(1988) 06 GAU CK 0011

In the Gauhati High Court

Case No : Wealth-tax Reference No. 8 of 1975

T.K. Baruah APPELLANT

Vs

Commissioner of Wealth-tax RESPONDENT

Date of Decision : 23-06-1988

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

Citation : (1988) 72 CTR 244 : (1989) 176 ITR 287

Hon'ble Judges : A. Raghuvir, C.J;R.K. Manisana, J

Bench : Division Bench

Advocate : J.P. Bhattacharjee, C.C. Deka, N.C. Phukan, B. Malakar and K. Bashak, for the Appellant; None, for the Respondent

Judgement

A. Raghuvir, C.J.—Tapan Kumar Baruah is the assessee in this case. The reference in this case is made under Sub-section (1) of Section 27 of the Wealth-tax Act, 1957. The following question is referred :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the calculation of penalty up to March 31, 1969 was to be made u/s 18(1)(i) of the Wealth-tax Act, 1957, as it originally stood from April 1, 1965, to March 31, 1969, as substituted with effect from April 1, 1965, by Section 18 of the Wealth-tax (Amendment) Act, 1964, and thereafter u/s 18(1)(i) as substituted by Section 24 of the Finance Act, 1969 ?"

2. This case relates to five orders of penalty in relation to the assessment years 1964-65, 1965-66, 1966-67, 1967-68 and 1968-69. For all the five years all through, a consolidated order was passed by the Revenue authorities.

3. All the five returns were filed by the assessee on August 31, 1969, but not on the due dates. The explanation offered by the assessee for the delay was not accepted and penalties were levied. The Wealth-tax Officer divided the delay into two parts one up to March 31, 1969, and the second the delay beyond April 1, 1969, and imposed penalty of Rs. 5,776, Rs. 5,448, Rs. 5,170, Rs. 3,484 and Rs.

10,175, respectively. The penalty amounts were ascertained at the rate of 2% per month of the tax payable for the former period and for the latter period after April 1, 1969, at the rate of 1/2% of the total wealth in the cases.

4. The Appellate Assistant Commissioner, Dibrugarh, on appeal, imposed the rate of penalty of 2% monthly of the total wealth-tax and modified the order subject to 50% of the total wealth-tax. In effect, the penalty referable to after April 1, 1969, was overturned.

5. The Appellate Tribunal held that the assessee failed to submit returns u/s 14(1) of the Wealth-tax Act, 1957, and that proceeding u/s 18(1)(a) was properly initiated. The Tribunal affirmed the penalties imposed by the Wealth-tax Officer at the rate of 2% per month before April 1, 1969, since he crossed the limit of maximum 50% of the total tax, and, therefore, directed that penalties be calculated for each completed month of default subject to a maximum of 50% of the tax payable. This part of the order was affirmed. The Appellate Tribunal further held that the Wealth-tax Officer was justified in calculating the penalty at the rate of 1/2% on the total net wealth for the period beyond April 1, 1969.

6. The question now is referred u/s 27(1) of the Wealth-tax Act, 1957, for our opinion.

7. Section 18(1)(i) of the Wealth tax Act, 1957, was amended by the Wealth-tux (Amendment) Act, 1964, and thereafter is substituted by Section 24 of the Finance Act, 1909.

8. In Jain Bros. and Others Vs. The Union of India (UOI) and Others, the Supreme Court held (headnote) :

"It is obvious that for the imposition of penalty it is not the assessment year or the date of the filing of the return which is important but it is the satisfaction of the Income Tax authorities that a default has been committed by the assesses which would attract the provisions relating to penalty. Whatever the stage at which the satisfaction is reached, the scheme of Sections 274(1) and 275 of the Act of 1961 is that the order imposing penalty must be made after the completion of the assessment. The crucial date, therefore, for purposes of penalty is the date of such completion."

9. The ratio of this decision was not noticed in Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth, Therefore, that case was declared per incuriam and was reversed in Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, What is ordered by the Income Tax Appellate Tribunal is in conformity with the ratio of the case in Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, In that view, the Tribunal has committed no error. We answer the question referred in the affirmative, in favour of the Revenue and against the assessee. No costs.