(2002) 04 DEL CK 0163

In the Delhi High Court

Case No : Civil Writ Petition No. 5644 of 2000 16 April 2002 A.Y. 1989-90 and 1990-91

Ivory Mart — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 16-04-2002

Acts Referred:

Citation : (2002) 174 CTR 634

Hon'ble Judges : Vikramajit Sen, J;Dalveer Bhandari, J

Bench : Full Bench

Advocate : O.S. Bajpai, Amit Shukla and Ajay Jha, for the assessedJ.R. Goel with Ajay Jha and Ms. Prem Lata Bansal, for the Revenu, for the Appellant;

Judgement

By the court

The petitioner has preferred this writ petition against the order dated 24-8-2000, passed by Commissioner by which a certificate in Form 3 of Kar Vivad Samadhan Scheme (hereinafter referred to as the ''KVSS''), 1998, for the assessment years 1989-90 and 1990-91 was rejected.

2. Brief facts which are necessary to dispose of the writ petition are recapitulated as under :

The petitioner, Ivory Mart, along with Indian Handicrafts Emporium & Minar Art Gallery, filed a joint writ petition, i.e., CW No. 1991/92 before this court with the prayer that the Explanation (aa) to section 80HHC as introduced by section 28(e)(i) of the Finance (No. 2) Act, 1991, be declared unconstitutional, invalid and non est. The petitioners also filed an application u/s 151, Civil Procedure Code, along with the writ petition for interim relief. In that application, the petitioners prayed that the respondents be restrained from reopening the petitioners'' assessments for the periods 1986-87, 1987-88, 1988-89, 1989-90, 1990-91.

During the pendency of that writ petition, respondents introduced KVSS, 1998.

This scheme was introduced by the Central Government with a view to collect revenues through direct and indirect taxes by avoiding litigation. The Finance Minister explained the object of the Kar Vivad Samadhan Scheme and the relevant part is extracted as under [(1998) 147 CTR (St) 9 : (1998) 231 ITR 67] :

"Litigation has been the bane of both direct and indirect taxes. A lot of energy of the revenue department is being frittered in pursuing large number of litigations pending at different levels for long periods of time. Considerable revenue also gets locked up in such disputes. Declogging the system will not only incentives honest taxpayers, enable Government to realise its reasonable dues much earlier but coupled with administrative measures, would also make the system more user friendly."

The petitioner took benefit of this scheme and made declaration u/s 89 of the Finance Act (2 of 1998) in respect of Kar Vivad Samadhan Scheme, 1998. The declaration was made on 24-12-1998. The last column of the scheme reads as under :

Last column

Reply

Detail of pendency of appeal/revision/ reference/writ on the date of declaration

(i) Appeal/reference/revision/writ petition number

CW No. 1991192 filed oil 25-5-1992 in Delhi High Court

(ii) Date of filing

(iii) Authority of Court

Against that column, the petitioner mentioned CW No. 1991/92 and date of filing as 25-5-1992, in Delhi High Court.

3. It may be pertinent to point out that in a recent judgment titled Sushila Rani Vs. Commissioner of Income Tax and Another, their Lordships of the Supreme Court have mentioned as under :

"A certificate issued u/s 90(1) of the Finance (No. 2) Act, 1998 Kar Vivad Samadhan Scheme, 1998making a determination as to the sum payable under the Kar Vivad Samadhan Scheme is conclusive as to the matters stated therein and cannot be reopened in any proceedings under any law for the time being in force, except on the ground of false declaration by. the declarant."

4. A short controversy which arises for the consideration of this court is whether the petitioner has made any false declaration in the declaration u/s 89 of the Finance (No. 2) Act, 1998, in respect of Kar Vivad Samadhan Scheme, 1998 ?

5. We have carefully seen the writ petition, application for interim relief, other annexures and various court orders. In the writ petition filed on 25-5-1992 (CW

No. 1991/92), the petitioners prayed that the Explanation (aa) to section 80HHC as introduced by section 28(e)(i) of the Finance (No. 2) Act, 1998, be declared unconstitutional, invalid and non est. The petitioners have also prayed that the respondents be restrained from reopening the petitioners'' assessments for the periods 1986-87, 1987-88, 1988-89, 1989-90, 1990-91.

6. According to the judgment of Smt. Sushila Rani (supra), a certificate u/s 90(1) of the Finance (No. 2) Act, 1998Kar Vivad Samadhan Scheme, 1998 making a determination as to the sum payable under the Kar Vivad Samadhan Scheme is conclusive as to the matter stated therein and cannot be reopened in any proceedings under any law for the time being in force, except on the ground of false declaration by the declarant.

7. We are clearly of the opinion that the petitioner cannot be held guilty of making any false declaration in the instant case. In this view of the matter, this writ petition deserves to be allowed. The impugned order passed by respondent No. 2 on 24-8-2000, is quashed restoring the validity of the certificates in Form No. 2A, which are Annexures D1 and D2, of the petition. The respondents are directed to issue certificate in Form No. 4 prescribed under rule 5(h) of the Kar Vivad Samadhan Scheme, 1998.

The writ petition is allowed with costs which are quantified at Rs. 2,000.

CM Nos. 3114, 9223/01 are also accordingly disposed of.

OPEN