
(1981) 09 P&H CK 0040
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 933 of 1981

Hira Singh

APPELLANT

Vs

Commissioner of Wealth-tax and Another

RESPONDENT

Date of Decision : 11-09-1981

Acts Referred:

Wealth Tax Act, 1957 — Section 14, 17, 18(1), 18B(1)

Citation : (1981) 25 CTR 101

Hon'ble Judges : Rajendra Nath Mittal, J

Bench : Single Bench

Advocate : Gopal K. Sood, for the Appellant; D.N. Awasthy, for the Respondent

Judgement

R.N. Mittal, J.—Briefly, the facts are that the petitioner submitted his returns of net wealth for the wealth-tax assessment years 1970-71 and 1971-72 in the status of an HUF to the WTO u/s 14(1) read with Section 18 of the W.T. Act (hereinafter referred to as "the Act"), for the first time on 18th July, 1972. No notice u/s 14(2)/17 of the Act was issued to him by the WTO at that time. In the two returns, he showed his agricultural land measuring 21 acres 6 kanals as his net wealth. The WTO on 17th June, 1978, made the following noting on the order sheet:

"The rates applied for 1970-71 and 1971-72 assessment years in respect of land are very low; asked to produce the following information :

(i) Sale deed of land sold to Rakha Land Colonisers,

(ii) Exact location of land

(iii) * * * (iv) To file wealth-tax returns for 1972-73, 1973-74 and 1974-75....."

2. The petitioner filed the returns of net wealth u/s 14(1) read with Section 13 for the assessment years 1972-73, 1973-74, 1974-75 and 1975-76 without the issuance of any statutory notice u/s 14(2)/17 of the Act. In the annexures to the returns, he showed his agricultural land as measuring 24 acres 6 kanals for the

assessment year 1972-73 and for each of the remaining three assessment years as measuring 9 acres 7 kanals 8 marlas. In the latter years, he showed a lesser area with himself as a partition had taken place between him and his major sons on the basis of the decree dated 22nd May, 1972, passed by a civil court.

3. The WTO passed a consolidated common assessment order on 21st August, 1975, copy annex, P-2, for all the six assessment years, that is, from 1970-71 to 1975-76. He accepted the figures of the area of agricultural land disclosed by the petitioner but for each year he estimated the capital value at a figure higher than the one shown by the petitioner. On 21st August, 1975, the WTO also initiated penal action u/s 18(1)(a)/18(2) of the Act for the late filing of the net wealth returns for the six assessment years. He, vide his order dated 31st December, 1977, imposed various penalties u/s 18(1)(a) of the Act for the late filing of the returns.

4. On 5th July, 1978, the petitioner made a petition u/s 18B of the Act, copy annexure P-1, to the CWT, respondent No. 1, for waiver of the penalties imposed by the WTO by exercising his powers vested in him under the said section. The respondent waived the penalties for the assessment years 1970-71 and 1971-72 but declined to give the relief for the remaining assessment years, vide his order dated 25th December, 1980, copy annex. P-1, on the grounds that the declaration of wealth was not voluntary even though it was prior to the issuance of a notice u/s 14/17 of the Act and that the condition of Section 18B of the Act was not satisfied. The petitioner has impugned the order through this writ petition.

5. The question that arises for determination is as to whether, in the facts and circumstances of the case, the provisions of Section 18B(1)(i)(a) of the Act are attracted for the assessment years 1972-73 to 1975-76. In order to determine the question, it is necessary to read the relevant part of the section which is as follows :

" 18B. (1) Notwithstanding anything contained in this Act, the Commissioner may, in his discretion, whether on his own motion or otherwise,--

(i) reduce or waive the amount of penalty imposed or imposable on a person under Clause (i) of Sub-section (1) of Section 18 for failure without reasonable cause to furnish the return of net wealth which such person was required to furnish under Sub-section (1) of Section 14; or.....

if he is satisfied that such person,--

(a) in the case referred to in Clause (i), has, prior to the issue of a notice to him under Sub-section (2) of Section 14, voluntarily and in good faith, made full and true disclosure of his net wealth, and.....

and also has co-operated in any inquiry relating to the assessment of his net wealth and has either paid or made satisfactory arrangements for the payment of any tax or interest payable in consequence of an order passed under this Act in

respect of the relevant assessment year.

Explanation.--For the purposes of this sub-section, a person shall be deemed to have made full and true disclosure of the particulars of his assets or debts in any case where the excess of net wealth assessed over the net wealth returned is of such a nature as not to attract the provisions of Clause (c) of Sub-section (1) of Section 18."

6. The section came up for interpretation before a Division Bench of the Gujarat High Court in *Madhukar Manilal Modi Vs. Commissioner of Wealth Tax, Gujarat-V, and Another*, . The facts of that case were that for the assessment year 1971-72, the assessee filed his return of net wealth u/s 14(1) of the W. T. Act on 29th November, 1971. For the assessment years 1969-70 and 1970-71, the returns were filed only on 19th September, 1973, a few days before the assessment for 1971-72 was completed. The ITO imposed penalty for late filing of returns for all the three assessment years. No notice u/s 14(2) had been served for late filing of returns. He made an application to the Commissioner u/s 18(2A) praying that the amount of minimum penalty imposable on him in respect of all the three assessment years be waived. The latter waived the minimum penalty imposable on him for late filing of the return for the assessment year 1971-72, but refused to waive the penalty for the assessment years 1969-70 and 1970-71, on the grounds that the returns for the assessment years 1969-70 and 1970-71 were filed only after the assessee was asked during the course of the assessment proceedings for the assessment year 1971-72 to file those returns and, therefore, those returns could not be said to be voluntary returns and that the assessee was not a new assessee when he filed the returns for the assessment years 1969-70 and 1970-71 and, therefore, the case was not a fit one to waive or reduce the penalty imposable under the Act. The petitioner challenged the order in the High Court. It was observed by the learned Bench as under (headnote):

" Firstly, that the Commissioner completely misdirected himself in law in reading into Section 18(2A) the condition, that the assessee had not voluntarily filed returns for the two assessment years in question since he did so only after he was asked to do so during the course of the assessment proceedings for the assessment year 1971-72. Though Section 18(2A)(a) uses the word " voluntarily ", the said word has to be read with the expression "made full disclosure of his net wealth ". The condition which the legislature has imposed is that in cases where an assessee has, prior to the issue of notice to him u/s 14(2), filed a return but has not done so within the time limited by law, he must satisfy the Commissioner that he has made full disclosure of his net wealth voluntarily and in good faith. The word " voluntarily ", therefore, has not to be read in the context of the filing of the return.

Secondly, by the mere fact that a return has been filed under the advice, suggestion or even at the behest (otherwise than by a notice u/s 14(2)) of the Wealth-tax Officer, it does not cease to be a voluntary return.

Thirdly, there is nothing in Section 18(2A) which restricts the relief to assesseees who file their returns for the first time. Imposition of such a condition would amount to addition of a new condition in the relevant statutory provision."

7. I am in respectful agreement with the above observations. It may be mentioned that the provisions of Section 18B were included first in Section 18 as Clause (2A). Later, by the T.L. (Amend.) Act, 1975, Clause (2A) of Section 18 was deleted and an independent Section 18B was introduced. The language of Section 18B is in pari materia with that of Clause (2A) of Section 18.

8. Similar view was taken by the Karnataka High Court in *B. Anjanappa Vs. Commissioner of Wealth Tax, Karnataka and Another*, . It was observed therein that Section 18(2A) would apply to a return which was filed beyond time without reasonable cause. If in such a return the assessee had " voluntarily and in good faith, made full disclosure of his net wealth ", the condition mentioned in Clause (a) stood satisfied. The expression "voluntarily" means " without compulsion " and " good faith " means " with due care and caution ". If the return filed by the assessee did not show that he 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 condition.

9. The learned counsel for the respondents has argued that the punctuation u/s 18B is not to be taken into consideration for the purpose of interpreting the section. According to him, the words "voluntarily and in good faith " also qualify the filing of the returns. He urges that the assessee cannot sit on the fence and by filing the returns after having been asked by the WTO to do so, he cannot be allowed to say that he was done so voluntarily and in good faith. In support of his contention, he has placed reliance on *Hakam Singh and Others Vs. Commissioner of Income Tax*, .

10. I regret my inability to accept this contention. The words " voluntarily and in good faith ", in my view, qualify the words " made full and true disclosure " of his net wealth. Merely because a WTO asks a wealth-tax assessee to file the returns, it cannot be said that the latter is not entitled to the benefit of Section 18B. What is to be seen is, whether an assessee has made a full and true disclosure of his wealth in good faith, voluntarily and before the issuance of a notice u/s 14(2). If he has done so, his case is covered by Section 18B. Filing of the return at the instance of the WTO may not be sufficient to hold otherwise. The facts of *Hakam Singh and Others Vs. Commissioner of Income Tax*, , are distinguishable. In that case, the books of account of the assessee had been seized in a raid by the I.T. department and, thereafter, the assessee filed the return under an apprehension that he was likely to be dealt with under the penal provisions of the I.T. Act. It may be mentioned that the learned Bench did not disagree with the observations in *Madhukar Manilal Modi Vs. Commissioner of Wealth Tax, Gujarat-V*, and *Another*, , which was taken into consideration by it. The facts of the present case are similar to those of *Madhukar Manilal Modi's* case.

11. In the present case, in the returns for the assessment years 1970-71 and 1971-72, the petitioner had shown his land as 24 acres 6 kanals. In the return for the assessment year 1972-73, again, he showed the same area. In the returns of later assessment years, he showed his land as 9 acres 7 kanals 8 marlas for the reason that the land shown earlier had been partitioned between him and his major sons on the basis of a decree of the civil court dated 22nd May, 1972. The WTO accepted the area disclosed by the petitioner in all the returns as correct. However, he assessed the value of the land as more than what was given by the petitioner and imposed penalties on him u/s 18(1)(a). The Commissioner, Patiala, in the application u/s 18B, waived the penalties for the assessment years 1970-71 and 1971-72, but refused to do so for the subsequent assessment years. It is not disputed that the petitioner had correctly disclosed the particulars of the land in the returns and that the returns were filed before the issuance of the notice u/s 14(2)/17. The value of the land has always posed difficulties. The wealth-tax on agricultural land has now been abolished. The budget speech of the Minister of Finance made on 18th June, 1980, in Parliament, in this regard, is as follows (123 ITR (St.) at p. 21):

" At present, agricultural property is included in the taxable wealth for the purposes of the levy of wealth-tax. At the time when agricultural property was brought within the tax net, it was hoped that it would be a potent instrument for mobilising resources from the affluent section of agriculturists. But our experience of over the last decade has been most disappointing. The amount realised as wealth-tax on agricultural property has generally been less than Rs. 1 crore per annum. The valuation of agricultural land has posed difficulties leading to complaints of harassment. As this tax has clearly failed to achieve its original objective, I propose to discontinue the levy of wealth-tax on agricultural property except in the case of owners of tea, coffee, rubber and cardamom plantations. I am sure that this measure will be widely welcomed by our farmers. "

12. The Wealth-tax Commissioner refused to waive the penalties regarding the assessment years from 1972-73 to 1975-76, on the ground that the declaration of wealth was not voluntary by the assessee as the returns were filed at the instance of the WTO. In my view, he has not correctly interpreted Section 18B. Therefore, the impugned order is liable to be quashed.

13. For the aforesaid reason, I accept the writ petition with costs and quash the impugned order so far as it relates to the assessment years 1972-73 to 1975-76, and direct the Commissioner to decide the applications relating to the said assessment years afresh after taking into consideration the above observations. Counsel fee Rs. 300.