

Commissioner of Wealth-tax, Jullundur v. Ravi Kumar
(S. S. Sodhi, A.C.J.)

subsequent to May 1982 were pending on the date of premature retirement and, as such, the order Annexure P-2, could not be sustained. This matter had also been taken into account by the Division Bench in *Pirithi Singh's case*. In the aforesaid case, the representations of Pirithi Singh petitioner were pending even at the time of the hearing of the Letters Patent Appeal and it was during the course of the aforesaid appeal that a direction was issued to the concerned officer to dispose of the representations. In compliance with these directions, the representations of Pirithi Singh were disposed of and were rejected. In the present case the representations had been admittedly disposed of prior to the filing of the writ petition and, in any case, the stamp of approval of the adverse entries had been put by the Civil Court in the civil suits filed by the respondent challenging those entries. It is, therefore, not open to the respondent to say now that those adverse entries could not be taken into account as representations against those entries were pending on the date of premature retirement of the respondent. We also find that in case of doubtful integrity, the entire service record of an official has to be taken into account and any one entry to that effect is sufficient for purposes of ordering premature retirement.

(8) No other point has been urged before us.

(9) For the reasons recorded above, we allow the present Letters Patent Appeal and uphold the order of premature retirement passed against the respondent and dismiss the writ petition, but with no order as to costs.

R.N.R.

Before : S. S. Sodhi & Ashok Bhan, JJ.

COMMISSIONER OF WEALTH TAX, JULLUNDUR,—*Applicant*.

versus

RAVI KUMAR,—*Respondent*.

Wealth-tax Reference No. 20 to 24 of 1987.

7th August, 1991.

Wealth tax Act, 1957—Ss. 18 (i) (a), 18 (2-A) & 18-B—Delay in filing Wealth Tax Returns—Penalty proceedings initiated—During pendency of proceedings. Assessee moving Commissioner of Wealth-tax under S. 18-B for waiver of penalty—Commissioner directing that

penalty leviable under S. 18 (i) (a) be reduced to the amount of wealth-tax demand raised by the W.T.O.—W.T.O. proceeding to pass order of penalty in terms of the order of Commissioner—Appeal against the order of penalty imposed by W.T.O. is not maintainable—Assessee has no right to appeal in view of the order of Commissioner passed under S. 18 (2-A).

Held, that in proceedings for penalty initiated under Section 18 (i) (a) of the Act, where the Wealth Tax Officer gives effect to the order of the Commissioner passed under Section 18 (2-A) on the application made before the Commissioner by the assessee, such order of the Wealth Tax Officer is not appealable. We are clearly bound by the judicial precedent provided by our own Court in *Amrik Singh v. Commissioner of Wealth Tax*, 170 I.T.R. 656 and with respect we also prefer the view expressed therein. Hence, both the questions referred are answered in the negative against the assessee and in favour of revenue.

(Paras 4 & 5)

Amrik Singh v. Commissioner of Wealth Tax, 170 I.T.R. 656.

(FOLLOWED)

Commissioner of Wealth-tax, Karnataka-II v. B. Kempanna, 126 I.T.R. 825.

(Dissented from)

Wealth tax Reference from the order of the Income Tax Appellate Tribunal Amritsar, dated 30th July, 1981 arise out of :

Sr. No.	R. A. No.	Arising out of WTA No.	Asstt. Year
1.	23 (ASR)/81	144 (CHG.)/79	1969-70
2.	24 (ASR)/81	145 (CHG.)/79	1970-71
3.	25 (ASR)/81	146 (CHG.)/79	1971-72
4.	26 (ASR)/81	147 (CHG.)/79	1972-73
5.	27 (ASR)/81	148 (CHG.)/79	1973-74

The following questions of law has been referred to this Hon'ble Court (Pb. and Hy.) High Court Chandigarh by the Income Tax Appellate Tribunal Amritsar for its opinion :

1. "Whether on the facts and in the circumstances of the case ITAT is right in law in holding that orders passed by WTO under Sec. 18(1) (a) for the four years levying penalty in pursuance of and in conformity with CWT order U/s 18

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18 (2-A) and 18 (B) of the Act is appealable before the Appellate Authorities despite the mandatory provisions of Section 18B(5) of the Wealth Tax Act."

2. Whether on the facts and in the circumstances of the case ITAT is right in law in not sustaining the order of the AAC."

A. K. Mittal, Advocate, for the Appellant.

Nemo, for the Respondent.

JUDGMENT

S. S. Sodhi, J.

(1) The controversy here is with regard to the order passed by the Commissioner of Wealth Tax on the assessee's application under Section 18(2-A) of the Wealth Tax Act, 1957 hereinafter referred to as 'the Act'. Is the right of appeal against the order of the Wealth Tax Officer giving effect to such order of the Commissioner lost hereby ?

(2) There was delay on the part of the assessee in filing his Wealth Tax Returns for the Assessment Years 1969-70 to 1973-74. On this account, the Wealth Tax Officer initiated penalty proceedings under Section 18(i) (a) of the Act. Before, however, these proceedings could be finalized, the assessee moved the Commissioner of Wealth Tax under Section 18-B of the Act for waiver of the penalty imposable for these years. The Commissioner, by his order of March 8, 1977, directed that the penalty leviable under Section 18(i) (a) be reduced to the amount of Wealth Tax demand raised by the Wealth Tax Officer for the relevant Assessment Years which were as under :—

<i>Assessment Year</i>	<i>Wealth Tax Demand</i>
1969-70	Rs. 451
1970-71	Rs. 1607
1971-72	Rs. 3450
1972-73	Rs. 4298
1973-74	Rs. 885

(3) The Wealth Tax Officer, following the order of the Commissioner of Wealth Tax under Section 18-B of the Act proceeded to pass an order levying penalty for these Assessment Years in terms of the order passed by the Commissioner. It was in appeal against this order before the Appellate Assistant Commissioner and then before the Tribunal that the question arose whether order passed by the Commissioner under Section 18-B of the Act took away the right of appeal from the assessee against an order imposing penalty passed under Section 18(1) (a) of the Act. It is in this factual background that the two questions set out below came to be referred:—

1. "Whether on the facts and in the circumstances of the case ITAT is right in law in holding that orders passed by WTO under Sec. 18(1) (a) for the four years levying penalty in pursuance of and in conformity with CWT order U/s 18 (2-A) and 18 (B) of the Act is appealable before the Appellate Authorities despite the mandatory provisions of Section 18B (5) of the Wealth Tax Act."
2. Whether on the facts and in the circumstances of the case ITAT is right in law in not sustaining the order of the AAC ?

(4) There is a conflict of views with regard to the survival of the right of appeal after an order has been passed by the Commissioner under Section 18-B of the Act. The High Court of Karnataka in *Commissioner of Wealth Tax Karnataka-II v. B. Kempanna* (1), has held the right of appeal available to the assessee against an order of the Wealth Tax Officer imposing penalty under Section 18(1) (a) of the Act is not lost or waived on an order being passed on his application under Section 18(2-A) which Section 18-B renders final. It being observed, "— This is because the ambit and scope of S. 18 (2A) is quite different and in no way affects the jurisdiction of the WTO to decide about the questions arising under S. 18 (1) (a) of the Act as to the existence or non-existence of reasonable cause. The only effect the order of the Commissioner would have is that the minimum penalty to be levied by the WTO would be in accordance with what is determined by the Commissioner if the minimum penalty is only reduced and not waived, and if it is waived, the WTO is also bound not to levy any penalty. Apart from this.

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there is no other effect consequent on the order of the Commissioner under S. 18(2A) so far as the jurisdiction of the WTO is concerned in the matter of imposition of penalty.-----" A contrary view has however, been taken by our Court in *Anrik Singh vs. Commissioner of Wealth Tax*, (2), where, it was held that in proceedings for penalty initiated under Section 18 (1) (a) of the Act, where the Wealth Tax Officer gives effect to the order of the Commissioner passed under Section 18 (2-A) on the application made before the Commissioner by the assessee, such order of the Wealth Tax Officer is not appealable. We are clearly bound by the judicial precedent provided by our own Court and with respect, we also prefer the view expressed therein.

(5) Both the questions referred are consequently answered in the negative against the assessee and in favour of revenue. This reference is disposed of accordingly. There will, however, be no order as to costs.

R.N.R.

Before : A. L. Bahri & H. S. Bedi, JJ.

TEJINDER SINGH SIDHU,—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 8990 of 1991

22nd August, 1991

Constitution of India, 1950—Art. 226—Admission to Post-graduate Courses—Advertisement inviting applications for the Post-graduate Degree/Diploma Courses—Cl. 6 thereof—Challenge to—Petitioner opting for admission to M.D. Course in Psychiatry—Cl. 6 of advertisement providing stipulation entitling a candidate for admission to Post-graduate Degree Course only in the speciality in which Post-graduate Diploma Course studied—Petitioner doing one-year Diploma Course in Clinical Pathology (DCPM), hence, denied admission to M.D. Course in Psychiatry—Minimum qualification for admission to Post-graduate Degree/Diploma Course prescribed as M.B.B.S.—Candidate with higher qualification should not be made ineligible for admission to other subjects for Post-graduate Courses—Petitioner, therefore, cannot be denied admission to M.D. Course in Psychiatry—Creation of additional seat—Direction given by Court.