(1997) 03 P&H CK 0021

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No''s. 3804 of 1983, (CWP No. 3805 of 1983)

JAGJIWAN KUMAR APPELLANT

Vs

COMMISSIONER OF WEALTH TAX (PADAM SAIN v. CWT). RESPONDENT

Date of Decision : 14-03-1997

Acts Referred:
Income Tax Act, 1961 — Section 273A

Citation : (1997) 139 CTR 299

Hon'ble Judges : N. K. Agarwal, J

Bench : Single Bench

Judgement

N. K. AGRAWAL, J. :

These are two writ petitions (CWPs Nos. 3804 and 3805 of 1983) filed under Arts. 226/227 of the Constitution, for quashing the order dt. 9th Feb., 1983 passed by the CWT, whereby applications filed by the petitioners for waiver of the penalty were partly rejected.

2. Petitioner Jagjiwan Kumar (in CWP No. 3804 of 1983) and petitioner Padam Sain (in CWP No. 3805 of 1983) filed their returns of wealth for different assessment years belatedly. Since the facts are similar in both the writ petitioners, these petitions are being decided by this common order. The facts arising from CWP No. 3804 of 1983 filed by Jagjiwan Kumar shall be discussed hereinafter.

3. While making assessments for different years under the WT Act, the WTO noticed that the returns of net wealth had been filed after the expiry of the due date and he, therefore, initiated proceedings for the levy of penalty for late filing of returns under s. 18(1)(a) of the WT Act. The petitioner took the plea that there were reasonable and sufficient grounds for the waiver of penalty and he, therefore, filed applications for all the years in which penalties had been imposed, before the CWT under s. 18B of the WT Act. The petitioner took the plea that no penalty should be imposed and it should be waived because he

voluntarily filed the returns prior to the issuance of notice to him by the WTO. Since he co-operated in enquiry and paid the tax due after assessment in each year, that was a case seeking the waiver of penalties for the relevant years.

The details with regard to the dates of filing of WT returns and the levy of penalty in case of Jagjiwan Kumar are as under :-

Year of Assessment

Date of filing of

Penalty imposed return Rs.

Penalty reduced under s. 18B Rs.

(i) 1968-69

20.2.1976

728

100

(ii) 1969-70

20.2.1976

743

100

(iii) 1970-71

22.7.1974

18,326

reduced to 5 per cent of the penalty imposed

(iv) 1971-72

22.7.1974

15,723

- do -

(v) 1972-73

22.7.1974

14,008

- do -

(vi) 1973-74

22.7.1974

7,216

- do -

(vii) 1976-77

15.1.1980

959

100

(viii) 1977-78

15.1.1980

394

100

(ix) 1978-79

9.4.1980

356

100

(x) 1979-80

9.4.1980

402

100

In the case of the second petitioner, Padam Sain, returns were filed for the aforesaid assessment years on the same dates on which Jagjiwan Kumar had filed his returns except that for the two assessment years namely, for 1978-79 and 1979-80, returns were filed on 15th Jan., 1980. In the case of Padam Sain, no penalty was imposed for the late filing of the return for the asst. yr. 1976-77 but penalty was levied for the asst. yr. 1981-82, which was reduced to Rs. 100 by the CWT.

4. Penalty under s. 18(1)(a) is imposable if an assessee has failed to furnish the return which he is required to furnish under s. 14(1) or after notice given under s. 14(2) or s. 17 of WT Act. It is obvious that the petitioners had failed to furnish the returns of wealth for all the years in question within the stipulated due date. Penalties were, however, not imposed by the WTO for the asst. yrs. 1974-75, 1975-76, 1980-81 and 1981-82. The petitioners claim for the 10 years in question, for which penalties were imposed for not furnishing the returns on or before the due date, is primarily based on the plea that the applications filed before the CWT, seeking waiver of the penalty, were not properly considered inasmuch as the petitioner had fulfilled all the conditions laid down in s. 18B of

the Act. Though the CWT reduced the penalties to small amounts of Rs. 100 each in six years, the petitioner is aggrieved against the non-consideration of his compliance with law. The CWT in four assessment years reduced the penalty to the amount equivalent to 5 per cent of the penalty imposed by the WTO.

5. Shri J. C. Nagpal, learned counsel for the petitioners, has argued that, while seeking waiver of the penalty, an assessee has to show that he fulfilled all the conditions laid down in s. 18B(1) read with Expln. to sub-s. (1). If an assessee has filed return of wealth prior to issue of notice to him under s. 14(2) and has voluntarily and in good faith made full and true disclosure of his net wealth, he deserved the exercise of jurisdiction by the CIT/CWT regarding waiver of penalty. It is further pointed out by Shri Nagpal that the assessee had co-operated during the course of enquiry relating to all assessment years and had also paid the tax due. No proceedings were also initiated for concealment of wealth under s. 18(1)(c) of the Act. In these circumstances, the petitioners should have been given the benefit of waiver of penalty in all the years.

A similar question had arisen before this High Court in Smt. Parkash Devi Vs. Commissioner of Wealth-tax, . It was held that five conditions are required to be fulfilled to get the benefit of waiver of penalty under s. 18B of the Act. These conditions are as under :

(1) that the returns were filed by the petitioner prior to the issuance of a notice to him under sub-s. (2) of s. 14 of the Act;

(2) that these were filed voluntarily and in good faith;

(3) that the petitioner had made full and true disclosure of his net wealth;

(4) that he had co-operated in the inquiry relating to the assessment of his net wealth; and

(5) that he had paid or made satisfactory arrangements for the payment of the tax or interest payable in consequence of an order passed under the Act in respect of the relevant assessment.

Shri Nagpal has vehemently argued that if it is found that the petitioner did fulfil all the conditions as laid down in s. 18B of the Act, there was no justification to refuse to grant him the benefit of waiver of penalty. In paragraph 2 of the order, the CWT has explicitly observed that the assessee has fulfilled the conditions specified in s. 18B of the Act. The following observations of the CWT in paragraph 2 of the order dt. 9th Feb., 1983 are relevant :

"On perusal of WTOs reports and relevant records, I am of the opinion that the conditions set forth in s. 18B of the WT Act are satisfied in the instant case. However, having regard to all the circumstances, I am of the opinion that it is a fit case for reduction rather than waiver."

6. From the perusal of the CWTs order, it is manifest that the two petitioners herein did fulfil all the conditions specified in s. 18B of the Act. If they had not

fulfilled one or two of the five conditions, that would have been a case for reduction of penalty rather than its complete waiver. Once they are found to have fulfilled all the conditions, then there was no justification to refuse the waiver.

In Dr. Brij Mohan Bhargava Vs. Commissioner of Income Tax, , a question about the reduction of penalty again came to be examined by this High Court, though that was a case of waiver under s. 273A of the IT Act, 1961. It was held by the learned Single Judge that s. 273A gave discretion to the CIT to give relief or not to give relief at all or to give only partial relief.

7. In the case of the petitioners, no notice had been issued for any of the years and returns were filed by the petitioners, prior to the issuance of the notice, voluntarily and in good faith. There is also no dispute to the net wealth disclosed by the petitioners. No proceedings for concealment of wealth were initiated in any year under s. 18(1)(c) of the Act. There is also no challenge to the petitioners pleas that they had co-operated in the enquiry relating to the assessment and had paid the tax as assessed. In these circumstances, the decision of the Division Bench of this Court in Smt. Parkash Devis case (supra) is found to be applicable. If the five conditions, which are fundamental to the recording of satisfaction by the CWT, are found to have been fulfilled, then the satisfaction of the CWT is to be recorded and has, in fact, been recorded in the present cases. Therefore, there are found to be no sufficient and valid reasons to impose penalty in any of the years. The mere fact that the returns were filed late would not invite the levy of penalty. The provisions contained in s. 18B of the Act do make an assessee entitled to claim waiver once the assessee is able to show that he fulfilled all the conditions specified therein. Since the petitioners are found to have satisfied all the conditions and CWT has recorded his satisfaction in his order dt. 9th Feb., 1983 passed under s. 18B of the Act, there is no reason to refuse the benefit of waiver of penalty to the petitioners.

8. In the result, both the petitions succeed and the penalties, imposed under s. 18(1)(a) of the WT Act, for all the years in question are waived. No order as to costs.

CWP No. 3805 of 1983

For orders, see CWP No. 3804 of 1983 (Jagjivan Kumar vs. CWT & Ors.).