

(1979) 11 MP CK 0019

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 322 of 1976

Yogesh Kumar

APPELLANT

Vs

Addl. Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 30-11-1979

Acts Referred:

Wealth Tax Act, 1957 — Section 14(1), 18(1), 27(1)

Citation : (1981) 132 ITR 597

Hon'ble Judges : R.K. Vijayvargiya, J;G.G.Sohani, J

Bench : Division Bench

Advocate : S.C. Goel, for the Appellant; S.C. Bagadiya, for the Respondent

Judgement

Vijayvargiya, J.—By this reference u/s 27(1) of the W.T. Act, 1957 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Indore Bench, Indore, has referred the following questions of law for the opinion of this court.

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in inferring that there was absence of a reasonable cause on the part of the assessee in not filing the return of wealth for the assessment years 1969-70 and 1970-71 in time ?

(2) Whether, on the facts and in law the Tribunal was justified in upholding the order of the Wealth-tax Officer levying penalty on the assessee ? "

2. The facts giving rise to this reference as set out in the statement of the case are as follows: The assessee is an individual. The return of wealth u/s 14(1) of the Act was filed by him on January 15, 1971, and the same was due on June 30, 1969. Thus, there was a delay of 18 months in the filing of the return for the assessment year 1969-70 and of six months in filing the return for the assessment year 1970-71. The assessee filed the returns in the status of an HUF disclosing an income of Rs. 1,07,550 for the assessment year 1969-70 and of Rs. 1,38,820 for the assessment year 1970-71. The assessee had filed his return of income for the assessment years 1969-70 and 1970-71 in his status as an

individual. The ITO in the assessment orders assessed the assessee in his status as an individual.

3. The WTO initiated penalty proceedings u/s 18(1)(a) of the Act at the time of the completion of the assessments under the Act for the late filing of the returns by the assessee for the aforesaid two years. The explanation of the assessee in the penalty proceedings before the WTO was that as he had received the assets on a partial partition of the HUF in the year 1964, the assets which he received as a result of that partial partition continued to be an HUF property in his hands and as the exemption in respect of the assets held by the HUF in those years of assessment was to the extent of Rs. 2,00,000, he bona fide believed that he was not liable to file a return under the Act for either of the two years. The assessee further submitted that when the ITO while making the assessment under the I.T. Act of the aforesaid two years held that the real status of the assessee even in respect of the income from the assets received by him on partial partition was that of an individual, he immediately filed the returns under the Act contending therein that his status was that of an HUF. The WTO did not accept the explanation of the assessee and imposed upon him a penalty of Rs. 680 in respect of the assessment year 1969-70 and a penalty of Rs. 1,165 in respect of the assessment year 1970-71. The appeals preferred by the assessee to the AAC were allowed. The AAC held that the question regarding the status of the assessee in respect of the assets received by him on a partial partition of the HUF was not free from doubt and, therefore, the assessee had sufficient cause for the delay in filing the returns. The revenue preferred appeals before the Tribunal against the order of the AAC quashing the penalties levied on the assessee. The Tribunal allowed the appeals of the revenue and held that the cause shown by the assessee for the delay in filing the returns was not sufficient and, therefore, the WTO was justified in imposing the penalties on the assessee. At the instance of the assessee, the Tribunal has referred the aforesaid questions of law for the opinion of this court.

4. The learned counsel for the assessee submitted that the question whether the status of the assessee in respect of the assets received by him on partial partition was that of an individual or that of an HUF was a matter which was not free from doubt and, therefore, the assessee had a reasonable cause for not filing the returns in time. He, therefore, contended that the Tribunal erred in law in holding that the assessee had no sufficient cause for the delay in filing the returns. He further submitted that the only ground on which the Tribunal negated the contention of the assessee was that the assessee had filed his Income Tax returns for the years in question in his status as an individual and, therefore, he had no doubt whatsoever in his mind about his status. According to the Tribunal, the income which the assessee derived from the assets received by him in partial partition was returned by him in his status as an individual and, therefore, there was no ground for entertaining any doubt about his status for filing the return under the provisions of the Act.

5. The learned counsel for the assessee submitted that the conditions for the filing of the returns as an HUF under the I.T. Act were entirely different for the years in question and as the assessee was an unmarried single person he could not have filed his returns for Income Tax in the status of an HUF, while there were no such conditions in existence for determining the status of a person as an HUF under the provisions of the Act. In any case, according to him, this was a matter not free from doubt and, therefore, it cannot be said that the assessee deliberately filed the return after the prescribed time and, therefore, was liable to penalty on that ground. The contention of the learned counsel for the assessee cannot be upheld. Whether the assessee in the circumstances of the case had a reasonable cause for filing the returns after the prescribed time is a question of fact. The Tribunal has considered the explanation of the assessee and has held that the assessee had no reasonable cause for the late filing of the return. In the circumstances, the finding of the Tribunal being on a question of fact no question of law arises out of the order of the Tribunal. In this view of the matter, it is not necessary to refer to the decisions relied upon by the learned counsel for the assessee because they are distinguishable on facts.

6. As a result of the discussion aforesaid our answer to questions Nos. 1 and 2 referred to us is in the affirmative and against the assessee.

7. In the circumstances of the case, the parties shall bear their own costs of this reference.