

(2002) 02 BOM CK 0007

In the Bombay High Court

Case No : Writ Petition No. 3435 of 1986 8 February 2002

Maneklal D. Shah

APPELLANT

Vs

P.K. Gupta

RESPONDENT

Date of Decision : 08-02-2002

Acts Referred:

Income Tax Act, 1961 — Section 273A
Wealth Tax Act, 1957 — Section 18B

Citation : (2003) 130 TAXMAN 469

Hon'ble Judges : V.C. Daga, J; J.P. Devadhar, J

Bench : Full Bench

Advocate : F.V. Irani and L. M. Shah, for the Petitioner and R.V. Desai and P.S. Jetly, for the Appellant;

Judgement

V.C. Daga, J.

This petition is directed against the order dated 4-9-1986 (Exhibit-E) passed by the Commissioner of Income Tax, Central-II, Mumbai u/s 273A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), read with section 18B of the Wealth Tax Act, 1957 being arbitrary, perverse and self-contradictory.

The Facts

2. The facts necessary to appreciate the rival contentions may be stated briefly are as under :

The petitioner is a karta of Maneklal D. Shah, Hindu undivided family (HUF) which is carrying on proprietary business of dealing in Polyester Yarn in the name of M/s. Amsons Export Corporation. Sometime in the month of November, 1978, search operation was carried out in the office as well as residential premises of the assessee and its karta Mr. M.D. Shah. The petitioner contended that nothing incriminating was found during the search operation carried out u/s 132 of the Act.

3. The petitioner submitted that at no point of time any material much less legally acceptable material was brought on record by the Tax Authorities/Tax department to establish that the assessee had earned any income over and above those shown in the return prior to settlement. However, the petitioner claimed to have moved an application for settlement on 20-1-1981 u/s 273A of the Act in good faith to avoid tax litigation and sought settlement of its assessment for accounting years 1972-73 to 1979-80. Accordingly, petitioner filed statement wherein it offered for assessment of a sum of Rs. 3,74,756 spread over the period from the assessment years 1973-74 to 1979-80 and prayed for permission to capitalise the income disclosed and that the assessment be completed on the above agreed basis. This application was moved by the petitioner without prejudice to its legal rights and remedies. It was specifically pleaded that the case settlement fell through no adverse inference should be drawn while making regular assessments for any of the assessment years and it would be made on its own merits. The petitioner in the said application had also sought waiver of penalty and/or interest leviable in respect of such income.

4. The petitioner, on 21-7-1981, moved another application u/s 18B of the Wealth Tax Act for waiver of penalty leviable under the said Act. A similar plea, similar to the plea raised in the application referred to hereinabove, filed u/s 273A of the Act, was also made by the petitioner in this application.

5. The petitioner submitted that pursuant to above two applications extensive discussions had taken place between the petitioner and the first respondent on the amount of income. Ultimately, in the month of July, 1981, settlement reached between the petitioner and the department. In the settlement, it was settled that an amount of Rs. 15.50 lakhs be added to the income of the petitioner for the assessment years 1972-73 to 1979-80, the backdrop thereof is not necessary for the decision of this petition.

6. Being aggrieved by the order dated 4-9-1986 (Exhibit-E), the petitioner invoked writ jurisdiction of this court under article 226 of the Constitution of India, challenging the said order on various grounds set out in the petition. No affidavit-in-opposition is filed on record in spite of lapse of more than 16 years from the date of presentation of this petition.

Findings

7. The learned counsel for the petitioner took us through various grounds raised in the petition and tried to substantiate the same by various precedents. Since this case is being remanded back to the Commissioner for consideration afresh, we do not propose to dwell on various contentions raised in the petition and keep all the said questions open for reconsideration by the above authority.

8. It is brought to our notice that while considering the waiver of the penalty u/s 273A of the Act, the Commissioner has not taken into consideration, the agreed understanding/settlement, arrived by and between the parties. The fact that there was settlement between the parties is not in dispute. Xerox copy of

Settlement dated 24-7-1981 is placed on record along with affidavit dated 8-2-2002. In the writ petition filed in the year 1986, specific allegations and positive statement in this behalf were made by the petitioner. No counter-affidavit, to controvert the allegations made in the petition, has been filed, nor any material is placed on record to deny the said settlement dated 24-7-1981. We specifically asked the learned counsel for the respondent whether they desire to file any reply to controvert or deny the existence of such settlement. The answer was in negative. In this view of the matter, the settlement between the parties stands proved. The same can very well be road in support of the contentions raised by the petitioner. The said settlement has been signed by three officers of the Income Tax department, namely, Income Tax Officer, Central Circle XIX, Inspecting Assistant Commissioner, Central Range-IV, Commissioner, Central II.

9. As assured in the settlement, it was obligatory on the part of the first respondent to move the Board for their approval but it appears that no steps were taken in this behalf or at any rate no material is produced before us to show that any approach in this behalf was made to the Board. No explanation for this inaction on the part of the first respondent is forthcoming. Thus, in spite of the settlement arrived at the petition u/s 273A has been rejected.

10. The second aspect of the submission is based on the impugned order passed on the application u/s 18B of the Wealth Tax Act. A perusal of the said order would show that for some of the years, penalty has been sustained for 18% and for other years penalty has not been waived. No reasons are to be found in the order as to why penalty for some years sustained totally and for some years reduced to 18%, while exercising power under the Act. Giving reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review. Reasoned decision is not only for the purpose of showing that the citizen is receiving justice, but also a valid discipline for the authority itself. Therefore, stating of reasons is one of the essentials of justice. The appellate authority is enjoined and incumbent upon it to appreciate the evidence : consider the reasoning of the primary authority and assign its own reasons as to why it disagrees with the reasons and findings of the primary authority. Unless adequate reasons are given, merely because it is an appellate authority, it cannot brush aside the reasoning or findings recorded by the primary authority. The order should be self-explanatory and should not keep higher court guessing for reasons. The reasons provide live link between the conclusion and evidence. That vital link is the safeguard against arbitrariness. It gives opportunity to the higher court to see whether or not, the subordinate court of authority or the Tribunal considered the relevant material. Since no reasons are found in the order, we are left with no other alternative but to quash and set aside the impugned order to the extent, it is challenged and to remit the proceedings back to the Commissioner of Income Tax, Central-II, Mumbai, for hearing and consideration afresh on merits.

11. In this view of the matter, rule is made absolute in terms of prayer (a) of the petition and the matter is remanded to Commissioner for fresh decision in accordance with law. in the facts of this case, there will be no order as to costs.

Order accordingly.