
(1981) 11 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3189 of 1961

Smt. Parkash Devi

APPELLANT

Vs

Commissioner of Wealth-tax

RESPONDENT

Date of Decision : 10-11-1981

Acts Referred:

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

Citation : (1982) 27 CTR 1 : (1983) 141 ITR 122

Hon'ble Judges : M.M. Punchhi, J;K.S. Tiwana, J

Bench : Division Bench

Advocate : Ashok Bhan and Ajay K. Mittal, for the Appellant; D.N. Awasthy and B.K. Jhingan, for the Respondent

Judgement

M.M. Punchhi, J.—The pristinely legal question which calls for determination in this writ petition under Articles 226 and 227 of the Constitution of India is whether the Commissioner, while reducing or waiving the amount of penalty imposed or imposable on a person under Clause (i) of Sub-section (1) of Section 18 of the W.T. Act, 1957 (for short "the Act"), can ignore his recorded satisfaction to the statutory conditions embodied in Section 18B, while exercising discretion in that direction ?

2. Shrimati Parkash Devi, petitioner, filed voluntary returns under the Act for assessment years 1970-71 to 1977-78. She took the anticipatory step of filing an application u/s 18B of the Act to the Commissioner on the assumption that failure, without reasonable cause, to furnish the returns of net wealth which she was required to furnish under Sub-section (1) of Section 14, would attract the penalty u/s 18 ; for the returns which she filed voluntarily on April 22, 1978, she paid the full amount of the total tax due on the returned wealth. When the WTO framed assessment and created additional demands, these too she met on July 6, 1978. The WTO then initiated proceedings against her for levy of penalty u/s 18(1)(a) of the Act as the returns filed by her were late. On the application submitted by the petitioner, the Commissioner, vide his order dated 20th May,

1981, held that the satisfying of the conditions set forth in Section 18B of the Act were accomplished. However, the Commissioner while opting either to waive the penalty or reduce it chose to impose penalty at 10 per cent. of that imposable in respect of each of the assessment years 1970-71 to 1977-78, vide order, annex. P-2. This order has been challenged in this writ petition.

3. Sub-section (1) of Section 18B is relevant for our purpose which need be extracted :

"18B. Power to reduce or waive penalty in certain cases.--(1) Notwithstanding anything contained in this Act, the Commissioner may, in his discretion, whether on his own motion or otherwise,--

(i) reduce or waive the amount of penalty imposed or imposable on a person under Clause (i) of Sub-section (1) of Section 18 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

(ii) reduce or waive the amount of penalty imposed or imposable on a person under Clause (iii) of Sub-section (1) of Section 18, If he is satisfied that such person,--

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

(b) in the case referred to in Clause (ii), has, prior to the detection by the Wealth-tax Officer, of the concealment of particulars of assets or of the inaccuracy of particulars furnished in respect of any asset or debt in respect of which the penalty is imposable, voluntarily and in good faith made full and true disclosure of such particulars,

and also has co-operated in any inquiry relating to the assessment of his net wealth and has either paid or made satisfactory arrangements for the payment of any tax or interest payable in consequence of an order passed under this Act in respect of the relevant assessment year,..... "

4. It is plain therefrom that in the instant case we are concerned with Sub-clause (i) pertaining to the discretion of the Commissioner and Sub-clause (a) pertaining to the Commissioner's satisfaction, as warranted by the facts of the present case. The Commissioner has, in so many words, in the impugned order stated that he was satisfied that the conditions set forth in Section 18B are satisfied in this case. To enumerate them, these are :

(1) that the returns were filed by the petitioner prior to the issuance of a notice to her under Sub-section (2) of Section 14 of the Act;

(2) that these were filed voluntarily and in good faith ;

(3) that the petitioner had made full and true disclosure of her net wealth;

(4) that she had co-operated in the inquiry relating to the assessment of her net wealth ; and

(5) that she had paid or made satisfactory arrangements for the payment of the tax or interest payable in consequence of an order passed under the Act in respect of the relevant assessment years.

5. There is no gainsaying the fact that the aforesaid five conditions culled out from the reading of Section 18B of the Act are foundational to the exercise of discretion under Sub-clause (i) of Sub-section (1) of Section 18. That in the manner of arriving at that milestone of satisfaction in relation to these five particulars, the Commissioner has to remain uninfluenced by extraneous factors is a matter well settled. It has now gained ground that he has to pass a speaking order in these proceedings. See in this connection *S. Sannaiah Vs. Commissioner of Income Tax, Mysore and Another*, and *Rasiklal Ranchkodbhai Patel v. CWT* [1980] 121 ITR 219. That the Commissioner has to remain uninfluenced by extraneous factors like the assessee being an old assessee under the I.T. Act is well settled and the converse deprecated in the decisions of this court in *Dr. Paramjit Singh Grewal Vs. Commissioner of Income Tax and Another*, , *Major Naranjan Singh Vs. Commissioner of Wealth-tax*,). Similar was the view of the Allahabad High Court in *Kundan Lal Behari Lal Vs. Commissioner of Wealth-tax and Another*, . Precedents on that aspect need not be multiplied. All these are cases on the side of pre-satisfaction stage and do not squarely cover the point in issue. We are confronted in the present case with the post-satisfaction stage.

6. It is contended on behalf of the petitioner that, in the instant case, the Commissioner, in the exercise of his discretion either to waive or reduce penalty, totally ignored the five factors which prompted him up to the satisfaction stage and these five, according to the learned counsel, would remain relevant and pervasive towards exercise of discretion under Sub-clause (i). On the other hand, the learned counsel for the respondent contends that these five considerations had outlived their utility and could not be put to use at such a discretionary stage. However, in the instant case, the Commissioner has dealt with the case in this manner:

"On a perusal of the Wealth-tax Officer's report and relevant records, I am satisfied that the conditions set forth u/s 18B of the Wealth-tax Act are satisfied in this case. However, having regard to all the circumstances, I am of the opinion that it is a fit case for reduction of penalty, imposable rather than for complete waiver. I may, in particular, mention that it is not a case of a marginal wealth-tax payer. The net wealth, after exemptions, for most of the years, is well above Rs. 2 lakhs, while for assessment years 1975-76 to 1977-78, net wealth is around Rs. 3 lakhs. The delay in filing of return ranges from 9 months in respect of assessment year 1977-78 to 73 months in respect of assessment year 1970-71. In this connection, it is worth noting that as per the assessee's own showing as per letter dated April 15, 1978, addressed to Income Tax Officer, Distt. II(9), Jullundur, in connection with her Income Tax proceedings in respect of

assessment years 1971-72 to 1977-78, it was some time in September, 1976, that she came to know that voluntary returns under the Income Tax Act, had to be filed by her. In spite of her knowledge about her liability to file voluntary returns under the Income Tax Act, in respect of assessment years 1971-72 to 1977-78, she did not care to ascertain her liability under the Wealth-tax Act in respect of the above assessment years and in fact filed the returns as late as 22nd April, 1978. Having regard to the above facts and other circumstances, I accordingly direct that the penalty imposable/imposed u/s 18(1)(a) shall be reduced to 10% of that imposable in respect of each of the assessment years 1970-71 to 1977-78."

7. The consideration put at the foremost by the Commissioner is that the petitioner had become cognizant of her liabilities under the I.T. Act and that she should have taken care to ascertain her liabilities under the W.T. Act in respect of the assessment years in question and thus there was late filing of the returns. Now, this consideration, if it would have weighed with the Commissioner at the pre-satisfaction stage, would have been considered extraneous and the Commissioner's order struck down on that score alone. It is also noticeable in the order that the five considerations which were fundamental to his recording satisfaction have receded to the background at the post-satisfaction stage. To our mind, the existence of those five statutory conditions of the pre-satisfaction stage remains pervasive in the context not only up to the stage of satisfaction, uninfluenced by extraneous factors, but even after such stage, equally so but to be taken into account in conjunction with other germane factors so as to strike a balance.

8. E.S. Venkataramiah J. of the Karnataka High Court (who now adorns the Supreme Court Bench), had in *Shankara Apaya Swami Vs. Wealth Tax Officer, Belgaum and Another*, , observed as follows (p. 652):

"It is needless to mention that the Commissioner while exercising his discretion u/s 18(2A) has to bear in mind several factors such as the gravity of the default, the loss occasioned to the Revenue by the assessee not filing the return in time, and the extent of tax withheld. These factors are only illustrative but not exhaustive. Just like in criminal cases a judge while imposing a sentence on the accused who is found guilty of an offence takes into consideration several factors apart from the fact that he has committed the offence in question, the Commissioner should take into consideration all other relevant factors while reducing or waiving the penalty imposed or imposable u/s 18(1)(a) of the Act. [Section 18(2A) of the old Act is now Section 18B]."

9. This case was followed by a Division Bench of the Andhra Pradesh High Court in *Seetha Mahalakshmi Rice and Groundnut Oil Mill Contractors Co. Vs. Commissioner of Income Tax*, . Then again, M. P. Chandrakantaraj Urs J., of the Karnataka High Court in *S.B. Naik Patil Vs. Commissioner of Wealth Tax, Karnataka-I and Another*, , following *Shankara Apaya Swami Vs. Wealth Tax Officer, Belgaum and Another*, , took the view that the Commissioner was not

required to direct his mind to the reasonableness of the cause explained by the assessee but to the factors which are required to be considered by him in giving relief or refusing relief u/s 18B of the Act, This view, with due respect to the learned judge, appears to us to be too conservative and diminishing the scope spelled out in *Shankara Apaya Swami Vs. Wealth Tax Officer, Belgaum and Another*, .

10. Taking into account the judicial precedents on the subject and otherwise the scheme of the statute under consideration, we are of the considered view that like in a criminal case the Commissioner too has to take into account, while imposing sentence, all relevant considerations and then come to a conclusion whether it was a case of complete waiver or reduction of penalty. To illustrate, if the accused in a criminal trial for theft had pleaded that he had stolen some food on account of dire necessity, the court while legitimately convicting him could not ignore the circumstances of the case and such plea at the stage of the sentence and ask the convict to give a substituted explanation. The explanation remains pervasive at both the stages. Similarly, the statutory factors which go to record a satisfaction must compel the Commissioner to influence his discretion both in isolation and in conjunction with other relevant factors to exercise his discretion to waive or reduce penalty. Patently, those factors had receded to the background, and altogether ruled out in the manner in which the Commissioner exercised his discretion while passing the impugned order. Necessarily, there has not been a proper application of mind requiring the impugned order to be quashed and asking him to re-determine the cause in the light of the foregoing observations.

11. Resultantly, this petition is allowed. The impugned order of the Commissioner (annex, P-2) is quashed partially, preserving the satisfaction stage, directing him to re-bear the petitioner only on the question of waiver or deduction of penalty in the light of the observations made above. In the circumstances of the case, there will be no order as to costs. The petitioner through her counsel is directed to appear, before the Commissioner on 2nd December, 1981.