

TaxHelpline Case No. 123 of 2001

Madras High Court India

Tax Case No.323 of 1986 (Reference No.201 of 1986), decided on 20th April, 1998

Before R. Jayasimha Babu and N. V Balasubramanian, JJ

C.V. Rajan for the Commissioner. K. Ramagopal for the Assessee

COMMISSIONER OF WEALTH TAX

vs

A. BADRA CHETTY & SONS

Wealth tax-----Penalty---Failure to file returns in time ---HUF---Finding in income-tax " assessment proceedings that a certain amount did not belong to HUF-- Finding upheld by High Court---Penalty could not be levied for failure to file wealth tax returns in respect of such an amount---Indian Wealth- Tax Act 1957, S.18(1)(a).

The assessee was a Hindu undivided family. It claimed in the 'J', income-tax proceedings that there was a partition on September 24, 1961, and a firm was constituted and the source for the investment in the firm had come from the assets partitioned in the assessee's family. The Income-tax Officer initially accepted the claim of the assessee as to the source of the investment, in the partnership firm, but, subsequently, on the basis of the directions of the Commissioner of Income-tax cancelled the earlier assessment and held that the assessee's family on the date of partition did not have any money and the source of investment in the firm could not be the assets of the family. This was confirmed by the Tribunal. The order of the Tribunal came up for consideration before the Madras High Court and the said Court-in the case of B. Viswanathiah & Co. v. CIT (1993) 201 ITR 53 (Mad.), held that the finding of the Appellate Tribunal that the assessee did not possess the sum of Rs.14,35,000 or even any part thereof on September 24, 1961, was arrived at on the basis of the available material and the said finding rendered by -the Appellate Tribunal was a pure question of fact. The Appellate Tribunal in the appeal preferred against the levy of penalty under the Wealth Tax Act came to the conclusion that the Income-tax Officer himself did not believe the availability or the existence of the cash of Rs.14,35,000 and, therefore, the question of failure to submit the return did not arise and cancelled the penalty levied under section 18(1)(a) of the Wealth Tax Act, 1957. On x reference:

Held, that when the assessee had pointed out the source for the investment in the firm, as having come from the assessee's family, it was rejected by the Department and the logical consequences of the finding was that the firm had the money and not the assessee. Therefore, the assessee had reasonable cause for its failure to file the return of wealth within the time prescribed under section 14(1) of the Act. The Tribunal had come to the correct conclusion in holding that the levy of penalty under section 18(1)(a) of the Act imposed on the assessee was not justifiable.

B. Viswanathiah & Co. v. CIT (1993) 201 ITR 53 (Mad.) ref.

JUDGMENT

N. V. BALASUBRAMANIAN, J.---The assessee before us is a Hindu undivided family. The Wealth Tax Officer levied penalty under section 18(1)(a) of the Wealth Tax Act, 1957, for the assessment year 1961-62 for its failure to file a return of wealth within the time allowed under section 15 of the Act. The due date for filing the return for the assessment year 1961-62 was June 1, 1961. The assessee did not file the return within the time limit prescribed under the provisions of section 14(1) of the Act. The Wealth Tax Officer issued a notice of reassessment under section 17(1) of the Act for the assessee to file the return of net wealth and the assessee requested time to file the return till December 31, 1969. The assessee, thereafter, filed the return. The Appellate Assistant Commissioner (Appeals) held that the assessee was granted time by the Wealth Tax Officer from October 24, 1969, to December, 31, 1969, and there was a default for the period from June 1, 1961, to October 24, 1969, and the penalty should be levied for the period of such default. The assessee took up the matter in appeal before the Income-tax Appellate Tribunal. It is now necessary to mention certain facts relating to levy of penalty in income-tax also. The assessee claimed there was a partition on September 24, 1961, and a firm was constituted and the source for the investment in the firm has come from the assets partitioned in the assessee's family. The Income-tax Officer initially accepted the claim of the assessee as to the source of the investment in the partnership firm, but, subsequently, on the basis of the directions of the Commissioner of Income-tax cancelled the earlier assessment and held that the assessee's family on the date of partition did not have any money and the source of investment in the firm cannot be the assets of the family. Though the Appellate Tribunal in the income-tax appeal upheld the inclusion of the value of sum of Rs.80,352, the Tribunal also did not accept the claim of the assessee that it had a sum of Rs.14,35,000 as cash available on the date of partition. The earlier order of the Income-tax Appellate Tribunal in the assessee's own case came up for consideration before this Court and this Court in the case of *B. Viswanathiah & Co. v. CIT (1993) 201 ITR 53*, held that the finding of the Appellate Tribunal that the assessee did not possess the sum of Rs.14,35,000 or even any part thereof on September 24, 1961, was arrived at by the Appellate Tribunal on the basis of the available material and the said finding rendered by the Appellate Tribunal was a pure question of fact.

The Appellate Tribunal in the appeal preferred against the levy of penalty under the Wealth Tax Act came to the conclusion that the Income-tax Officer himself did not believe the availability or the existence of the cash of Rs.14,35,000 and, therefore, the question of failure to submit the return did not arise and cancelled the penalty levied under section 18(1)(a) of the Act.

The Revenue has challenged the order of the Appellate Tribunal and on the basis of the directions of this Court the following question of law has been referred for our consideration:--

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding and had valid materials to hold that the penalty under section 18(1)(a) is not leviable for the assessment year: 1961-62?"

It is seen from the judgment of this Court in the assessee's own case reported in *B. Viswanathiah & Co. v. CIT (1993) 201 ITR 53*, this Court upheld the finding of the Appellate Tribunal that the assessee's family did not possess cash of Rs.14,35,000 or even any part thereof on the date of partition. On the basis of the judgment of this Court, it cannot be said that the assessee after having known that it had cash to the extent

of Rs.14,35,000 failed to submit the return. As a matter of fact, the Income-tax Officer himself did not believe that the assessee had a cash of Rs.14,35,000 on the date of partition. The Income-tax Officer himself has doubted that the assessee did not have any cash and the penalty cannot be imposed as the oscillating view of the Income-tax Officer as he himself was not sure as to whom the amount really belonged and the dispute was finally resolved by the orders of this Court. The assessee, in these circumstances; cannot be penalised for its failure to file the return within the time prescribed under section 14(1) of the Act. When the assessee has pointed out the source for the investment in the firm, as having come from the assessee's family, it was rejected by the Department and the logical consequences of the finding is that the firm had the money and not the assessee. Therefore, the assessee had reasonable cause for its failure to file the return of wealth within the time prescribed under section 14(1) of the Act. The Tribunal has come to the correct conclusion in holding that the levy of penalty under section 18(1)(a) of the Act imposed on the assessee was not justifiable. We find no error in the order of the Appellate Tribunal. Accordingly, we answer the question of law referred to us in the affirmative and against the Revenue. Mr. K. Ramagopal undertakes to file Vakalatnama. The assessee will be entitled to the cost of a sum of Rs.750

Reference answered

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