(1981) 04 P&H CK 0008

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 582 of 1980

Major Naranjan Singh APPELLANT

Vs

Commissioner of Wealth-tax RESPONDENT

Date of Decision : 28-04-1981

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Income Tax Act, 1961 — Section 139, 139(2), 148, 271, 273A
Wealth Tax Act, 1957 — Section 14, 14(1), 16(3), 17, 18(1)

Citation : (1982) 27 CTR 9 : (1982) 138 ITR 88

Hon'ble Judges : Sukhdev Singh Kang, J

Bench : Single Bench

Advocate : Ashok Bhan, for the Appellant; D.N. Awasthy, for the Respondent

Judgement

Sukhdev Singh Kang, J.—This is a writ petition under Articles 226/227 of the Constitution of India for the issuance of a writ of certiorari quashing the order, annex. P-2.

2. The facts giving rise to this petition may be briefly stated. The petitioner, who is a retired Major from the Army and an old man, could not file his wealth-tax returns u/s 14(1) of the W.T. Act, 1957 (hereinafter to be called "the Act"), for the assessment years 1972-73, 1973-74 and 1974-75, before 30th day of June, 1972, 1973 and 1974, respectively. He filed his wealth-tax returns for these years on 25th July, 1977, 28th July, 1977, and 28th July, 1977, respectively, in good faith and voluntarily. The WTO, District 11(9), Jullundur, completed the. petitioner''s assessment of the wealth-tax as required by Section 16(3) of the Act. The tax assessed was also paid by the petitioner. The WTO initiated penalty proceedings for the aforesaid three years and issued notices u/s 18(1)(a) of the Act.

3. The petitioner filed an application u/s 18B of the Act praying that the penalty for the assessment years 1972-73, 1973-74 and 1974-75, be waived. The learned Income Tax Commissioner, Jullundur, rejected the application, vide his

order dated 15th January, 1980, on the ground that the wealth declared by the petitioner was not voluntary, though it was in good faith. The petitioner admittedly had made the returns of wealth before the issuance of any notice u/s 14 or Section 17 of the Act. The Commissioner declined the application holding that the returns were not filed voluntarily, because the petitioner was already an assessee for the assessment year 1970-71. The department, as well as the assessee knew about the net wealth of the petitioner. The knowledge of the Department about the taxability of the assessee''s wealth, prior to the filing of the return of wealth, would definitely run counter to the claim that the declaration of wealth was voluntary.

4. Today I had an occasion to deal with Harjas Rai Vs. Commissioner of Income Tax and Another, , which were cases arising out of Section 273 of the I.T. Act, which provision is identical with Section 18(2)(a) of the W.T. Act. In these cases also the Commissioner had taken a similar view. Sections 14 and 17 of the W.T. Act are in terms similar to Sections 139(2) and 148 of the I.T. Act. There I have held (p. 85) :

"I have carefully considered the contentions raised by the learned counsel for the parties and perused the record. In my view the orders of the Commissioner are not sustainable in law. Admittedly, no notices u/s 139(2) or Section 148 of the Act had been issued to the petitioners when they filed the returns and made disclosures of their income. They had on their own accord submitted these returns and made the disclosures. Nobody had asked, much less coerced, them to do so because it was purely a volitional act on the part of the petitioners. The mere fact that the petitioners were assessees of Income Tax or advance tax demand had been made or that the ITO knew that the petitioners had earned taxable income will not be sufficient to hold that the returns filed and the disclosures made by the petitioners were not voluntary. The knowledge with the ITO cannot act as a constraint on the petitioners. If this interpretation is accepted then no person, who is already an assessee, can avail of the concession provided by Section 273A. The setting and the context of Section 273A of the Act do not support the interpretation put on the word ''voluntary'' by the Commissioner. The Legislature wanted to encourage voluntary disclosures of income. For this purpose, they provided an inducement in the form of reduction or waiver of penalty. This provision has to be liberally construed. The Commissioner has put a very narrow construction, which is not supported even by the dictionary meaning of the word ''voluntary''."

5. The above ratio fully applies to this case. Consequently, I allow this writ petition, set aside the order dated 15th January, 1980, annex. P-2, passed by the Commissioner and remand the case to him for a fresh decision in accordance with law and the observations made in this judgment.

