

(1978) 02 AHC CK 0039

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 761 of 1975

Shareef Ahmad

APPELLANT

Vs

Commissioner of Wealth Tax and Another

RESPONDENT

Date of Decision : 16-02-1978

Acts Referred:

Wealth Tax Act, 1957 — Section 18(2A), 7(2)

Citation : (1979) 117 ITR 35

Hon'ble Judges : Satish Chandra, J;K.C. Agrawal, J

Bench : Division Bench

Advocate : R.K. Gulati, for the Appellant; A. Gupta, for the Respondent

Judgement

K.C. Agrawal, J.—This is a petition under Article 226 of the Constitution of India for quashing the order of the CWT dated 6th March, 1975, passed u/s 18(2A) of the W.T. Act, 1957 (hereinafter referred to as "the Act").

2. The petitioner is an individual assessee. He filed the wealth-tax returns for the assessment years 1969-70, 1970-71, 1971-72 and 1972-73 on February 28, 1973. According to the case of the petitioner, although he was being assessed under the I.T. Act for a very long time, as he was bona fide under the belief that his wealth was below the taxable limit, he did not submit the return of the wealth-tax of the aforesaid years. The assessments for the aforesaid years were by four different orders made on the same date, i.e., 4th August, 1973. While determining the market value of the machinery held by the firm, M/s. Sayeed Bhai and Company, the WTO added 10 per cent. over the book written down value by way of appreciation in the value of assets. This resulted in an addition of Rs. 3,526 for the first year and the same amount for the subsequent three years. The WTO also added certain amount in the wealth of the petitioner out of dharmada account from the balance-sheet of the firm in which the petitioner was a partner. The WTO while making the assessments of these years directed a notice to be issued to the petitioner u/s 18(l)(a) of the Act for imposing penalty for late filing of returns. Thereafter, the petitioner on 25th September, 1974, moved the

CWT, Kanpur, u/s 18(2A) of the Act for waiving the penalty of wealth-tax. In his application dated 5th September, 1974, the petitioner alleged that he had filed the returns of the aforesaid assessment years voluntarily declaring full particulars of the wealth even before the notice under, Section 18(2) was served upon him. It was prayed that as the case of the petitioner was fully covered by Section 18(2A) of the Act, the Commissioner may waive the penalty. The petitioner received a letter dated February 18, 1975, from the office of the CWT informing that as the petitioner had not shown the appreciation in the cost of the machinery in the assessment years 1969-70 to 1972-73, and has also not disclosed the dharmada account maintained in the firm, M/s. Sayeed Ahmad Sharif Ahmad, therefore, the Commissioner intended to reject the application. It, however, gave an opportunity to the petitioner to appear before the Commissioner on February 25, 1975, with a written reply to the points mentioned above. The petitioner submitted the reply on February 18, 1975, stating, inter alia, that he had acted bona fide and that he was not guilty of a conduct which could deprive him of the benefit of waiver of the tax provided by Sub-section (2A) of Section 18. The petitioner also asserted that he was not guilty of the charges mentioned in the letter of the CWT dated February 18, 1975. It, however, appears that the CWT, being not satisfied with the explanation offered by the petitioner, rejected the application filed on March 6, 1975, on the ground that the petitioner had not made complete disclosure of his wealth. In this view of the matter, the Commissioner found that the petitioner's good faith or bad faith was not relevant as other conditions mentioned in Section 18(2A) had not been satisfied. Aggrieved by the aforesaid order, the petitioner has filed the present writ petition.

3. The first point raised by the learned counsel for the petitioner was that mere addition in the wealth-tax return filed by the petitioner would not ipso facto amount to having not made full disclosure of net wealth. The emphasis laid by the learned counsel was that he had, in fact, disclosed the value of half of the share in the machinery which had been given to the firm and if subsequently the value of the share in the machinery had been enhanced by the WTO that would not deprive the petitioner of the benefit to which he was entitled u/s 18(2A) of the Act.

4. Section 18(2A), which is relevant for our purposes, reads as under:

"18. (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 ;....."

5. It would be seen from the aforesaid section that the power to reduce or waive the amount of minimum penalty imposable on a person can be exercised by the Commissioner if he is satisfied that such person had filed the return voluntarily and in good faith and had made full disclosure of his net wealth. "In the instant case, it will be seen that the application filed by the petitioner for the waiver of the amount of penalty was rejected by the Commissioner on two grounds, the same being that the petitioner had not shown in the assessment years 1970-71 and 1971-72, the appreciation in the cost of the machinery in the assets of Messrs. Habib Oil Industrial Corporation and that he had not disclosed his share in dharmada account maintained in the firm. As mentioned above, the value of the machinery shown by the petitioner in the return filed was enhanced by Rs. 3,526. This was done by the WTO under Sub-section (2) of Section 7 of the Act. In his opinion, the value shown in the return by the petitioner was not correct. The fact that the petitioner had shown the machinery itself as his property in the wealth-tax return is not in dispute. He put the valuation of the machinery which he thought was proper and correct. If the WTO took another view of the matter and held that the same was liable to be increased by Rs. 3,526, it would not necessarily mean that the petitioner was guilty of having not made a full disclosure of the assets. This could be a case of an honest difference of opinion between the petitioner and the WTO. The petitioner had given the details which were not wanting in essential quality. Hence, the view of the WTO that the petitioner had not disclosed the full value of the assets by having not mentioned the same figure which ought to have been put, according to the WTO, could not be a ground to hold that the petitioner had not made full disclosure of his net wealth.

6. The other ground on which the Commissioner rejected the application was that the petitioner had not shown the dharmada account in the return. According to the petitioner since the dharmada account was the money kept in trust for charitable purposes and not for the consumption or use by the petitioner himself, he was not obliged to show the same in the wealth-tax return. It may, however, be mentioned that since the WTO included the amount of the dharmada account in the wealth-tax return, it is too late in the day for the petitioner to argue that the same ought not to have been considered as the money of the petitioner. There is, however, substance in the submission of the learned counsel for the petitioner that if the Commissioner would have excluded from his consideration the fact of the enhancement of the value of the machinery in the assessment order, he might not have found the petitioner to be guilty of having not made the full disclosure. It is worthy of being noted that the addition made by the WTO on account of the dharmada was of small amounts--in one year the amount liable to be added was found to be only Rs. 10 while in another the amount was Rs, 495. It may, however, also be pointed out that for applying Clause (a) of Sub-section (2A) of Section 18, another ingredient which was necessary to be satisfied was

that the petitioner had acted in good faith. The Commissioner did not record any finding on this aspect of the matter being of the opinion that the same was not relevant. A thing is said to have been done in good faith if it is done honestly irrespective of the fact that it was done negligently. In deciding the question of good faith what comes into consideration is the intention of honesty and the absence of bad faith or mala fide. According to our view, the Commissioner ought to have given a finding on the question of good faith as well. In the absence of such a finding the order of the Commissioner cannot be upheld inasmuch as the authority entrusted with the discretion must direct himself properly in law. He was obliged under the law to call his own attention to matters which he was bound to consider. It is true that the power conferred u/s 18(2A) is discretionary but the discretion is to be exercised in accordance with the law and not mechanically. In view of the above, the order of the Commissioner rejecting the application filed by the petitioner u/s 18(2A) cannot be maintained.

7. In the result, the writ petition succeeds and is allowed. The order of the CWT dated March 6, 1975, is quashed. He is directed to decide the application of the petitioner afresh in accordance with law. There will be no order as to costs.