

**(2002) 12 P&H CK 0037**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Writ Petition No. 2135 of 1982

Shri Amar Nath

APPELLANT

Vs

The Commissioner of Wealth-tax  
and Another

RESPONDENT

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**Date of Decision:** Dec. 10, 2002

**Acts Referred:**

- Wealth Tax Act, 1957 - Section 18(1), 18B(1)

**Citation:** (2003) 179 CTR 402 : (2003) 261 ITR 247 : (2003) 133 PLR 405

**Hon'ble Judges:** G.S. Singhvi, J

**Bench:** Single Bench

**Advocate:** Sanjay Bansal, for the Appellant; N.L. Sharda, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

G.S. Singhvi, J.

This is a petition for quashing order dated 15.3.1982 (Annexure P6) passed by Commissioner of Wealth-Tax, Jullundur (respondent No. 1) declining the petitioner's prayer for waiver of penalty in terms of Section 18B of the Wealth-tax Act, 1957 (for short, the Act") and to restrain the Income- tax Officer, Special Circle-I, Jullundur (respondent no.2) from taking recovery proceedings in pursuance of notice dated 1.3.1982 (Annexure P7).

2. The petitioner is a wealth-tax assessee. He filed returns for the assessment years 1967-68 to 1974-85 u/s 14(2) of the Act after due dates. The Wealth-tax Officer made assessment and created demand varying from Rs. 520/- to Rs. 33,739/- for different years. He also levied penalty u/s 18(1)(a) of the Act. The details of the returns filed by the petitioner and the assessment made by the Wealth-tax Officer for different years are as under:-

Asst. Due Year	Due date of filing the return	Date of filing the return	Delay months	Net Wealth returned	Wealth Tax assessed	Penalty demand
						18(1)(a).
67-68	30.6.67	28.2.75	91	Rs.1589182	203.900.520	297
68-69	30.6.68	28.2.75	79	Rs. 90118/-	244.382.720	360
69-70	30.6.69	28.2.75	67	Rs. 48929/-	130.600.153	16917
70-71	29.2.82	28.2.75	36	Rs. 59121/-	358.853.468	46593
71-72	29.2.72	28.2.75	36	Rs. 67045/-	474.302.374	57374
72-73	31.7.72	28.2.75	30	Rs.139733	367,088.634	70060
73-74	31.7.73	17.10.73	21	Rs.1244266	95,556.184	6033
74-75	31.7.74	26.3.75	7	Rs.553500	89,230.337	29623

3. During the pendency of the penalty proceedings, the petitioner filed application dated 10.4.1981 u/s 18(2A) (now 18B of the Act) for waiver of penalty by asserting that he had filed returns voluntarily in good faith and made full and true disclosure of the assets. Respondent No. 1 rejected the said application vide order Annexure P6 and held that failure of the Wealth-tax Officer to initiate proceedings u/s 18(1)(c) of the Act cannot lead to the presumption that the assessee had made full and true disclosure of his net wealth within the meaning of Section 168(1)(a) of the Act. The reasons recorded by respondent No. 1 for rejecting the application of the petitioner read as under:-

"In the facts and circumstances of the instant case, as discussed herein before, there is no doubt whatever that the assessee failed to make, in good faith, full and true disclosure of his net wealth for various years involved. The particulars and nature of Ranjit Nagar property was not disclosed in the returns for the asstt. years 1967-68 to 69-70. In the computation of statement of wealth enclosed with the respective returns, it is merely stated "Agri. land (not an asset) Nil". It is not as if the particulars and nature of the land had been disclosed then exemption was claimed on the plea of the land being agri, land. In any case the execution of Ranjit Nagar property was not bona fide, as the assessee knew that land was neither agricultural nor used for agricultural purposes. In other years involved also, as discussed herein before, agricultural land and other property held by the assessee in the names of his sons and wife, has not been included in the net wealth disclosed in the Return(s).

I may add that the various judicial pronouncements relied upon by Shri Vijn do not help the assessee. In the case of Hasan Ahmed Khan, decided by Allahabad High Court and reported in 99 ITR the Commissioner had rejected the application u/s 18(2A) (now 18-8) on the ground that, as the value of the assets shown by the assessee was much less than their assessed value, the case did not fall u/s 18(2A). In the instant case, as mentioned earlier, some of the assets belongs to the assessee had not been included in the net wealth and the dispute does not relate to the valuation only.

4. Respondent No. 1 also rejected the petitioner's plea that on account of failure of the Wealth-tax Officer to initiate penalty proceedings u/s 18(2)(c), he is entitled to waiver of penalty and observed as under:-

"It is no doubt true that the W.T.O. has failed to initiate penalty proceedings u/s 18(1)(c) of the W.T. Act but because of that lapse, it cannot legitimately be held that, the assessee had made full and true disclosure of his net wealth within the meaning of Section 168(1)(a) of the W.T. Act, The failure to initiate penalty proceedings u/s 18(1)(c) cannot alter the fact that in the instant case the assessee failed to make full and true disclosures of his net wealth for the various years involved. Since one of the essential pre-conditions set forth in Section 18B(1)(a) has not been satisfied, I hold that the assessee is not entitled to the benefit of waiver/reduction of penalty imposed/imposable u/s 18(1)(a) of the W.T. Act for any of the asstt. year 67-68 to 74-75."

5. Immediately thereafter, respondent No. 2 issued notice Annexure P7 to the petitioner to show cause why action may not be taken to recover the outstanding demand by one of the modes prescribed in the Second Schedule to the Income Tax Act, 1961 (for short, "the 1961 Act").

6. The petitioner has challenged order Annexure P6 mainly on the ground that respondent No. 1 has erred in rejecting his application for waiver ignoring the fact that Wealth-tax Officer had not initiated proceedings u/s 18(1)(c) of the Act.

7. In the written statement filed on behalf of respondent No. 1, it has been admitted that the petitioner had filed returns voluntarily without any notice from the department. At the same time, it has been averred that he had done so after receipt of complaints by the department and initiation of enquiries to know his tax liability, it has been further averred that the findings recorded by the Wealth-tax Officer that the petitioner had not given full and complete particulars of his properties situated in Ranjit Nagar were upheld by the Income Tax Appellate Tribunal and, therefore, he is not entitled to claim waiver u/s 8B of the Act.

8. Shri Sanjay Bansal assailed order Annexure P6 by arguing that respondent No. 1 committed a serious illegality by declining the petitioner's prayer for waiver of penalty notwithstanding the fact that Wealth-tax Officer had not taken action u/s 18(1)(c) of the Act. He referred to the Explanation appearing below Section 18B(1) of

the Act and argued that the petitioner is entitled to the benefit of deeming provision contained therein because the Wealth-tax Officer had not initiated penalty proceedings u/s 18(1)(c). Shri Bansal then argued that the proceedings initiated by respondent No. 2 in furtherance of order Annexure P6 may also be declared illegal and quashed. In support of his arguments, Shri Bansal relied on the following decisions:-

(1) [Seetha Mahalakshmi Rice and Groundnut Oil Mill Contractors Co. Vs. Commissioner of Income Tax, .](#)

(2) [Smt. Parkash Devi Vs. Commissioner of Wealth-tax, .](#)

(3) [Laxman Vs. Commissioner of Income Tax, .](#)

(4) [Tarloki Nath Avinash Chander \(HUF\) Vs. Commissioner of Income Tax and Another, .](#)

(5) [Jagjiwan Kumar Vs. Commissioner of Income Tax/Wealth-tax and Others, .](#)

(6) Sureshchandra Babulal Mittal v. Assistant Commissioner of Income Tax (Investigation) and Ors. (2001)249 I.T.R. 603.

9. Dr. N.L. Sharda, counsel for the Revenue supported the impugned order and argued that the petitioner cannot take benefit of the Explanation appearing below Section 18B(1) of the Act because the returns filed by him were not voluntary. He pointed out that the petitioner had filed returns only after receipt of complaints by the department and initiation of enquiries about his true wealth. Dr. Sharda further argued that the statement furnished by the petitioner along with the returns did not represent the true and full disclosure of his wealth and, therefore, respondent No. 1 did not commit any error by refusing to invoke the deeming clause in his favour.

10. I have given serious thought to the respective arguments. For the purpose of deciding the issues raised in the petition. It will be useful to notice Section 18B(1) of the Act which reads as under:-

"18B. (1) Notwithstanding anything contained in this Act, the Commissioner may, in his discretion, whether on his own motion or otherwise, (i) xx xx

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

(a) xx xx

(b) in the case referred to in Clause (ii), has, prior to the detection by the Assessing 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 and 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.

Explanation.- For the purposes of this sub-section, a person shall be deemed to have made full and true disclosure of the particulars of his assets or debts in any case where the excess of net wealth assessed over the net wealth returned is of such a nature as not to attract the provisions of Clause (c) of Sub-section (1) of Section 18.

11. In *Smt. Parkash Devi v. Commissioner of Wealth-tax, Jullundur*, (supra), a Division Bench of this Court interpreted Section 18B of the Act and observed as under:-

"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.

There is no gain saying 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 relating to these five particulars, the Commissioner has to remain uninfluenced by extraneous factors is a matter well settled."

12. In *Jaggiwan Kumar v. Commissioner of income tax/Wealth-tax and Ors.* (supra), a learned Single Judge referred to the judgment of the Division Bench in *Smt. Parkash Devi's* case (supra) and held that once five conditions enshrined in Section 18B(1) of the Act are satisfied, there could be no justification to refuse the prayer for waiver of penalty. The relevant portion of the judgment of the Single Judge is reproduced below:-

"In the case of the petitioners, no notice had been issued for any of the years and the returns were filed by the petitioners prior to the issuance of the notice, voluntarily and in good faith. There is also no dispute to the net wealth disclosed by the petitioners. No proceedings for concealment of wealth were initiated in any year u/s 18(1)(c) of the Act. There is also no challenge to the petitioners pleas that they had co-operated in the enquiry relating to the assessment and had paid the tax as assessed. In these circumstances, the decision of the Division Bench of this court in [Smt. Parkash Devi Vs. Commissioner of Wealth-tax](#), is found to be applicable. If the five conditions, which are fundamental to the recording of satisfaction by the Commissioner, are found to have been fulfilled, then the satisfaction of the Commissioner is to be recorded and has, in fact been recorded in the present cases. Therefore, there are found to be no sufficient and valid reasons to impose penalty in any of the years. The mere fact that the returns are filed late would not invite the levy of penalty. The provisions contained in Section 18B of the Act do make an assessee entitled to claim waiver once the assessee is able to show that he fulfilled all the conditions and the Commissioner has recorded his satisfaction in his order dated February 9, 1983 passed u/s 18B of the Act, there is no reason to refuse the benefit of waiver of penalty to the petitioners.

13. Sections 273A of the 1961 Act which is pari materia to Section 18B of the Act was interpreted by a Division Bench of Andhra Pradesh High Court in *Seetha Mahalakshmi Rice and Groundnut Oil Mill Contractors Co. v. Commissioner of Income Tax, A.P. (supra)* and it was held as under: -

"The Commissioner has a statutory duty and obligation to examine the facts and circumstances of each case and exercise his discretion fairly and objectively and arrive at a correct conclusion. This objective examination and satisfaction are necessary because it is a statutory discretion. A careful reading of the requirements or ingredients of this provision shows that Parliament enacted this provision to show some equitable consideration to honest assessee who have not only co-operated in any enquiry relating to the assessment of this income, but also either paid or made satisfactory arrangements for payment of any tax or interest payable by them in respect of the relevant assessment year. He must have voluntarily and in good faith, made full and true disclosure of his income. The expressions "good faith" and "full and true disclosure of his income" used in Section 273A(1)(a) reveal that the assessee, in the circumstances must have felt that he has filed the return voluntarily and in good faith and according to him, has made a full and true disclosure of his income. The mere fact that what has been disclosed by him in the return is not accepted by the ITO, subsequently, in the order of assessment, would not in any way disentitle him straightaway for the relief enshrined in Section 273A(1). What is determined by the ITO in the assessment order cannot be taken to be the full and true disclosure of his income in every case.

We may now turn to the Explanation which requires that in any case where the excess of income assessed over the income returned is of such a nature as not to attract the provisions of Clause (c) of Sub-section (1) of Section 271, it must be deemed that the assessee has made full and true disclosure of his income or of the particulars relating thereto. The Explanation supports our view that Section 273(1) which provides for the exercise of discretion by the Commissioner can be availed of by the assessee who are not liable to be proceeded against for levy of penalty u/s 271(1)(c), which would come into play only when the officer in the course of any proceedings under the Act is satisfied that the assessee has concealed the particulars of his income or furnished inaccurate particulars of such income. The concealment of income and furnishing of any inaccurate particulars of such income would take the case of any party out of the purview of Section 273A(i) (a).

In the present case, admittedly, there are no proceedings taken u/s 27(1)(c). Consequently, it must be taken for granted that the assessee has not committed an offence so as to be proceeded against for levy of penalty u/s 27(1)(c) for concealing the particulars of its income or for furnishing inaccurate particulars of such income for the assessment year in question. In this view and in view of the Explanation to Section 273A(1), the assessee shall be deemed to have made full and true disclosure of his income.

14. In *Tarloki Nath Avinash Chancier (HUF) v. Commissioner of Income Tax and Anr.* (supra), a learned Single Judge of this Court considered the case involving prayer for waiver of interest and penalty u/s 273A of the 1961 Act and held as under:-

"Under Section 273A all that the Commissioner had to see was whether the returns submitted by the petitioner without notice could be treated as voluntary and whether such disclosure made was in good faith. Both these aspects had escaped the notice of the Commissioner. The commissioner had taken into consideration irrelevant matters like the petitioner being a habitual defaulter, The mere fact that the petitioner was an assessee to Income Tax and advance tax had been paid by him or that the Income Tax Officer knew that the petitioner had earned taxable income would not be sufficient to hold that the returns filed and the disclosure made by him were not voluntary. If the department's interpretation was accepted, an existing assessee could not avail of the concession provided u/s 273A. Therefore, the order of the Commissioner was liable to be set aside."

15. In *Laxman v. Commissioner of Income Tax*, (supra), a Division Bench of Bombay High Court held that Commissioner of Income Tax had committed a serious illegality by refusing to waive the penalty on the ground that the return had been filed after Inspector of Income Tax had made enquiries regarding assessee's funds.

16. In *Sureshchandra Babulal Mittal v. Assistant Commissioner of Income Tax (investigation) and Ors.* (supra) a Learned Single Judge of Madhya Pradesh High Court held that the benefit of deeming fiction cannot be denied to the assessee

unless the Commissioner is satisfied that the conditions precedent for invoking the deeming fiction had not been satisfied. Some of the observations made in that judgment, which have bearing on the case in hand are extracted below:-

"Section 273A of the Income Tax, Act 1961, empowers the Commissioner to reduce or waive the amount of penalty imposed or imposable provided he is satisfied that the assessee had, prior to detection by the Assessing Officer of any concealment of particulars of income or of the inaccuracy of particulars furnished in respect of such income, voluntarily and in good faith made full and true disclosure of such particulars. The section further provides that the assessee should have further co-operated in any inquiry relating to the assessment of his income and should have either paid or made satisfactory arrangements for the payment of tax or interest which had become payable in consequence of an order passed under the Act in respect of the relevant assessment year. The Expression appended to the section defines the meaning of the words "full and true disclosure of income". By a deeming fiction, if it is found that the excess of income assessed over the income returned is of such a nature as not to attract the provisions of Clause (c) of Section 271(1) then it is deemed that the assessee had made a full and true disclosure of his income or particulars relating thereto. By this deeming fiction, the Legislature has given certain benefits to the assessee which if proved would result in reduction or waiver of penalty."

17. In the light of the propositions laid down in the aforementioned cases, it is to be seen whether the reasons assigned by respondent No. 1 for rejecting the application of the petitioner are legally correct. A perusal of the portions of the order passed by respondent No. 1 which have been extracted hereinabove shows that he denied the benefit of the fiction contained in Explanation appearing below Section 18B(1) by presuming that even though the penalty proceedings had not been initiated by the Wealth-tax Officer u/s 18(1)(c), the petitioner was required to prove that the returns filed by him contained full and true disclosure of his net wealth. This is clearly against the plain language of the Explanation which provides that the assessee shall be deemed to have made full and true disclosure of the particulars of his assets where the excess of the net wealth assessed does not attract Section 18(1)(c). It is not in dispute that the Wealth Tax Officer did not initiate proceedings against the petitioner u/s 18(1)(c). Therefore, respondent No. 1 was bound to decide the application of the petitioner by presuming that the petitioner had made full and true disclosure of the particulars of his assets and his failure to do so has the effect of rendering order Annexure P-6 illegal.

18. It is also not the case of the respondent that the petitioner had filed returns after issuance of notice u/s 14(2) of the Act or that the same had not been filed voluntarily and in good faith or that he had not paid or made satisfactory arrangement for payment of tax and/or interest in pursuance of the assessment order. Therefore, it must be held that there was no legal jurisdiction to reject the application of the



petitioner.

19. For the reasons mentioned above, the writ petition is allowed. Order Annexure P6 is quashed with the direction to respondent No. 1 to decide the petitioner's application for waiver afresh keeping in view the proposition laid down in Smt. Parkash Devi's case (supra) and Jagjiwan Kumar's case (supra) and the observations made in this order.