
(1979) 10 KAR CK 0016

In the Karnataka High Court

Case No : Writ Petition No's. 5962 of 1975 connected with 6717 to 6721 of 1975

B. Anjanappa

APPELLANT

Vs

Commissioner of Wealth Tax and Another

RESPONDENT

Date of Decision : 31-10-1979

Acts Referred:

Wealth Tax Act, 1957 — Section 18 (1) (a), 18 (2A)

Citation : (1980) 15 CTR 5

Hon'ble Judges : M.K. Srinivasa Iyengar, J

Bench : Single Bench

Advocate : G. Sarangan, for the Appellant; S.R. Rajasekharamurthy, for the Respondent

Judgement

Srinivasa Iyengar, J.—The petitioner who has been assessed to wealth-tax in the status of HUF has challenged in these writ petitions, the order of the CWT made on the application filed by him u/s 18(2A) of the W.T. Act, 1957, in relation to the penalties imposed u/s 18(1)(a) of the W.T. Act for the assessment years 1966-67, 1967-68 and 1969-70 to 1972-73. The Commissioner reduced the penalties that had been imposed by the WTO.

2. The petitioner filed the returns on February 22, 1973, and the assessment was completed by the WTO virtually accepting the wealth that had been disclosed, by his order dated March 15, 1973. As the return had been filed beyond the time prescribed, the WTO issued notice u/s 18(1)(a) of the W.T. Act to show cause why penalty for late submission of wealth-tax returns should not be imposed.

3. The petitioner filed a petition before the Commissioner seeking waiver of penalty on the ground that he had disclosed the wealth voluntarily and fully and had co-operated in finalisation of the assessment and had also paid up the taxes. It would appear that the petitioner appraised the WTO of having filed before the Commissioner a petition for waiver of penalty. The WTO, without waiting or affording an opportunity of personal hearing to the petitioner, made an order imposing penalty on March 11, 1975. The Commissioner's order reducing to

some extent the penalty was made on March 21, 1975.

4. The following tabular statement gives the details of the wealth returned, wealth assessed, wealth-tax imposed and the penalty imposed by the WTO and the penalty as reduced by the Commissioner :

Asst. year

Wealth returned

Wealth assessed

Tax

Penalty levied by WTO

Penalty as per order of CIT

1

2

3

4

5

6

1966-67

2,63,746

2,64,170

321

14,920

5,000

1967-68

2,50,477

2,50,830

354

11,800

3,000

1969-70

2,44,288

2,44,290

222

9,520

2,000

1970-71

2,41,816

2,41,820

210

6,480

1,500

1971-72

2,18,165

2,18,170

181

1,730

1,000

1972-73

2,16,707

2,16,510

1639

500

200

5. In these writ petitions, it has been contended that having regard to the facts of the case, penalty should have been waived and the order made by the Commissioner without giving an opportunity to the petitioner to be heard is untenable. About 4 odd acres of agricultural land inherited had been retained by the petitioner and his brothers in common as association of persons and after litigating with the trust board, a layout was formed under its supervision for disposal of sites. As the association of persons was not liable for wealth-tax no return had been filed. Only in 1972-73 when accounts were made up with the help of chartered accountants they were advised that the petitioner should include for wealth-tax, the value of the share pertaining to his branch and in these circumstances the returns came to be filed.

6. This court has held that the penalty to be imposed for filing the return beyond the prescribed time without reasonable cause is on the basis of the law as in force on the date of default, viz., the last date by which the return was due to be filed [vide Commissioner of Wealth Tax, Mysore Vs. C.S. Manvi and Others, In the instant cases, the return was due to be filed on 30th June of 1966 and the subsequent years. From the tabular statement given above, it is seen that for one year, the net wealth computed was about Rs. 200 less than what had been shown in the return and for three years, the net wealth computed was only by way of rounding up of the amount and in the other two years, the difference between wealth returned and that computed did not exceed even Rs. 500. In the light of the decision in Commissioner of Wealth Tax, Mysore Vs. C.S. Manvi and Others, the maximum penalty that could have been levied by the WTO himself for the first two assessment years would be about Rs. 160 and Rs. 180. Therefore, it is clear that the penalty as had been imposed by the WTO was not correct. The amounts fixed as penalty by the Commissioner are not based upon any particular principle of evaluation. It appears to be plainly arbitrary and in an ad hoc manner. The Commissioner is vested with the power of waiving or reducing the penalty imposable u/s 18(1)(a) and this power has to be exercised in a judicious manner. The Commissioner's order does not disclose that the assessee had been given an opportunity to be heard in the matter. It purports to have been made on the perusal of the record only and does not refer to the representative of the assessee or the assessee being heard in the matter. The material portion is as follows :

" On perusal of the records, I find that the assessee filed the returns late even though he was conscious of the fact that he possessed valuable properties which he was trying to exploit by planning a layout and secured Government permission to do so. He was thus conscious of the values of the properties and got the orders of the Trust Board acquiring these properties cancelled. Since the returns were filed before the issue of notices and taxes have been paid, I reduce the penalties as under. "

7. The fact that the returns were filed late was not a matter which would affect the exercise of the power u/s 18(2A). The power under that section has to be exercised notwithstanding the fact that the returns have been filed late and the assessee was unable to satisfactorily explain the delay. If there was no delay or if there was satisfactory reason for the delay, there would have been no occasion to levy the penalty, much less seeking waiver of penalty imposable. The status of the assessee was that of HUF. As could be seen from the details given above, the net wealth exceeded the limit not liable to tax only by a small amount. In the assessment for the year 1972-73, the exemption of rupees two lakhs was not available as no such exemption was permissible when the minimum non-taxable limit had been exceeded.

8. In Shankara Apaya Swami Vs. Wealth Tax Officer, Belgaum and Another, where the reasoning of the Commissioner was the same, this court held that the

Commissioner had wrongly applied the provisions of the Act and it was observed as follows (p. 651) :

" The question whether there was reasonable cause for filing the return beyond time arises for consideration u/s 18(1)(a) itself and if the authority concerned is satisfied that there was reasonable cause for the delay then there would be no occasion to levy penalty and for invoking Section 18(2A). It has, therefore, to be held that the words in question relate to the return which is filed beyond time without reasonable cause. If in that return the assessee has " voluntarily and in good faith made full disclosure of his net wealth " the condition mentioned in Clause (a) stands satisfied. The expression " voluntarily " means "without compulsion" and "good faith" means "with due care and caution". Hence, if the return filed by the assessee does not show that he has deliberately furnished wrong particulars about his wealth or deliberately omitted to include all the items of taxable wealth then he should be considered as having satisfied the above conditions. "

9. Further on, it was observed :

" It is needless to mention that the Commissioner while exercising his discretion u/s 18(2A) has to bear in mind several factors such as the gravity of the default, the loss occasioned to the revenue by the assessee not filing the return in time, and the extent of tax withheld. These factors are only illustrative but not exhaustive. Just like in criminal cases a judge while imposing a sentence on the accused who is found guilty of an offence takes into consideration several factors apart from the fact that he has committed the offence in question, the Commissioner should take into consideration all other relevant factors while reducing or waiving the penalty imposed or imposable u/s 18(1)(a) of the Act. "

10. I fully agree with these observations made in the said case. Having regard to the facts and circumstances of the instant cases, it must be held that the order of the Commissioner suffers from a grave infirmity in that all the relevant circumstances have not been taken into consideration in the exercise of his jurisdiction u/s 18(2A). In a particular case, where the question arises of exercising power u/s 18(2A) in respect of the assessment for several years, adoption of an uniform rule would be a proper one. As has been pointed out earlier, the maximum penalty imposable for the first two years even by the WTO for the delay in filing the return would be a small amount. The wealth liable for assessment appears to have remained stationary without any increase. So far as the subsequent years are concerned, the delay itself would be shorter than for the previous assessment years. In a case where the wealth returned has been virtually accepted and the liability to tax is marginal, it appears, that the exercise of the discretion to waive the penalty would be a proper one. That is not to say that in no other case penalty could be waived. All circumstances would have to be taken into consideration in exercising the power u/s 18(2A).

11. For the reasons stated above, the order of the Commissioner to the extent it

is prejudicial to the assessee is set aside with a direction that the Commissioner shall pass orders afresh after giving an opportunity to the petitioner to be heard and in the light of the observations made above.