(1978) 01 AHC CK 0033

In the Allahabad High Court

Case No : C.M.W.P. No. 650 of 1975

SMT. CHANDRA KIRAN — APPELLANT

Vs

COMMISSIONER OF WEALTH TAX. — RESPONDENT

Date of Decision : 27-01-1978

Acts Referred:
Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 18, 217, 271

Citation : (1978) 7 CTR 246(1)

Hon'ble Judges : Satish Chandra, J

Bench : Division Bench

Judgement

Satish Chandra, J. - On 16th January, 1974, the petitioner filed his returns under the Wealth Tax Act for the assessment years 1969-70 to 1973-74. It is not disputed that these returns were filed prior to the issuance of any notice under S. 14(2) of the Wealth Tax Act. In the usual course, the Wealth Tax Officer passed the assessment order dated 30-12-1974 for these years. In the operative portion of his order, he stated, "Issue notice of demand and challan. Proceedings u/s. 18(1)(a) have already been started for late filing of return".

2. Thereupon the petitioner applied to the Commissioner, Wealth Tax under S. 18(2-A) of the Wealth Tax Act, for waiver of the proposed penalty leviable under S. 18(1)(a) for the late filing of the return.

3. The Commissioner held that in respect of the first three years though the petitioner had disclosed the value of the house-property at Sadwara, Farrukhabad but he claimed exemption in respect of it under S. 5(1)(iv), which was rejected. The petitioner did not make a full and complete disclosure in good faith of her wealth. Similarly, for the fourth year, viz. 1973-74, the assessee claimed some deductions under S. 5(1)(xxxii) which was not accepted by the Wealth Tax Officer. In this respect also the Commissioner observed that the assessee made a wrong claim of exemption and hence the disclosure was not full (and) complete and in good faith. On these findings he dismissed the application

for waiver of penalty.

4. Aggrieved, the petitioner has come to this court under Article 226 of the Constitution.

5. S. 18(1)(a) contemplates a case, inter alia, of delay in filing the return. Sub-S. (2-A) of S. 19 empowers the Commissioner in his discretion to reduce or waive the amounts of penalty 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-S. (2) of S. 14, voluntarily and in good faith, made full disclosure of his net wealth ....".

6. Identical provisions for imposition as well as waiver of penalty have been made in S. 217 of the Income Tax Act. Sub-S. (4-A) of S. 271 corresponds to Sub-S. (2-A)(a) of S. 18. The language of both provisions is identical.

7. In Bishamber Dass Devi Dayal vs. Commissioner of Income Tax U.P. and Another, the Commissioner held that the correct test was whether the disclosure was full and complete. A Division Bench of this Court held that the Commissioner was in error because for delay in filing the return the statute only requires that the assessee had made full disclosure of his income in good faith. The Bench observed :

"The only question which required consideration at the hands of the Commissioner was whether the assessee had made full disclosure of his income. In this connection the second part of clause (a) is material and relevant. Under it the requirement is that the assessee should have made "full and true disclosure of such particulars". Obviously, the statute makes a difference in the requirement with regard to default committed in respect of clause (1) or (c) of Sub-S. (1) of S. 271, In the former case the assessee has made full disclosure of his income while in the latter he should have made full and true disclosure of the particulars of income. The Commissioner when be observed that the words "full and complete" occurring in S. 271(4-A) do not cover a situation where additions are made to the returned income, was in error because firstly the words "full and complete" do not all occur in the statute in relation to a default in filing the returns within time. The only requirement is that the assessee has made "full disclosure of his income".

8. The same position applies in the present case. The Commissioner has held that the disclosure was not "full and complete and in good faith" because the assessee had claimed exemptions which were disallowed. There is not even a hint that there was any mala fide in claiming the exemptions. There was hence no material to hold that the disclosure was not in good faith. The view that the disclosure should be full and complete is untenable in view of the decision of this Court mentioned above.

9. The assessee had disclosed the house-property as well as property in respect of which he claimed deduction. The mere fact that the claim had been disallowed

would not make that he had not made full disclosure within the meaning of S. 2-A.

10. In the result, the petition succeeds and is allowed, the impugned order of the Commissioner dated 14th April, 1975 is quashed. The Wealth Tax Officer is directed not to proceed with proceedings under S. 18(1)(a) for late filing of the return. The petitioner will be entitled to costs.

