Suresh Jindal Vs. Cwt

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Court : Delhi

Decided On : Aug-01-2002

Reported in : [2002]124TAXMAN576(Delhi)

Appeal No. : CW No. 368 of 1978 1 August 2002

Appellant : Suresh Jindal

Respondent : Cwt

Advocate for Pet/Ap. : Ajay Jha and; Sanjeev Khanna, for the Responden

Judgement :

By the Court

Petitioner by this writ petition assails the order dated 17-9-1977, by which the Commissioner of Income Tax in exercise of discretion under section 18(2A) of the Wealth Tax Act, 1957 and section 18B of the Wealth Tax Act, 1957 reduced the penalty levied. The ground taken in the writ petition is that once the Commissioner had reached a conclusion that the requisite conditions of section 18(2A) now section 18B were satisfied, he should not have maintained the penalty of 20 per cent and waived the same completely. Petitioner also questions the virus of the said section, while claiming the benefit under the same section. The Commissioner in his discretion has waived the penalty up to 20 per cent only and has given an indication that this has been done considering the overall circumstances of the case.

2. In my view, the petitioner cannot question the discretion exercised by the Commissioner with regard to the extent of waiver. Reference may be usefully invited to a judgment reported at Amrit Narain v. CIT : [1991]190ITR644(Delhi) , where a Division Bench of this court has observed as under:

'The Commissioner is a high functionary and merely because discretion is left with him to waive or reduce penalty or interest under section 273A, it does not mean that the provision is arbitrary.'

3. In the cited case, the Commissioner found that the three conditions specified in clause (c) of section 273A were fulfilled but reduced the penalty and interest only by 50 per cent taking the overall circumstances into consideration. A writ petition under article 226 of the Constitution of India was filed claiming that the Commissioner ought to have waived the entire penalty and interest.

4. The Division Bench held that there was no material to show that there was any improper exercise of discretion by the Commissioner. Challenge to the virus of the section on the ground of it being arbitrary was also repelled. The above cited authority applies to the present case.

5. The writ petition, accordingly, has no merit and is dismissed.