(2008) 07 GUJ CK 0071

In the Gujarat High Court

Apurv R. Hathi — APPELLANT

Vs

J.G. Arora or Successor Designated Authority — RESPONDENT

Date of Decision : 23-07-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Finance (No. 2) Act, 1998 — Section 89, 95
Income Tax Act, 1961 — Section 140A, 249, 264

Citation : (2008) 07 GUJ CK 0071

Hon'ble Judges : K.A. Puj, J;Bankim N. Mehta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

K.A. Puj, J.—The petitioner has filed this petition under Article 226 of the Constitution of India challenging the order dated 26-2-1999 passed by the respondent rejecting the petitioner''s declaration u/s 89 of the Finance (No. 2) Act of 1998 under Kar Vivad Samadhan Scheme (hereinafter referred to as ''KVSS'') for the assessment years 1993-94, 1994-95 and 1995-96.

2. The petition was admitted by this court and Rule was issued by this court on 7-9-1999.

3. It is the case of the petitioner that for the assessment years 1993-94, 1994-95 and 1995-96, the petitioner did not file his return of income in time. On account of financial difficulties, based on the correct position of the returns filed and the assessments framed, the petitioner could not pay the amount of taxes due, as per the returned income, as required u/s 140A of the Income Tax Act, 1961. The assessing officer passed assessment orders on 31-3-1998. The petitioner preferred appeals before the Commissioner (Appeals), Baroda on 24-4-1998 which were pending at the relevant time. The petitioner filed a declaration under KVSS on 31-12-1998 before the respondent seeking a certificate under the KVSS.

4. The petitioner was given to understand that in view of non-payment of self-assessment taxes, the appeals of the petitioners, might not be entertained by the appellate authority. The petitioner, therefore, filed revision petitions before the Commissioner, Gujarat, Ahmedabad u/s 264 of the Act for each of the three assessment years. The said three revisions were pending at the relevant time. The learned Commissioner (Appeals), Baroda had dismissed appeals for all the three years holding them to be not maintainable for non-payment of self-assessment tax.

5. The declaration filed by the petitioner was dismissed as infructuous by the respondent vide his order dated 26-2-1999 on the ground that no valid appeals were pending on the date of filing of the petitioner''s declaration for the respective assessment years. It was further observed that the revision petition was filed in the month of January, 1999 after filing of the petitioner''s declaration on 31-12-1998 and hence, such revision cannot validate the petitioner''s declaration since as per the provision contained in Section 95(i)(c) of the Finance (No. 2) Act, 1998, there has to be pendency of a valid appeal/reference/writ/revision petition on the date of declaration.

6. It is this order which is under challenge in the present petition.

7. Mr. S.N. Soparkar, learned senior advocate appearing for the petitioner has submitted that the impugned order of the respondent in rejecting the declaration under KVSS on the ground that appeals were not maintainable u/s 249(4)(a) of the Act is bad, illegal and contrary to law. The respondent, as a Designated Authority under the KVSS, has no authority to examine the validity or otherwise of an appeal, once an appeal is filed. It is deemed to be a valid appeal, unless it is rejected by the appellate authority. He has further submitted that out of abundant caution, the petitioner had preferred revision petitions. In spite of that, the respondent has rejected the declaration on the ground that the revision petitions were filed after filing of the declaration. He has further submitted that the respondent has interpreted the provisions of KVSS in a hyper technical manner. u/s 95(i)(c) of the Finance (No. 2) Act, 1998, the requirement is that, on the date of filing of declaration, appeal or revision must be pending. The appeals of the petitioner were pending. Based on that, the petitioner filed a declaration. The moment petitioner realized that validity of the appeal may be di