

KERALA HIGH COURT

Commissioner of Wealth-Tax

Vs

V. Pathummabi

(P Govindan Nair, C.J. V Khalid, J.)

07.04.1975

JUDGMENT

Govindan Nair, C.J.

1. The same question has been referred to us by the Income-tax Appellate Tribunal, Cochin Bench, for the assessment years 1964-65 and 1965-66 in relation to the same assessee. The question referred is in these terms:

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that even for the default continuing after April 1, 1969, in furnishing the return of net wealth for the assessment years 1964-65 and 1965-66 the penalty for every month during which the default continued after April \, 1969, is to be computed under the law as it obtained on the 1st April of each assessment year alone, that is, under Section 18(1)(i) of the Wealth-tax Act, 1957, as it stood prior to its amendment by the Finance Act, 1969 ?"

2. The returns for the two years 1964-65 and 1965-66 should have been filed by the assessee on or before June 30, 1964, and June 30, 1965, respectively. Admittedly, this had not been done. The returns for the two years were filed only on March 30, 1970.

3. Originally Section 18(1) of the Wealth-tax Act stood in these terms: "18. Penalty for concealment.--(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." This section was amended by Section 18 of the Wealth-tax (Amendment) Act, 1964 (46 of 1964), and the amended Section 18(1) reads as follows :

"18. Penalty for failure to furnish returns, to comply with notices and concealment of assets, etc.--(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 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

(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 any assets or furnished inaccurate particulars of any assets or debts ;

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 ;"

4. This section was again amended with effect from April 1, 1969, by the Finance Act, 1969, and after such amendment Section 18(1) reads as follows:

"18. Penalty for failure to furnish returns, to comply with notices and concealment of assets, etc.--(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

(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 any assets or furnished inaccurate particulars of any assets or debts ;

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 specified in Sub-section (1A), 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 specified in Sub-section (1A), 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."

5. A glance at the sections is sufficient for the purpose of understanding that the penalty that could have been imposed under the section as it stood originally is different from the penalty that can be imposed after it was amended. Before the amendments all that had been provided was the maximum limit of the penalty that could be imposed. The penalty was not geared statutorily to the time lag between the due date of the return and the actual date of filing the return, though in the exercise of discretion by the authorities empowered to act under the section, the time lag may be a matter which could have been taken into account for determining the quantum of the penalty. Even after the amendment, in a sense, the discretion has been taken away or at least drastically curtailed in that the statute itself provided that for every month of continued default there should be a penalty and what should be the quantum of that penalty has also been provided by the section itself. But the most significant change that has been introduced, it appears to us, is about the nature of the offence itself. An omission which had been made a penal offence under

the Act as it originally stood before the amendments, and which offence was complete on the expiry of the due date, has been after the amendment made into a continuing offence, an offence that repeated itself every month. Whether an act or omission is an offence or not should be determined with reference to the state of affairs that obtained at the time of the commission of the act or at the time the omission took place. This had been succinctly stated by Sir Lionel Leach, Chief Justice of Madras, in the decision in *Commissioner of Income-tax v. Vedlapatla Veera Venkataramiah*¹ and in Full Bench decision of this court in *Commissioner of Income-tax v. K. Ahamed*² we stated the same principle and also referred to the decision in *Commissioner of Income-tax v. Vedlapatla Veera Venkataramiah*³ with approval. So, the normal rule is that an amendment which took effect subsequent to an act or omission should not be applied for punishing or penalising the person who committed the act or was guilty of the omission.

6. Various views have been put forward before us. It was said that it was the failure to submit the returns on or before June 30, 1964, and June 30, 1965, that constituted the offence. That offence could not be relied on for the purpose of imposing any recurring penalties introduced by an amendment after the omission had taken place. On the other hand, counsel for the revenue contended that the law that should be applied is the law which obtained at the time of the imposition of the penalty, or, at any rate, the law that obtained at the time the return was filed which in this case was on March 30, 1970, after the date of the amendment introduced by the Finance Act of 1969. It was, therefore, contended that Section 18(1)(i) as it was amended by the Finance Act, 1969, must be applied for the entire periods from July 1, 1964, to March 30, 1970, for the year 1964-65 and from July 1, 1965, to March 30, 1970, for the year 1965-66 and the penalties imposed on that basis. Another view was also put forward and that was that in any case for continued defaults from April 1, 1969, onwards the date on which the Finance Act, 1969, came into force, the penalty should be on the basis of what is provided in the amended section. 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. Since Section 18(1)(i) uses the expression "continued default", we think that for the purpose of Section 18(1)(i), as amended, the original default itself must be one which occurred after Section 18(1)(i) came into existence. If the original default, the failure to file the return within the date stipulated under the Act, had not occurred on or after April 1, 1965 (the date from which the amendment introduced to Section 18 by the Wealth-tax (Amendment) Act, 1964 came into operation), we think Section 18(1)(i) as amended has no application in determining the question of the penalty to be imposed for a default that had occurred before April 1, 1965. In other words, we understand the amendment as introducing a different form of offence which is treated as repeating itself after the original default during every month of its

continuance. This is a new law introducing a new type of offence and must apply only to an offence committed after the amended Section 18(1)(i) (amended by Act 46 of 1964) came into force.

7. This is the view that we have expressed on general principles in *Commissioner of Income-tax v. K. Ahamed*⁴ and this we conceive is the basis of the decision of the Madras High Court in *Commissioner of Gift-tax v. C. Muthukumaraswamy Mudaliar*⁵

8. Reference was made by counsel for the revenue to the decision in *Jain Brothers v. Union of India*⁶ We do not think that this decision has any application for it is mainly concerned with the scope and ambit of Section 297(2)(g) of the Income-tax Act, 1961.

9. The decision in *Biswanath Ghosh v. Income-tax Officer*⁷ of the Orissa High Court will be helpful in determining in what manner the penalty should be imposed for the default to file the return before July 1, 1965, for the year 1965-66. It has to be noticed that by the time Section 18(1)(i) had been amended by the Act 46 of 1964 with effect from April 1, 1965, and so the omission took place after the amendment to Section 18(1)(i). Section 18(1), which we have already extracted, has clearly changed the nature of the offence and has imposed a penalty for every month during which the default continued. The principle of the decision in *Biswanath Ghosh v. Income-tax Officer* [1974] 95 ITR 372 (Orissa) would, therefore, apply to the penalty to be imposed for the year 1965-66.

10. We wish to add only one more word. The year of assessment has no relevancy in deciding the quantum of the penalty to be imposed or in deciding which Section, the original one or the section as amended, should be applied.

11. In the light of the above, we answer the question referred to us by stating that penalty should be imposed under the original Section 18(1)(i) of the Wealth-tax Act as it stood prior to its amendment by Act 46 of 1964 and the Finance Act, 1969, for the assessment year 1964-65 and that Section 18(1)(i) as it was amended by the Finance Act, 1969, must be applied for imposing the penalty for the year 1965-66.

12. A copy of this judgment under the seal of the High Court and the signature of the Registrar will be sent to the Appellate Tribunal, Cochin Bench.

Cases Referred.

1[1943] 11 ITR 308 (Mad)

2[1974] 95 ITR 599 (Ker) [FB]

3[1943] 11 ITR 308 (Mad)

4[1964] 95 ITR 599 (Ker)

5[1975] 98 ITR 540 (Mad)

6[1970] 77 ITR 107 (SC)
7[1974] 95 ITR 372 (Ori)