

Shri Amar Nath Vs The Commissioner of Wealth-tax and Another

Court: High Court Of Punjab And Haryana At Chandigarh

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

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 Date of Delay in Wealth Tax Penalty

Year date of filing months returned assessed demand u/s

filing the the return 18(1)

return (a).

67- 30.6.67 28.2.75 91 Rs.158918/- 203.900.520 297

68

68- 30.6.68 28.2.75 79 Rs. 90118/- 244.382.720 360

69

69- 30.6.69 28.2.75 67 Rs. 48929/- 130.600.153 16917

70

70- 29.2.82 28.2.75 36 Rs. 59121/- 358.853.4682 46593

71

71- 29.2.72 28.2.75 36 Rs. 67045/- 474.302.3743 67374

72

72- 31.7.72 28.2.75 30 Rs.139733/- 567,088.6341 70060

73

73- 31.7.73 17.10.73 2 Rs.124426/- 695,556.18460 5933

74

74- 31.7.74 26.3.75 7 Rs.553500/- 889,230.33739 27623

75

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 Vijh 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 Jagjiwan 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 assesses 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.