(1982) 06 GAU CK 0012

In the Gauhati High Court

Case No : Civil Rule No''s. 230 to 232 of 1975

Mohammed Ali APPELLANT

Vs

Commissioner of Wealth-tax and Others RESPONDENT

Date of Decision : 21-06-1982

Acts Referred:
Wealth Tax Act, 1957 — Section 13(2), 14(2), 18(1), 18(2), 18(2A)

Citation : (1982) 31 CTR 141 : (1983) 141 ITR 690

Hon'ble Judges : D. Pathak, Acting C.J.;T.C. Das, J

Bench : Division Bench

Advocate : J.P. Bhattacharjee and B.P. Saraf, for the Appellant; G.K. Talukdar and D.K. Talukdar, for the Respondent

Judgement

Pathak, Actg. C.J.

1. These applications under article 226 of the Constitution of India are directed against the order passed by the Commissioner of Wealth-tax, North Eastern Region, Shillong, passed u/s 18(2A) of the W.T. Act, 1957 (hereinafter referred to as "the Act").

2. The assessee in the present cases submitted returns under the W.T. Act, for the assessment years 1969-70 to 1971-72, voluntarily before the WTO, B-Ward, Gauhati. The returns were, however, submitted beyond the prescribed time. The WTO issued notice u/s 18(2) of the W.T. Act, directing the petitioner to show cause as to why an order imposing penalty for late submission of returns should not be made u/s 18(1)(a) of the Act.

3. On receipt of the notice, the assessee moved petitions before the Commissioner u/s 18(2A) for waiver of the penalty imposable u/s 18(1)(a) on the ground that the petitioner voluntarily and in good faith made a full disclosure of his net wealth without any notice u/s 14(2) of the Act and that it was a fit case for a waiver of the penalty.

4. The Commissioner of Wealth-tax found that the assessee submitted the

returns voluntarily and made disclosure in good faith. It was further found that the assessee extended all co-operation in the enquiry regarding the assessment and in the completion of the assessment. On the basis of the aforesaid findings the Commissioner came to the conclusion that the assessee was entitled to relief u/s 18(2A) of the W.T. Act. The Commissioner of Wealth-tax accordingly reduced the penalty to 25% of the minimum imposable under the Act.

5. By the present petitions the assessee has challenged the said order of the Commissioner of Wealth-tax on the ground that all the conditions laid down in Section 18(2A) of the Act having been fulfilled, the Commissioner of Wealth-tax acted illegally in not waiving the entire amount of penalty. It is contended that the failure of the Commissioner to waive the entire penalty amounted to an arbitrary exercise of the power and a failure to exercise the duty cast u/s 18(2A).

6. We have perused the order of the Commissioner. The Commissioner has given no reasons as to why he has not waived the penalty in full but simply reduced it to 25%.

7. The power of the Commissioner to waive or reduce the penalty u/s 18(2A) is a quasi-judicial power. It is now well settled that where an authority makes an order in the exercise of quasi-judicial function, it must record its reasons in support of its order. Every quasi-judicial order must be supported by reasons. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process. This rule must be observed in its proper spirit and a mere pretence of compliance with it would not satisfy the requirement of law.

8. In the instant cases, the Commissioner was fully satisfied that all the conditions precedent for an exercise of the power under s, 18(2A) were fulfilled. In spite of that he has not waived the penalty but simply reduced it by 25 per cent. He has given no reason whatsoever for not waiving the penalty in full.

9. Under such circumstances, the order of the Commissioner cannot be sustained.

10. Our above reasons are also fortified by a decision of the Division Bench of this court in Civil Rules Nos. 450-553 of 1975 BAIDYA NATH SARMA AND OTHERS Vs. COMMISSIONER OF WEALTH-TAX, ASSAM AND OTHERS., and also a Single Bench decision of this court in Civil Rule Nos. 356-361 of 1975 Sardar Kartar Singh Vs. Commissioner of Wealth-tax and Others, Accordingly, the impugned order passed by the Commissioner of Wealth-tax is set aside. The Commissioner of Wealth-tax is directed to pass fresh orders in accordance with law in the light of the observations made above.

11. In the result the petitions are allowed and the rules are made absolute. But we pass no order as to costs.