had been passed by his Court on September 6, 1973) according to law. The matter has been hanging fire for an unduly long time. The learned Senior Subordinate Judge will, therefore, make every possible endeavour to dispose of the proceeding in question within three months. Parties have been directed to appear before the Senior Subordinate Judge, Rohtak, on February 14, 1977.

N. K. S.

INCOME TAX REFERENCE

Before M. R. Sharma and S. S. Sidhu, JJ.

SURESH SETH,—*Applicant.*

versus

THE COMMISSIONER OF WEALTH-TAX AMRITSAR,—*Respondent.*

Income-Tax Reference No. 29 of 1975.

January 28, 1977.

Wealth Tax Act (XXVII of 1957) as amended by Finance Act (XIV of 1969)—Sections 14(1) and 18(1) (a)—Omission to file a return by the due date—Rates of penalty enhanced subsequently by the amending Act—Such omission—Whether a continuing wrong so as to attract enhanced penalty.

Held, that the omission of an assessee to file a return on the due date completes his default on that date and does not render it a continuing default. Consequently, the penalty can be imposed on him only on the basis of the law which was prevalent on that date. (Para 16).

Reference under Section 27(1) of the Wealth-Tax, Act, 1957 made by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, referred the case to this Hon'ble Court for opinion on the following questions of law arising out its order dated 4th May, 1974 of I.T.A. 259 and 260 of 1972-73 for the Assessment years 1964-65 and 1965-66:—

"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 offence ?*

2. *Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in 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 respectively ?"

Balraj Kohli, Advocate and Ram Rang, Advocate, *for the Applicant—Petitioner.*

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

JUDGMENT

M. R. Sharma, J.—(1) The Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, has referred to us the following two questions of law for our opinion :—

"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 offence ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in 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 1965-1966, respectively ?"

(2) The wealth-tax returns of the assessee for the assessment years 1964-65 and 1965-66 were due on June 30, 1964, and June 30, 1965, as laid down in section 14(1) of the Wealth-tax Act, 1957 (hereinafter called the Act). The same were, however, filed on March 18, 1971, after a delay of about six years. The Wealth-Tax Officer completed the assessments for the afore-mentioned years on March 22, 1971 on total wealth of Rs. 1,45,800 and Rs. 1,65,200 respectively as against the declared wealth of Rs. 1,38,550 and Rs. 1,59,127 respectively. For the late submission of the returns of wealth, penalty proceedings were initiated against the assessee. Since the assessee failed to advance any reasons which prevented him from filing his wealth-tax returns within the time allowable by law, the Wealth-Tax Officer levied penalties of Rs. 5,382 and Rs. 7,759 on him under

section 18(1) (a) of the Act for the aforementioned assessment years. The amounts of penalty were worked out as follows :—

"*Assessment year* 1964-65:—(i) For the period from 1st July, 1964 to 31st March, 1969 : Penalty at 2 per cent PM subject to maximum of 50 per cent of the wealth-tax payable under section 18(1) (a) before its amendments on 1st April, 1969 by the Finance Act, 1969 ———— Rs. 115.

(ii) For the period from 1st April, 1969 to 18th March, 1971 : Penalty at 1/2 percent of the new wealth for each month of the default under section 18(1) (a) as amended by the Finance Act, 1969 ———— Rs. 5,267

Rs. 5,382.

(i) *Assessment year* 1965-66 :—For the period from 1st June, 1965 to 30th March, 1969 : Penalty at 2 per cent PM subject to maximum of 50 per cent of the wealth-tax payable under section 18(1) (a) before its amendment on 1st April, 1969 by the Finance Act ———— Rs. 163.

(ii) For the period from 1st April, 1969 to 18th March, 1971 : Penalty at 1/2 per cent of the net wealth for each month of default under section 18(1) (a) as amended on 1st April, 1969 by the Finance Act, 1969 — — — Rs. 7,596

Rs. 7,759."

(3) The orders imposing the aforementioned penalties were upheld in appeal by the Appellate Assistant Commissioner and the Income-Tax Appellate Tribunal, Amritsar Bench, Amritsar. Since the two appeals had been consolidated by the last mentioned Tribunal, a consolidated reference has been made to us.

The precise question involved in the case is whether penalties should be imposed, on the assessee on the basis of section 18(1) (a) of the Act as it stood prior to its amendment on April 1, 1969, by the Finance Act, 1969, or the same should be increased from April 1, 1969, onwards by which date this section had been amended by the Finance Act, 1969.

(4) The point whether the non-filing of a return under section 14(1) of the Act constitutes a continuing default or not is not bare

of authority and has received the attention of at least two High Courts. *In The Commissioner of Wealth Tax, Lucknow* v. *Ram Narain Agrawal* (1), the question arose under these circumstances. The assessee was assessed to wealth-tax as an individual for the assessment years 1964-65, 1965-66, 1966-67 and 1967-68. No voluntary returns of wealth was filed as required of him under section 14(1) of the Act. The Wealth Tax Officer issued notices under section 17 of the Act calling for a return of net wealth for the assessment years which were served upon the assessee on October 26, 1969. The returns were filed by him on September 18, 1970, and the assessments were completed on January 30, 1971. The Wealth-tax Officer initiated proceedings under section 18(1) (a) of the Act for delay in filing the returns and levied penalties against the assessee. The appeal filed by the assessee was dismissed by the Appellate Assistant Commissioner of Income-tax but the second appeal filed by him before the Income-tax Appellate Trbunal was partly allowed and it was held that the increased scale of penalty was applicable only in a case where the default in furnishing the returns of net wealth accrued on or after April 1, 1969. After allowing the appeal, the Tribunal directed the Wealth-tax Officer to impose the penalty on the scale in force prior to the Finance Act, 1969. Aggrieved by this order, the Commissioner of Wealth-tax had the following question referred for the opinion of the High Court:—

> "Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the Finance Act, 1969, was not retrospective in effect and the penalties under section 18(1)(a) of the Wealth-tax Act, 1957, were exigible in these cases for the assessment years 1964-65, 1965-66, 1966-67 and 1967-68 on the scale in force prior to the Finance Act, 1969 ?"

While answering the question against the Department and in favour of the assessee, the Bench observed as under :—

> "The law operative on the date when the infringement takes place is the law applicable unless it is made punishable *ex post facto*. If the argument of the Department is accepted it shall make the operation of the amended law retrospective when there are no such words in the statute

(1) 1976 Taxation Law Reports 1074.

itself. There is no scope for culling out an intention of the Legislature as the language is explicit and unambiguous. It is well settled both by English and Indian Courts that a fiscal statute cannot be regarded as retrospective by interpretation. We cannot read any intention of retrospective operation by implication. Moreover, we are concerned with a penal provision and the rule against the retrospectivity applies with greater rigour in such cases.

(5) In *Commissioner of Gift Tax* v. *C. Muthukumaraswamy Mudaliar* (2), a Division Bench of the Madras High Court was concerned with the interpretation of section 17(1)(a) of the Gift Tax (Amendment) Act, 1962, which is *pari materia* with section 18(1)(a) of the Act. It was held that the non-submission of the return on June 30, 1962, was an infringement of the law for which penalty was sought to be levied and as such the provisions relating to penalty that were in force on that date would have to be applied in the assessee's case.

(6) We are in respectful agreement with the view taken in the aforementioned two cases.

(7) The learned counsel for the Revenue has, however, contended that the non-submission of the return on the due date constitutes a recurring default which attracts the imposition of penalty under the provisions as amended from time to time. In support of his contention, he has placed reliance upon *The State* v. *Kunja Behari Chandra and others*, (3), *State* v. *A. H. Bhiwandiwalla* (4), and *State* v. *Umashankar Laxminarayan Jaiswal and another* (5). We shall now briefly deal with these three authorities

(8) In *Kunja Behari Chandra's* case (supra), the Patna High Court was concerned with the interpretation of sections 30 and 31(4) of the Mines Act, 1923, Coal Mines Pithead Bath Rules 1946, and Mines Creche Rules, 1946. The relevant rules provide that creche should be provided for the children of the workers and workers

(2) (1975)98 I.T.R. 540.
(3) AIR 1954 Patna 371.
(4) AIR 1955 Bombay 161.
(5) AIR 1962 M.P. 311.

should be allowed the facility of having a bath at the pithead of the mines. Apparently, the rules conferred important privileges on the miners which they are entitled to enjoy from day-to-day. It was also the legal duty of the owners of the coal mines to provide these facilities from day-to-day. In that background, it was held that omission on the part of the owners of the coal mines to provide these facilities from day-to-day constituted a continuous offence inasmuch as the same was committed on every day on which the act or omission continued.

(9) In *A. H. Bhiwandiawalla's case* (supra), decided by the Bombay High Court (D.B.), the Court was concerned with the interpretation of rules 4 and 5 of the Bombay Factories Rules. It was held that the failure of the accused to apply for the registration and to give a notice of occupation was not a continuing offence but the conduct of the accused in using the premises as a factory without obtaining a licence constituted a continuing offence.

(10) Similarly, in *Umashankar Laxminarayan Jaiswal's case* (supra) decided by the Madhya Pradesh High Court (D.B.), omission to securely fence the fermenting vats was regarded as a continuing offence.

(11) The aforementioned three cases are obviously distinguishable. Only those acts and omissions were held to be continuing wrongs which the party concerned was obliged under law to perform or to refrain from performing from day-to-day and at least on the point of failure of the accused to apply for registration and to give a notice of occupation of the factory, the default was not held to be a continued default by the Bombay High Court. To that extent the view of the Bombay High Court goes against the Revenue because omission to file a return or the omission to give a notice of occupation are the types of acts or omission which can properly be regarded as of the same type. Had the statute provided that the possession of wealth, without filing a return in respect of it before the Wealth-tax Officer, would constitute a wrongful act, the default would certainly be regarded as a continuing one. There is, however, no such provision in the Act.

(12) The aforementioned considerations apart, the matter stands concluded against the Revenue by some of the observations made

by the Supreme Court of India in *Balakrishna Savalram Pujari Waghmare and others* v. *Shri Dhyaneshwar Maharaj Sansthan and others*, (6). These observations are—

> 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 an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue."

(13) If section 18 of the Act is tested on the touchstone of the aforementioned principle, it becomes obvious that the wrongful act on the part of an assessee becomes complete as soon as he does not file the return of his wealth on the stipulated date. His omission to do so does not make the wrongful act a continuing one, merely because the penalty imposable on him may either continue or get enhanced.

(14) The same conclusion follows from a consideration of section 6 of the General Clauses Act, the relevant portion of which reads as under :—

> "6 *Effect of Repeal* : Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hither to made or hereafter to be made, then, unless a different intention appears, the repeal shall not— ————————
>
> * * * *
>
> (d) Effect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
>
> (e) effect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid ; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment, may be imposed as if the repealing Act or Regulation had not been passed."

(6) AIR 1959 S.C. 798.

(15) If the assessee by not filing the returns on June 30, 1964, and June 30, 1965, had committed a default, the repeal or the modification of the provisions relating to penalty could not affect his right to be dealt with in accordance with the repealed or modified statutory provisions.

(16) After a careful consideration of the whole matter, we are of the considered view that the omission of an assessee to file a return on the due date completes his default on that date and does not render it a continuing default. Consequently, the penalty can be imposed on him only on the basis of the law which was prevalent on that date.

(17) We accordingly answer both the questions in favour of the assessee and against the Revenue.

N.K.S.

MISCELLANEOUS CIVIL

Before O. Chinnappa Reddy, J.

RAMA KANTA, WIFE OF SHRI ASHOK KUMAR,—*Applicant.*

versus

SHRI ASHOK KUMAR, SON OF SHRI KRISHAN LAL,—*Respondent.*

Civil Misc. No. 2-M of 1977

January 31, 1977.

Hindu Marriage Act t(XXV of 1955)—Sections 21 and 21-A—Code of Civil Procedure (Act V of 1908)—Section 24—Proceedings under the Hindu Marriage Act pending in different district courts—Transfer of such proceedings—Application under section 24—Whether maintainable.

Held, that section 21-A of the Hindu Marriage Act 1955 makes special provision for the transfer of certain proceedings under the Act. By virtue of section 21, it is to be taken that this special provision excludes the general provisions in the Code of Civil Procedure