
(2008) 07 GUJ CK 0041

In the Gujarat High Court

Case No : Special Civil Application No. 2221 of 1999

Kailash T. Agrawal

APPELLANT

Vs

M.S. Thanvi, Designated Authority

RESPONDENT

Date of Decision : 01-07-2008

Acts Referred:

Income Tax Act, 1961 — Section 154, 155, 158, 245D(4), 264

Citation : (2008) 218 CTR 291

Hon'ble Judges : H.B. Antani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : S.N. Soparkar and Vaibhavi Parikh, for the Appellant; Manish R. Bhatt, for the Respondent

Final Decision : Dismissed

Judgement

D.A. Mehta, J.—This petition challenges order dt. 15th Feb., 1999 whereunder declaration made by the petitioner under Kar Vivad Samadhan Scheme, 1998 (KVSS) came to be rejected by the respondent.

2. The petitioner, an individual, was a partner of a partnership firm Jindal (India) Textile Mills Ltd. during the period relatable to asst. yrs. 1989-90 to 1993-94. The petitioner had filed returns of income declaring partnership share from the aforesaid partnership firm on the basis of return of income filed by the firm, and as per the allocation of the share of the partnership firm. It appears that the partnership firm approached the Settlement Commission for settlement of the tax liabilities relatable to asst. yrs. 1989-90 to 1993-94 in the hands of the partnership firm. On 12th Dec. 1997. the Settlement Commission made order u/s 245D(4) of the IT Act. (the Act) whereby, after computing the income of the firm, determined the tax payable by the firm and allocated the same as per requirements of Section 158 of the Act.

3. On 1st July, 1998. the AO having jurisdiction over the petitioner framed an order u/s 155 of the Act so as to give consequential effect to the order of the

Settlement Commission resulting in additional liability to pay Income Tax for asst. yrs. 1989-90 and 1990-91 in the hands of the petitioner. The petitioner preferred revision application u/s 264 of the Act for the aforesaid two assessment years. During the pendency of the said revision petition, the petitioner filed declaration under KVSS on 30th Dec, 1998 seeking settlement of the disputed amount of tax for asst. yrs. 1989-90 and 1990-91.

4. The respondent authority rejected the declaration made by the petitioner vide impugned order dt. 15th Feb. 1999 stating that the income of the partnership firm was determined by the Settlement Commission vide order dt. 12th Dec, 1997 and the share of income of the petitioner from the said partnership firm was also determined by the order of the Settlement Commission. It was further stated that there was no demand outstanding as on 31st March, 1998. Thus, according to the respondent, the case of the petitioner was covered by provisions of Section 95(i)(b) of KVSS.

5. On behalf of the petitioner, Mr. S.N. Soparkar, learned senior advocate submitted that the Designated Authority has committed an error in law by holding that the bar stipulated by Section 95(i)(b) of KVSS was applicable to the case of the petitioner. In fact, the petitioner was at no point of time the applicant before the Settlement Commission u/s 245D(4) of the Act. It was submitted that the liability to pay additional amount of tax arose as a consequence of the order made by the Settlement Commission on 12th Dec, 1997 and hence the petitioner was a person in whose case tax arrears existed so as to be eligible, for availing the benefit under KVSS. That, merely because the AO framed an order u/s 155 of the Act on 1st July, 1998, cannot be a ground for holding that the petitioner was not having any outstanding arrears as on 31st March, 1998.

6. In support of this submission, reliance has been placed on the following question and answer from a circular issued by CBDT on 7th Oct., 1998 (1998) 150 CTR (St) 5:

Q. 31. What happens to the amount of tax arrear if the same is modified by an order u/s 154 passed after 31st March, 1998?

Ans. 31, The order u/s 154 would rectify the apparent mistake in the order passed on or before 31st March, 1998 and hence, it would relate back to that order. The tax arrear would accordingly stand modified and in such cases, the modified tax arrear will constitute the tax arrear for the purpose of declaration under the scheme.

7. Heard Mr. M.R. Bhatt, learned senior standing counsel for respondent authority. Learned Counsel placed reliance on the provisions of KVSS and supported the order made by the respondent authority.

8. The plea raised on behalf of the petitioner that the petitioner was not an applicant before the Settlement Commission and that the Settlement Commission has not passed any order in case of the petitioner, requires to be

accepted. However, from the aforesaid contention, it is not possible to accept the submissions that the petitioner is entitled to approach the Designated Authority by preferring a declaration under KVSS. The petitioner has to show independently that the basic requirements entitling an assessee to avail of the benefit under KVSS stand fulfilled. In other words, the petitioner, in his individual capacity, is required to show from the record that the prerequisite conditions stipulated by KVSS stand fulfilled so as to entitle the petitioner to avail of the benefits under KVSS.

9. In the present case, admittedly, there were no outstanding tax arrears on the day when the petitioner preferred application under KVSS. The demand was raised on 1st July, 1998, when the AC) framed an order u/s 155 of the Act. The contention of the petitioner that on 12th Dec, 1997, when the Settlement Commission passed an order u/s 245D(4) of the Act in the case of the firm and simultaneously made an order of allocation u/s 158 of the Act brought into existence the liability qua the petitioner is only partially correct. Though there was allocation of partnership share after income is determined by the Settlement Commission, the allocation was in the case of the firm and there was no demand raised in the hands of individual partners, including the petitioner. The term "tax arrears" as defined u/s 87(m) of KVSS specifically talks of the amount of tax, penalty or interest determined on or before 31st day of March, 1998 under the 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. Therefore, on the date of declaration, there was no amount of tax remaining unpaid and the petitioner could not have approached under KVSS. In fact, once the petitioner takes a stand that the petitioner was not an applicant before the Settlement Commission and the Settlement Commission has not made any order in case of the petitioner, in the same breath the petitioner cannot contend that by virtue of the order made by the Settlement Commission in case of the partnership firm, the petitioner became liable to pay tax. To put it differently, if the bar stipulated by Section 95(i)(b) of KVSS is not to operate in case of the petitioner, there could be no question of any liability arising in the hands of the petitioner by virtue of the same order which is made only qua the petitioner (sic-partnership) firm.

10. In almost similar fact situation, this Court has laid down that the embargo provided for in Section 95(i)(b) of KVSS is only with regard to the share income from the firm in which the order u/s 245D(4) of the Act is passed and it does not preclude the partners from approaching the Designated Authority under KVSS for settlement of their other disputes [Manibhai Prabhudas Patel and Another Vs. L.K. Koolwal, Designated Authority, The contention based on the aforesaid circular of the Board dt. 7th Oct., 1998 also does not merit acceptance. Section 155 of the Act cannot be equated with Section 154 of the Act-the former provisions being in relation to various other consequential amendments, while Section 154 of the Act specifically relates to rectification of any mistake apparent from the record.

11. In the circumstances, the petitioner is not entitled to seek a mandamus or any other writ to the respondent authority to accept the declaration made by the petitioner. In the absence of any error in the impugned order dt. 15th Dec, 1999, the petition fails and is accordingly rejected. Rule is discharged. There shall be no order as to costs.