

(2004) 11 AHC CK 0088
In the Allahabad High Court
Case No : WT Ref. No. 79 of 1987

Commissioner of Wealth Tax

APPELLANT

Vs

Shyam Lal Bhatia

RESPONDENT

Date of Decision : 10-11-2004

Acts Referred:

Wealth Tax Act, 1957 — Section 18B, 23

Citation : (2005) 193 CTR 459 : (2005) 277 ITR 399

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Division Bench

Advocate : Bharat Ji Agrawal and A.M. Mahajan, for the Appellant; Vikram Gulati, for the Respondent

Judgement

R.K. Agrawal, J.—The Tribunal, Allahabad, has referred the following question of law u/s 27(1) of the WT Act, 1957 (hereinafter referred to as "the Act"), for opinion to this Court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the AAC was competent to decide the appeal on merits, and consequently in giving a finding that there was reasonable cause for the delay in filing the WT return, ignoring the vital fact that the CWT had passed an order under the provisions of Section 18B of the WT Act, declining to waive the penalty, and the WTO's earlier order levying penalty got merged with the CWT's order and became final in view of specific provisions of Section 18B(5) of the WT Act ?"

2. Briefly stated, the facts giving rise to the present petition are as follows:

The reference relates to the asst. yrs. 1974-75 to 1976-77. The respondent assessee is an individual He filed his WT returns for the assessment years in question after the due date. Penalty proceeding u/s 18(l)(a) of the Act was initiated and the WTO imposed penalty for late filing of return. The respondent filed an application u/s 18B of the Act before the CWT, Kanpur, seeking waiver/

reduction of the amount of penalty in respect of all the three years, which was dismissed by the CWT, vide order dt. 29th June, 1981. Even when the petition for waiver u/s 18B of the Act was pending before the CWT, the respondent had preferred separate appeals against the penalty order before the AAC. The AAC had partly allowed the appeals. The Revenue feeling aggrieved, preferred separate appeals before the Tribunal. The Tribunal had dismissed the appeal filed by the Revenue. Before the Tribunal, a plea was raised that the AAC had no right to entertain the appeal as the order of penalty has got merged with the order passed by the CWT u/s 18B of the Act. This argument had been repelled by the Tribunal with the following observations :

"In our opinion the fields of the operation of the two Sections 18(1)(a) and 18B are different. However, there are several High Courts (as mentioned above while dealing with the arguments of the representative of the assessee) which have held that the right of appeal of the assessee is not disturbed on account of filing of waiver petition by the assessee or on account of passing an order u/s 18B by the CIT (sjc-CWT). We are of the opinion that the AAC was correct in holding that he was competent to decide the appeals on merits. The AAC was further justified in holding that the delay till the date of filing of IT returns was due to a reasonable cause."

3. We have heard Sri A.N. Mahajan, the learned standing counsel for the Revenue, and Sri Vikram Gulati, learned counsel appearing for the respondent.

4. The learned counsel for the Revenue submitted that as the respondent assessee had filed the petition for waiver/reduction of the amount of penalty imposed u/s 18(1)(a) of the Act before the CWT, the penalty order got merged with the order of the CWT passed u/s 18B of the Act and, therefore, the appeal filed by the respondent before the AAC was not maintainable.

5. Sri Vikram Gulati, learned counsel for the respondent, however, submitted that the provision of Section 18B of the Act and the provision of appeal before the AAC u/s 23 of the Act operate in different fields and, therefore, merely because the respondent had filed a petition for reduction/waiver of the amount of penalty, the penalty order did not get merged with that of the CWT and, therefore, the appeal was maintainable. In support of his aforesaid submissions, he has relied upon the following decisions :

(i) Commissioner of Wealth Tax, Karnataka-II Vs. B. Kempanna, ;

(ii) Commissioner of Wealth-tax Vs. Smt. Gulab Bai Mittal, ;

(iii) CWT v. Lt. Col. Mirza Mahmood Ali Baig (1985) 152 FTR 740.

6. Having heard the learned counsel for the parties, we find that u/s 18B of the Act, the CWT has been empowered to reduce or waive the penalty in certain cases. This power can be exercised only in a case where penalty has been imposed. He is not to go into the merit of imposition of penalty. He has only to see as to whether the assessee has voluntarily and in good faith made full and

true disclosure of the particulars for the concealment of which penalty has been imposed and further the assessee has co-operated in the enquiry relating to the assessment of his net wealth and has either paid or made satisfactory arrangement for the payment of any tax or interest payable in consequence of an order passed under the Act in respect of the relevant assessment year whereas u/s 23 of the Act, an appeal lies against a penalty order, which is a statutory appeal, to be adjudicated by the appellate authority or merit. Thus, we are of the considered opinion that the provisions of Section 18B and Section 23 of the Act do operate in separate fields and it cannot be said that the penalty order got merged with the order of the CWT passed u/s 18B of the Act.

7. In the case of Commissioner of Wealth Tax Vs. M.K.S. Vanavarayar, , the Madras High Court has held that even though the quantum of penalty levied was in terms of the decision of the CWT, the WTO sought to exercise his powers only u/s 18(l)(a) for levying the penalty and hence his orders had independent existence and the appeals against those orders were competent.

8. In the case of B. Kempanna (supra), the Karnataka High Court has held that the power conferred on the CWT u/s 18(2A) of the Act is only to reduce or waive the amount of minimum penalty imposable on a person under cl. (i) or (iii) of Sub-section (1) of Section 18(2A). The power could be exercised by the CWT notwithstanding the default and there being no reasonable cause for the failure to furnish the return within the time prescribed. The question of existence of reasonable cause is not within the ambit of Section 18(2A); that inheres in the WTO. The opening words of the section also indicate that it is only notwithstanding anything contained in cl. (i) or cl. (iii) of Sub-section (1) and notwithstanding any other provision in the Act that the CWT could act. The provision does not override or obliterate the jurisdiction conferred on the other authorities under the Act. u/s 18(2B), what is made final is the order made u/s 18(2A), i.e., in regard to the quantum of minimum penalty that is directed to be waived or reduced and nothing more. There is no provision that once the assessee filed an application u/s 18(2A) before the CWT, he waives his other rights. The approach to the CWT can be without any such waiver. In contrast, u/s 25, if the assessee were to approach the CWT in revision, he could do so only if the order challenged is not the subject-matter of appeal before AAC or the Tribunal and the assessee should have waived his right of appeal. There is no such restriction imposed while invoking the provisions of Section 18(2A). This is because the ambit and scope of Section 18(2A) is quite different and in no way affects the jurisdiction of the WTO to decide about the question arising u/s 18(l)(a) of the Act as to the existence or non-existence of reasonable cause. The only effect the order of the CWT would have is that the minimum penalty to be levied by the WTO would be in accordance with what is determined by the CWT if the minimum penalty is only reduced and not waived, and if it is waived, the WTO is also bound not to levy any penalty. Apart from this, there is no other effect consequent on the order of the CWT u/s 18(2A) so far as the jurisdiction of the WTO is concerned in the matter of imposition of penalty. Consequently, the right

of appeal available to the assessee against the order of the WTO imposing penalty u/s 18(l)(a) (even subject to the reduction as directed by the CWT) is not lost. Therefore, when an order has been passed u/s 18(2A) by the CWT, the order of the WTO imposing penalty u/s 18(l)(a) does not get effaced and an appeal could be filed against it to the appellate authorities.

9. In the case of Smt. Gulab Bai Mittal (supra), the Madhya Pradesh High Court has held as follows :

"The provision of Section 18B of the WT Act, 1957, which confer power on the CWT to reduce the amount of penalty imposed on an assessee u/s 18(1), do not affect the right conferred by Section 23 on the assessee to prefer an appeal against the order of the WTO imposing penalty. There is no provision in the Act which lays down that once the assessee has filed an application u/s 18B before the CWT, he waives his other rights. Consequently, the right of appeal available to an assessee against the order of the WTO imposing penalty u/s 18(l)(a) is not lost. u/s 18B(5), what is made final is the order passed u/s 18B with regard to the quantum of penalty. It will not in any manner affect the jurisdiction of the AAC to decide the question as to whether the order of the WTO imposing penalty is or is not justified.

The CWT, while exercising powers u/s 18B, does not exercise appellate or revisional powers. In exercising powers u/s 18B, the CWT has to act on criteria different from that on which the appellate or the revisional authorities have to act."

10. We find that similar view has been taken by the Madhya Pradesh High Court in the case of Jagdish Agarwal v. CWT (1983) 143 TTR 941 (UP) , Commissioner of Wealth-tax Vs. Kekatpure Ginning and Pressing Factory, , Bindra & Co. v. CYT (1987) 165 TTR 256 (MP) and the Andhra Pradesh High Court in the case of Lt. Col Mirza Mahmood Ah Baig (supra).

11. In the case of Smt. Ichhabai Panchal Vs. Commissioner of Wealth Tax, , the Calcutta High Court has dissented with the decision of the Madras High Court in the case of M.K.S. Vanavaxayai (supra) and of the Karnataka High Court in the case of B. Kempanna (supra) and has held that in order to merit a waiver or reduction in penalty it implies that penalty must be imposable. Therefore, the moment the assessee chooses to go to the CWT for a waiver of penalty, in our opinion, he admits the position that conditions under cl. (a), cl. (b) and cl. (c) of Sub-section (1) of Section 18 have been fulfilled. If on that basis any order is passed, then he cannot feel aggrieved by such an order on the quantum of the waiver. Normally, an appeal would lie questioning the imposition on the ground of satisfaction that the conditions were not fulfilled which attracted the imposition of penalty or that the imposition of penalty was improper or heavy. If it be impliedly accepted that in order to merit consideration under Sub-section (2A) of Section 18 of the Act, then, in view of Sub-section (2B) it cannot be said either that the condition that the penalty was not imposable, because the conditions required to,

be fulfilled under cls. (a), (b) and (c) of Sub-section (1) of Section 18 of the Act were not complied with, or that the imposition was improper could not be challenged before any Court of law or authority as contemplated u/s 18. The Calcutta High Court has further held that the expression "notwithstanding" in Section 18(2A) of the Act makes it clear that only on the fulfilment of the conditions where penalty was imposable under cl. (a), (b) or (c) of Section 18, the power of the CWT becomes exercisable. If, on that basis, the CWT exercises his powers and an order has been passed, then a person cannot be aggrieved by the exercise of that power. In that view of the matter, in view of the language used in Section 18(2B) r/w Section 18, these two powers cannot co-exist, in the facts and circumstances of the case.

12. With great respect, we are unable to persuade ourselves to subscribe to the view taken by the Calcutta High Court as we have already held hereinbefore that the two provisions operate in different and separate field and the appeal being creature of statute, where merits of imposition of penalty cannot be gone into u/s 18B of the Act, it cannot be said that the penalty order got merged with that of the order of the CWT u/s 18B and, therefore, no appeal will lie. We are in agreement with the view taken by the Madras, Karnataka, Ajidhra Pradesh and Madhya Pradesh High Courts, referred to above.

13. In view of the foregoing discussion, we answer the question referred to us in the affirmative, i.e., in favour of the assessee and against the Revenue. However, there shall be no order as to costs.