

ANDHRA PRADESH HIGH COURT

Commissioner of Wealth-Tax

Vs

R.D. Chand

(B Divan, C.J. Muktadar, J.)

30.06.1976

JUDGMENT

Muktadar, J.

1. These two references by the Wealth-tax Appellate Tribunal under Section 27(1) of the Wealth-tax Act, 1957, hereinafter referred to as "the Act", are being disposed of by this common judgment as the questions of law arising in them are similar.

2. In R. C. No. 51/74, the Wealth-tax Appellate Tribunal has formulated the following question :

"Whether, on the facts and circumstances of the case, the quantum of penalty determined by the Tribunal was in accordance with law ?"

3. In R. C. No. 14/75, the Tribunal framed the following questions :

"(1) Whether, on the facts and in the circumstances of the case, the quantum of penalty determined by the Tribunal was in accordance with law?"

(2) Whether, on the facts and in the circumstances of the case, penalty is leviable under Section 18(1)(a) of the Wealth-tax Act for the assessment years 1964-65 to 1968-69 notwithstanding the fact that the Wealth-tax Officer granted time for filing the wealth-tax returns till March 20, 1970, pursuant to the application made by the assessee for such extension on March 10, 1970?"

4. It would be relevant at this stage to state the facts in each reference. In R. C. No. 51/74, for the assessment year 1961-62, the assessee had to file the return before June 30, 1961, as per the provisions of the Act. She, however, filed the return on June 27, 1966, admitting a net wealth of Rs. 6,62,543. The assessment was completed on July 22, 1966, on a net wealth of Rs. 11,30,232. There was a delay of about 60 months in filing the return. The explanation given by the legal representative of the deceased assessee was that the deceased died on May 13, 1961, and his affairs were in a confused state, and hence the delay. This explanation was not accepted by the Wealth-tax Officer, and he levied a penalty of Rs. 4,650 under Section 18(1)(a) of the Act as it stood on April 1, 1965.

5. The legal representative appealed to the Appellate Assistant Commissioner who did not accept the plea put forth on behalf of the assessee with regard to the delay in filing the return. Before the Appellate Assistant Commissioner, two other contentions were advanced, viz., (1) that the Wealth-tax Officer did not take the approval of the Inspecting Assistant Commissioner before levying the penalty as required under law, and (2) that the quantum of penalty should have been calculated with reference to the provisions of Section 18(1)(a) of the Act, obtaining as on July 1, 1961, when the default was committed and not with reference to the provisions as obtaining at the time of the levy of the penalty. The Appellate Assistant Commissioner rejected the first contention but acceded to the second contention and held that the scale of penalty applicable to the case was the one in force on July 1, 1961, when the default was committed. Since according to the provisions of Section 18(1)(a) of the Act, as in force on July 1, 1961, there was no minimum penalty prescribed in that scale, the Appellate Assistant Commissioner levied a penalty of Rs. 1,000 as he was of the opinion that this penalty would meet the ends of justice. Two appeals were preferred before the Tribunal. One was by the assessee with regard to the contention that the Wealth-tax Officer ought to have obtained prior approval of the Inspecting Assistant Commissioner as required by law before levying penalty and as he did not do so the penalty was invalid. The other appeal was by the revenue against the order of the Appellate Assistant Commissioner to the extent that the provisions of Section 18(1)(a) of the Act as it stood on July 1, 1961, were held applicable to the case. The Tribunal dismissed both the appeals. It came to the conclusion that since the default was committed on July 1, 1961, the law that would be applicable was Section 18(1)(a) of the Act as it stood on July 1, 1961. At the instance of the revenue, the above question was formulated.

6. In R. C. No. 14/75, the assessee who is an individual, was carrying on the business of exhibiting films in partnership besides having other properties. For the assessment years 1964-65 to 1968-69, i.e., for 5 years, the due dates for filing the wealth-tax returns under Section 14(1) of the Act were June 30, 1964, June 30, 1965, June 30, 1966, June 30, 1967, and August 31, 1968, respectively. The assessee, however, filed the returns for all the five years on March 21, 1970. He applied for extension of time on March 10, 1970, on the ground that the matter was referred to the approved valuer from whom the reports were expected and, as such, time might be granted till March 20, 1970, for filing the relevant returns. On this application, the Wealth-tax Officer granted time as prayed for. The assessee filed returns for all the five years on March 21, 1970. The assessments were completed on March 27, 1970, accepting the return of wealth. However, the Wealth-tax Officer initiated proceedings for levy of penalty and issued notices to the assessee under Section 18(1)(a) of the Act. The assessee tried to explain the delay in filing the return by stating that he was not in a position to know whether the wealth belonging to him exceeded the limit for tax liability and also there was delay in getting the valuer's report. This explanation was not accepted by the Wealth-tax Officer. He, therefore, levied by way of penalty under Section 18(1)(a) of the Act as it stood on April 1, 1969, a sum of Rs. 10,635 for 1964-65, Rs. 13,200 for 1965-66, Rs. 15,695 for 1966-67, Rs. 20,864 for 1967-68 and Rs. 21,756 for 1968-69. The assessee preferred appeals against the levy of penalties to the Appellate Assistant Commissioner who held that the penalty for the year 1964-65 should be on the basis of the law applicable on the date of commission of the default, i.e., July 1, 1964, and that for the assessment years 1965-66 to 1968-69, the penalties should be levied with reference to the position of law as it stood on the date of the commission of the default in not filing the returns on the crucial date, and not as per the amended provisions brought into force from April 1, 1969. The revenue preferred appeals before the Tribunal and the Tribunal dismissed the same. On an application made by the revenue,

first out of the above two questions in R. C. No. 14/75, was referred to us for our opinion. At the instance of the assessee, the second question in R. C. No. 14/75 has been referred to us.

7. Mr. P. Rama Rao, the learned standing counsel for the revenue, contended that both the Appellate Assistant Commissioner and the Wealth-tax Appellate Tribunal fell into error in applying the provisions of Section 18(1)(a) of the Act, as it stood on the date of the commission of the default. He submits that it is now well settled that the date of completion of the assessment should be the relevant date for the levy of penalty because on that date the Wealth-tax Officer had formed the opinion. In support of his contention, he has cited *Commissioner of Income-tax v. K.C. Behera*¹ *Commissioner of Wealth-tax v. Butchiaiah* and *Commissioner of Income-tax v. T. Raja and Satyanarayana Murthy*. He next contended that if his first contention is not accepted, then it should be taken that the default committed by the assessee was a continuing default in view of the provisions of Section 18(1)(i) as it stood amended on April 1, 1965. His contention in this regard is that, according to the provisions of the Act, the assessee was bound to furnish the wealth-tax returns by the 30th June of the corresponding assessment year. By not doing so a default was committed, and it continued till the filing of the return by the assessee. He submits that this is a case of continuing default as envisaged in Section 18(1)(i) as it stood amended on April 1, 1965, and, therefore, the law that was in force on the date when the returns were filed should be the law that would, be applicable for the levy of the penalty.

8. Mr. B. K. Seshu appearing for the assessee in R.C. No. 51/74 adopted the arguments advanced by Mr. Y. V. Anjaneyulu, the learned advocate appearing on behalf of the assessee in R.C. No. 14/75. Mr. Y. V. Anjaneyulu contends that according to the provisions of Section 14(1) of the Act, the assessee is bound to submit his return before 30th June of the corresponding assessment year, and this liability is absolute. Section 14(2) operates when Section 14(1) has not been complied with. Section 18(1) should be examined in the light of Section 14(1) to find out whether Section 18(1) specifies the completion of the default once and for all or whether it provides for a continuing offence. He submits that if Section 18(1)(a) as amended on April 1, 1965, is read with Section 14, it could safely be concluded that the default was completed when the return was not filed on the due date, i.e., by the 30th of June, of the corresponding assessment year. Clause (i) of Section 18(1) of the Act as it stood on April 1, 1965, provides for the scale of penalty that should be levied for every month of the delay. From this, he submits that it cannot be gathered that the legislature intended that the default should be a continuing default.

9. So far as the first contention of Mr. Rama Rao is concerned, namely, that the date of completion of the assessment is the relevant date for purposes of levying penalty because it was on that date the Wealth-tax Officer had formed the opinion that the assessee had not filed the return on the due date, it may straightaway be stated that the same contention was advanced by Mr. Rama Rao in R.C. No. 39/74 [*Addl. Commissioner of Income-tax v. Medisetty Ramarao*] which was disposed of on 26-12-1975 by a Bench of this court consisting of one of us, and the reference was answered against the revenue, and this contention which was advanced was not acceded to therein. R C. No. 39/74 [*Addl Commissioner of Income-tax v. Medisetty Ramarao*] was a case under Section 271(1)(iii) of the Income-tax Act. There, for the assessment years 1965-66 to 1967-68 the assessee had filed his returns originally on June 30, 1965, August 1, 1966, and September 4, 1967. The original assessments were completed some time prior to April 1, 1968. However, the Income-tax Officer came to the conclusion that the assessee had not disclosed the income accruing from the business of exhibition of films and, therefore, issued

notice under Section 147(a) of the Income-tax Act, 1961, The assessee then filed revised returns for the respective assessment years on November 26, 1969, June 24, 1970, and March 24, 1970. In the revised returns, the assessee included the income derived from the picture house of which he was the owner and which cinema theatre he had leased to one China Veeranna and others from June 27, 1958, for ten years. The revised returns were accepted by the Income-tax Officer on July 27, 1970, but he initiated proceedings for the levy of penalty. Since the minimum penalty leviable was more than Rs. 1,000 for each assessment year, he referred the penalty proceedings to the Inspecting Assistant Commissioner of Income-tax who by a separate order dated March 23, 1973, levied the minimum penalty of Rs. 1,810 for each of the assessment years. The assessee then preferred separate appeals to the Appellate Tribunal which by its common order partly allowed the appeals filed by the assessee. With regard to the quantum of penalty, the Appellate Tribunal came to the conclusion that since the original returns were filed on June 30, 1965, August 1, 1966, and September 4, 1967, the omission to disclose the income from the cinema theatre could be said to have been from the time of the filing of the returns if not earlier; therefore, the law with regard to the quantum of penalty as it stood prior to April 1, 1968, was applicable. In that reference, Mr. Rama Rao had advanced the same argument, namely, that since the reassessment proceedings were completed on October 22, 1970, it was only then that the Income-tax Officer was satisfied that concealment of income had taken place and, therefore, the law with respect to the quantum of penalty as it stood on that date would be relevant and not the law as it stood prior to the amendment on April 1, 1969. In support of that contention he had cited Commissioner of Income-tax v. T. Raja and Satyanarayana Murthy and Jain Brothers v. Union of India . This court distinguished these two rulings on the ground that in these two cases Section 297(2)(g) of the Income-tax Act, 1961, was under consideration in which section it was specifically provided that the date of completion of assessment should be the date for the levy of penalty. Since the provisions of Section 271 of the Income-tax Act, 1961, are in pari materia with the provisions of Section 18 of the Act, to our mind, it would not be necessary for us to repeat the same reasoning on which R.C. No.39/ 74 [Addl. Commissioner of Income-tax v. Medisetty Ramarao] was decided. Hence, relying upon the judgment dated December 26, 1975, in R.C. No. 39/74 [AddL Commissioner of Income-tax v. Medisetty Ramarao we hold that the first contention advanced by Mr. Rama Rao cannot be accepted.

10. In order to appreciate the alternative contention of Mr. Rama Rao that under Section 18(1)(a) of the Act, the default in not filing the return on the due date is a continuing default and, as such, the date on which the return was filed should be considered to be the relevant date, it is necessary to state the position of law as it stood prior to April 1, 1965, and the position of law as it stood thereafter until April 1, 1969, as well as the position of law as it stood after April 1, 1969.

11. Section 18(1)(a) of the Act, as it stood originally, was as follows:

"(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) or Subsection (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
- (b) has without reasonable cause failed to comply with a notice under Sub-section (2) or Sub-section (4) of Section 16 ; or
- (c) has concealed the particulars of his assets or deliberately furnished inaccurate particulars of his assets or debts ;

he or it may, by order in writing, direct that such person shall pay by 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

(ii) in the case referred to in Clause (b) or Clause (c), in addition to the amount of wealth-tax payable by him, a sum not exceeding one-and-a-half times the amount of the tax, if any, which would have been avoided if the net wealth returned by such person had been accepted as correct.

(2) No order shall be made under Sub-section (1) unless the person concerned has been given a reasonable opportunity of being heard.

(3) No prosecution for an offence under this Act shall be instituted in respect of the same facts, in relation to which a penalty has been imposed under this section.

(4) The Wealth-tax Officer shall not impose any penalty under this section without the previous approval of the Inspecting Assistant Commissioner of Wealth-tax."

12. This section was substituted with effect from April 1, 1965, by Section 18 of the Wealth-tax (Amendment) Act, 1964. By that amendment, Section 18(1)(a), (b) and (c) were maintained with minor amendments which are not relevant for purposes of this case. However, Clauses (i), (ii) and (iii) were amended in the following terms :

"(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;

(ii) in the cases referred to in Clause (b), in addition to the amount of wealth-tax payable by him, a sum which shall not be less than ten per cent. but which shall not exceed fifty per cent. of the amount of the tax, if any, which would have been avoided if the net wealth as returned by such person had been accepted as the correct net wealth ;

(iii) in the cases referred to in Clause (c), in addition to any wealth-tax payable by him, a sum which shall not be less than twenty per cent. but which shall not exceed one-and-a-half times the amount of the tax, if any, which would have been avoided if the net wealth as returned by such person had been accepted as the correct net wealth."

13. An Explanation thereto was added in the following terms:

"Where the net wealth returned by any person is less than eighty per cent. of the net wealth (hereinafter in this Explanation referred to as the correct wealth) as assessed under Section 16 or Section 17, such person shall, unless he proves that the failure to return the correct wealth did not arise from any fraud or any gross or wilful neglect on his part, be deemed to have concealed the particulars of assets or furnished inaccurate particulars of assets or debts for the purposes of Clause (c) of this Sub-section."

14. Once again, the provisions of Section 18 of the Wealth-tax Act. were amended by Section 24 of the Finance Act, 1969, and Clauses (i) and (ii) of the Wealth-tax (Amendment) Act, 1964, were substituted by the following Clauses (i) and (ii) along with an Explanation:

"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, in either case in the manner aforesaid ;

(ii) in the cases referred to in Clause (b), in addition to the amount of wealth-tax payable by him, a sum which shall not be less than one per cent. of the assessed net wealth but which shall not exceed the amount of the assessed net wealth.

Explanation.--For the purposes of Clause (ii), 'assessed net wealth' shall be taken to be the net wealth assessed under Section 16 as reduced by the net wealth declared in the return, if any, furnished by such person, or, as the case may be, the net wealth assessed under Section 17 as reduced by-

(i) the net wealth, if any, assessed previously under Section 16 or Section 17, or

(ii) the net wealth declared in the return, if any, furnished by such person under Section 17, whichever is greater".

15. Since we are not concerned with Section 18(1)(b) or (c) or Clauses (ii) and (iii) in this case, we are purposely avoiding any discussion thereof. Thus it would be seen that, under Section 18(1)(a) of the Act as it stood originally, the quantum of penalty that was prescribed in a case falling under Clause (a) of Section 18(1) of the Act was that, in addition to the amount of wealth-tax payable by the assessee, a sum not exceeding one-and-a-half times the amount of such tax could be levied. By the Wealth-tax (Amendment) Act, 1964, which came into effect from April 1, 1965, the quantum of penalty was amended and it was provided that in cases referred to in Clause (a), in addition to the amount of wealth-tax, if any, payable by the assessee, a sum equal to two per cent, of the tax for every month during which the default continued, was to be levied, but it should not exceed in the aggregate fifty per cent, of the tax. Clauses (i), (ii) and (iii) of the Wealth-tax (Amendment) Act, 1964, were once again amended as stated above by Section 24 of the Finance Act, 1969, which came into force on April 1, 1969. According to Section 24 of the Finance Act, 1969, in cases referred to in Clause (a) to Section 18(1) of the Wealth-tax Act, 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 in either case in the manner stated hereinabove.

Relying upon the provisions of Clause (i) to Section 18(1) as amended by the Wealth-tax (Amendment) Act, 1964, Mr. Rama Rao contends that Section 18(1)(i), as amended, itself has provided that the default in not filing the return on the due date would be considered a continuing default and, therefore, it should be taken that the date on which the returns were filed would be the relevant date; consequently, penalty should be levied on the basis of the provisions of Section

18(1)(i) as it stood on that date. Mr. Rama Rao fortifies his contention by submitting that the conception of continuing offence is now fairly well settled in criminal jurisprudence as under the Factories Act or the Mines Act where the owner does not obtain a licence to run the factory or does not construct a creche for the safety of miners, the courts have held that until the licence is obtained or the creche constructed, the offence would be a continuing offence. He, therefore, submits that there is no reason why the same principle should not be applied to the case of continuing default under Section 18(1)(a) of the Wealth-tax Act. In support of this contention, he has cited State v. A. H. Bhiwandiwalla and State v. Kunja Behari Chandra [FB].

16. It is true that the conception of continuing offence is now well settled in criminal jurisprudence, but, in order to treat an offence as a continuing offence, the words employed in the concerned section have to be so used as for the courts to come to the conclusion that the legislature intended a particular offence to be a continuing offence. In State v. A. H. Bhiwandiwalla, , two charges were framed against the accused under the Factories Act. One charge was for the contravention of Rule 7 of the Factories Rules and the other was for not obtaining the licence under Section 6 read with Rule 4 of the said Rules to run the factory. The court held that breach of Rule 7 of the Factories Rules was not a continuing offence but the contravention of Rule 4 read with Section 6 was a continuing offence, because having regard to the objects of the Act and the words employed in Rule 7 and Section 6 read with Rule 4, it was only possible to conclude that the breach of Rule 7 was not a continuing offence, and contravention of Section 6 read with Rule 4 was a continuing offence. Similarly, in State v. Kunja Behari Chandra [FB], having regard to the words used in Rule 3(a) of the Rules framed under the Mines Act, the court came to the conclusion that it was a continuing offence. Thus, it would be seen that an offence would be a continuing offence only if the legislature had so provided expressly or by necessary implication. It would not be proper to import the concept of continuing offence into Section 18(1)(a) of the Act simply on the ground that it is well established in criminal jurisprudence. The conception of continuing offence would be applied to Section 18(1)(a) if it could be concluded from that section that the legislature intended the default to be a continuing offence, the word "offence" being here used in the sense of any act or omission that invites penalty. We are also unable to accede to the contention of Mr. Rama Rao that having regard to the words "default continued" used in Clause (i) of Section 18(1) of the amended Act, it should be concluded that the default in not filing the return on the due date would be a continuing offence. Section 18(1)(a) as amended by the Wealth-tax (Amendment) Act, 1964, clearly lays down as to what would be considered a default. Clause (a) does not provide expressly nor can it be deduced by necessary implication to have provided that once a default is committed in not filing the returns on the due date, it should be considered to be a continuing default until the returns are filed. We are of the opinion that Section 18(1)(a) explicitly provides that if the assessee does not file his return before 30th June of the corresponding assessment year, he commits a default. In other words, the default is a completed default as on that date, and what is provided in Clause (i) to that section is the scale of penalty that should be levied in cases of contravention of Section 18(1)(a). By no stretch of imagination, it could be concluded that by providing Clause (i) of Section 18(1) by the Wealth-tax (Amendment) Act, 1964, the legislature had intended that infraction of Section 18(1)(a) would be a continuing default until the returns are filed.

17. In State v. Bhiwandiwalla , it was observed :

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

18. In the light of this observation, a question could be asked, viz., would the words "continued default" mean that every month the assessee does not file the return, he commits a fresh default? The answer has to be in the negative because Section 14(1) casts an obligation on the assessee to file his return by the 30th June of the corresponding assessment year and Section 18(1)(a) deals with the formation of opinion by the Wealth-tax Officer that the assessee has without reasonable cause failed to furnish the return before 30th June of the corresponding assessment year. By reading Section 14(1) in conjunction with Section 18(1)(a), it cannot be said that the non-filing of the return by 30th June of the corresponding assessment year amounts to commission of a fresh default every month thereafter.

19. In *Addl. Commissioner of Income-tax v. Medisetty Ramarao*, this court had observed:

"It is a cardinal principle of criminal jurisprudence that, unless otherwise provided expressly or by necessary implication, the penalty that was provided for at the time of the commission of the offence would be the proper penalty to be levied, and not the penalty that was provided for at the time of conviction of the offender. In other words, penalty for infraction takes place not when it is detected but when it actually has been committed." We still adhere to that view. As stated earlier, when Clause (a) to Section 18(1) read with Section 18(1)(i) of the Act does not expressly or by necessary implication treat the default as a continuing default, it would, in our opinion, be stretching the point too far to hold that from the scale of penalty provided in Clause (i) it should be assumed that the legislature intended that the default in not filing the return on the due date would be a continuing default.

20. The following rulings, viz., *Biswanath Ghosh v. Income-tax Officer* [1974] 95 ITR 372 (Orissa), *Income-tax Officer v. Gwalior Rayon Silk Mfg. (Wvg.) Co.*

Ltd., *Commissioner of Wealth-tax v. Smt. V. Pathum-mabi*, *Commissioner of Gift-tax v. Muthukumara-swamy Mudaliar*, and the judgment dated November 24, 1971, in R.C. 64/70 [*Commissioner of Income-tax v. Maduri Rajeswar*] relied upon by Mr. Rama Rao to support his contention that infraction of Section 18(1)(a) of the Wealth-tax Act was a continuing default, have no relevance to the instant case. Both *Biswanath Ghosh v. Income-tax Officer* [1974] 95 ITR 372 (Orissa) and *Income-tax Officer v. Gwalior Rayon Silk Mfg. (Wvg.) Co Ltd.* were cases dealing with the levy of interest under the Income-tax Act. According to Sub-section (8) of Section 139, the legislature itself had provided for the levy of interest at a particular rate.

".....reckoned from the 1st day of October of the assessment year to the date of the furnishing of the return or, where no return has been furnished, the date of completion of the assessment under Section 144, on the amount of the tax payable on the total income as determined on regular assessment, as reduced by the advance tax, if any, paid and any tax

deducted at source :....."

21. In was in the light of this provision that the courts have held that infraction of Section 139 of the Income-tax Act was a continuing offence. It is now well settled that proceedings for levy of interest and proceedings for levy of penalty are totally different proceedings. In Commissioner of Income-tax v. Anwar Ali , the Supreme Court observed as follows :

"The first point which falls for determination is whether the imposition of penalty is in the nature of a penal provision. The determination of the question of burden of proof will depend largely on the penalty proceedings being penal in nature or being merely meant for imposition of an additional tax, the liability to pay such tax having been designated as penalty under Section 28. One line of argument which has prevailed particularly with the Allahabad High Court in Lal Chand Gopal Das's case [1963] 48 ITR 324 (All) is that there was no essential difference between tax and penalty because the liability for payment of both was imposed as a part of the machinery of assessment and the penalty was merely an additional tax imposed in certain circumstances on account of the assessee's conduct. The justification of this view was founded on certain observations in C. A. Abraham v. Income-tax Officer, Kottayam . It is true that penalty proceedings under Section 28 are included in the expression "assessment" and the true nature of penalty has been held to be additional tax. But one of the principal objects in enacting Section 28 is to provide a deterrent against recurrence of default on the part of the assessee. The Section is penal in the sense that its consequences are intended to be an effective deterrent which will put a stop to practices which the legislature considers to be against the public interest. It is significant that in C. A. Abraham's case this court was not called upon to determine whether penalty proceedings were penal or of quasi-penal nature and the observations made with regard to penalty being an additional tax were made in a different context and for a different purpose. It appears to have been taken as settled by now in the sales tax law that an order imposing penalty is the result of quasi-criminal proceedings (Hindustan Steel Ltd. v. State of Orissa). In England also it has never been doubted that such proceedings are penal in character: *Fattorini (Thomas) (Lancashire) Ltd. v. Inland Revenue Commissioners*² "

22. In Income-tax Officer v. Gwalior Rayon Silk Mfg. (Wvg.) Co Ltd. , the Maharaja of Gwalior had granted exemption to the company from tax for a period of twelve years from the date when the firm started its business. The Commissioner of Income-tax refused to grant exemption with regard to the staple fibre division of the factory. In the writ petition filed by the company, the High Court quashed the order of the Commissioner. The revenue filed an appeal to the Supreme Court. It was allowed and the order of the Commissioner refusing exemption was maintained. As a result of the cancellation of the exemption, the company had to pay the amount of Rs. 6.60 crores. After some correspondence between the company and the income-tax authority, the assessee paid the sum of Rs. 3 crores and wanted to pay the balance of Rs. 3.60 crores in instalments and undertook to pay interest at 5% per annum although Section 220(2) provided for 4% interest. The Income-tax Officer accepted the offer. Thereafter, Section 220(2) of the Income-tax Act was amended providing for 6% interest. The Income-tax Officer then informed the assessee of the amended provision and called upon the assessee to pay interest at the rate of 6%. Eventually, the case came up before the Supreme Court, and it was observed as follows (page 463):

"Furthermore, it is the Finance Act which fixes the rate of interest payable under Sub-

section (2) of Section 220 and it is common knowledge that every year the Finance Act makes important amendments in the rates payable under the various provisions of the Income-tax Act. In these circumstances, therefore, it is not within the competence of the Income-tax Officer to vary the rate of interest fixed by the Finance Act under subsection (2) of Section 220 from time to time."

23. In *Commissioner of Wealth-tax v. Smt. V. Pathummabi*, the Kerala High Court, no doubt, held that after the amendment of Section 18(1) by the Wealth-tax (Amendment) Act, 1964, the non-filing of the return would be considered as a continuing default ; but with respect to the learned judges, we are unable to subscribe to that view for the reasons noted above. Moreover, the learned judges observed in paragraph 6 of their judgment as follows--See :

"As we read Section 18(1)(i) of the Wealth-tax Act, 1957, as amended, along with the main Section 18(1) we find that an offence that had become complete had been changed into a continuing offence and visited with consequences every month for continued default even by the amending Act 46 of 1964."

24. We fail to appreciate how an offence which is complete under the Act as it stood before April 1, 1964, could be considered to be a continuing offence when the main Section 18(1)(a) with certain amendments which are irrelevant for the purpose of this case has been fully retained by the Wealth-tax (Amendment) Act, 1964. It is only Clause (i) of Section 18(1) that had been amended" and that Clause, as we have already pointed out, provides for the scale of penalty that should be levied after April 1, 1965, even though the default was complete before that date. Finally, with respect, we are not prepared to accept the observations of the learned judges in R.C. No. 64/70 [*Commissioner of Income-tax v. Maduri Rajeswar*], dated November 24, 1971, when they observe:

"Even in the case cited above, it has been pointed out that penalty proceedings are included in the expression 'assessment' and the true nature of penalty has been held to be additional tax and not punishment" because in *Commissioner of Income-tax v. Anwar Ali* the Supreme Court has not equated penal proceedings with additional tax.

25. Mr. Anjaneyulu has also cited some rulings which, to our mind, do not clinch the issue. However, *Commissioner of Gift-tax v. C. Muthukumara-swamy Mudaliar* has to be taken note of. In that case, the Madras High Court held :

"Where the infringement is said to be the failure to furnish the return in time, the offence is complete when the return is not filed on the due date. Therefore, in such cases, the offence having taken place on the date fixed for furnishing the return, the law as on that date has to govern the levy of penalty."

26. We are in respectful agreement with the above conclusion. It is to be noted that the Kerala High Court in *Commissioner of Wealth-tax v. Smt. V. Pathummabi* has affirmed this view of the Madras High Court in spite of the fact that it held that having regard to the provisions of Section 18(1)(i) as amended on April 1, 1964, the non-filing of the return on the due date was a continuing default.

27. In the ultimate analysis, we hold that the non-filing of the return on 30th June of the corresponding assessment year is a completed default and not a continuing default; and what all Clause (i) of Section 18(1) as amended by the Wealth-tax (Amendment) Act, 1964, and by Section 24 of the Finance Act, 1969, provides is for the scale of penalty that should be levied for every month during which the return was not filed. Hence, the view taken by the Wealth-tax Appellate Tribunal is correct.

28. In the light of what we have held on the first question, it is not necessary for us to probe into the second question formulated by the Wealth-tax Appellate Tribunal in R. C. No. 14/75. Hence, we answer the question in R. C. No. 51/74 and question No. 1 in R. C. 14/75 in the affirmative and against the revenue with costs. Answer to question Nos 2 in R.C. No. 14/75 is not necessary. Advocate's fee Rs. 250 in each case.

Cases Referred.

11[1976] 103 ITR 479 (Ori)

2[1943] 11 ITR (Supp) 50