(1983) 01 AHC CK 0029

In the Allahabad High Court

Case No : Writ Petition No. 124 of 1979

Manohar Lal Agarwal APPELLANT

Vs

Central Board of Direct Taxes and Others RESPONDENT

Date of Decision : 06-01-1983

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 271(1), 271(4A)
Wealth Tax Act, 1957 — Section 18, 18(2A), 18B(1)

Citation : (1983) 36 CTR 73 : (1984) 145 ITR 101 : (1983) 15 TAXMAN 161

Hon'ble Judges : V.K. Mehrotra, J;R.M. Sahai, J

Bench : Division Bench

Advocate : R.V. Gupta, for the Appellant; Standing counsel, for the Respondent

Final Decision : Allowed

Judgement

R.M. Sahai, J.—By way of this petition the petitioner seeks quashing of the order dated 4th December, 1978, passed by the CBDT declining to interfere with the order dated 24th March, 1977, passed by the CWT, Kanpur, rejecting the waiver application filed by the petitioner u/s 18B of the W.T. Act, 1957. Two other orders dated March 20, 1975, and October 4, 1977, passed by the WTO levying penalty and the order of CWT rejecting another waiver application respectively have also been challenged.

2. Before examining the correctness of these orders we may notice facts in brief. In 1972, instructions appear to have been issued by the CBDT to the Commissioners of Income Tax and Wealth-tax to persuade assessees to make voluntary disclosures in what has been described in the petition as mass communication programme. On July 27, 1972, the petitioner moved an application before CIT disclosing voluntarily a sum of Rs. 50,000 earned in stray activities in the iron trade which was not shown in the returns for the years 1970-71 and 1971-72. The assessee prayed for the acceptance of the amounts of Rs. 20,000 in 1970-71, Rs. 15,000 in 1971-72 and 1972-73, respectively. It

was also prayed that no penalty or interest may be levied on it as the disclosure was made u/s 271(4A) of the I.T. Act, in good faith. It was further prayed that as a necessary corollary "I want to disclose the above amount less tax thereon in my wealth-tax return for the above years, u/s 18(2A) of the W.T. Act, 1957". Another application was moved on August 9, 1972, that as a result of the disclosure made on July 27, 1978, "I have to introduce capital of likewise amount to my personal account and thus my personal wealth will be affected". It was prayed that penalty under the W.T. Act be waived and disclosure of the mentioned amount be permitted under the W.T. Act. These disclosures were accepted but proceedings for penalty were initiated u/s 271(1)(c) of the I.T. Act for the years in dispute but they were waived by the Commissioner. These orders became final. Under the W.T. Act, also proceedings for imposing penalty u/s 18 were initiated and the WTO imposed penalties for all the years u/s 18(1)(c) of the Act. Against these orders dated March 28, 1975, the petitioner approached the CWT u/s 18B and prayed for waiver of the penalties. On March 24, 1977, the Commissioner found that all the conditions for the waiver for 1970-71 were satisfied. But for 1971-72, it was held that although the disclosure made by the assessee was accepted by the WTO, yet it could not be said to be full or complete. The reason for arriving at this finding is stated thus:

"The assessee has only disclosed the income offered for assessment this year as his additional wealth, whereas the income offered for the earlier year also should have been disclosed as a part of wealth for this year as the amount remained intact with him in cash till the date of disclosure subsequently made. The additional wealth to be disclosed for this year should have been Rs. 35,000 and not Rs. 15,000 only."

3. After this order the assessee moved another application for the waiver of penalty for 1972-73, and along with it claimed waiver for 1971- 72. as well. The prayer in respect of 1971-72 was treated as seeking a rectification but as the Commissioner was not satisfied that the view taken by him was erroneous he rejected the application for 1971-72. For 1972- 73. substantial relief was granted. It was held that the default was technical, and, therefore, a token penalty should have been levied. Petitioner then approached the CBDT for the waiver of penalty for 1971-72. The Board also expressed its inability to interfere with the order. This petition is confined to the levy of penalty for 1971-72. "Section 18B(1) of the W.T. Act runs 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

(ii) reduce or waive the amount of penalty imposed or imposable on a person under Clause (iii) of Sub-section (1) of Section 18,

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

(b) in the case referred to in Clause (ii), has, prior to the detection by the Wealth-tax Officer, of the concealment of particulars of assets or of the inaccuracy of particulars furnished in respect of any asset or debt in respect of which the penalty is imposable, voluntarily and in good faith made full and true disclosure of such particulars,

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."

4. A perusal of the section indicates that the Commissioner is empowered to waive the penalty if he is satisfied that the disclosure was voluntary, in good faith and complete. The Commissioner has not found that the disclosure was not voluntary nor there is any finding that it was not made in good faith. The only reason for rejecting the waiver application was that there was inaccuracy in disclosure by the petitioner. From what has been narrated above it is apparent that the inaccuracy arose not because the assessee concealed particulars of his assets. It arose because the voluntary disclosure of undisclosed income was spread over three years. Even the WTO did not notice that the disclosure in 1971-72 should have been Rs. 35,000. For a similar default of the WTO, the Commissioner reduced the penalty for 1972-73. We do not find any justification for levying a penalty for such technical omission, particularly when the disclosure was voluntary and the petitioner co-operated in the determination of net wealth.

5. Learned counsel for the Commissioner raised a preliminary objection that this petition was barred by time. According to him, the order having been passed in 1977 and the petition having been filed in 1979, the petitioner should be held to be guilty of laches. We are, however, not satisfied that the submission has any merit as the petitioner after the rejection of the application moved another application which was treated as an application for rectification by the Commissioner, against which he (the assessee) approached the CBDT. It may be, if the petitioner would have been better advised, he could have approached this court in 1977 but merely because he was advised to approach the Commissioner

again and then the CBDT, we do not think his petition can be dismissed on this ground.

6. In the result, the petition is allowed. The order passed by the Commissioner rejecting the waiver application for 1972-73 is quashed. He shall decide the application afresh in accordant with law. The petitioner shall be entitled to costs.

