(2005) 08 GUJ CK 0043

In the Gujarat High Court

Case No : Special Civil Application No. 6401 of 1993

Kiritkumar K. Shroff APPELLANT

Vs

Commissioner of Wealth-tax RESPONDENT

Date of Decision : 01-08-2005

Acts Referred:
Wealth Tax Act, 1957 — Section 14(1), 14(2), 15B, 16(3), 18(1)

Citation : (2005) 199 CTR 19 : (2005) 278 ITR 79

Hon'ble Judges : H.N. Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Manish Shah, for the Appellant; B.B. Naik, for the Respondent

Final Decision : Allowed

Judgement

D.A. Mehta J.

1. This petition challenges the order u/s 18B of the Wealth-tax Act, 1957 ("the Act"), passed by the respondent-Commissioner of Wealth-tax, Surat, on January 27, 1993 (exhibit "F").

2. The petitioner, one of the executors of the estate of the late Shri Dalichand V. Shroff, filed voluntary returns of wealth for the assessment years 1973-74 to 1976-77 on various dates which appear in the Table set out hereunder. The petitioner paid wealth-tax payable u/s 15B of the Act at the time of filing of the returns. The Wealth-tax Officer passed assessment orders u/s 16(3) of the Act for all the years accepting the wealth returned by the petitioner. The following table gives the year-wise details :

Asst. Wealth Wealth Tax paid Tax payable on Date of Date of Interest if Year returned assessed alongwith assessment return assessment any, charged return after deduction by the WTO (Rs.) (Rs.) (Rs.) (Rs.) (Rs.)

1973-74 404760 404760 3600 Nil 1/5/79 24/9/79 Nil 1974-75 406746 406746 4070 Nil 29/5/79 24/9/79 Nil 1975-76 437623 437623 4380 Nil 29/5/79 24/9/79

Nil 1976-77 436977 436977 4370 Nil 7/6/79 24/9/79 Nil

3. The petitioner filed an application seeking waiver of penalties levied/ leviable u/s 18(1)(a) of the Act for the years under consideration as well as subsequent assessment years. It was contended in the application that the petitioner had filed returns of wealth voluntarily and in good faith made full and true disclosure of net wealth before issuance of any notice under Sub-section (2) of Section 14 of the Act; it was also submitted that the petitioner had co-operated in finalisation of the assessment of the net wealth and had paid the tax payable in consequence of the orders of assessment for all the four years under consideration. The petitioner also explained the circumstances in which the delay in submitting the returns of wealth had occurred. In so far as the four years under consideration are concerned, it is an admitted fact that penalties to the tune of Rs. 50,240, Rs. 35,200, Rs. 18,430 and Rs. 3,060 were imposed respectively for the assessment years 1973-74, 1974-75, 1975-76 and 1976-77. The respondent has rejected the application vide his order dated January 27, 1993.

4. Mr. M. J. Shah, the learned advocate for the petitioner, has pointed out that the petitioner had fulfilled all the conditions for becoming entitled to waiver of the penalties imposed. That the respondent had made the impugned order based on extraneous reasons and considered factors which are not forming part of Section 18B of the Act. He invited attention to the statement of wealth, assessment orders, penalty orders and application made u/s 18B of the Act before the respondent, to submit that the petitioner had done everything that was required to be done and complied with all statutory requirements. He also invited attention to the order made by the Appellate Assistant Commissioner on April 25, 1985 (exhibit G), relating to the assessment years 1968-69 to 1972-73, whereby the appellate authority had deleted similar penalties levied u/s 18(1)(a) of the Act accepting the explanation tendered by the petitioner. He, therefore, urged that the impugned order made by the respondent was required to be quashed and set aside, and as held by this court in the case of Indramohan P. Arora Vs. Commissioner of Income Tax/Wealth Tax, , the matter be finally decided over here and the penalties waived for each of the years under consideration.

5. Mr. B.B. Naik, learned standing counsel appearing on behalf of the respondent, submitted that the petitioner has not tendered any explanation for delay in submitting the application u/s 18B of the Act. According to him, this would be a relevant factor for the purposes of determining whether the penalty could be waived in entirety or was required to be reduced, subject to all other conditions being fulfilled. He, therefore, urged that the matter must go back to the respondent authority for being adjudicated afresh, if necessary, after laying down appropriate guidelines. A further contention was raised that the explanation tendered for filing the return belatedly, had not been accepted by the Wealth-tax Officer and in the circumstances, no waiver was liable to be granted. According

to him, in the absence of any reasonable cause being pleaded, the order made by the respondent was justified and was required to be upheld.

6. On July 16, 1993, when the petition was admitted, the court had directed the respondent to file affidavit in reply "if he so chooses, latest by September 30, 1993". As the record reveals, no affidavit in reply has been tendered.

7. As can be seen from the impugned order, the reasons which have weighed with the respondent authority are as under :

"I have considered the contentions raised. The case records of the assessee do not support the contentions raised on behalf of the asses-see. The assessee had not laid evidence to prove that either the assessee paid interest charged and penalty levied/leviable or has made satisfactory arrangement for its payments. In this background, the assessee cannot be allowed relief u/s 273A of the Act."

8. Section 18B gives power to reduce or waive penalty in certain cases and the relevant extract thereof reads as under :

"18B. Power to reduce or waive penalty in certain cases.--(1) Notwithstanding anything contained in this Act, the Chief Commissioner or 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."

9. The Section requires that the Chief Commissioner or the Commissioner may, exercise his discretion, on his own or on an application made by the assessee and reduce or waive the amount of penalty imposed or imposable on a person u/s 18(1)(i) of the Act for failure without reasonable cause to furnish the return of net wealth within the statutory time prescribed u/s 14(1) of the Act. While

exercising such discretion, the authority is required to be satisfied that such person has (1) voluntarily and in good faith made full and true disclosure of his net wealth prior to issuance of notice u/s 14(2) of the Act, (2) has co-operated in any inquiry relating to the assessment of his net wealth, and (3) has either paid or made satisfactory arrangements 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.

10. As can be seen from the facts on record, the returns of wealth were filed voluntarily on the respective dates mentioned in the Table given above and the wealth returned by the petitioner has been accepted and assessments made at the same figure. The assessee had paid tax u/s 15B of the Act along with the return and no further demand is raised after the assessments were completed. The Wealth-tax Officer has not levied any interest in the assessment order.

11. These facts would go to show that the assessee-petitioner has fulfilled all the three conditions necessary for the respondent authority to exercise his discretion. In other words, the petitioner having satisfied the prerequisite conditions for invoking the jurisdiction of the respondent authority, it was incumbent upon the respondent authority to exercise his discretion in a proper and reasonable manner. The only reason advanced by the respondent authority for rejecting the application moved by the petitioner is that the petitioner had not led any evidence to prove that the petitioner had paid interest charged and penalty levied/leviable or had made satisfactory arrangements for its payment. On a plain reading of Section 18B of the Act, the requirement of payment of penalty leviable does not appear and hence the said reason is not germane to exercise of the discretion. Similarly, the observation that the petitioner had not placed any evidence to show that the petitioner had paid interest charged is also an incorrect observation because, in fact, no interest under any provision of the Act has been charged by the Wealth-tax Officer. In the last sentence, reference is made of Section 273A of the Act, but even if the same is considered as a slip of pen, it is apparent from the reasons advanced by the respondent authority that the impugned order suffers from the vice of non-application of mind. The respondent has taken into consideration the factors which are not germane to the issue and do not find place in the provision so as to be invoked against the petitioner.

12. The submission made on behalf of the respondent that no reasonable cause has been shown for the delay is besides the point. In fact, the provision specifically states that the failure to furnish return of net wealth is without reasonable cause. In the circumstances, whether the petitioner had reasonable cause or not, is not germane for the purposes of exercise of discretion vested in the respondent authority u/s 18B of the Act. This court in the case of Kherunissa Allibhai Vs. Commissioner of Income Tax, , while dealing with identical provision under the Income Tax Act, 1961, has stated that (headnote) "The whole concept of Section 273A is that the assessee concerned admitted his liability to penalty

but relied upon certain mitigating circumstances specified in the Section for the purpose of getting the penalty waived or reduced. When the assessee approaches the Commissioner u/s 273A, he does not dispute his liability to pay the penalty. All that he says is that he should be given the relief of reduction or waiver by the fact that the conditions specified in Section 273A are satisfied."

13. Therefore, in the light of what is stated hereinbefore, the impugned order dated January 27, 1993 (exhibit F), made by the respondent is hereby quashed and set aside. Penalties levied at Rs. 50,240, Rs. 35,200, Rs. 18,430 and Rs. 3,060, respectively, for the assessment years 1973-74, 1974-75, 1975-76 and 1976-77 are waived in entirety, the petitioner having satisfied all the prerequisite conditions imposed by Section 18B of the Act.

14. The petition is accordingly allowed. Rule made absolute. There shall be no order as to costs.

