

(2002) 07 RAJ CK 0045

In the Rajasthan High Court

Case No : Civil Writ Petition No. 196 of 1999 3 July 2002 A.Y. 1985-86 1989-90

Bindu Prasad Soni

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 03-07-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Income Tax Act, 1961 — Section 148, 2, 87, 88, 89

Citation : (2002) 176 CTR 165

Hon'ble Judges : N.N. Mathur, J;H.R. Panwar, J

Bench : Full Bench

Advocate : Anjay Kothari, for the Assessee and Sandeep Bhandawat, for the Revenue, for the Appellant;

Judgement

The Government of India introduced the scheme in the name of Kar Vivad Samadhan Scheme, 1998, under Chapter IV of Finance Act, 1998, with a view to provide a quick and voluntary settlement of tax dues as on 31-3-1998, both in various direct tax enactments as well as indirect taxes enactment by offering waiver of a part of the arrear taxes and interest and providing immunity against institution of prosecution and imposition of penalty. The assessee on his part was required to withdraw the appeals pending before the various appellate authorities and courts. The scheme came into force on 1-9-1998, and ended on 31-1-1999.

2. The petitioner is a goldsmith by profession. He derives income mainly from manufacturing of gold ornaments on job basis. The house and business premises of the petitioner was searched on 18-11-1988. He filed the return in response to notice u/s 148 on 23-1-1992, on a total income of Rs. 14,863. The assessing officer assessed the income of the petitioner for Rs. 5,32,163. The Commissioner (Appeals) reduced the amount to Rs. 7,000. On further appeal before the Tribunal, relief of Rs. 2,46,650 was granted. There has been some dispute with respect to the assessment year 1989-90. The Tax Recovery Officer of the Income Tax department by order dated 13-2-1997, made an order of attachment of the

residential house of the petitioner. At one stage petitioner desired to settle the entire dispute with Income Tax department, but, later on he challenged the order of the Tribunal by way of writ petition under articles. 226 and 227 of the Constitution of India before this court. The instant writ petition was admitted on 21-1-1999. After the admission of the writ petition and before the last date for filing the declaration under KVSS, i.e., 31-1-1999, the petitioner filed a declaration under KVSS for the assessment years 1985-86 and 1989-90 on 29-1-1999.

3. It is submitted by Mr. Kothari learned counsel appearing for the petitioner, that it is obligatory on the part of the designated authority to grant a certificate u/s 90(1) and (2) as the petitioner fulfils all the requisite conditions. On the other hand, it is submitted by Mr. Bhandawat learned counsel for the revenue, that the petitioner for taking the benefit under the Scheme of 1998 has filed the instant writ petition mala fide with a view to raise an artificial dispute.

4. The core question which arises for the consideration is whether the applicant is entitled to declaration under the Kar Vivad Samadhan Scheme in accordance with the provisions of section 90(1) and (2) of the Scheme of 1998. In order to appreciate the rival contentions, it would be appropriate to refer some of the provisions of the Scheme. Section 87 is a dictionary (sic- declaratory) provision. Sub-clause.(a) defines "declarant" which means a person making a declaration u/s 88. Sub-clause.(b) defines "designated authority". Sub-clause. (m) defines "tax arrears" which reads as follows:

"(i) in relation to direct tax enactment, the amount of tax, penalty or interest determined on or before 31-3-1998, under that enactment in respect of an assessment year as modified in consequence of giving effect to an appellate order but remaining unpaid on the date of declaration."

5. Section 88 provides settlement of tax payable section 89 provides that declaration u/s 88 shall be made to the designated authority and shall be in such form and shall be verified in such manner as may be prescribed. section 90 provides time and manner of payment of tax arrear, which reads as follows:

"90.(1) Within sixty days from the date of receipt of the declaration u/s 91, the designated authority shall, by order, determine the amount payable by the declarant in accordance with the provisions of this Scheme and grant a certificate in such form as may be prescribed to the declarant setting forth therein the particulars of the tax arrear and the sum payable after such determination towards full and final settlement of tax arrears."

Section 95 is the most relevant provision and has a direct bearing on the controversy involved in the instant case. The provision is extracted as follows:

"95. The provisions of this Scheme shall not

(i) in respect of tax arrear under any direct tax

(a)

(b)

(c) to a case where no appeal or reference or writ petition is admitted and pending before any appellate authority or High Court or the Supreme Court the date of filing of declaration or no application for revision is pending before the Commissioner on the date of filing declaration. "

Sub-clause. (i) of section 95 refers to a pendency of the writ petition. The expression "writ petition is admitted and pending" is of great significance. It cannot be disputed that a writ petition is admitted by the court under articles 226 and 227 of the Constitution of India only when the court on application of judicial mind finds a prima facie case which requires an elaborate hearing. In the instant case the Division Bench of this court while admitting the writ-petition passed the order as follows :

"Heard the learned counsel :

The petitioner raises arguable questions of law. The entire scheme is applicable only to cases admitted and pending. The Scheme as it stands will be over by 31-1-1999. Hence, the matter is taken up urgently. It is admitted, notices returnable in three weeks. Notices of stay petition, returnable in three weeks. In the meanwhile, no coersive steps be taken in this matter."

6. It appears that the respondent raised some controversy with respect to the admission of the writ petition and a prayer was made to recall the order of admission. This aspect has been dealt with by this court by a detailed order, dated 25-2-1999. We consider it appropriate to extract the said order :

"Learned counsel for the petitioner submitted that nothing should prevent respondents from passing an order on the declaration made by the petitioner under Kar Vivad Samadhan Scheme, 1998, on the grounds available to them, the writ petition is already admitted, stating that arguable question of law arise for consideration, by the order of the Bench dated 21-1-1998. The respondents are now trying to get review of that order, which cannot be done at this stage.

Mr. D.S.Shishodia, the learned senior advocate appearing for the respondents states that because of admission of the writ petition, the respondents are not in a position to decide the declaration filed by the petitioner, Under these circumstances, the respondents have to stay their hands until further order to be passed in the writ petition.

In this light of the submissions made by the learned counsel for the parties while maintaining the order dated 21-1-1998, we say that the respondent may not proceed to deal with the declaration until further orders to be passed in the writ petition.

List this matter in the first week of April, 1999 for final disposal itself."

7. In view of the aforesaid order there cannot be any dispute that a writ petition was pending on the date of filing of the declaration.

It is also not in dispute that the declaration was filed before the last date of hearing. In these circumstances, it is obligatory for the designated authority to proceed with the declaration proceedings as provided under sub-clause. (1) and sub-clause. (2) of section 90. Accordingly we direct the designated authority to proceed in accordance with law on the declaration filed by the petitioner.

8. In view of this direction the petitioner seeks permission to withdraw the instant writ petition. The permission to withdraw the writ petition is granted, keeping in view of the fact that we have already directed the designated authority to proceed with the declaration proceedings. It is made clear that this writ petition is being permitted to withdraw reserving the rights and contention of the respective parties to be raised at an appropriate stage. It will be open for the petitioner to approach this court, in case of necessity. The designated authority will decide the declaration within a period of three weeks from today. It goes without saying that during the pendency of the matter before the designated authority no coercive process for recovery shall be taken.

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