
(1991) 03 CAL CK 0028

In the Calcutta High Court

Case No : Matter (Wealth-tax) No. 5533 of 1988

Mrs. Sheila Davar

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 12-03-1991

Acts Referred:

Wealth Tax Act, 1957 — Section 14(1), 14(2), 18(1), 18(2A), 18(2B)

Citation : (1992) 198 ITR 469 : (1993) 68 TAXMAN 403

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Advocate : Sukumar Bhattacharjee, for the Appellant;R.C. Prasad, for the Respondent

Judgement

Ajit K. Sengupta, J.—In this reference u/s 27(1) of the Wealth-tax Act, 1957, for the assessment years 1969-70 to 1973-74, the following question has been referred to this court :

" Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the penalty orders made by the Wealth-tax Officer did not exist and the appeals were not maintainable ?"

2. To bring out the real controversy, we reframe the question as follows :

" Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the appeals were not maintainable ? "

3. The facts leading to this case are that, for the assessment years under consideration, the assessee filed her wealth-tax returns beyond the stipulated dates. As such, penalty proceedings u/s 18(I)(a) of the Act were initiated against her. In spite of service of notice, no explanation was filed by the assessee. So, the Wealth-tax Officer imposed penalty at the rate of 1/2% of the net wealth for each completed month of default. On March 25, 1985, the assessee filed separate petitions u/s 18B of the Act for reduction/waiver of the penalties imposed. On the next date i.e. March 26, 1985, she filed separate appeals

against the penalty orders before the Appellate Assistant Commissioner. By an order dated October 18, 1985, the Commissioner of Income Tax rejected the petitions u/s 18B for all these years. On January 10, 1986, the Commissioner of Income Tax rectified the said order u/s 35 of the Act and reduced the penalty u/s 18(l)(a) to the extent of 50% of what is leviable or levied for each of these assessment years. The Appellate Assistant Commissioner heard the appeals on September 2, 1986 and August 27, 1987, and disposed of the appeals for the assessment years 1967-68, 1968-69, 1969-70 and 1974-75 by an order dated April 30, 1987, and the appeals relating to the assessment years 1970-71 to 1973-74 by an order dated August 31, 1987. She cancelled the penalty for the assessment year 1974-75, but upheld the penalty for the remaining assessment years. By his order dated January 10, 1986, the Commissioner of Wealth-tax reduced the penalty u/s 18(l)(a) to the extent of 50% of what is leviable or levied for each of the assessment years 1967-68 to 1974-75. Being aggrieved, the assessee preferred separate appeals against the orders of the Appellate Assistant Commissioner before the Tribunal.

4. During the hearing of the appeals before the Tribunal, it was contended on behalf of the Department that " after the order dated January 10, 1986, was passed by the Commissioner of Wealth-tax reducing the penalty, the original penalty order made by the Wealth-tax Officer did not survive and as such, the present appeal is no longer maintainable ". This contention was opposed on behalf of the assessee. On consideration of the materials on record, the Tribunal came to the finding that " the present appeal is not maintainable. After the order for reduction dated January 10, 1986, was passed by the Commissioner of Wealth-tax, the penalty order as passed by the Wealth-tax Officer no longer existed and as such, the Appellate Assistant Commissioner could not either confirm or cancel it. Similarly, we also cannot confirm or cancel the penalty". In this view of the matter, the Tribunal dismissed the appeals as not maintainable.

5. At the hearing, Mr. Bhattacharjee, learned advocate for the assessee, relying on several decisions of the Madras, Kerala and Madhya Pradesh High Courts contended that the Tribunal fell into an error in holding that no appeal lay against the order passed by the Wealth-tax Officer or the Appellate Assistant Commissioner when an application was made u/s 18B for reduction or waiver of the penalty imposed or imposable u/s 18(l)(a) of the Act. In this case, as we have indicated, the first appellate authority dealt with the appeals in two orders passed on September 2, 1986, for the assessment year 1969-70 and on August 27, 1987, for the other four years. The Appellate Assistant Commissioner confirmed the imposition of penalty for all the years. The assessee challenged in those appeals that no penalty should have been imposed, while the applications u/s 18B for all the assessment years were pending before the Commissioner of Wealth-tax. The Commissioner of Wealth-tax passed orders on January 10, 1986, whereby he reduced the amount of penalty for each of the assessment years by 50%.

6. Mr. Bhattacharjee has submitted that an appeal lies against the order of the Wealth-tax Officer inasmuch as the opening words of Section 18B are "notwithstanding anything contained in this Act". According to him, the Commissioner of Wealth-tax could only consider the question of reduction or waiver of penalty but whether penalty was at all imposable or not and whether there was any reasonable ground for delay in filing the return or not were not and could not have been the issue before the Commissioner and, accordingly, the Commissioner could only decide the question of quantum and not as to the liability of the assessee. Whether penalty was imposable at all or not could be decided only by the appellate authority before whom the appeals were pending and the appellate authority could decide the issue notwithstanding the making of an application by the assessee u/s 18B for reduction or waiver of penalty.

7. He relied on several decisions ; the first decision is of the Madras High Court in Commissioner of Wealth Tax Vs. M.K.S. Vanavarayar, . In that case also, the question arose whether an appeal lies against the order passed by the Wealth-tax Officer in pursuance of the order of the Commissioner u/s 18(2A) of the Act. There it was held that, as the appeals to the Appellate Assistant Commissioner were against the orders of the Wealth-tax Officer, though passed in pursuance of the order of the Commissioner u/s 18(2A), the appeals were competent. Even though the quantum of penalty levied was in terms of the decision of the Commissioner, the Wealth-tax Officer sought to exercise his powers only u/s 18(1) (a) for levying the penalty and hence his orders had independent existence and hence the appeals against these orders were competent.

8. He then relied on the decision of the Karnataka High Court in Commissioner of Wealth Tax, Karnataka-II Vs. B. Kempanna, It was held there that the power conferred on the Commissioner u/s 18(2A) of the Wealth-tax Act, 1957, is only to reduce or waive the amount of minimum penalty imposable on a person under Clause (i) or (iii) of Sub-section (1) of Section 18(2A). The power could be exercised by the Commissioner notwithstanding the default and there being no reasonable cause for the failure to furnish the return within the time prescribed. The question of the existence of reasonable cause is not within the ambit of Section 18(2A); that inheres in the Wealth-tax Officer. The opening words of the Section also indicate that it is only notwithstanding anything contained in Clause (i) or Clause (iii) of Sub-section (1) and notwithstanding any other provision in the Act that the Commissioner could act. The provision does not override or obliterate the jurisdiction conferred on the other authorities under the Act.

9. u/s 18(2B), what is made final is the order made u/s 18(2A), i.e., in regard to the quantum of minimum penalty that is directed to be waived or reduced and nothing more. There is no provision that once the assessee filed an application u/s 18(2A) before the Commissioner, he waives his other rights. The approach to the Commissioner can be without any such waiver. In contrast, u/s 25, if the assessee were to approach the Commissioner in revision, he could do so only if the order challenged is not the subject-matter of an appeal before the Appellate

Assistant Commissioner or the Appellate Tribunal and the assessee should have waived his right of appeal. There is no such restriction imposed while invoking the provisions of Section 18(2A). This is because the ambit and scope of Section 18(2A) is quite different and in no way affects the jurisdiction of the Wealth-tax Officer to decide about the question arising u/s 18(l)(a) of the Act as to the existence or non-existence of a reasonable cause. The only effect the order of the Commissioner would have is that the minimum penalty to be levied by the Wealth-tax Officer would be in accordance with what is determined by the Commissioner if the minimum penalty is only reduced and not waived, and if it is waived, the Wealth-tax Officer is also bound not to levy any penalty. Apart from this, there is no other effect consequent on the order of the Commissioner u/s 18(2A) so far as the jurisdiction of the Wealth-tax Officer is concerned in the matter of imposition of penalty. Consequently, the right of appeal available to the assessee against the order of the Wealth-tax Officer imposing penalty u/s 18(l)(a) (even subject to the reduction as directed by the Commissioner) is not lost. Therefore, when an order has been passed u/s 18(2A) by the Commissioner, the order of the Wealth-tax Officer imposing penalty u/s 18(l)(a) does not get effaced and an appeal could be filed against it to the appellate authorities.

10. The next decision he cited is of the Madhya Pradesh High Court in Commissioner of Wealth-tax Vs. Smt. Gulab Bai Mittal, . In this case, the Madhya Pradesh High Court followed the judgment of the Karnataka High Court in the case of Commissioner of Wealth Tax, Karnataka-II Vs. B. Kempanna, , holding, inter alia, that the right of appeal available to an assessee against the order of the Wealth-tax Officer imposing penalty u/s 18(l)(a) of the Act is not lost when an application is made u/s 18B before the Commissioner for waiver or reduction of the penalty imposable or imposed.

11. Mr. Bhattacharjee, in his usual fairness, has also drawn our attention to the decision of a Division Bench of this court in the case of Smt. Ichhabai Panchal Vs. Commissioner of Wealth Tax, . In that case, a Division Bench of this court dissented from the view taken by the Karnataka High Court in the case of Commissioner of Wealth Tax, Karnataka-II Vs. B. Kempanna, . Dealing with the said decision, the Division Bench of this court observed as follows (at page 242) :

"Reliance, however, was placed on the observations of the Karnataka High Court in the case of Commissioner of Wealth Tax, Karnataka-II Vs. B. Kempanna, , where it was held, inter alia, that the power conferred on the Commissioner u/s 18(2A) of the Wealth-tax Act, 1957, was only to reduce or waive the amount of minimum penalty imposable on a person under Clause (i) or Clause (iii) of Sub-section (1) of Section 18. The power could be exercised by the Commissioner notwithstanding the default and there being no reasonable cause for the failure to furnish the return within the time prescribed. The question, the court observed, of the existence of a reasonable cause was not within the ambit of Section 18(2A); that inheres in the Wealth-tax Officer. The opening words of the Section also indicated that it was only notwithstanding anything contained in

Clause (i) or Clause (iii) of Sub-section (1) of Section 18 and notwithstanding any other provision in the Act that the Commissioner could act. The provision did not override or obliterate the jurisdiction conferred on the other authorities under the Act. The court further observed that, u/s 18(2B), what was made final was the order made u/s 18(2A), i.e., in regard to the quantum of minimum penalty that was directed to be waived or reduced and nothing more. There was no provision that once the assessee filed an application u/s 18(2A) before the Commissioner he waived his other rights. With great respect, we are, however, unable to agree with this conclusion. The expression "notwithstanding" makes it quite clear, in our opinion, that only on the fulfilment of the conditions where penalty was imposable, i.e., under Clause (a), (b) or (c) of Sub-section (1) of Section 18, that the power of the Commissioner becomes exercisable. If on that basis the Commissioner exercises his power and an order has been passed, then a person cannot be aggrieved by the exercise of that power. In that view of the matter, in view of the language used in Section 18(2B) read with Section 18 (sic), in our opinion, these two powers cannot co-exist in the facts and circumstances of the case. "

12. Further, the decision of the Madras High Court in Commissioner of Wealth Tax Vs. M.K.S. Vanavarayar, was also distinguished therein in the following manner (at page 240) ;

" Our attention was drawn to a decision of the Madras High Court in the case of Commissioner of Wealth Tax Vs. M.K.S. Vanavarayar, , where the Division Bench of the Madras High Court held that as the appeals to the Appellate Assistant Commissioner were against the order of the Wealth-tax Officer passed in pursuance of the order of the Commissioner u/s 18(2A), the appeals to the Appellate Assistant Commissioner were competent and accordingly, the Tribunal was in error in holding that there was no order at all of the Commissioner u/s 18(2A) of the Act. There, however, the court observed at page 189 of the report that if there was no valid order of the Commissioner, the next question that would arise was, what was the status of the order of the Wealth-tax Officer dated September 28, 1971. So, in such a case, an appeal would lie. So the observations that were made in that decision would not be really applicable in the facts and circumstances of this case because those observations were on the basis that there was no order of the Commissioner u/s 18(2A). But, in the instant case, there is an order of the Commissioner u/s 18(2A) and that is not in dispute here."

13. At this stage, we must observe that Section 18B was inserted with effect from October 1, 1975, by the Taxation Laws (Amendment) Act, 1975, replacing Sections 18(2A) and 18(2B). The provisions of these two Sections were consolidated u/s 18B. The decisions cited from the Bar mainly deal with the provisions of Sections 18(2A) and 18(2B). Having regard to the fact that the provisions of Sections 18(2A) and 18(2B) are in pari materia with the provisions of Section 18B, the decisions relied on by the parties will also have relevance in

the context of the application of Section 18B.

14. In our view, so far as this court is concerned, the Bench decision in Smt. Ichhabai Panchal Vs. Commissioner of Wealth Tax, , binds us, where it has been held that an appeal would not be competent against an order passed u/s 18(2A), or any order passed in pursuance thereof. In our view, an assessee can make an application for waiver or reduction of penalty only when the assessee satisfies the conditions mentioned in Section 18B. It lays down that an assessee who has failed without reasonable cause to furnish the return of net wealth as required u/s 14(1) and who has filed the return of net wealth before a notice u/s 14(2) was issued, and voluntarily and in good faith, makes a full and true disclosure of his net wealth, can only make an application for reduction of penalty imposed or imposable upon him for such default. The assessee admits his default but asks for reduction or waiver of penalty. Therefore, the quantum of penalty is the only question pertinent. No further question as to whether the assessee made any default, nor whether there was any reasonable cause for delay in filing the return or not, in other words, no further question as to whether penalty was imposable or not u/s 18(l)(a) would arise. The Commissioner as well as the Wealth tax Officer would only be concerned with the quantum of penalty. Whether the Commissioner should have waived the penalty if all the conditions of Section 18B were satisfied is a different question altogether. We are of the view that no appeal lies against any order passed, pursuant to the order made u/s 18B of the Act.

15. For the foregoing reasons, we answer the reframed question in the affirmative and in favour of the Revenue.

16. There will be no order as to costs.

Shyamal Kumar Sen, J.

17. I agree.