(2002) 04 DEL CK 0091

In the Delhi High Court

Case No : Civil Writ Petition No. 5644 of 2000

Ivory Mart APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 16-04-2002

Acts Referred:

Finance (No. 2) Act, 1998 — Section 90(1)
Income Tax Act, 1961 — Section 147

Citation : (2002) 255 ITR 425

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

Bench : Division Bench

Advocate : O.S. Bajpai and Amit Shukla, for the Appellant; J.R. Goel and Prem Lata Bansal, for the Respondent

Judgement

1. The petitioner has preferred this writ petition against the order dated August 24, 2000, passed by the Commissioner of Income Tax by which a certificate in Form No. 3 of the Kar Vivad Samadhan Scheme, 1998 (in short "the KVSS"), for the assessment years 1989-90 and 1990-91 was rejected.

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

The petitioner, Ivory Mart, along with Indian Handicrafts Emporium and Minor Art Gallery filed a joint writ petition, i.e., C. W. No. 1991 of 1992, before this court with the prayer that 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 of the Civil Procedure Code, 1908, 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 and 1990-91.

3. During the pendency of that writ petition, the respondents introduced the Kar

Vivad Samadhan Scheme, 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] 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. Dialoging 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."

4. The petitioner took benefit of this scheme and made declaration u/s 89 of the Finance (No. 2) Act of 1998, in respect of the Kar Vivad Samadhan Scheme, 1998. The declaration was made on December 24, 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. 1991 of 1992 filed on May 25, 1992 in the Delhi High Court

(ii) Date of filing

(iii) Authority of court.

5. Against that column, the petitioner mentioned C. W. No. 1991 of 1992 and date of filing as May 25, 1992, in the Delhi High Court.

6. 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 (headnote) :

"A certificate issued u/s 90(1) of the Finance (No. 2) Act, 1998--Kar Vivad Samadhan Scheme, 1998--making 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."

7. The 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 of 1998, in respect of the Kar Vivad Samadhan Scheme, 1998 ?

8. We have carefully seen the writ petition, application for interim relief, other annexures and various court orders. In the writ petition filed on May 25, 1992 (C. W. No. 1991 of 1992), the petitioners prayed that 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 have also prayed that the respondents be restrained from re-opening the petitioners'' assessments for the periods 1986-87, 1987-88, 1988-89,1989-90 and 1990-91.

9. According to the judgment of Sushila Rani Vs. Commissioner of Income Tax and Another, , a certificate u/s 90(1) of the Finance (No. 2) Act of 1998--Kar Vivad Samadhan Scheme, 1998--making 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.

10. 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 August 24, 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(b) of the Kar Vivad Samadhan Scheme, 1998.

11. The writ petition is allowed with costs which are quantified at Rs. 2,000. C. M. Nos. 3114, 9223 of 2001 are also accordingly disposed of.