Commissioner of Wealth-Tax, Amritsar

Vs

Suresh Seth

Civil Appeals Nos. 768 and 769 of 1978

(R. S. Pathak, E. S. Venkatramiah JJ)

07.04.1981

JUDGMENT

VENKATARAMIAH J. –

1. The Commissioner of Wealth-tax, Amritsar, has filed the above appeals by special leave against the judgment of the High Court of Punjab and Haryana in a reference made under s. 27 (1) of the W. T. Act. 1957 (hereinafter referred to as "the Act"), answering in favour of the assessee the following two questions :

> "1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the offence relating to the omission to file the wealth-tax returns was a continuing offenc ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law i upholding the penalties of Rs. 5,382 and Rs. 7,759 levied by the department on the assessee under section 18 (1) (a) of the Wealth-tax Act, 1957, for the assessment years 1964-65 and 1965-66, respectivel ?"

The assessee, the respondent in these appeals filed his wealth-tax returns for the assessment years 1964-65 and 1965-66 on March 18,1971, while he was required by s. 14 (1) of the Act to file the return for the assessment year 1964-65 on or before June 30, 1964, and the return for the assessment year 1965-66 on or before June 30, 1965. The WTO completed the assessments for the aforementioned years on March 22, 1971, determining the total wealth at Rs. 1,45,800 for the assessment year 1964-65 as against the declared wealth of Rs. 1,38,550 and at Rs. 1,65,200 for the assessment year 1965-66 as against the declared wealth of Rs. 1,59,127 and also commenced proceedings for levying penalty under s. 18 (1) (a) of the Act for late submission of returns. Ultimately, the penalties were levied as follows :

> #"Assessment year 1964-65 Rs.(i) For the period from 1-7-64 to 31-3-6 :Penalty at 2% p.m. subject to a maximum of 50% of thewealth-tax payable under section 18(1)(a) before itsamendment on 1-4-69 by the Finance Act, 1969 115(ii) For the period from 1-4-69 to 18-3-7 :Penalty at 1\2% of the net wealth for each monthof default under section 18(1)(a) as amended 5,267by the Finance Act, 1969 _____ 5,382Assessment year 1965-66(i) For the period from 1-7-65 to 30-3-6 :Penalty at 2% p.m. subject to a maximum of 50% of thewealth-tax payable under section 18(1)(a) before itsamendment on 1-4-69 by the Finance Act, 1969 163(ii) For the period from 1-4-69 to 18-3-7 :Penalty at half per cent of the net wealth for each

monthof default under section 18(1)(a)as amended on 1-4-69 by 7,596the Finance Act, 1969 _____ 7,759##

The above orders levying penalties were upheld in appeal by the AAC and the Income-tax Appellate Tribunal, Amritsar Bench, Amritsar. At the instance of the asssessee, a consolidated reference was made by the Income-tax Appellate Tribunal to the High Court referring the above two questions for its opinion. The High Court answered the said questions in favour of the assessee after rejecting the contention of the department that the default or failure to file the return in time was a continuing default and that the penalty had to be computed for the period prior to April 1, 1965, in accordance with s. 18 as it stood prior to is amendment by the W. T. (Amend.) Act, 1964, for the period between April 1, 1965, to March 31,1969, in accordance with s. 18 of the Act as amended by the W. T. (Amend.) Act, 1964, and for the period between April 1, 1969, to March 18, 1971 (on which date the returns were filed) in accordance with s 18 of the Act as amended by the Finance Act, 1969. Aggrieved by the decision of the High Court, the department has filed these appeals under art. 136 of the Constitution.

Before dealing with the contentions the parties, it is appropriate to set out the provisions of the Act which have a bearing on the question involved in the present appeals as they stood during the relevant periods :

Prior to April 1, 1965, sub-ss. (1) and (3) of section 14 of the Act stood as follows :

"14. Return of wealth-(1) Every person whose net wealth on the valuation date was of such an amount as to render him liable to wealth-tax under this Act, shall, before the thirtieth day of June of the corresponding assessment year, furnish to the Wealth-tax Officer, a return in the prescribed form and verified in the prescribed manner setting forth his net wealth as on that valuation date :....

(3) The Wealth-tax Office may, if he is satisfied that it is necessary so to do, extend the date for the delivery of the return under this section."

After April 1, 1965 :

"14. (1) Every person, if his net wealth or the net wealth of any other person in respect of which he is assessable under this Act on the valuation date was of such as amount as to render him liable to wealth-tax under this Act, shall, before the thirtieth day of June of the corresponding assessment year, furnish to the Wealth-tax Officer a return in the prescribed form and verified in the prescribed manner setting forth the net wealth as on that valuation date....

(3) The Wealth-tax Officer may, if he is satisfied that it is necessary so to do, extend the date for the delivery of the return under this section."

Section 15 of the Act which has not undergone any change since the commencement of the Act reads :

"15. Return after due date and amendment of return-If any person has not furnished a return within the time allowed under section 14, or having furnished a return under that section discovers any omission or a wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is

made."

The relevant parts of section 18 of the Act as they stood during the three periods referred to above read as follows :

Prior to April 1, 1965 :

> "18. (1) If the Wealth-tax Officer, Appellate Assistant Commissioner, Commissioner or Appellate Tribunal in the course of any proceedings under this Act is satisfied that any person -
>
> (a) has without reasonable cause failed to furnish the return of his net wealth which is required to furnish under sub-section (1) or sub- section (2) of section 14 or section 17 or has without reasonable cause failed to furnish it within the time allowed and in the manner required : or....

he or it may, by order in writing, direct that such person shall pay way of penalty -

> (i) in the case referred to in clause (a), in addition to the amount of wealth-tax payable by him, a sum not exceeding one-and-a-half times the amount of such tax, and..."

Between April 1, 1965, and March 31, 1969 :

> "18. (1) If the Wealth-tax Officer, Appellate Assistant Commissioner, Commissioner or Appellate Tribunal in the course of any proceedings under this Act is satisfied that any person -
>
> (a) has without reasonable cause failed to furnish the return (of his net wealth) which he is required to furnish under sub-section (1) of section 14 or by notice given under sub-section (2) of section 14 or section 17, or has without reasonable cause failed to furnish it within the time allowed and in the manner required by sub-section (1) of section 14 or by such notice, as the case may be; or....

he or it may, by order in writing, direct that such person shall pay by way of penalty -

> (i) in the cases referred to in clause (a), in addition to the amount of wealth-tax, if any, payable by him, a sum, equal to two per cent. of the tax for every month during which the default continued, but not exceeding in the aggregate fifty per cent. of the tax;...."

After April 1, 1969, and as on March 18, 1971, on which date the returns were filed.

> "18. (1) If the Wealth-tax Officer, Appellate Assistant Commissioner, Commissioner or Appellate Tribunal in the course of any proceedings under this Act is satisfied that any person -
>
> (a) has without reasonable cause failed to furnish the return which he is required to furnish under sub-section (1) of section 14 or by notice given under sub-section (2) of section 14 or section 17, or has without reasonable cause failed to furnish within

the time allowed and in the manner required by sub-section (1) of section 14 or by such notice, as the case may be; or....

he or it may, by order in writing, direct that such person shall pay by way of penalty -

(i) in the cases referred to in clause (a), in addition to the amount of wealth-tax if any, payable by him, a sum, for every month during which the default continued, equal to one-half per cent of -

(A) the net wealth assessed under section 16, as reduced by the amount of net wealth on which, in accordance with the rates of wealth-tax specified in Paragraph A of part I of the Schedule or Part II of the Schedule, the wealth-tax chargeable is nil, or

(B) the net wealth assessed under section 17, where assessment has been made under that section, as reduced by -

(1) the net wealth, if any, assessed previously under section 16 or section 17, or

(2) the amount of net wealth on which, in accordance with the rates of wealth-tax specified in Paragraph A of Part I of the Schedule or Part II of the Schedule, the wealth-tax chargeable is nil.

whichever is greater,

but not exceeding, in the aggregate, an amount equal to the net wealth assessed under section 16, or, as the case may be, the net wealth assessed under section 17, as reduced i either case in the manner aforesiad...."

Now let us analyse the above provisions of law. Section 14 of the Act, which has not undergone any material change from the commencement of the ct in so far as the question involved in these appeals is concerned, requires a person the value of whose wealth is such as would attract the liability to pay tax to file a return of his wealth as on the valuation date in the prescribed manner before the WTO on or before the thirtieth of June of the assessment year or on or before any date up to which the WTO has extended the time to file the return. Section 15 of the Act, however, enables such a person to file a return at any tie before the assessment is made. The distinction between s. 14 and s. 15 of the Act lies in the fact that whereas under s. 14 a duty is imposed on the assessee to file a return within the prescribed date, s. 15 enables him to file a return before the assessment is made even though the last date prescribed by s. 14 (1) is over. Section 18 of the Act deals with three types of penalties for certain specified acts or omissions on the part of the assessee referred to in cls. (a), (b) and (c) of sub-s. (1) thereof. We are concerned in this case with the question of levy of penalty in respect of omissions referred to in cl. (a) of s. 18 (1) of the Act. There are four kinds of omissions referred to in that clause-(i) failure to furnish the return which the assessee is required to furnish under sub-s. (1) of s. 14; (ii) failure to furnish the return as required by a notice issued under s. 14 (2) or s. 17; (iii) failure to furnish the return as required by s. 14 (1) within the time allowed and in the prescribed manner; and (iv) failure to furnish the return as required by a notice issued under s. 14 (2) of s. 17 within the time allowed and in the prescribed manner. each one of these omissions exposes the assesses to the levy of penalty unless reasonable cause is shown for not performing the duty. In cl. (i) of s. 18 (1) of the Act, the penalty leviable for any of the omissions referred to in s. 18 (1) (a) is set out but the measure of penalty imposable has varied form time tot time. Prior to April 1, 1965, the penalty imposable was a sum not exceeding one and a half times the amount of

wealth-tax payable by the assessee during the assessment year in question. Within the outer limit referred to above, the officer concerned or the Tribunal, as the case may be, could impose any amount as penalty having regard to all the relevant circumstances of the case including perhaps the time that had elapsed from the last day allowed to file the return. Between April 1, 1965, and March 31, 1969, the measure of penalty was regulated by s. 18 of the Act as amended in 1964. During that period the penalty imposable was a sum equivalent to 2 per cent. of the tax for every month during which the default continued but not exceeding in the aggregate fifty per cent. of the tax. The penalty leviable during this period was less onerous than it was before April 1, 1965. Then came the amendment made by the Finance Act of 1969. After April 1, 1969, by reason of the amendment introduced by the Finance Act of 1969, the penalty imposable was altered to a sum for every month during which the default continued equal to one-half per cent. of the net wealth calculated in accordance with the amended provisions in s. 18. The penalty leviable during this period was more drastic than what it was before. One significant difference between the law as it existed prior to April 1, 1965, and the law as it existed during the subsequent two periods is that whereas during the period prior to April 1, 1965, there was no specific reference in cl. (i) of s. 18 (1) (a) to the time lag between the last date on which the return had to be filed and the date on which it was actually filed, the said factor was expressly required to be taken into consideration after April 1, 1965, while determining the penalty payable by the assessee. Another significant factor which requires to be borne in mind is that neither the W. T. (Amend.) Act, 1964, nor the Finance Act, 1969, by which s. 18 of the Act was amended, expressly stated that the amended provisions of s. 18 would be applicable to an assessee who had failed to file the return in respect of any preceeding assessment year and the said default had continued after the amendment came into fore except using the phrase "for every month during which the default continued", in that part of s. 18 which prescribed the measure of penalty.

The contention of the department is that whatever may have been the position of law before April 1, 1965, on and after that date the default committed by an assessee in not filing a return as required by s. 14 (1) of the Act amounted to a continuing wrong which attracted the penalty as provided by the law in force at the time when such default continued. In other words it is contended that in this case since the assessee who had to file a return after April 1, 1965, for assessment year 1965=66, had to filed the same till March 13, 1971, penalty had to be computed for the period up to April 1, 1969, under the provisions of s. 18 of the Act as it stood during that period and for the subsequent period additional penalty should be levied in accordance with s. 18 as amended by the finance Act, 1969. Relying upon the decision of the Kerala High Court in CWT v. Smt. V. Pathummabi [1977] 108 ITR 689, it is argued that amendments made in1964 and 1969, brought about a qualitative change in the nature of the default contemplated under s. 18 and that what could have been a completed default before April 1, 1965, became a continuing default. Even assuming that this argument is correct it has to be held that the decision of the High Court in so far as the default committed by the assessee in not filing the return in respect of the assessment year 1964-65 is concerned, is not erroneous. What remains to be considered is whether the decision in respect of the default committed by the assessee in not filing the return due on June 30, 1965, for the assessment year 1965-66, is liable to be interfered with.

To repeat, the relevant part of s. 18 of the Act can be divided into two parts, the first art contained in cl. (a) of s. 18 (1) setting out the gist of the default and the second part prescribing the measure of penalty. The former part has more or less remained the same from the commencement of the Act and it is only the latter part which has undergone changes. The question is whether by reason of the changes in the latter part, there has been a change in the nature of the wrong referred to in s. 18 (1) (a) of the Act.

A liability in law ordinarily arises out of an act of commission or an act of omission. When a person does an act which law prohibits him from doing it and attaches a penalty for doing it, he is stated to have committed an act of commission which amounts to a wrong in the eye of law. Similarly when a person omits to do an act which is required by law to be performed by him and attaches a penalty for such omission, he is said to have committed an act of omission which is also a wrong in the eye of law. Ordinarily, a wrongful act or failure to perform an act required by law to be done becomes a completed act of commission or of omission, as the case may be, as soon as the wrongful act is committed in the former case and when the time prescribed by law to perform an act expires in the latter case and the liability arising therefrom gets fastened as soon as the act of commission or of omission is completed. The extent of that liability is ordinarily measured according to the law in force at the time of such completion. In the case of acts amounting to crimes the punishment to the imposed cannot be enhanced at all under our Constitution by any subsequent legislation by reason of art. 20 (1) of the Constitution which declares that no person shall be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. In other cases, however, even though the liability may be enhanced it can only be done by a subsequent law (of course subject to the Constitution) which either by express words or by necessary implication provides for such enchanment. In the instant case, the contention is that the wrong or the default in question has been altered into a continuing wrong or default giving rise to a liability de die in diem, that is, from day to day. The distinctive nature of a continuing wrong is that the law that is violated makes the wrongdoer continuously liable for penalty. A wrong or default which is complete but whose effect may continue to be felt even after its completion is, however, not a continuing wrong or default. It is reasonable to take the view that the court should not be eager to hold that an act or omission is a continuing wrong or default, unless there are words in the statute concerned which make out that such was the intention of the Legislature. In the instant case, whenever the question of levying penalty arises what has to be first considered is whether the assessee had filed without reasonable cause to file the return as required by law and if it is held that he has failed to do so then penalty has to be levied in accordance with the measure provided in the Act. When the default is the filing of a delayed return, s the penalty may be correlated to the time lag between the last day for filing it without penalty and the day on which it is filed and the quantum of tax or wealth involved in the case for purposes of determining the quantum of penalty but the default, however, is only one which takes place on the expiry of the last day for filing the return without penalty and not a continuing one. The default in question does not, however, give rise to a fresh cause of action every day. Explaining the expression 'a continuing cause of action' Lord Lindley in Hole v. Chard Union [1894] 1 Ch 293, 295, 296 (CA), observed :

> "What is a continuing cause of actio ? Speaking accurately, there is no such thing; but what is called a continuing cause of action is a cause of action which arises from the repetition of acts or omissions of the same kind as that for which the action was brought."

In the same decision, Lord Justice A. L. Smith, who concurred with the above view, said (p. 296) :

> "If once a cause of action arises, and the acts complained of are continuously repeated, the cause of action continues and goes on de die in diem. It seems to me that there was a connection in the present case between the series of acts before and after the action was brought; they were repeated in succession, and became a continuing cause of action. They were an assertion of the same claim-namely, a claim to continue to pour sewage into the steam-and a continuance of the same alleged right. in my opinion, there was here a continuing cause of action within the meaning

of the rule."

The distinction between a continuing offence and an offence which is not a continuing one is well brought out in the decision of the High Court of Bombay in State v. A. H. Bhiwandiwalla, AIR 1955 Bom 161. In that case, the accused - respondent had been charged with two offences, namely, (a) failure to apply for registration of his factory and to give notice of occupation, and (b) running the factory without a licence issued under the Factories Act, 1948. The accused had raised a plea of limitation against the prosecution. In that context, the High Court observed (p. 163) :

> "In civil law, we often refer to a continuing or recurring cause of action. Similarly, even in criminal law the expression 'continuing offence' is frequently used. As observed by Beaumont C.J. in Emperor v. Chhotalal Amarchand, AIR 1937 Bom 1 [FB], the expression 'continuing offence' is not a very happy expression. It assumes, says the learned Chief Justice (pp. 6,7) :

'..... that you can have a continuing offence in the sense in which you can have a continuing tort, or a continuing breach of contract, and I doubt, myself whether the assumption is well founded, having regard to the provisions of the Criminal Procedure Code as to the framing of charges and as to the charges which can be tried at one and the same trial. It is quite clear that you could not charge a man with committing an offence de die in diem over a substantial period.'

Even so, this expression has acquired a well-recognised meaning in criminal law. If an act committee by an accused person constitutes an offence and if that act continues from day to day, then form day to day a fresh offence is committed by the accused so long as the act continues. Normally and in the ordinary course an offence is committed only one. But we may have offences which can be committed form day to day and it is offences falling in this latter category that are described as continuing offences."

Accordingly, the High Court of Bombay held in Bhiwandiwalla's case, AIR 1955 Bom 161, that the failure to apply for registration of the factory under the factories Act and to give notice of occupation thereof was not a continuing offence but the running of the factory without a licence issued thereunder was a continuing offence.

Section 39 of the Indian Mines Act, 1923, which came up for consideration before the Patna High Court in State v. Kunja Behari Chandra, AIR 1954 Pat 371, on which reliance was placed by the revenue is a case of continuing offence. Section 39 provided :

> "39. Whoever contravenes any provision of this Act or of any regulation, rule or bye-law or of any order made thereunder for the contravention of which no penalty is hereinbefore provided shall be punishable with fine which may extend to one thousand rupees, and in the case of a continuing contravention, with a further fine which may extend to one hundred rupees for every day on which the offender is proved to have persisted in the contravention after the date of the first conviction."

In this case, the language of the section itself made it obvious that its violation resulted in a continuing offence.

The true principle appears to be that where the wrong complained of is the omission to perform a positive duty requiring a person to do a certain act the test to determine whether such a wrong is a continuing one is whether the duty in question is one which requires him to continue to do that Act.

Breach of covenant to keep the premises in good repair, breach of a continuing guarantee, obstruction to a right of way, obstruction to the right of a person to the unobstructed flow of water, refusal by a man to maintain his wife and children whom he is bound to maintain under law and the carrying on of mining operations or the running of a factory without complying with the measures intended for the safety and well-being of workmen may be illustrations of continuing breaches or wrongs giving rise to civil r criminal liability, as the case may be, de die in diem.

In Balkrishna Savalram Pujari v. Shree Dnyaneshwar Maharaj Sansthan [1959] Supp 2 SCR 476, 496, Gajendragadkar J. (as he then was) observed :

> "It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes in injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury."

Section 18 of the Act, with which we are concerned in this case, however, does not require the assessee to file a return during every month after the last day to file it is over. Non-performance of any of the acts mentioned in s. 18 (1) (a) of the Act gives rise to a single default and to a single penalty, the measure of which, however, is geared up to the time lag between the last date on which the return has to be filed and the date on which it is filed. The default, if any committed, is committed on the last date allowed to file the return. The default cannot be one committed every month thereafter. The words "for every month during which the default continued" indicate only the multiplier to be adopted in determining the quantum of penalty and do not have the effect of making the default in question a continuing one. Nor do they make the amended provisions modifying the penalty applicable to earlier defaults in the absence of necessary provisions in the amending Acts. The principle underlying section 6 of the General clauses Act is clearly applicable to these cases. It may be stated here that the majority of the High Courts in India have also taken the same view.

In the result, we hold that where the default complained of is one falling under s. 18 (1) (a) of the Act, the penalty has to be computed in accordance with law in force on the last day on which the return in question had to be filed. Neither the amendment made in 1964 nor the amendment made in 1969 has retrospective effect.

The appeals therefore, fail and are dismissed with costs. Hearing fee one set.

Appeals dismissed.

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