

(1999) 12 AHC CK 0025

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 939 of 1999

Dilip Kumar Agarwal

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 13-12-1999

Acts Referred:

Finance Act, 1998 — Section 88, 90, 90(1), 90(2), 90(3)
Income Tax Act, 1961 — Section 156
Land Acquisition Act, 1894 — Section 18, 18(2)

Citation : (2001) 247 ITR 765 : (2001) 117 TAXMAN 335

Hon'ble Judges : S. Rafat Alam, J; M.C. Agarwal, J

Bench : Division Bench

Advocate : Rajesh Kumar, for the Appellant; A.N. Mahajan, for the Respondent

Judgement

M. C. Agarwal, J.—By the Finance (No. 2) Act, 1998, the Government of India introduced a scheme for the settlement of direct and indirect tax disputes. The scheme is known as the Kar Vivad Samadhan Scheme, 1998, and applies only to tax dues that are in arrears. A person who wanted to take benefit of the scheme and to get the disputes settled in terms of the scheme was required to file a declaration after September 1, 1998, but on or before December 30, 1998. The declaration has to be made in the prescribed form and the taxpayer for the purpose of the scheme is known as the declarant. u/s 90(1) of the Act the designated authority is required to determine the amount payable by the declarant in accordance with the provisions of the scheme within 60 days from the date of the declaration and to grant a certificate, in the prescribed form to the declarant setting forth the particulars of the tax arrear and the sum payable after such determination towards full and final settlement of tax arrears. Subsection (2) of Section 90 provides that the declarant shall pay the sum determined by the designated authority within 30 days of the passing of an order by the designated authority and intimate the fact of such payment to the designated authority along with proof thereof and the designated authority shall thereupon issue the certificate to the declarant. Subsection (3) of Section 90

provides that every order passed under Sub-section (1), determining the sum payable under this scheme, shall be conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any proceedings.

2. In accordance with the provisions of the scheme and the rules made thereunder, the present petitioner filed a declaration in respect of the arrears of his Income Tax dues for the assessment years 1982-83, 1983-84, 1984-85 and 1995-96. The declaration is stated to be filed on December 28, 1998. The designated authority, i.e., the Commissioner of Income Tax, Allahabad, determined the amount payable by the petitioner in accordance with the provisions of the scheme and granted a certificate in terms of section 90(1) in Form No. 2-A. This determination was admittedly done on February 25, 1999. The Kar Vivad Samadhan Scheme Rules, 1998, provide that the certificate in Sub-section (1) of Section 90 of the scheme shall be in Form No. 2-A setting forth therein the particulars of the tax arrears and the sum payable under the direct tax enactment after determination towards full and final settlement of tax arrears under that enactment. As stated above, Sub-section (2) of Section 90 requires the declarant to pay the sum determined by the designated authority within 30 days of the passing of an order by the designated authority. In pursuance of the determination u/s 90(1), the designated authority, i.e., the Commissioner of Income Tax, issued a certificate to the petitioner stating that a sum of Rs. 99,353 has been determined as the amount payable towards the full and final settlement of the tax arrears covered by the said declaration. At the foot of the certificate it has been stated that "the declarant is hereby directed to make the payment of sum payable within thirty days from the date of this certificate" which is dated February 25, 1999. The petitioner's case is that this intimation was served upon the petitioner on March 18, 1999, and he deposited the amount in terms of this certificate on March 30, 1999, i.e., within about 12 days of the receipt of the intimation and yet the designated authority is not issuing to him the second certificate mentioned in Sub-section (2) of Section 90 which has to be in Form No. 3 prescribed under rule 5 of the aforesaid Rules. The reason assigned by the designated authority for refusing to issue the said certificate for full and final settlement of the tax arrears is that the petitioner did not deposit the amount within 30 days of the passing of the order which was passed on February 25, 1999. The petitioner is aggrieved by this denial of the certificate in Form No. 3 and has come to this court in the present writ petition for quashing a letter dated June 22, 1999, issued by the designated authority intimating the reason for denial of the certificate in Form No. 3. The petitioner's contention is that the petitioner availed of the benefit of a statutory scheme and made a valid declaration and paid the tax as required within the time prescribed, i.e., 30 days of the receipt of the intimation, and that the denial of the certificate is illegal. It is claimed that the law required the deposit to be made within 30 days and this period could not be curtailed by the designated authority by delay in the service of the order and the action of the designated authority is illegal. In the counter affidavit reliance has been placed on the provisions of the scheme and it is stated

that the petitioner was statutorily required to deposit the arrears of tax within 30 days of the date on which the determination was made and the certificate of intimation u/s 90(1) was signed by the designated authority. It is also stated that the intimation was served on the petitioner within time and he could have deposited the money within 30 days, i.e., by March 25, 1999:

3. We have heard Sri Rajesh Kumar, learned counsel for the petitioner, and Sri A. N. Mahajan, learned standing counsel for the respondent.

4. A perusal of the provisions of the scheme would show that Section 90(1) contemplates a determination of the amount of tax dues payable by the declarant and an intimation of such determination in the form of the certificate. The certificate is to be contained in the case of direct taxes in Form No. 2-A. Sub-section (2) requires the declarant to pay the sum determined by the designated authority within 30 days of the passing of an order by the designated authority. Thus, Sub-section (2) contemplates an order to be passed by the designated authority subsequent to the determination u/s 90(1) and it is within 30 days of the passing of such order that the declarant has to pay the amount. The rules framed under the scheme and the forms prescribed, however, have combined the determination u/s 90(1) and the order for payment contemplated by Sub-section (2) of Section 90, in one form, i.e., Form No. 2-A which contains the details of the amount payable and at the foot thereof requires the declarant to make the payment of the sum payable within 30 days from the certificate. The question is whether this direction can be treated as a direction within the meaning of Sub-section (2) of Section 90 and the question, however, is whether the words "passing of an order" mean the date on which the designated authority signs the certificate of intimation in Form No. 2-A or for the purposes of Sub-section (2) of Section 90, the words "passing of an order" mean communication or service of the order on the declarant. The period of 30 days has been statutorily granted to a declarant and it cannot be presumed that the Legislature wanted that the designated authority should have the authority to curtail this period nominally or substantially or to frustrate the declaration by not intimating the determination u/s 90(1) within 30 days at all. When a declarant makes a valid declaration he acquires a statutory right of determination and to pay the amount determined within 30 days and this right cannot be frustrated in the manner advocated by the Revenue in the present case. The order contemplated in Sub-section (2) is an order which requires compliance and the declarant has to pay the amount within 30 days of the passing of the order. Section 93 of the Scheme provides that any amount paid in pursuance of a declaration made u/s 88 shall not be refundable under any situation. Therefore, if what the Revenue says is accepted the sum of Rs. 99,353 paid by the petitioner cannot be refunded to him and the scheme does not provide how the same will be dealt with. In order to find out the meaning of the phrase "passing of an order" we have to keep in mind the nature of the order. "Order" means a direction or a command. It is particularly so when the person ordered is required to comply with the "order", i.e., the command or direction. An order which is not communicated to the person who is obliged to

comply with or execute the order, is no order in the eyes of law and becomes an order only when it is communicated to such person. This is clear from the nature of the order contemplated by Sub-section (2) of Section 90 as well as the use of the word "passing" in conjunction with the "order". The word "pass", inter alia, means to put in circulation, to transfer from one person to another. Therefore, the use of the word "passing" makes the intention clear that the order has to be communicated to the declarant and the order would be deemed to have been passed only when it is communicated to the declarant. As stated above, the order passed under Sub-section (2) of Section 90 requires compliance from the declarant and the non-compliance affects adversely his statutory right under the scheme and puts his money in jeopardy. The provisions of the Act and the Rules made thereunder cannot be interpreted in a manner which makes it possible for the Revenue to achieve this undesirable result.

5. In *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, , a similar phrase "the date of the Collector's award" came up for interpretation. The question was whether limitation for making a reference u/s 18 of the Land Acquisition Act would commence from the date on which the Collector signs the award or from the date on which the award is either communicated to the party or is known by the party either actually or constructively. The Supreme Court held that where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned. Therefore, the expression "the date of the award" used in proviso (b) to Section 18(2) of the Act must mean the date when the award is either communicated to the party or is known by him either actually or constructively. The Supreme Court observed that it will be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to Section 18 in a literal or mechanical way.

6. A similar situation came before this court in *Balwant Singh and Sons v. Assistant Commissioner (Assessment)*, in Writ Petition No. 921 of 1995 decided on May 13, 1997. In that case the question was whether an application for refund was within the period of limitation prescribed which was three years from the date of the order of assessment or of the final order on appeal, revision or reference whichever is later. This court following *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, , held that the limitation will commence from the date the final order, referred to above, is communicated to the concerned person.

7. That all orders requiring compliance and non-compliance of which adversely affects the legal rights of the obligee take effect only from the date of the communication of the order is also clear from the fact that all statutes and notifications, etc., are required to be published in the Official Gazette and

publication has been held to mean not merely the printing of the gazette but its availability to the public. Therefore, a notification has been held to be "published" when it is made available to the public. It was so held by the Supreme Court in *Collector of Central Excise Vs. New Tobacco Co. Etc. Etc.*, . The Supreme Court referred to its earlier decision in *Harla Vs. The State of Rajasthan*, . In that case a Council of Ministers, appointed to look after the Government and Administration of Jaipur State during the Maharaja's minority, passed a resolution which purported to enact the Jaipur Opium Act and the question which had arisen for consideration of the court was whether the mere passing of the resolution without promulgation or publication in the Gazette or other means as known to the public was sufficient to make it law. The Supreme Court held that the resolution of the Council of Ministers without publication was not sufficient to make the law operative.

8. Similar is the position in respect of the statutory orders requiring compliance from a subject. The mere preparing of the draft of an order and signing it in the authority's own office would not in our view amount to passing of an order. The order would legally stand passed when it is passed over to the declarant for compliance by payment of the amounts determined payable by the designated authority.

9. The period of 30 days prescribed for payment of the tax is in consonance with the legislative policy in the direct taxes. Under the Income Tax Act, Section 156 requires the service of a notice of demand after an assessment and the notice of demand which is issued under rule 15 of the Income Tax Rules in Form No. 7 requires an assessee to pay the demand within 30 days of the service of the notice. It is only after the expiry of this period of 30 days that an assessee can be deemed to be a defaulter and further action for the levy of interest, penalty, etc., and recovery of the dues can be taken. This also indicates that the legislative policy is to give the taxpayer 30 clear days for payment of the dues. Therefore, considering the matter from all angles, we are of the view that in Sub-section (2) of Section 90 of the Finance (No. 2) Act, 1998, the passing of an order is complete only when it is served or otherwise communicated to the declarant and the direction at the foot of Form No. 2A directing the declarant to make the payment of the sum payable "within 30 days from the date of this certificate" is not in accordance with the scheme and is, therefore, illegal. We, therefore, allow this writ petition and hold that the declarant petitioner having paid the dues determined u/s 90(1) within 30 days of the communication to him of the order made under Sub-section (2) of Section 90, the designated authority is obliged to issue to the petitioner the requisite certificate in Form No. 3.

10. We, therefore, allow this writ petition and quash the communication F. No. CIT/Alld/Tech/KVSS/98-99, dated June 22, 1999, issued by the designated authority respondent No. 1 to the petitioner and direct the designated authority to issue to the petitioner a certificate in Form No. 3 as required under the scheme.

11. The parties will bear their own costs.