

Smt. Harbans Kaur

Vs

Commissioner of Wealth Tax

Civil Appeal No. 1334 of 1981 With C.A. Nos. 1335-1338 of 1981

(B. P. Jeevan Reddy, K. T. Thomas JJ)

13.01.1997

JUDGMENT

K.T. THOMAS J. -

The appellants in these appeals were liable to penalty under section 18 of the Wealth-tax Act, 1957 (for short "the Act"), for failure to file the returns in respect of the assessment years 1970-71, 1971-72, 1972-73, 1973-74, 1974-75 and 1975-76. When Parliament amended the Act and incorporated section 18B by the Taxation Laws (Amendment Act, 1975), i.e., Act 41 of 1975, the appellants in these cases submitted wealth-tax returns and made a request for full waiver of the penalty as envisaged in the new provision. The Commissioner of Wealth-tax ("the Commissioner" for short) found that as the appellants have complied with the conditions stipulated in section 18B of the Act they are entitled to the benefit of the new provision. However, keeping in view the facts and circumstances of the case, the Commissioner, instead of granting waiver of the full penalty, had only reduced it to 5 per cent. for the relevant assessment years. The appellants submitted that once a person is found to be entitled to the benefits of the new provision of section 18B of the Act, the Commissioner should have waived the entire amount of penalty payable by that person concerned. So saying they approached the High Court by filing writ petitions but those writ petitions were dismissed in limine. Hence, these appeals.

Learned counsel contended that once a person is found entitled to the benefit under section 18B, the Commissioner cannot withdraw part of the benefit by imposing a penalty of 5 per cent. According to him, once the failure is condoned, power to waive cannot be exercised in a truncated manner as was done in this case but only in full measure.

Section 18(1) empowers the officer under the Act to impose penalty on a person in certain contingencies. As per the sub-section if the Wealth-tax Officer, the Appellate Assistant Commissioner to the Appellate Tribunal, in the course of any proceedings under the Act, is satisfied that any person has, without reasonable cause, failed to furnish the returns which he is required to furnish or has without reasonable cause failed to furnish within the time allowed or without reasonable cause failed to comply with a notice under section 16(2) or (4), or has concealed the particulars of any assets or furnished inaccurate particulars of any assets or debts such officer may direct that such person shall pay, by way of penalty, the amount specified respectively in the three clauses set out therein.

Section 18B confers power on the Commissioner to reduce or waive such penalty in certain contingencies, if he is satisfied that such person had made full and true disclosure of his net wealth and has also co-operated in any enquiry 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 consequences of an order passed under the Act.

If the conditions stipulated in the section are satisfied the Commissioner has a discretion in the matter. In exercise of that discretion, the Commissioner can either reduce the amount of the penalty or he may even waive the entire penalty. It is for the Commissioner to decide on the facts of a particular case whether a waiver in entirety or a reduction alone is warranted.

The words "the Commissioner may in his discretion... reduce or waive the amount of penalty" in section 18B of the Act are clear enough to show that the power conferred on the Commissioner is to be exercised by him in such manner as he demands just and proper. When a discretion is conferred on an authority the same must be exercised fairly and not arbitrarily, justly and not fancifully, vide *S.G. Jaisinghani v. Union of India* [1967] 65 ITR 34; AIR 1967 SC 1427.

Even if the Legislature has not used the words "in his discretion" in section 18B(1), the Commissioner could have exercised only discretionary power in view of the employment of the word "may". Now, when Parliament used both expressions "may" and "in his discretion" together, the position is placed beyond the pale of any doubt that the Legislature wanted an officer of the ranks of the Commissioner to be reposed with the discretionary power to choose between entire waiver or reduction in any proportion.

Of course, when the Commissioner, instead of giving a complete waiver, chooses to give only a reduction for the penalty amount he must indicate in his order that he has applied his mind in that regard. In this view, there is no warrant for the proposition that the Commissioner, if satisfied of the compliance of conditions, has only one choice, i.e., to waive the penalty in entirety. Otherwise, it may mean that the Commissioner can in case where conditions are not satisfied, reduce the penalty amount. When conditions are not satisfied, the Commissioner cannot do either. Only when the said conditions are satisfied that the occasion arises for the Commissioner to exercise his discretion not before.

Learned counsel has cited the following decisions of the various High Court in support of the contention that waiver in full has to be ordered when all the required conditions have been complied with : *Shakuntala Mehra v. CWT* [1976] 102 ITR 301 of the Delhi High Court; *Shankara Apaya Swami v. WTO* [1976] 103 ITR 649, of the Karnataka High Court; *B. Anjanappa v. CWT* [1980] 124 ITR 433 of the Karnataka High Court; *Rasiklal Ranchhodbhai Patel v. CWT* [1980] 121 ITR 219 of the Gujarat High Court; *Sardar Kartar Singh v. CWT* [1982] 135 ITR 379 of the Gauhati High Court. In all those decision the learned judges have pointed out that without indicating any reason whatsoever the Commissioner cannot dispense with his discretion in granting waiver of the penalty. Those decisions have not laid down the proposition that the only course which a Commissioner can adopt on fulfillment of the conditions is to waive the penalty in entirety.

Section 18B is analogous to section 273A of the Income-tax Act, 1961, whereunder also a similar discretion has been conferred on the Commissioner of Income-tax for either reducing the penalty or granting waiver of the entire penalty. It is understood in clear terms that the said discretion in the Income-tax Act is to be exercised in a reasonable and fair manner. The decision of the Bombay High Court in *Purshottam Thackersey v. K.N. Anantarama Ayyar, CIT (No. 2)* [1985] 154 ITR 438, cited before us, only shows that the order of the Commissioner declining to waive the penalty without advancing any reason whatsoever cannot be supported and the matter was remitted to the Commissioner for passing an order afresh.

In the cases on hand, the Commissioner has indicated his own reasons for resorting to the power of reduction of the penalty in preference to granting full waiver of the penalty. We cannot say that the reasons indicated in the orders are in any manner unjust or irrelevant. We, therefore, find no ground to interfere with the impugned orders and the judgements of the High Court. The appeals are dismissed.