

(1979) 11 KAR CK 0011

In the Karnataka High Court

Case No : Writ Petition No's. 1282 and 1298 to 1302 of 1975

Radhakrishna

APPELLANT

Vs

Commissioner of Wealth Tax, Karnataka-II and Another

RESPONDENT

Date of Decision : 13-11-1979

Acts Referred:

Income Tax Act, 1961 — Section 273 A

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

Citation : (1980) 121 ITR 722

Hon'ble Judges : M.K. Srinivas Iyengar, J

Bench : Single Bench

Advocate : S.P. Bhat, for the Appellant; S.R. Rajasekharamurthy, for the Respondent

Judgement

Srinivasa Iyengar, J.—In these petitions, the petitioner is challenging the order made by the CWT, Karnataka-II, Bangalore, on September 6, 1974, rejecting the application filed by the petitioner under s. 18(2A) of the Wealth-tax Act, 1957 (to be hereinafter referred as "the Act"), for waiver of penalty imposable under s. 18(1)(a) of the Act, in relation to the assessment years 1966-67 to 1971-72.

2. The return for the assessment year 1966-67 was filed on April 6, 1972, and the assessment order was made on April 12, 1972. The returns for the other assessment years had been filed on or about March 22, 1972, and the assessments were completed on March 28, 1972. The returns were due to be filed by 30th of June of 1966 and of the subsequent years, and obviously the returns had been filed belated. The WTO, (Assessment-7), Circle-1, Bangalore, had issued notices to show cause why penalty should not be imposed under s. 18(1)(a) of the Act. The assessee had sent a reply thereto. He also filed an application on August 14, 1972, before the CWT, under s. 18(2A) of the Act. It transpires that the WTO imposed penalties by his orders made on March 14, 1974. The order of the CWT is subsequent thereto. The CWT was of the opinion that good faith had not been established and accordingly rejected the prayer for

waiver of penalty for all the six years.

3. The Commissioner came to this conclusion, as is clear from his order, on the basis that in regard to the assessment to Income Tax, the Income Tax returns had not been accepted, but estimates of his income had to be made on the basis of the properties acquired or investments made. In his petition before the CWT, the assessee had pleaded that he had not filed the returns regarding the wealth-tax as he was under the impression that the properties had to be valued on the basis of the cost incurred but as he was advised, round about the time he filed his returns that the market value of the properties was the basis, on which the liability to wealth-tax would depend, he had got the properties valued and filed the returns. The CWT did not accept this as correct on the ground that the assessee had put his own interpretation on the provisions of the Act. The petitioner had also contended that he had fully and truly and in good faith disclosed his wealth and had co-operated in finalising the assessment and also had paid the tax. The only ground for the rejection of the application was that the CWT was not satisfied about the good faith of the petitioner.

4. It is contended by Sri S. P. Bhat, learned counsel appearing for the petitioner, that the conclusion reached by the CWT is untenable, and on the facts and circumstances of the case, it must be held that the petitioner had voluntarily and in good faith made full and true disclosure of his net wealth. His argument was that the requirement of good faith as stipulated in s. 18(2A) of the Act is that good faith in making a full and true disclosure of the net wealth at the time of the disclosure, had to be ascertained, and a contrary finding cannot be arrived at merely because at some time past there was some default or want of good faith on the part of the petitioner. He placed reliance upon the observations made in the cases of *S. Sannaiah Vs. Commissioner of Income Tax, Mysore and Another*, , *Shankara Apaya Swami Vs. Wealth Tax Officer, Belgaum and Another*, , *Hasan Ahmad Khan Vs. Commissioner of Wealth Tax and Another*, and *JAKHODIA BROTHERS Vs. COMMISSIONER OF Income Tax AND ANOTHER.*, This court in *Sannaiah's* case while considering the provisions of s. 271(4A) of the I.T. Act, 1961, observed that the expression "voluntarily and in good faith" occurring in that section refers to the "full disclosure of the income" of the assessee. In *Shankara Apaya Swami Vs. Wealth Tax Officer, Belgaum and Another*, , the CWT had held that though the returns were voluntary, they were not in good faith. This court held that the view taken by the Commissioner was not warranted, and observed thus (p. 652) :

"The expression "voluntarily" means "without compulsion" and "good faith" means "with due care and caution". Hence, if the return filed by the assessee does not show that he has deliberately furnished wrong particulars about his wealth or deliberately omitted to include all the items of taxable wealth then he should be considered as having satisfied the above condition."

5. The other two cases above referred to are decisions of the Allahabad High Court. In *Hasan Ahmad Khan Vs. Commissioner of Wealth Tax and Another*, the

High Court of Allahabad, while considering the scope of s. 18(2A) of the Act held that what the Commissioner has to be satisfied about was that while disclosing his net wealth fully, the assessee had acted in good faith. What had happened in that case was that the wealth of the assessee had been assessed at a higher value than what had been disclosed by the assessee. The contention on behalf of the department in that case was that as the full disclosure of the net wealth had not been made, it could not be said that the return had been filed in good faith. This contention was not accepted by the Allahabad High Court, and it was observed that the expression "in good faith made full disclosure of his net wealth" merely means that the assessee should have honestly described all his assets and liabilities which go to constitute his net wealth, along with their estimated value, and the mere fact that the estimated value given by the assessee was ultimately not accepted by the assessing authority would not result in the assessee being treated as having acted in bad faith. In *JAKHODIA BROTHERS Vs. COMMISSIONER OF Income Tax AND ANOTHER.*, , the provision for consideration was s. 273A of the I.T. Act, 1961. In that case, the CIT had come to the conclusion that the disclosure made by the petitioner was not in good faith. The Allahabad High Court held that this was wrong and observed thus (p. 67) :

"The good faith which is required to be established for invoking the aforesaid provision is that in making the disclosure the petitioner must have acted honestly. In other words, he should not have been guilty of having acted dishonestly in making the disclosure. The fact that before making the disclosure his conduct had been dishonest or that he did not act in good faith is irrelevant for the purposes of applying these provisions. The disclosure is made by an assessee under this section for the purposes of getting the benefits provided therein. The fact that in the past the assessee did not make a full disclosure of his income and or concealed the same is immaterial."

6. In the instant case, the reasoning of the CWT is that because the Income Tax assessment had been made on the basis of estimates, the disclosure of net wealth in the returns, could not be said to be in good faith. The mere fact that the assessment of Income Tax, in some earlier years, had been made on the basis of estimates, does not lead to a conclusion that the disclosure of wealth in the instant case was not in good faith. The good faith of the petitioner that is relevant is at the time of disclosure of the net wealth in the returns. Apart from the returns having been filed belatedly, there is no oblique motive suggested on the part of the petitioner. The mere fact of the returns having been filed late, would not, by itself, amount to want of good faith. In the instant case, it is seen that the wealth, as had been disclosed by the petitioner, had been accepted by the WTO and the assessment has been made accordingly. The expression "good faith" is not defined in the Act, but it is defined in s. 3(22) of the General Clauses Act, 1897, as follows :

"a thing shall be deemed to be done in "good faith" where it is in fact done

honestly, whether it is done negligently or not."

7. The requirement of s. 18(2A) of the Act is that the full and true disclosure of the net wealth must be in good faith. If it has been done honestly, it should be considered as having been done in good faith whether or not it has been done negligently, i.e., even in a case where a disclosure has been made negligently, it can still be considered as having been done in good faith if in fact it has been done honestly. From the facts of the instant case, it is clear that no want of good faith can be attributed in the disclosure of the net wealth, as there has been no deficiency in the particulars of the wealth or their value furnished in the returns. It is clear that the CWT came to the conclusion on an irrelevant factor, viz., of some suspicion in the matter of return that had been filed for the purpose of Income Tax in the earlier years, and accordingly the order made by the CWT is vitiated.

8. Accordingly, the order made by the CWT, Karnataka-II, Bangalore, on September 6, 1974, rejecting the application filed by the petitioner under s. 18(2A) of the Act, is quashed, and it is directed that he shall consider the application of the petitioner afresh in the light of the observations made above and in accordance with law, and dispose of the same. No costs.