(1999) 07 KAR CK 0019

In the Karnataka High Court

Case No : Writ Petition No. 24273 of 1999

Atamjit Singh APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 16-07-1999

Acts Referred:

Finance Act, 1997 — Section 64 (1), 65, 66, 67
Limitation Act, 1963 — Section 4

Citation : (2001) 166 CTR 414 : (2001) 247 ITR 356 : (2001) 114 TAXMAN 120

Hon'ble Judges : R.V. Raveendran, J

Bench : Single Bench

Advocate : P.A. Bhat, for the Appellant; M.V. Seshachala, for the Respondent

Judgement

R.V. Raveendran J.

1. The question that arises for consideration in this petition is whether the Commissioner can condone the delay on the part of the declarant in paying the tax in respect of the income declared under the Voluntary Disclosure of Income Scheme, 1997.

2. The Voluntary Disclosure of Income Scheme, 1997 (in short "the scheme"), introduced by Chapter IV of the Finance Act, 1997 ("the Act" for short), was in force between July 1, 1997, and December 31, 1997. The relevant provisions of the Scheme are :

Section 64 of the Act relates to charge of tax on voluntarily disclosed income. It provides for filing of a declaration in respect of any undisclosed income chargeable to tax under the Income Tax Act (as enumerated in Subsection (1) of Section ,64) in the manner provided in Section 65, between July 1, 1997, and December 31, 1997.

3. Section 65 provides that a declaration u/s 64(1) shall be made to the Commissioner and such declaration shall be in the prescribed form.

4. Section 66 requires that the tax payable under the Scheme in respect of the voluntarily disclosed income shall be paid by the declarant and the declaration shall be accompanied by proof of payment of such tax.

5. Section 67 enables the declarant to file the declaration without paying the tax, provided he pays the tax in respect of voluntarily disclosed income within three months from the date of filing of the declaration with interest. It is, however, made clear that if the declarant fails to pay the same within the three months period, then the declaration filed by him shall be deemed never to have been made. The said Section is extracted below for ready reference :

"67. (1) Notwithstanding anything contained in Section 66, the declarant may file a declaration without paying the tax under that Section and the declarant may file the declaration and the declarant may pay the tax within three months from the date of filing of the declaration with simple interest at the rate of two per cent, for every month or part of a month comprised in the period beginning from the date of filing the declaration and ending on the date of payment of such tax and file the proof of such payment within the said period of three months.

(2) If the declarant fails to pay the tax in respect of the voluntarily disclosed income before the expiry of three months from the date of filing of the declaration, the declaration filed by him shall be deemed never to have been made under this Scheme."

6. The petitioner claims to have made a declaration in the prescribed form (annexure A to the petition) on December 27, 1997, declaring an income of Rs. 5,25,000 for the assessment years 1989-90 to 1993-94. She did not pay the tax on or before the date of such declaration. Nor did she pay the tax within three months from the date of filing the declaration with interest as provided in Section 67(1) of the Act. She paid the tax of Rs. 1,57,500 (as calculated in the manner provided u/s 64) and Rs. 9,450 as interest thereon, in all Rs. 1,66,950 on March 31, 1998.

7. The Commissioner has now sent the following communication dated June 25, 1999 (annexure C), to the petitioner in regard to the said declaration filed on December 29, 1997 :

"Please refer to the declaration filed by you on December 27, 1997, and the letter dated June 15, 1999, from Ostawal and Jain, C. As referred to above. As seen from the records, tax due on the amount declared was paid on March 31, 1998. Your attention is invited to the provisions of Section 67 of the said Act. In terms of the said provision, if the declarant fails to pay the tax in respect of the voluntarily disclosed income before the expiry of three months from the date of filing the declaration, the declaration filed shall be deemed never to have been made under the scheme.

Since the payment made by you on March 31, 1998, is beyond the due date, certificate u/s 68(2) cannot be issued."

8. Feeling aggrieved the petitioner has filed this petition for the following reliefs : (i) to quash annexure C, dated June 25, 1999 : (ii) for a direction to the respondent to consider and grant a certificate that the petitioner has complied with She Voluntary Disclosure Scheme ; and (iii) for a direction to the respondent to accept the declaration filed by the petitioner on December 27, 1997, or in the alternative to refund the sum of Rs. 1,66,950 paid under the scheme with interest.

9. The petitioner contends that the payment was in accordance with the scheme. The two reasons put forth by the petitioner in support of the said contentions are :

The advertisements in newspapers and television, issued by the Department made her to believe that the last date for making the declaration was December 31, 1997, and the last date for payment was March 31, 1998, and, therefore, she never realised that the payment had to be made within three months from the date of filing the declaration. As the short delay of four days in making payment was due to a bona fide error, it ought to be condoned and the declaration should be accepted.

10. The scheme should be liberally construed in favour of the assessees and where there is no undue delay and where the payment of tax with interest is made before the last dale contemplated under the scheme for payment with interest, it should be accepted.

11. The scheme (section 66) contemplates that the tax should be paid before the declaration and proof of payment should accompany the declaration. Section 67 contains an exception to the requirement of Section 66. [t enables the declarant to pay the tax within a period of three months from the date of filing the declaration, with simple interest at the rate of two per cent, for the period of delay (that is for the period beginning from the date of filing the declaration and ending on the date of payment of such tax). Sub-section (2) of Section 67 makes it clear that if the declarant fails to pay the tax in respect of the voluntarily disclosed income before the expiry of three months from the date of filing of the declaration, the declaration filed by him shall be deemed never to have been made under the scheme.

12. It is well settled that the choice between a strict and liberal construction would arise only in case of doubt or ambiguity in regard to the intention of the Legislature. Where the words of the statute are plain and clear, they have to be interpreted and understood in the ordinary sense. The terms of sections 66 and 67 are specific and clear. Where tax is not paid before the expiry of three months from the date of filing [he declaration, the declaration is deemed never to have been made. Where the statutory provisions are unambiguous and specific, the question of either relaxing the provision or interpreting it beneficially or liberally in favour of the assessee or granting extension of time on equitable grounds does not arise. In the absence of any provision for extension of time or

condoning delay on sufficient cause being shown, the time cannot be extended. When a law requires a particular thing to be done in a particular manner to obtain benefit, it is needless to say that the thing must be done in that manner and no other, to become entitled to the benefit. The position is some what akin to periods of limitation prescribed for initiating legal or other proceedings. The question of considering the reasons for delay or condoning the delay will arise only when there is a provision for condonation. In the absence of provision for condonation, as in the case of limitation prescribed for an original suit, the question of condoning the delay does not arise at all. Therefore, the impugned order dated June 25, 1999, does not suffer from any infirmity and is not open to challenge.

13. Learned counsel for the petitioner relied on two decisions in support of his contention that the tax could be paid even after the three-month period, provided the delay was satisfactorily explained.

14. In Kangold (India) Ltd. Vs. Commissioner of Income Tax, , the declaration under the Voluntary Disclosure of Income Scheme, 1997, was filed on December 30, 1997. The cheque for payment of tax was delivered on March 30, 1998, within the three-month period. But, the cheque was encashed on April 3, 1998, after three months. The Department rejected the declaration on the ground that the payment was received after 90 days. The court held that the tax has to be paid within three months and not 90 days ; that what is relevant for the purpose of Section 67 is the date of remittance by cheque and not the date of encashment of the cheque ; and that having regard to the settled legal position, that in case of payment by cheque, the payment is deemed to have been made on the date of delivery of the cheque and not on the date of encashment, payment by cheque within three months is a valid payment u/s 67, and, therefore, the declaration could not have been rejected. The said decision is wholly inapplicable as there is no payment either by way of cheque or otherwise within the three-month period in the case on hand.

15. The next decision relied on by learned counsel for the petitioner is that of the Punjab and Haryana High Court in the case of Smt. Laxmi Mittal Vs. Commissioner of Income Tax, . In that case, the declaration was filed on December 27, 1977. The declarant paid a part of the tax (Rs. 2,682) along with the declaration. On March 27, 1998, the last date specified for payment of tax u/s 67, when she was going to get the money for making the payment, she met with an accident. She and her husband were admitted to a nursing home. Consequently, the balance of tax (Rs. 5,50,000) and interest was not paid on March 27, 1998, but only on March 30, 1998. The Commissioner treated the declaration as non est, even though the Department did not dispute the fact that the declarant was admitted in a nursing home and was physically unable to make payment on March 27, 1998. The Department contended that the provisions of Section 67 were inflexible. The Punjab and Haryana High Court rejected the said contentions on the following reasons (page 99) :

"Mr. Sawhney submits that Section 67 lays down an inflexible rule and according to this provision the deposit has to be made within a period, of three months from the date of declaration. Any failure renders the declaration and the deposit non est. This contention cannot be accepted. The Government of India has itself issued a circular dated September 3, 1998. By this circular it has been, inter alia, provided by the Board that the period for calculating interest will be 90 days from the date of declaration. If the 90th day happens to be a bank holiday, payment on the 91st day being the next working day would be valid. Thus, it is clear that Section 67 does not embody a totally inflexible rule. When things are beyond the control of the citizen, certain moving space is normally allowed. This is precisely what the petitioner is wanting in the present case."

16. I respectfully disagree with the said view of the Punjab and Haryana High Court that Section 67 does not embody a totally inflexible rule. When the wording of the statute is clear, the question of relaxing the provision, on the ground of hardship or on the ground that the matter was beyond the control of the party, does not arise. In this case, Section 67(2) makes it clear that if the declarant fails to make payment before the expiry of three months from the date of filing the declaration, the declaration shall be deemed never to have been made under the scheme. The Punjab and Haryana High Court has relied on the Board''s circular dated September 3, 1998, which provides that where the 90th day happens to be a bank holiday, payment on the 91st day being the next working day would be valid. The said circular is issued u/s 119 of the Income Tax Act. Under that section, the Board has power, inter alia, to tone down the rigour of the law and ensure fair enforcement of the provisions of the Act, by issuing circulars. But, the said power to relax the rigour of the law, cannot be used to issue instructions contrary to or ultra views the statutory provision. The Board circular dated September 3, 1998, permitting payment on the 91st day when the 90th day is a bank holiday is in consonance with Section 67(2) and not contrary to it. In fact the clarification is similar to Section 4 of the Limitation Act, 1963, which provides for the suit to be filed on the reopening day where the prescribed period expires on a day when the court is closed. The said clarification contained in the Board''s circular dated September 5, 1998, issued u/s 119 of the Income Tax Act, has nothing to do with condoning delay on the ground of hardship or other reason, for non-payment within the time specified.

17. The petitioner lastly contended that as his declaration was deemed to have never been made under the scheme, the amount paid on March 31, 1998, by way of tax and interest (Rs. 1,66,950) should be refunded. When the declaration is deemed to have never been made, there is (no ?) need to pay the tax or interest, nor has the Department any right to retain such amount. But, annexure C dated June 25, 1999, does not treat the amount paid as forfeited nor refuses to refund the amount. If the petitioner has paid any amount as tax or interest on the declared amount, it is open for him to make an application for refund as the declaration is deemed never to have been made. As and when such application is filed, the respondent shall consider and dispose of the same in accordance with

law.

18. With the above observation this writ petition is disposed of. Parties to bear their respective costs.