

(1981) 07 GAU CK 0008
In the Gauhati High Court
Case No : Civil Rule No's. 353-355 of 1975

Sardar Joginder Singh

APPELLANT

Vs

Commissioner of Wealth-tax

RESPONDENT

Date of Decision : 09-07-1981

Acts Referred:

Constitution of India, 1950 — Article 226
Wealth Tax Act, 1957 — Section 18(1), 18(2A)

Citation : (1982) 134 ITR 636

Hon'ble Judges : B.L. Hansaria, J

Bench : Single Bench

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

Judgement

B.L. Hansaria, J.—These petitions are under art. 226 of the Constitution of India and are directed against the orders passed by the learned Commissioner, Wealth-tax, u/s 18(2A) of the W.T. Act, 1957, hereinafter "the Act". The relevant facts are that the petitioner is a wealth-tax assessee and he submitted his wealth-tax return for the, assessment years 1967-68 to 1969-70 on June 11, 1973, u/s 14(1) of the Act. As the petitioner had filed his returns late, he submitted a petition on June 21, 1973, to the learned Commissioner u/s 18(2A) of the Act for waiver of the penalty imposable u/s 18(1)(a) of the Act. By the impugned order the learned Commissioner has rejected the prayer on the ground that according to him the assessee had not made a full disclosure, which is one of the essential conditions for an invocation of the power under the aforesaid section of law. What happened was that the petitioner in his wealth-tax return had disclosed the valuation of the immovable property he owns at Ulubari, Gauhati, at Rs. 61,250 for his half share. The learned Commissioner in his impugned order stated that the total investment in the property was to the extent of Rs. 1,45,500 being Rs. 23,000 as purchase price of land and Rs. 1,22,500 as construction cost of the building. Half of this comes to Rs. 72,750, as against Rs. 61,250 disclosed by the assessee. Thus, the learned Commissioner felt that by his own reckoning the

assessee understated the valuation of his property by Rs. 11,500 even if appreciation in the value of the properties since 1963 were to be left out of account. The return thus lacked a full disclosure according to the learned Commissioner, which resulted in the denial of any relief u/s 18(2A) of the Act.

2. The submission of Shri Bhattacharyya is that the learned Commissioner misconceived the law in having stated on the above facts that there was a lack of full disclosure of the net wealth by the assessee.

3. Before proceeding further, it may be stated that, at the relevant time, this part of the requirement of law was that the disclosure must be in good faith and "full". The section underwent an amendment and under the provision as it now finds place in Section 18B the disclosure must be "full and true". We are, therefore, not concerned in these cases whether the disclosure was true also or not. We may read the relevant part of Section 18(2A) as it existed at the material time :

" (2A) Notwithstanding anything contained in Clause (i) or Clause (iii) of Sub-section (1), the Commissioner may, in his discretion,--

(i) reduce or waive the amount of minimum penalty imposable on a person under Clause (i) of Sub-section (1) 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.....

if he is satisfied that such person-

(a) in the case referred to in Clause (i) of this sub-section has, prior to the issue of notice to him under Sub-section (2) of Section 14, voluntarily and in good faith, made full disclosure of his net wealth....."

4. Strong reliance has been placed by Shri Bhattacharyya on the decision of the Allahabad High Court in *Hasan Ahmad Khan Vs. Commissioner of Wealth Tax and Another*, . The facts of that case are almost identical with the case at hand. It was held there that if the assessee honestly thought that he had fully disclosed his net wealth, although the disclosure made by him is ultimately found to be inaccurate, it would not be possible to say that he did not act in good faith. The expression "in good faith, made full disclosure of his net wealth" finding place in the relevant part of Section 18(2A) merely means, said the Division Bench, that the assessee should have honestly disclosed all his assets and liabilities which go to constitute his net wealth along with their estimated value. Once this has been done it would become possible for the Commissioner to consider the assessee's application u/s 18(2A) for waiving the penalty imposable upon him.

5. The basic requirement being of "disclosure", of course, full and in good faith, it is apparent that once the assessee lays open his assets and liabilities and makes an honest estimation of the same, the requirement of this part of law would be satisfied. The word " disclosure " indicates that something is exposed, brought to light, uncovered, laid open or revealed, which was earlier kept hidden. There is

no dispute in the present case that the assessee had fully disclosed the immovable property owned by him. The only hitch is regarding the estimation of the value of the property. The assessee's explanation is that though the half share of the property came to Rs. 72,750, he valued the same at Rs. 61,250, because the property being a joint family property, half of its share if sold in the market would not have fetched just the half of the total valuation. It is for the learned Commissioner to accept or not this explanation. What lies within my purview is to state that merely because the estimate of the assessee was not found acceptable, the assessee could not have been totally denied relief u/s 18(2A) of the Act inasmuch as it cannot be said that the same had resulted in a failure to make a full disclosure. It is pertinent to note that the good faith of the assessee was not doubted. The main thrust of this requirement seems to be on the disclosure of each parcel of physical assets owned by an assessee. Let it be said that the view about an estimation would vary, and even if the assessee would have valued his share at Rs. 72,750 in the present cases, it could have been well said (as it has been) by the learned Commissioner that he (the assessee) underestimated the same, as the valuation has to be according to the market trends, opinions about which are most likely to differ. If the benefit contemplated by the section has to be denied on the score of underestimation, made even in good faith, it will render the provision a dead letter. It would have been a different matter if because of this, full benefit of the section would not have been made available to the assessee. But the total denial of the relief on the ground which prevailed with the learned Commissioner has to be regarded as an apparent error of law.

6. The impugned orders are, therefore, quashed and the matters are remanded to the learned Commissioner for disposal of the same in accordance with law. The petitions are allowed.