Before B. S. Dhillon and M. R. Sharma, JJ

DEWAWANTI,—*Applicant.*

versus

COMMISSIONER OF WEALTH TAX,—*Respondent.*

Wealth Tax Reference No. 9 of 1976.

July 28, 1980.

Wealth Tax Act (XXVII of 1957)—Sections 18 and 35—Assessment proceedings completed after adding a sum exceeding Rs. 25,000 to the declared wealth—Wealth Tax Officer initiating penalty proceedings in regard to concealed wealth—Case referred to Inspecting Assistant Commissioner of Wealth Tax under section 18(3)—Assessee then filing application for rectification of the assessment order before the Wealth Tax Officer—Application allowed and concealed wealth reduced to a sum on which penalty payable is less than Rs. 25,000—Inspecting Assistant Commissioner—Whether still competent to impose penalty in regard to the concealed income.

Held, that the determination of the amounts by the Wealth Tax Officer in respect of which penalty imposable exceeds a sum of Rs 25,000 is the condition precedent for the exercise of jurisdiction by the Inspecting Assistant Commissioner. This determination has to be made by the Wealth Tax Officer in accordance with all the provisions of the Act including section 35. The words "who shall for the purpose have all the powers conferred under this section for the imposition of penalty" employed towards the penultimate part of the section clearly indicate that the section does not cast upon the Inspecting Assistant Commissioner an absolute duty of proceeding with the case. All that the section provides is that he shall have the powers of imposing penalty. This implies that if at the time when the case comes up for final hearing, the Inspecting Assistant Commissioner is satisfied that the condition precedent for the exercise of his jurisdiction are lacking, it is open to him to decline the reference. The express words of the section only give powers to the Inspecting Assistant Commissioner to impose penalty, and exercise of his jurisdiction depends upon the determination made by the Wealth Tax Officer. A necessary corollary of this principle is that the Inspecting Assistant Commissioner is under an obligation to entertain and to decide the question whether a penalty of more than Rs. 25,000 is imposable or not before he makes a final adjudication upon the case. If he comes to the conclusion that such a penalty is not imposable then the very basis of his jurisdiction goes. In that event, he was to decline the reference leaving it to the Wealth Tax Officer to decide the matter. (Paras 13, 14 and 15).

Held, that controversy between the parties should be settled by the lowest officer in the hierarchy of domestic tribunals. If a matter

which lies within the jurisdiction of the lowest tribunal is decided by the appellate authority, the citizens loses a valuable right of appeal to the lower Appellate Tribunal. These conditions apart, to err is human and no tribunal or a Judge, however, eminent he may be, can claim to be infallible. It would be a sound matter of policy that if a mistake is committed by a Tribunal or a Judge, it or he should have the jurisdiction to effectively rectify the same.

(Para 16)

Reference under section 27(1) of the Wealth-tax Act, 1957 made by the Income-tax Appellate Tribunal (Amritsar Bench) Amritsar to this Hon'ble Court for its opinion upon the following question of law arising out of Tribunal's Order, dated 25th July, 1975 in W.T.A. No. 15 of 1974-75 (Assessment Year 1969-70) :—

> *"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the Inspecting Assistant Commissioner of Wealth-tax had the jurisdiction to impose penalties under section 18(1)(c) of the Wealth-tax 1957 for the assessment year, 1968-70."*

H. L. Sibal, Senior Advocate with S. C. Sibal, Advocate & R. S. Setia, Advocate, *for the applicant.*

D. N. Awasthy, Advocate with B. K. Jhingan, Advocate, *for the Respondent.*

JUDGMENT

M. R. Sharma, J.

(1) As common questions of law and fact arise out of these references—W.T. References No. 9, 10, 11 to 13, 15, 16 and 17 of 1976 under Section 27(1) of the Wealth-tax Act, 1957 (hereinafter referred to as the Act), they are being disposed of by this judgment.

(2) In W.T. Reference No. 9 of 1976, the assessee is a partner in the firm M/s. Jetha Nand Gobind Ram and Company constituted,—*vide* partnership deed, dated May 11, 1963. The firm had the following three partners:—

1. Smt. Dayawanti, w/o Shri Jethanand, Manek Chand.
2. Smt. Nirmala Devi, w/o Shri Lakhraj Manek Chand.
3. Smt. Promila Devi, w/o Shri Mohan Lal, Manek Chand.

3. For the assessment year 1969-70, relevant to the valuation date as at March 31, 1969, the assessee filed her return of net wealth on July 30, 1969 declaring her total wealth at Rs. 1,67,665. *Vide* his order, dated January 20, 1972, the Wealth-tax Officer completed the assessment on a total wealth of Rs. 1,37,910 for the year under consideration. A sum of Rs. 25,682 was added to the declared wealth of the assessee in consequence of the settlement arrived at between the firm and the department. The application for settlement had been made on March 24, 1971. The Wealth-tax Officer also initiated penalty proceedings under section 18(1)(c) of the Act and since the net wealth concealed by the assessee exceeded Rs. 25,000, he referred the case to the Inspecting Assistant Commissioner of Wealth-tax under section 18(2) of the Act.

4. Later on, an application under section 35 of the Act was made before the Wealth-tax Officer by the assessee for the rectification of his order, on the ground that it suffered from an error apparent on the face of the record. This application was allowed by the said Officer and he declared the total wealth of the assessee at Rs. 1,18,300. In other words, instead of making an addition of Rs. 25,682 to the declared value of the wealth of the assessee, a sum of Rs. 6,072 only was added to it. This order was passed by the Wealth-tax Officer on May 5, 1973.

5. The Inspecting Assistant Commissioner of Wealth-tax took up the penalty proceedings and,—*vide* his order, dated March 18, 1974, imposed a penalty of Rs. 6,072 on the assessee under section 18(1)(c) of the Act. Before the said officer an objection was raised on behalf of the assessee that since the undeclared value of the wealth did not exceed Rs. 25,000, he had no jurisdiction to proceed with the case, but he turned down this objection on the ground that on the date when the Wealth-tax Officer made a reference, he was of the view that the value of the wealth concealed exceeded Rs. 25,000 and since on that basis he could assume jurisdiction, the same could not have been ousted by subsequent events like the rectification order passed by the Wealth-tax Officer.

6. Aggrieved by the order of the Inspecting Assistant Commissioner, the assessee filed an appeal before the Income-tax Appellate Tribunal, Amritsar Bench, (hereinafter referred to as the Tribunal), which dismissed the same with the following observation:—

> "From a plain reading of the above provision it is obvious that the Wealth-tax Officer is required to refer the case

to the Inspecting Assistant. Commissioner of Wealth-tax under section 18(3) of the Wealth-tax Act if at the time of assessment he finds that the amount in respect of which penalty is impossible under section 18(1)(c) exceeds a sum of Rs. 25,000. Now in the present case the assessments were completed by the Wealth-tax Officer on 20th January, 1972 and at this time the amount of concealed wealth added to the net wealth of the assessee for each of the assessment years in question was a sum of Rs. 25,682. Since, at the time of assessment the minimum penalty imposable on the assessee under section 18(1)(c) exceeded a sum of Rs. 25,000, the Wealth-tax Officer rightly referred the case to the Inspecting Assistant Commissioner who validly assumed jurisdiction in respect of these penalties. The subsequent reduction of the concealed wealth as a result of the order under section 35 passed by the Wealth-tax Officer on 15th May, 1973 would not, in our opinion, affect or take away the jurisdiction of the Inspecting Assistant Commissioner to impose penalties under section 18(1)(c) in these cases ....".

7. At the instance of the assessee, the learned Appellate Tribunal has referred the following question of law for our opinion:—

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the Inspecting Assistant Commissioner of Wealth-tax had the jurisdiction to impose penalties under section 18(1)(c) of the Wealth-tax 1957 for the assessment year 1969-70."

8. We have gone through the record of the case and have heard the learned counsel for the parties at some length.

9. Mr. H. L. Sibal, learned counsel for the assessee, drew our attention to section 18(3) of the Act and submitted that the condition precedent for the exercise of the jurisdiction by the Inspecting Assistant Commissioner was dependent upon the amount of wealth concealed as determined by the Wealth-tax Officer. According to the learned counsel, the termination of income envisaged in this section would mean the final conclusion arrived at by the Wealth-tax Officer under all the provisions of the Act, including section 35; and since the Wealth-tax Officer had himself rectified his error by

holding that the wealth concealed came to Rs. 6,072 only and this fact was brought to the pointed notice of the Inspecting Assistant Commissioner, he should not have decided the case himself and should have declined the reference by observing that the Wealth-tax Officer was himself competent to give a decision in the penalty proceedings.

10. On the other hand, Mr. Awasthy, learned counsel for the Revenue, submitted that once the Inspecting Assistant Commissioner is found to have correctly assumed the jurisdiction on the date when the reference was made to him, the same could not be ousted by subsequent events. The learned counsel further submitted that on the date when the reference was made, the Wealth-tax Officer was *prima facie* of the view that the value of the wealth concealed was more than Rs. 25,000 and subsequent change of opinion by him given even in proceedings under section 35 of the Act, could not oust the jurisdiction of the Inspecting Assistant Commissioner. In support of his submission, Mr. Awasthy relied upon a recent Division Bench judgment of this Court in *Commissioner of Income-tax, Patiala-I* v. *Raman Industries* (1). That was a case under section 274(2) of the Income-tax Act, 1961, and under the provisions of the statute as they existed on the date of the reference, the Inspecting Assistant Commissioner did have the jurisdiction to deal with the case, but on the date when he decided the matter, his jurisdiction stood excluded because of the amendment of the statutory provision. On these facts, the Bench concluded:—

> "From the above observation it emerges that a statute dealing with procedure is always retrospective and its provisions also apply to the proceedings pending at the time of its enactment but where some provisions of a statute of procedure affect vested rights, these are prospective in operation unless there is an indication in the statute to the contrary. The jurisdiction of a Tribunal to try a case is a vested right and is to be determined according to the law in force at its institution. A change in law pending the case cannot affect the right of the parties to continue proceedings in that Tribunal in the absence of provisions to the contrary. There is no provision in the Amendment Act which shows that the amendment in section 274 of the

(1) 121 I.T.R. 405.

Act is retrospective. The section deals with vested right and, therefore, it is prospective. Consequently, the IAC had the jurisdiction to impose the penalty."

11. According to Mr. Awasthy, the principle laid down in this authority could also be invoked in the present case, because there was in principle no difference in the ouster of jurisdiction under the amended statute or under some action taken in accordance with section 35 of the Act.

12. Mr. Awasthy further contended that period of limitation for making a rectification being four years, a reference made by the Wealth-tax Officer on the basis of which the Inspecting Assistant Commissioner assumed jurisdiction could not be allowed to remain in a state of uncertainty for such a long period.

13. After carefully considering the arguments raised at the Bar, we are of the view that the decision depends upon two points, namely, (i) the conditions precedent for the exercise of jurisdiction by the Inspecting Assistant Commissioner, and (ii) whether the Inspecting Assistant Commissioner could in law decline a reference when he came to the conclusion that the conditions precedent for the exercise of jurisdiction were lacking. For this purpose, we have to look at the phraseology employed in section 18(3) of the Act. It reads as under:—

18(3) Notwithstanding anything contained in clause (iii) of sub-section (1) if in case falling under clause (c) of that sub-section the amount (as determined by the Wealth-tax Officer on assessment in respect of which penalty is imposable under clause (c) of sub-section (1) exceeds a sum of twenty-five thousand rupees the Wealth-tax Officer shall refer the case to the Inspecting Assistant Commissioner who shall for the purpose have all the powers conferred under this section for the imposition of penalty."

A plain reading of this section shows that determination of the amount by the Wealth-tax Officer in respect of which penalty imposable exceeds a sum of Rs. 25,000 is the condition precedent for the exercise of jurisdiction by the Inspecting Assistant Commissioner.

This determination has to be made by the Wealth-tax Officer in accordance with all the provisions of the Act, including section 35.

14. The words "who shall for the purpose have all the powers conferred under this section for the imposition of penalty"' employed towards the penultimate part of the section clearly indicate that the section does not cast upon the Inspecting Assistant Commissioner an absolute duty of proceeding with the case. All that the section provides is that he shall have the powers of imposing penalty. This implies that if at the time when the case comes up for final hearing, the Inspecting Assistant Commissioner is satisfied that the conditions precedent for the exercise of his jurisdiction are lacking, it is open to him to decline the reference. The view taken by us finds ample support from *The Queen* v. *The Commissioner for Special Purposes of the Income-tax* (2). Speaking for the Court Lord Esher, M. R. observed as under:—

> " .. When an inferior court or tribunal or body, which has to exercise the power of deciding facts, is first established by Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction."

This principle was followed with approval by the Supreme Court in *Rai Brij Raj Krishana another* v. *Messrs. S. K. Shaw and Brothers* (3).

15. As noticed earlier, the express words of the section only give powers to the Inspecting Assistant Commissioner to impose penalty, and exercise of his jurisdiction depends upon the determination made by the Wealth-tax Officer. A necessary corollary of this principle is that the Inspecting Assistant Commissioner is under an obligation to entertain and to decide the question whether a penalty

(2) 1888 Queen's Division 313.
(3) A.I.R. 1951 S.C. 115.

of more than Rs. 25,000 is imposable or not before he makes a final adjudication upon the case. If he comes to the conclusion that such a penalty is not imposable, then the very basis of his jurisdiction goes. In that event, he has to decline the reference leaving it to the Wealth-tax Officer to decide the matter. The rule of law laid down by the Division Bench of this Court in *Raman Industries' case* (supra) is clearly distinguishable. In that case, the law as it stood at the time of making of reference was held to govern the proceedings. In the case before us, on the basis of the existing statutory provisions, the determination made by the Wealth-tax Officer was modified by him under a statutory provision. Since the jurisdiction of the Inspecting Assistant Commissioner depends upon this determination, the same would necessarily be ousted if the statutory requirement regarding the amount of penalty imposable becomes unsatisfied.

16. The view which we have taken is also in accord with general principles of law followed by the Courts. It is desirable that controversy between the parties should be settled by the lowest officer in the hierarchy of domestic tribunals. If a matter which lies within the jurisdiction of the lowest tribunal is decided by the Appellate Authority, the citizen loses a valuable right of appeal to he lower Appellate Tribunal. These considerations apart, to err is human and no tribunal or a judge, however, eminent he may be, can claim to be infallible. It would be a sound matter of policy that if a mistake is committed by a tribunal or a judge, it or he should have the jurisdiction to effectively rectify the same. This is precisely what has been done by the Wealth-tax Officer in this case. A contrary view, if taken, would allow the parties to this litigation to take undue benefit of the mistake committed by a tribunal exercising judicial functions. It is a settled principle of law that the action of a Court or a tribunal should harm neither of the parties arrayed before it.

17. The apprehensions entertained by Mr. Awasthy that since period for exercise of jurisdiction under section 35 of the Act was as 4 years, that would keep the proceedings before the Inspecting Assistan Commissioner in a state of uncertainty if the view taken by us is allowed to prevail, are really groundless, for the interpretation placed by us on section 18(3) of the Act not only allows the Wealth-tax Officer to rectify the mistake, but also entitles the Inspecting Assistant Commissioner to determine that the reference made to

him, was based on wrong assumptions of fact and in that case he can decline the same and leave the matter to be decided by the Wealth-tax Officer himself.

18. For the reasons aforementioned, the questions of law referred to us for our opinion all the references are answered in the negative, i.e., in favour of the assessees and against the revenue. No costs.

Bhopinder Singh Dhillon, J.—I agree.

S. C. K.

Before G. C. Mital, J.

JOGINDER SINGH SAINI,—*Appellant.*

versus

STATE OF HARYANA and another,—*Respondents.*

Regular First Appeal No. 688 *of* 1979.

July 28, 1980.

Land Acquisition Act (1 *of* 1894)—*Section* 23—*Acquired land having orchards—Modes of calculating compensation—Stated—Nursery plants—Whether form part of the acquired land—Compensation for such plants—Whether payable.*

Held, that there are more than one ways of assessing the compensation for an orchard and the claimants would be entitled to ask for the highest compensation to be calculated in those ways. The claimants cannot ask for compensation for the land underneath the orchard plus compensation for the orchard to be calculated on the schedule or formula prepared by the Government for fruit bearing trees because if this is allowed then the claimants would be paid compensation for the land twice. However, the compensation to be calculated for an orchard on the basis of formula prepared by the Government or on the basis of annual value of the produce of the orchard would mean the total compensation for the orchard as a whole i.e. the fruit bearing trees and the land on which they are growing. For an orchard there can be the following ways for assessing the market value :—

1. To find out the value of the annual produce from the orchard and capitalise the same by 20 times. This would