
(1989) 07 AHC CK 0044

In the Allahabad High Court

Case No : Wealth-tax Reference No. 905 of 1978

Commissioner of Wealth Tax

APPELLANT

Vs

S.L. Khunnah

RESPONDENT

Date of Decision : 20-07-1989

Acts Referred:

Wealth Tax Act, 1957 — Section 18(1)

Citation : (1989) 79 CTR 229 : (1989) 180 ITR 340 : (1989) 46 TAXMAN 240

Hon'ble Judges : K.C. Agrawal, Acting C.J.; R.K. Gulati, J

Bench : Division Bench

Advocate : Rajesh Tandon, for the Respondent

Judgement

K.C. Agrawal, Actg. C.J.

1. In this reference, the questions referred to this court for opinion by the Income Tax Appellate Tribunal are :

"(i) Whether there is a finding of the Tribunal that the assessee was prevented by reasonable cause from filing the wealth-tax returns in time for the assessment years 1970-71 and 1971-72 ? If not, what is the effect on the ultimate order passed by the Tribunal ?

(ii) If the answer to the aforesaid question is in the affirmative, whether the decision of the Appellate Tribunal is vitiated by its having relied on the following circumstances :

1. That the penalty u/s 18(1)(a) for the years 1969-70 to 1970-71 had been waived in the case of Shri C. L. Khunnah ;

2. That the penalty for the year 1971-72 had been cancelled by the Tribunal in the case of Shri C. L. Khunnah on the ground that Shri C. L. Khunnah had been prevented by sufficient cause from filing his return within time in respect of that year ;

3. That the Department had not questioned the cancellation of the penalty by the Appellate Assistant Commissioner in the case of Shri M. C, Khunnah ;

4. That the assessee's claim that he was an existing wealth-tax assessee and that by the delayed filing of the return he could not have expected to avoid the payment of wealth-tax."

2. These very questions have been referred to in the other connected references.

3. The assessee, S.L. Khunnah, is an individual. He was a partner in L.N. Khunnah and Sons. The dispute relates to penalties levied on him u/s 18(1)(a) for the assessment years 1970-71 and 1971-72. The returns for these two years had been filed on December 30, 1971. Since in the opinion of the Wealth-tax Officer, there was delay in the filing of the returns, he issued notices for levy of penalty u/s 18(1)(a) of the Wealth-tax Act.

4. The assessee claimed that the delay was for a reasonable cause and no penalty should be levied. He contended that on the death of the senior-most partner of the firm, S. L. Khunnah and Sons, in which the assessee was also a partner, serious disputes arose amongst the members of the family. L. N. Khunnah died in March, 1969, leaving behind a number of sons and/ grandsons. One of the grandsons was D, C. Khunnah. He made fantastic claims in the firm's property and also lodged frivolous complaints against the firm. Ultimately, the dispute was referred to A. B. Tandon for arbitration. So, the assessee was not in a position to predicate the wealth which he was likely to get only under the award. On the grounds mentioned above, the assessee claimed that there was a reasonable ground for not filing the returns in time.

5. This was contested on behalf of the Department alleging that the books of account of S. L. Khunnah and Sons were completed a long time back, and that even the income tax returns of the firm as well as the partners constituting the same had been filed, and therefore, there was no difficulty for the assessee in filing the wealth-tax returns. About the claims of D. C. Khunnah, the Department pleaded that none of his claims affected the wealth of the assessee.

6. The Wealth-tax Officer levied penalty for the year 1969-70, against which the assessee went up in appeal. The appeal was allowed and the penalty was cancelled by order dated March 31, 1975. The Appellate Assistant Commissioner believed the difficulties pointed out by the assessee in filing the wealth-tax returns and held that the confusion created by D. C. Khunnah could be a real cause constituting reasonable excuse for the default. The order of the Appellate Assistant Commissioner cancelling the penalty for the year 1969-70 had been accepted by the Department. This is clear from the statement of case printed at page 61 of the paper book.

7. Following the decision for the year 1969-70, the Appellate Assistant Commissioner cancelled the penalties imposed for the years 1970-71 and 1971 - 72. In the order, the Appellate Assistant Commissioner remarked :

"I have discussed in detail in my appellate order No. 129/Addl. 1(5)774-75 dated March 31, 1975, in the case of Shri S. L. Khunnah and held that there was a reasonable cause for not filing the return of wealth within time u/s 14(1) of the Wealth-tax Act. I, therefore, for the same reasons hold that no penalty is eligible and annul the Wealth-tax Officer's orders. The appeals are allowed.".

8. Against the order of the Appellate Assistant Commissioner with regard to the years 1970-71 and 1971-72, appeals were filed to the Income Tax Appellate Tribunal by the Department. The appeals filed by the Wealth-tax Officer against the appellate order in the case of S. L. Khunnah were dismissed on September 17, 1976. Another appeal was filed by C. L. Khunnah before the Income Tax Appellate Tribunal against a similar order of the Appellate Assistant Commissioner, which was W. T. A. No. 255 (Alld) of 1973-75. The Income Tax Appellate Tribunal allowed the appeal holding that the assessee was prevented by sufficient cause from filing his return within time. The Tribunal cancelled the penalties. In this way, the questions that have been mentioned by us in the beginning of the judgment were referred for our opinion.

9. So far as the first question is concerned, as to what will constitute sufficient cause or, in other words, whether, the assessee was prevented by reasons beyond his control is essentially a question of fact. In the facts and circumstances of the present case, the Appellate Assistant Commissioner found in his judgment for the years 1970-71 and 1971-72 in the case of S.L. Kunnah that the returns, could not be filed in time because of the turmoil in the family and the assessee did not know where would the dispute lead and, consequently, was unable to file the returns in time. This was accepted by the Income Tax Appellate Tribunal. In accepting the judgment of the Appellate Assistant Commissioner and agreeing with him, the Income Tax Appellate Tribunal had not committed any error.

10. A thing is generally considered as reasonable if it is not actuated by bad faith, dishonesty or false grounds. If the conduct of an assessee could be that of a reasonable man, the Appellate Assistant Commissioner could not be held to have erred in believing the same and cancelling the penalty. No hard and fast rule can be laid down for governing or deciding as to when a certain ground would be considered as reasonable and when it would not be so held. There is no rigid method capable of being prescribed in this regard. Each case has to be decided on its own merits and facts by the authority. If the decision is based on relevant grounds by the authority which has power to condone the default, the appellate court cannot interfere with the same. The power of the appellate court to interfere arises when the exercise of discretion is arbitrary, perverse or capricious. In a matter of condonation, what an authority has to keep in mind is that it should not be based on unjustified sentiments and too vague and unregulated benevolence. The authority has to exercise the discretion informed by traditions, methodical by analogy and disciplined by system. Those who exercise discretion will remember that:

"An appeal to a judge's discretion is an appeal to his judicial discretion. The discretion must be exercised not in opposition to, but in accordance with, established principles of law."

11. Consequently, our view is that discretion must be exercised not in opposition to, but in accordance with, the established principles of law.

12. We, consequently, answer the first question in the affirmative, against the Revenue and in favour of the assessee by holding that the Tribunal was right in finding that the assessee was prevented by reasonable cause from filing the wealth-tax returns in time for assessment years 1970-71 and 1971-72.

13. So far as the second question is concerned, we have already indicated that there is no rigid formula which can be prescribed for condonation of delay in filing the return. Whether a particular assessee was prevented by a justifiable cause or not is a question of fact. Each case has to be considered and decided on its own facts. In our opinion, the penalty u/s 18(1)(a) for the years 1970-71 and 1971-72 had been rightly waived in the case of C. L. Khunnah.

14. The answers to the questions are as under :

(i) In favour of the assessee and against the Revenue.

(ii) 1. The penalty u/s 18(1)(a) for the years 1969-70 to 1970-71 had been rightly waived in the case of C. L. Khunnah

2. The penalty for the year 1971-72 had been rightly cancelled by the Tribunal in the case of C. L. Khunnah as he was prevented by sufficient cause from filing the return in time in respect of that year.

3. The decision of the Income Tax Appellate Tribunal was not vitiated by the fact that the Department had not questioned the cancellation of the penalty imposed by the Appellate Assistant Commissioner in the case of M. C. Khunnah inasmuch as each case has a separate identity.

4. We do not consider it appropriate to answer this question inasmuch the answers given by us to the other questions are complete in themselves. We, consequently, return this question unanswered.

15. We make no order as to costs.