

8. Question No. 2 does not arise.

9. Question No. 1 is, therefore, answered in the negative, in favour of the assessee and against the department. Question No. 2 is returned unanswered. The assessee is entitled to costs which are assessed at Rs. 200.

