

**Lachman Chaturbhuj Java Vs. R.G. Nitsure and Others**

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**SooperKanoon Citation :** [sooperkanoon.com/344275](http://sooperkanoon.com/344275)

**Court :** Mumbai

**Decided On :** Jan-16-1981

**Reported in :** [1982]132ITR631(Bom); [1981]6TAXMAN198(Bom)

**Judge :** B. Lentin, J.

**Acts :** [Wealth Tax, 1957](#) - Sections 18(1)(A)

**Appeal No. :** Miscellaneous Application No. 641 of 1977

**Appellant :** Lachman Chaturbhuj Java

**Respondent :** R.G. Nitsure and Others

**Judgement :**

**Lentin, J.**

1. For the assessment year 1970-71, the petitioner had to file his wealth-tax return on or before September 30, 1970. On July 2, 1970, the petitioner made an application for extension of time. However, that application is not before me, and neither learned counsel is in a position to state the period till which extension of time was sought for. On September 30, 1970, the petitioner made another application for extension of time department. According to the petitioner, his chartered ill December 30, 1970. No reply was vouchsafed by the accountant filed his wealth-tax return on May 31, 1971, showing the net taxable wealth at Rs.

2,91,224 and on that day admittedly wealth-tax in the amount of Rs. 956 was paid to the department on self-assessment basis. The filing of the wealth-tax return on May 31, 1971, is not admitted by the department. On February 24, 1973, the WTO issued a notice under s. 17 of the W.T. Act (hereinafter referred to as 'the Act') calling upon the petitioner to file his return for the assessment year 1970-71. According to the petitioner, his chartered accountant informed the officer that the return had already been filed but that in case the same was not traceable in the records of the department, he would file another return, which was done on March 26, 1973. On August 8, 1973, the department issued a penalty notice under s. 18(1)(a) of the Act. On September 19, 1973, which was the date fixed for the hearing of that notice, the petitioner remained absent, and on that day an ex parte order was passed against the petitioner levying a penalty of Rs. 45,030, for the late filing of the return on March 26, 1973. The petitioner filed a revision application before the Commissioner, who by his order dated January 29, 1973, substantially confirmed the WTO's order dated September 19, 1973. It is the Commissioner's order which the petitioner challenges by way of the present petition.

2. For the assessment year 1971-72, the petitioner had to file On September 28, 1971, he applied for extension of time till December 30, 1971. The department granted extension of time till November 30, 1971. It appeal that some time prior thereto the petitioner made another application for extension of time till March 29, 1972. Neither side is in a position to give the date of that application; it is, however, not in dispute that such an application was made and that no reply was vouchsafed by the department. On February 24, 1973, the WTO issued a notice under s. 17 of the Act calling upon the petitioner to file his wealth-tax return for the assessment year 1971-72. On March 26, 1973, the petitioner filed his return showing his net wealth at Rs. 64,408. On March 29, 1973, the assessment order was passed assessing the petitioner's net wealth at Rs. 1,29,854 by adding an amount of Rs. 65,446 being the income-tax liabilities claimed for the assessment years 1967-68 and 1968-69. Tax on the net assessed wealth was levied at Rs. 299. On August 8, 1973, the department issued a penalty notice under s. 18(1)(a) of the Act. On the date of hearing, namely, September 19, 1973, the petitioner was absent and an ex parte order was passed by the WTO levying a penalty of Rs.

2,537 for late filing of the return on March 26, 1973. The petitioner's revision application under s. 25(1) was rejected by the Commissioner, who by his order dated January 29, 1977, upheld the WTO's order dated September 19, 1973, with some modifications. It is the Commissioner's order dated January 29, 1977, which is also challenged in the presents petition.

3. Reverting to the assessment year 1970-71, the petitioner's chartered accountant, Mr. N. S. Parekh, had made an affidavit stating that the wealth-tax return for that year was prepared by his office some time in April or May, 1971, and was filed with the WTO and that on the basis of that wealth-tax return the wealth-tax payable on self-assessment worked out to Rs. 956, which amount he advised the petitioner to deposit with the department and which the petitioner did on May 31, 1971, vide Challan No. WT/20. In his affidavit, the petitioner's chartered accountant further stated that unfortunately the receipt for the filing of the wealth-tax return was misplaced either in his office or in the petitioner's office and hence it was not possible to produce the same for verification. Now, the reason given by the Commissioner for rejecting the petitioner's application is to be found in para. 23 of his order, the relevant excerpt whereof is as under :

'..... I cannot accept the affidavit filed by M/s. Narendra S. Parikh, F.C.A., as evidence, regarding the filing of net wealth of the petitioner on or about April/May 1971... For one thing apart from the affidavit, there is absolutely nothing to prove the facts stated by the petitioner. The payment of self-assessment tax does not ipso facto establish that the return of net wealth has been filed on that date. It is rather strange that in this case, even the receipt for filing of the return has been misplaced.....'

4. Beyond the bald assertion that the affidavit filed by the petitioner's chartered accountant was not acceptable to the Commissioner, no reason has been given by the Commissioner why he chose to disregard the affidavit made by the petitioner's chartered accountant. It is not as if even the department harboured a grievance that the chartered accountant and the petitioner were in collusion with each other or that the chartered accountant had gone out of his way to make a false affidavit. If some the Commissioner should have so stated in his order with his reasons for

disbelieving the petitioner's chartered accountant instead of summarily and lightly rejecting that affidavit as not being acceptable to him without giving any reason at all. Neither in this affidavit nor in anything on record is there anything which would cast the slightest doubt or aspersion on the veracity or bona fides of the chartered accountant who made this affidavit on oath and presumably with due sense of responsibility. The emphasis laid by the Commissioner on, and his suspicion about, the loss or misplacement of the receipt appears to be without basis, and for which no reason has been given. A document may genuinely be lost or misplaced, and it is not entirely unknown that even in the department sometimes entire files get lost or are untraceable (albeit genuinely), and the assessee's are put to the hardship of filing duplicate returns more than once. Be that as it may, in the light of the chartered accountant's affidavit, the Commissioner might well have done better to have taken a view less uncharitable than he has done on the loss of this receipt. Moreover, the chartered accountant had not even chosen to absolve himself from responsibility as is manifest from his frank admission in his affidavit that the receipt had been lost or misplaced by the petitioner or even by himself. There was no reason why the chartered accountant should have gratuitously taken upon himself this burden unless there was a receipt which is not traceable.

5. In the light of the above discussion I am constrained to say that the entire approach of the Commissioner was totally erroneous which goes to the root of the matter and merits interference. At best the period for which the penalty could be levied would be from January 1, 1971, to April 30, 1971.

6. It was urged by Mr. Kotwal on behalf of the department that penalty should be levied from October 1, 1970, because the petitioner's application dated September 30, 1970, for replied to by the department and hence must be deemed to be rejected. I do not agree. In a tax proceeding and more so where penalty is attracted, it is not only right and proper but pre-eminently essential and imperative that the department should intimate to the assessee its refusal to extend time without expecting the assessee to dance attendance on the department by making enquiries whether the department proposes to grant the assessee's application for extension of time, it is the duty of the department to inform the assessee accordingly well in advance, so that the assessee is put on his guard that unless

he files his return within the prescribed period, penal consequences are liable to follow. If the department chooses not to reply to the assessee's application within the time applied for by the assessee, time is deemed to be extended as prayed for by the assessee, and he would be justified in assuming that his application has been granted by the department and not the other way round as urged by Mr. Kotwal. It may be recalled here that the department vouchsafed no reply to the petitioner's application dated September 30, 1970, for extension of time till December 30, 1970. The petitioner was, therefore, justified in assuming that silence on the part of the department was consent and that time was extended till December 30, 1970, for him to file his return. As, however, the wealth-tax return was filed by the petitioner's chartered accountant in May, 1971, at the time of making payment of Rs. 956 on self-assessment, the penalty attracted would be for a period of four months, namely, from January 1, 1971, to April 30, 1971, and must be calculated accordingly under s. 18(1)(a) of the Act.

7. Coming to the next assessment year, namely, 1971-72, it is the case of the petitioner that he was advised by his chartered accountant that it was not necessary to file his wealth-tax return as the petitioner's net wealth for that year was only Rs. 64,408, namely, below the taxable limit, and that he bona fide followed the advice given with equal bona fides to him by his chartered accountant and hence did not file the return for the assessment year 1971-72, till March 26, 1973, after service of the notice dated February 24, 1973, under s. 17 of the Act. It is true that, as appears from the assessment order, the WTO was of the opinion that income-tax liabilities for the assessment years 1967-68 and 1968-69, aggregating to Rs. 65,446 were liable to form part of the assessment, and hence on that basis computed the petitioner's total wealth at Rs. 1,29,854. In his impugned order the Commissioner has not given due weight to the advice the petitioner received from his chartered accountant. Section 18 of the Act provides for an imposition of penalty if the department is satisfied that any person has 'without reasonable cause' failed to furnish the return within the time prescribed. It is not even the department's case that there was any collusion between the petitioner and his chartered accountant or that the chartered accountant deliberately and wantonly gave a palpably wrong advice which no reasonable person, much less a professional person, should give or that there were any male

fides, or for that matter even want of bona fides, on the part of the petitioner in following the advice or on the part of the chartered accountant in giving it. Surely it would not be unreasonable to expect an assessee, who engages a chartered accountant to assist him in tax matters which get more complicated day by day, to be advised and guided by him. Can it be said that the petitioner failed to furnish his return within the prescribed time 'without reasonable cause', because he acted under the advice and guidance of the chartered accountant employed by him for that specific purpose. To my mind, the answer must be in the negative. To this extent the approach of the Commissioner is contrary to law and goes to the root of the matter, necessitating interference.

8. In the result, the petition is allowed in terms of prayers (a) and (b). In respect of the assessment year 1970-71, after calculating the penalty under s. 18(1)(a) of the Act for four months, namely, from January 1, 1971, to April 30, 1971, and deducting the same from the amount of Rs. 21,091 paid by the petitioner to the department, the department shall refund the balance to the petitioner within six weeks today. In respect of the assessment year 1971-72, the department shall refund to the petitioner the sum of Rs. 2,537 in toto within two weeks from today. Rule is made absolute accordingly. There will be no order as to costs.