
(1999) 08 AP CK 0167

In the Andhra Pradesh High Court

Case No : Writ Petitioner No"s. 14194, 14195 and 14262 of 1999 20 August 1999

DR. (MRS. RENUKA DATLA

APPELLANT

Vs

COMMISSIONER OF Income Tax

RESPONDENT

Date of Decision : 20-08-1999

Acts Referred:

Central Sales Tax Act, 1956 — Section 10
Constitution of India, 1950 — Article 14, 226
Finance (No. 2) Act, 1998 — Section 87, 88, 89, 95
Income Tax Act, 1961 — Section 143, 220, 234A, 234B, 234C

Citation : (1999) 107 TAXMAN 143

Hon'ble Judges : Reddi, J;P. Venkatrama Reddi, J;B. Prakash Rao, J

Bench : Full Bench

Advocate : C. Kodanda Ram, for the Petitioner and S.R. Ashok, for the Appellant;

Judgement

Reddi, J.

The petitioner questions the legality of two similar orders. passed by the respondent on 26-2-1999 rejecting the declarations filed by the petitioner under the provisions of Kar Vivad Samadhan Scheme ("the KVSS Scheme") which was introduced by Chapter IV of the Finance (No. 2) Act, 1998 and seeks an order to direct the respondent to "consider" the declarations filed by the petitioner u/s 88 of the Act, on 30-1-1999. Three reasons are given for rejection of the declarations:

There does not exist any arrears on 31-3-1998 as seen from the facts stated above.

2. The appeal said to be pending is on levy of interest, which has been waived. Hence, there is no dispute.

3. The arrear that is sought to be settled relates to the current demand raised on

31-12-1998 which is entirely different from the arrear demand,"

The declarations related to the income assessed for the years 1989-90 and 1992-93. The assessments of the petitioners for the aforementioned years were made u/s 143(3) of the Income Tax Act, 1961 ("the Act"). The assessee-petitioner preferred appeals. The Commissioner (Appeals) by his orders dated 31-7-1997 and 30-9-1997 partly allowed the appeals, by giving partial relief in respect of unexplained investment in the co-ownership property of Raju, Investments and also setting aside the addition in regard to unexplained investment in share in one case and gold and jewellery in another case. For giving effect to the appellate order, modification orders were passed on 30-9-1997 and 17-11-1997 re-computing the income. The tax payable thereon was specified at Rs. 4,82,727 and Rs. 6,56,042, respectively. Thereafter, the competent authority granted waiver of interest payable under sections 234A, 234B and 234C by his order dated 31-10-1997. In order to give effect to that order, the assessing officer passed consequential orders on 20-1-1998. For the year 1989-90, the balance tax payable was shown as Rs. 3,25,40 1. This tax was paid in full till on 27-3-1998. For the year 1992-93, the refundable amount was arrived at Rs. 4,65,289. Questioning the order of the appellate authority in not granting full relief on the aforementioned items and upholding the levy of interest, the petitioner preferred appeals to the Tribunal in the meanwhile. The appeals insofar as the interest is concerned have become infructuous as it was waived during the pendency of appeal. We are told that the appeals are still pending in the Tribunal, but that has no bearing on the present case inasmuch as the tax on the item disputed in the appeal was paid well before the crucial date, i.e., before the date of filing the declaration as noted above.

2. While so, on 31-12-1998, the Deputy Commissioner, Central Circle W, Hyderabad, made fresh assessments u/s 143(3), read with section 251, of the Act in order to carry out the directions of the appellate authority. Practically, those orders were based on a concession made by the petitioner agreeing to the additions. It may be mentioned that in the fresh assessment order dated 31-12-1998 for the year 1992-93, the assessing authority added with the consent of the assessee a sum of Rs. 2,80,786 towards the income from unexplained investment in Raju Investments, which, according to the assessing officer, missed in the consequential order passed on 17-11-1997.

3. As a result of fresh assessments made on 31-12-1989, the tax liability was worked out as Rs. 7,27,991 for 1989-90 and Rs. 13,38,040 for the year 1992-93. The balance tax payable was shown as Rs. 16,28,515 for the year 1989-90 and Rs. 22,05,925 for the year 1992-93 and the same was demanded. Out of that, the interest component for the year 1989-90 was Rs. 15.02 lakhs and Rs. 14.42 lakhs for the year 1992-93. In the impugned order, it is stated that there is no proof of filing appeal against the assessment orders passed on 31-12-1998. However, it is seen from the material papers filed by the petitioner's counsel that appeals were in fact filed on 4-2-1999, i.e., four days after the declaration was

filed only disputing the levy of interest under sections 234A, 234B and 234C. It is further seen from the record that the appellate authority allowed the appeals on 24-3-1999, i.e., subsequent to the impugned order, directing the deletion of interest which was on the earlier occasion waived by the Director-General, Income Tax, Bangalore.

4. In the declaration filed for the year 1989-90, the tax arrear on the date of filing the declaration was shown as Rs. 1,26,889 which is also the figure reflected in the fresh assessment order dated 31-12-1998 after excluding the interest under sections 234A, 234B and 234C. The disputed income relatable to the tax arrear was calculated at Rs. 2,41,693 on which the petitioner offered to pay a tax of Rs. 96,677 under the Scheme. Coming to the declaration for the year 1992-93, the tax arrear was shown as Rs. 5,42,174 on the date of making the declaration and corresponding disputed income was calculated at Rs. 9,68,168. On this, the petitioner offered to pay the tax of Rs. 3,87,267 under the Scheme.

5. On these facts, the question whether the petitioner can avail of" the benefit of the Scheme and whether the reasons given by the Ist respondent while rejecting the declaration are correct in law. This in turn raises two questions:

On the date of filing the declaration (i) was there "tax arrear"; (ii) was there an appeal in respect of such tax arrear ? For resolving the issues, naturally, we must take stock of the relevant provisions.

6. The relevant part of section 88 which is the pivotal provision reads as follows:

"Settlement of tax payable-Subject to the provisions of this Scheme, where any person makes, on or after the 1st day of September, 1998 but on or before the 31-12-1998, a declaration to the designated authority in accordance with the provisions of section 89 in respect of tax arrear, then, not with standing anything contained in ally direct tax enactment or indirect tax enactment or any other provision of any law for the time being in force, the amount payable under this scheme by the declarant shall be determined at the rates specified hereunder, namely --

(a) where the tax arrear is payable under the Income Tax Act, 1961 (43 of 1961),-

(i) ** ** *

(ii) in the case of a declarant, being a person other than a company or a firm, at the rate of thirty per cent of the disputed income,"

It may be noted that the date for filing the declaration was extended and it is not in dispute that the petitioner filed the declaration within the extended period. The relevant words to be noticed in section 88 are-In respect of tax arrear". That means, the declaration made by assessee should be in respect of tax arrear as defined by clause (m) of section 87 of the Finance (No. 2) Act, 1998 (dealing with the KVSS Scheme) which insofar as it is relevant reads as follows

"(m) "tax arrear" means,-

(i) in relation to direct tax enactment, the amount of tax, penalty or interest, determined on or before the 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;"

7. The expressions "disputed income" and "disputed tax" should also be noticed :

"(e) "disputed income", in relation to an assessment year, means the whole or so much of the total income as is relatable to the disputed tax;

(f) "disputed tax" means the total tax determined and payable, in respect of an assessment year under any direct tax enactment but which remains unpaid as on the date of making the declaration u/s 88;"

8. Another material provision is section 95. The relevant portion of section 95 is as under:

Scheme not to apply in certain cases-The provisions of this Scheme shall not apply-

(i) in respect of tax arrear under any direct tax enactment,-

(a) and (b)**

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

"The main point put against the assessee by the respondent as well as the counsel for the revenue is that the declaration does not relate to any "tax arrear" within the meaning of section 87(m). We find force in the contention of the learned counsel for the respondent. In our view, the "arrear of tax" as on the date of declaration had arisen not on account of any determination made on or before 31-3-1998, but on account of determination made long thereafter. The event of determination or to put it more precisely, the re-determination of the tax pursuant to the appellate order remanding the matter for taking a fresh decision insofar as the unexplained investment in the shares for the two years and unexplained investment in acquisition of jewellery for the year 1992-93, took place only after 31-3-1998. The disputed items of income in respect of which the assessment was set aside and remanded by the appellate authority, were added back to the assessable income on the basis of the concession of the petitioner. That was done when the fresh assessment orders were passed on 31-12-1998. The position on 31-3-1998 was that there was no determination of tax insofar as the aforementioned disputed items are concerned. The process of determination of tax vis-a-vis the "set aside" items was in a state of suspended animation on the crucial date - 31-3~ 1998. As rightly observed by the Commissioner, the arrear that is sought to be settled under the scheme arises out of the

determination made and demand raised on 31-12-1998, ie., beyond the crucial date. In respect of the other disputed item, namely, the income representing the unexplained investment in Raju Investments, the tax was paid before 31-3-1998 to the extent the addition was upheld by the Appellate Commissioner.

9. The learned counsel for the petitioner wants to overcome this factual hurdle by pleading that the order passed on 31-12-1998 should relate back to the date of filing the return for the assessment year or at any rate to the date of the original assessment proceeding. It is pointed out that the assessment order dated 31-12-1998 which was made pursuant to the direction u/s 251 is not independent of the determination made before 31-3-1998. The learned counsel, therefore, argues that the determination of disputed tax sought to be settled under the Scheme must be deemed to have taken place for all practical purposes before 1-4-1998.

10. The contention of the learned counsel, if accepted, would amount to unduly stretching the scope of the expression "determined" on or before 31-3-1998 by invoking the relation back theory thereby extending the ambit and amplitude of the Scheme. While construing a provision in the Scheme, inter alia, providing for an exception in the form of concession to the taxpayer, the provision should be construed strictly in accordance with the plain language employed therein unless of course it results in some incongruous or discriminatory results which might expose it to an attack from the standpoint of article 14 of the Constitution. A provision in a fiscal Statute, more especially a provision granting exemption or concession, should not be stretched in favour of the assessee by means of analogy, inference and appropriations. The fact that the Legislature itself was not in favour of taking cognizance of the fresh assessments or reassessments made subsequent to the cut-off date - 31-3-1998, is manifested in the exception provided in section 87(m). If there was a determination before 1-4-1998 by the appellate authority and as a sequel thereto the earlier assessment stood modified to give effect to that appellate order, such modification even though made subsequent to 31-3-1998 but before the date of declaration will answer the definition of "tax arrear" in section 87(m). In other words, a consequential order passed merely quantifying the tax on the basis of the appellate decision will be within the purview of the Scheme although such consequential order was subsequent to 31-3-1998 provided the other ingredients are satisfied. To this limited extent, the proceedings subsequent to 31-3-1998 are taken note of u/s 87(m) but the order of fresh assessment made pursuant to the direction issued u/s 251(1)(a) is not what is contemplated by the expression "as modified in consequence of giving effect to an appellate order".

11. The central theme of the argument of the petitioner's counsel, as already noted, is that the determination made on 31-12-1998 by means of the fresh assessment order passed u/s 143 read with section 251 is in reality a continuation of determination made prior to 1-4-1998 by assessing and appellate authorities and it dates back to the period prior to 31-3-1998. According to this

argument, it is enough if the genesis of the determination is traceable to a date prior to 1-4-1998. The tax determined under the fresh assessment order operates post jacto according to this argument. We do not think that the fiction of relation back can be pressed into service in order to get over the plain terminology "determined on or before 31-3-1998", that finds place in the definition of "tax arrear". To say that the determination of tax liability made after 31-3-1998 should be projected into and treated as determination made on or before that date merely because it is referable to the proceedings or events that took place prior to 31-3-1998, is nothing but straining and stretching the language of the definition of "tax arrear". There may be cases when the Court may be compelled to read down or modify the language of the section to further the intention of the Legislature or to avoid incongruity or to save the provision from the constitutional taboo. That is not the case here. The language as it remains can operate on its own force without there being any need to trim or mould the same for any compelling reason. In such a case, no question of departing from the plain words would arise. As observed by the Supreme Court in *Keshavji Ravii & Co. v. CIT* : [1990]183ITR1(SC) "the need for interpretation arises when the words used in the Statute are, on their own terms, ambivalent and do not manifest the intention of the Legislature". But, that situation does not exist here.

12. If apart from the plain words, the legislative intention has to be ascertained, we have the internal evidence of the legislative intent in the definition clause (m) of section 87. Only the post-31-3-1998 modification for the limited purpose of giving effect to an appellate order is recognised and nothing more. This exception spelt out in section 87(m) by necessary implication rules out the application of "relation back" theory envisaged by the learned counsel.

13. In this context, the learned counsel for the petitioner sought to draw support from the following observations made by the Division Bench of the Delhi High Court in *All India Federation of Tax Practitioners v. Union of India* [1999] 23 ITR 1:

". . . It is true that "tax arrears" has been defined as the amount of" tax, penalty or interest "determined" on or before March 31, 1998, under clause (m) of section 87. Still it cannot be denied in the illustration given hereinabove that at one point of time, the tax was determined though such determination was reversed in appeal by the Commissioner (Appeals). The determination is sought to be restored in the appeal preferred by the department before the Tribunal. Once the appeal is allowed, the determination would relate back to the date of originating the same (p. 20)

These observations ought to be understood in the context of the issue, the learned Judges were discussing. The learned Judges were meeting the argument of the revenue that if an assessee succeeds in the first appeal, the tax ceases to be in arrears and it would assume the character of arrears only if the further appeal filed by the revenue is decided by the Tribunal in favour of the revenue. Therefore, it was sought to be contended that where the department was the

appellant, an assessee, though litigating, cannot be treated to be in arrears. This argument was rejected by their Lordships in the above terms. In the context of the argument which the learned Judges were considering, those observations may be apposite because once the Tribunal reverses the first appellate authority's order, the assessment prior to 1-4-1998 will be restored. In such a situation, the tax determination which took place prior to 1-4-1998 would remain intact. That was the ratio underlying the observations quoted above. The issue with which we are concerned is quite different and there is nothing in the judgment of the Delhi High Court which can come to the aid of the petitioner.

14. The learned counsel for the petitioner Mr. Kodanda Ram submits that the acceptance of the interpretation suggested by him would better achieve the legislative object in framing the Scheme. It is pointed out that the objective of the Scheme being immediate realisation of the tax arrears by cutting short the litigation, there is no reason why the assessee in whose cases fresh assessments or reassessments were done after 31-3-1998 but before the date of declaration in continuation of the original or pending proceedings, should be denied the option of availing the Scheme. It is, therefore, contended that the literal interpretation should be avoided to construe the crucial words occurring in clause (m) of section 87. We cannot endorse this argument which enlarges the scope of the legislative dictat and pre-supposes what the Legislature could have or ought to have done. It is for the political executive to formulate the policy and the Legislature to decide to what extent a scheme of this nature should go and where to stop. If the Legislature thought it fit to prescribe (the cut-off date and disregard any determination of substantive nature made after 31-3-1998 in its effort to garner the revenues by means of offering incentives to the assessee, the Court cannot substitute its own wisdom for that of the Legislature and weigh in golden scales as to how best the objective could be achieved. Diverse considerations and a host of economic factors play a role in moulding the policy of the State in bringing into force a scheme of this nature. By a process of judicial interpretation, the Courts should refrain from making embellishments refinements in the Scheme in the name of promoting the objective better. The Court in exercise of jurisdiction under article 226 cannot ordain that the scheme should go the whole-hog to achieve the avowed purpose and it should be more comprehensive or more relief-oriented. Various decisions of the Supreme Court from 1960s eloquently convey the message that

Courts should be slow and cautious in interfering with the classification made in fiscal legislation and the modalities evolved for charging and recovering the taxes. We cannot expect a Scheme or provision intended to extend tax relief to be most comprehensive giving coverage to every possible situation. Logical deductions and analogies do not always hold

15. Let us take the facts of the instant case. The submission made on behalf of the petitioner is that the appeal filed before the Tribunal questioning the addition of income on unexplained investment in shares and jewellery should be treated

as the appeal pending on the plain language of section 95(1)(c), notwithstanding the fact that the petitioner specifically agreed for such addition in the course of fresh assessment made subsequent to such appeal. In this context, the question that would naturally crop up is - is it the intention of the Parliament that such ineffective appeals in respect of the items on which the dispute had been abandoned, should be taken into reckoning for the purpose of section 95? The contention of the petitioner is that it is enough if the appeal is admitted and pending, whatever the character and effectiveness of the appeal may be. Here, the petitioner wants to rely on the plain words relegating to the background the possible intention of the Legislature.

16. What should be the approach of the Court in interpreting a fiscal statute, more especially a provision granting an exemption or concession, has been laid down by the Supreme Court in a recent decision in *Orissa State Warehousing Corpn. v. CIT* 1999 (3) Sup 460. Umesh C. Banerjee, J. speaking for the Supreme Court observed:

"While it is true that in the event of there being any doubt in the matter of interpretation of a fiscal statute, the same goes in favour of the assessee. But the fact remains and the law is well-settled on this score that in the matter of interpretation of the taxing statutes the law Courts would not be justified in introducing some other expressions which the Legislature thought fit to omit. In the present context, there is no doubt as to the meaning of the words used in the section by reason of the words used, neither there is any difficulty in ascertaining the statutory intent. Incidentally, it cannot but be said that an exemption is an exception to the general rule and since the same is opposed to the natural tenor of the statute, the entitlement for exemption, therefore, ought not to be read with any latitude to the taxpayer or even with a wider connotation as is being suggested by Dr. V. Gauri Shankar but to restrict its application to the specific language and depicting the intent of the Legislature." [Emphasis supplied]

17. The Supreme Court then referred to the following passage in *Keshaji Ravji & Co.*'s case (*supra*):

"Artificial and unduly latitudinarian rules of construction which, with their general tendency to "give the taxpayer the breaks" are out of place where the legislation has a fiscal mission.. . ." (p. 1807)

18. In *International Cotton Corpn. (P.) Ltd. v. CTO* [1975] 35 STC 1, the Supreme Court while dealing with the constitutionality of section 10 of the Central Sales Tax Amendment Act " 1969 which provided for exemption from Central Sales Tax if the dealer had not collected the tax between 10- 11- 1964 and 9-6-1969 repelled the argument that those who had not collected the tax on their sales prior to 10- 11- 1964 should also get the same benefit to conform to the norms of article 14. Their Lordships observed :

"A concession is not a matter of right. Where the Legislature taking into consideration the hardship caused to a certain set of taxpayers gives them a

certain concession, it does not mean that that action is bad as another set of taxpayers similarly situated may not have been given a similar concession. It would not be proper to strike down the provision of law giving concession to the former on the ground that the latter are not given such concession. Nor is it possible for this Court to direct that the latter set should be given a similar concession. That would mean legislation by this Court and this Court has no legislative powers." (p. 9)

19. The principle of construction of a provision in a Tax Statute providing for an exception or exemption has been succinctly summarised by the Supreme Court in *Novopan India Ltd., Hyderabad Vs. Collector of Central Excise and Customs, Hyderabad*, after referring to various Rulings, This is what their Lordships observed:

"18. We are, however, of the opinion that, on principle, the decision of this Court in *Mangalore Chemicals and in Union of India v. Wood Papers* referred to therein - represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee - assuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason explained in *Mangalore Chemicals* and other decisions, viz., each such exception/exemption increases the tax burden on other members of the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this Court in *Hansraj Gordhandas Vs. H.H. Dave, Assistant Collector of Central Excise and Customs, Surat and Others*, that such a notification has to be interpreted in the light of the words employed by it and not on any other basis " (p. 775)

These principles negative the scope for upholding the argument of the learned counsel for the petitioner that the expression "determined on or before 31-3-1998" should be given expanded meaning by importing a fiction.

20. In the light of the above discussion, we are of the view that reasons 1 and 3 given by the Commissioner (Central), Bangalore, in the impugned order are legally sustainable. As far as the 2nd reason, i.e., regarding appeals pending in the Tribunal, the Commissioner is not right in observing that they related only to levy of interest which was waived. The petitioner did raise certain other grounds also including the ground that the Appellate Commissioner ought to have straightaway deleted the income added towards the unexplained investment in shares and jewellery instead of setting aside and remanding the matter to the assessing authority. However, it is worthy of note that in the course of fresh assessment proceedings, the assessee agreed for the additions on this account without raising any dispute and on such concession, the "set aside income" as once again added resulting in increase of tax liability and the creation of "tax

arrear". Thus, the appeals before the Tribunal have become infructuous not only with regard to the waiver of interest, but also with regard to other items of dispute. Whether an ineffective or infructuous appeal, not to speak of a sham or incompetent appeal, can be said to be an appeal pending" within the meaning, of section 95(1)(c) is another question that could arise in the instant case. However, we consider it unnecessary. to go into that question having regard to the conclusion reached on the first point. We, therefore, rest our conclusion on the ground that the fresh assessment order dated 31-12-1998 has not given rise to the "tax arrear" which could form the subject-matter of declaration u/s 88 read with section 89 and, therefore, the benefit of concessional rate of tax cannot be availed of by the petitioner.

21. In the result, the writ petitions are dismissed. In the circumstances of the case, we award no costs.

WP No. 14262 of 1999:

22. The petitioner in this writ petition is a private trust. In the order passed u/s 143(3) on 27-6-1996, the taxable income was determined at Rs. 8,67,050 on which the tax payable was Rs. 3,68,438 adding the interest u/s 234A and section 234B, the demand was raised for. the tax of Rs. 8,15,711. By an order dated 31-10-1997, the competent. authority waived the interest under sections 234A and 234B. The assessing authority passed the consequential order showing the outstanding tax at Rs. 3,88,438 and the interest thereon u/s 220(2) at Rs. 1,26,753. Thus, t lie total amount of Rs. 5,10,940 was demanded. B v an order dated 27-4-1998, the Commissioner (Appeals) set aside the assessment made oil 27-3-1996 and directed fresh assessment after ascertaining the correct area of land under cultivation and the probable yield therefrom. Pursuant to the directions of the appellate authority, fresh assessment order was passed on 20-10-1998. In the course of this proceeding, the assessee specifically agreed for the addition of Rs. 8,67,050 representing the unexplained income. Accordingly, the income was determined and an amount of Rs. 4,88,438 was arrived at after deducting the amount paid and balance tax was shown as Rs. 3,84,187. To this, interest u/s 234A and section 234B was added making total sum payable as Rs. 10,65,799. The petitioner filed appeal to the Commissioner (Appeals) on 27-1-1999 questioning the levy of interest which was once waived by the competent authority. The -appeal was allowed on 24-3-1999 directing the deletion of interest under sections 234A and 234B. In the meanwhile, the petitioner filed the declaration u/s 88 of the Scheme on 29-1-1999. The same was rejected by the impugned order dated 25-2-1999 by, the Ist respondent herein who gave the following reasons :

(1) The tax arrears as on 31-3-1998 ceased to exist after the assessment was set aside by the Commissioner (Appeals) in April 1998.

(2) The appeal pending on the date of declaration relates to the assessment order passed on 20-12-1998, and not the earlier one where the arrears were

outstanding as on 31-3-1998.

(3) The arrear which is now sought to be settled relates to the current demand consequent to the order passed on 20-12-1998 which is entirely different from the arrear demand which was outstanding on 31-3-1998 and which was totally wiped out after the assessment was set aside in April 1998 which is much before the date of declaration."

In the declaration, the petitioner showed the disputed income as Rs. 8,57,560 and the tax arrear outstanding as on 31-3-1998 as well as on the date of the declaration as Rs. 3,84,187. Calculating the 30 per cent of tax on Rs. 8,57,560 under the scheme, the petitioner offered to pay a sum of Rs. 2,57,268.

23. The difference in facts between the previous cases (W.P. Nos. 14194 and 14195 of 1999) and the present case may be noticed. In this case, the order in appeal was passed after 31-3-1998 setting aside the original assessment and directing the fresh assessment. There was no appeal pending as regards the tax on the date of final declaration or even now. There was no second appeal to the Tribunal against the order dated 20-4-1998 remanding the assessment.

24. There are two formidable obstacles which come in the way of the petitioner invoking the application of the scheme. Firstly, there was no tax arrear within the meaning of clause (m) of section 87 nor any disputed tax or income on the date of filing the declaration. Secondly, there was no appeal pending on the date of filing the declaration in respect of- tile (ax arrear for the clearance of which the petitioner seeks to have resort to the scheme.

25. Regarding the first ground, it is to be noted that although the first ingredient of clause (iii) of section 87 was satisfied, the other ingredient was not satisfied. It is to be noted that the tax which was remaining in paid on the elate of declaration, is not the tax that, was determined before 31-3-1998. No doubt, on 31-3-1998, the assessment order passed on 27-6-1996 which was subjected to appeal was holding his field. But, with the set ting aside of the said assessment by the Commissioner (Appeals) by his order dated 27-4-1998, the tax demand outstanding on 31-3-1998 got wiped out and paved the way for fresh assessment. The fresh assessment was made on 20-10-1998 and pursuant thereto, the demand for tax which is sought to be settled under the scheme was raised. No doubt, this tax was not paid by the date of filing the declaration. But that is not material. "Tax remainder unpaid" shall be the tax determined on or before 31-3-1998. The determination of tax made before 31-3-1998 was no longer in force on the date of filing the declaration. Therefore, the question of any tax remaining unpaid with reference thereto does not arise. The definition of "tax arrear" does not contemplate arrear of tax arising out of the determination made subsequent to 31-3-1998, the only exception being the modification order, as clarified by us supra- The learned counsel for the petitioner, therefore, falls back on the argument that the tax determination though made on 20-10-1998 should have post-lacto operation and should relate back to the date of original

assessment made in 1996. This contention we have already rejected in the first part of" this judgment.

26. The second obstacle in the way of the petitioner is the absence of appeal in relation to the tax arrear which is sought to be cleared on the basis of the Scheme. The appeal which was filed and pending on the date of declaration was only in respect of interest. The addition of income and the tax assessed thereon was not the subject-matter of appeal. In fact, no appeal could have been filed in relation to the tax as the assessment made on 20-10-1998 was based on a concession. The petitioner by its letter specifically stated that it had no objection to the addition of the entire income which was previously assessed. It is obvious that any and every appeal, whatsoever it relates to, is not what is contemplated by section 95(1)(c). The appeal should relate to the particular tax arrear or the disputed tax which the assessee wants to pay off by availing of the concessional rate provided for by the Scheme. Incidentally, it may be mentioned that the petitioner has not offered to pay the interest disputed in the appeal under the provisions of the scheme. Therefore, we hold that section 95(1)(c) has not been satisfied.

27. Our conclusion, therefore, is that in this case too, no illegality has been committed by the 1st respondent in rejecting the petitioner's declaration purportedly filed under the Kar Vivad Samadhan Scheme. Hence, the writ petition is dismissed. No costs.