(1999) 10 P&H CK 0116

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petns. No''s. 1887 and 2195 of 1999

Kamal Sood APPELLANT

Vs

Union of India and Another RESPONDENT

Date of Decision : 26-10-1999

Acts Referred:

Finance Act, 1997 — Section 67(2)
Income Tax Act, 1961 — Section 139

Citation : (2000) 160 CTR 199 : (2000) 1 ILR (P&H) 381 : (2000) 241 ITR 567 : (2000) 124 PLR 474 : (2000) 2 RCR(Civil) 192

Hon'ble Judges : N.K.Sud, J;N.K. Sodhi, J

Bench : Division Bench

Advocate : Harpawan Kumar, for the Appellant; R.P. Sawhney and Rajesh Bindal, for the Respondent

Judgement

N.K. Sodhi, J.—This order will dispose of two Writ Petns. Nos. 1887 and 2195 of 1999, in which common questions of law and fact arise. Since the arguments were addressed in Civil Writ Petn. No. 1887 of 1999, the facts are taken from this case.

2. The challenge in this petition filed under Art. 226 of the Constitution is to the order dt. 21st July, 1998, passed by the CIT, Rohtak, under s. 67(2) of the Finance Act, 1997, whereby the declaration filed by the petitioner under the Voluntary Disclosure of Income Scheme 1997, was rejected.

3. The petitioner is doing business in timber and is a partner in the firm called Public Timber Traders, Mathura Road, Faridabad. He is assessed to Income Tax in Ward No. 1 at Faridabad in the State of Haryana. The Government of India by the Finance Act, 1997, introduced a scheme called the "Voluntary Disclosure of Income Scheme, 1997" (for short "the scheme"). It is contained in Chapter-IV of the Finance Act consisting of ss. 62 to 78 (both inclusive). The purpose of introducing the scheme is to mobilise and channelise funds into priority sectors of the economy and to offer an opportunity to persons who have evaded tax in

the past, to declare their undisclosed income, pay a reasonable tax and in future adopt the path of rectitude and civic responsibility. In other words, this was an amnesty scheme in line with similar schemes declared by the Government previously. The sole object of the scheme is to unearth the maximum black money and put the same to productive use. Under the scheme a person could voluntarily disclose his income for which he had failed to furnish a return under s. 139 of the IT Act, 1961, or which he had filed to disclose in a return of income furnished by him or which had escaped assessment by reason of his omission or failure to make a return or to disclose fully and truly all material facts necessary for his assessment or otherwise. Such voluntarily disclosed income was taxed at the rate of 30 per cent. The declaration was to be made to the CIT in the prescribed form. The tax payable under the scheme in respect of the voluntarily disclosed income was to be paid by the declarant and the declaration was to be accompanied by proof of payment of such tax. Sec. 67 of the Finance Act which is relevant for our purpose is reproduced hereunder for facility of reference :

"67. Interest payable by declarant. - (1) Notwithstanding anything contained in s. 66, the declarant may file a declaration without paying the tax under that section and the declarant may file the declaration and the declarant may pay the tax within three months from the date of filing of the declaration with simple interest at the rate of two per cent for every month or part of a month comprised in the period beginning from the date of filing the declaration and ending on the date of payment of such tax and file the proof of such payment within the said period of three months.

(2) If the declaration fails to pay the tax in respect of the voluntarily disclosed income before the expiry of three months from the date of filing of the declaration, the declaration filed by him shall be deemed never to have been made under this scheme."

4. Under this provision the declaration could be filed without paying the tax and in that event the declarant was required to pay tax within three months from the date of filing of the declaration. Sub-s. (2) provides that if the declarant fails to pay tax before the expiry of three months from the date of filing of the declaration, the declaration filed by him shall be deemed never to have been made under the scheme.

5. The petitioner before us filed the requisite declaration on 30th December, 1997, declaring an undisclosed income of Rs. 1,25,000. The tax payable on this income was Rs. 37,500. He did not pay tax on the undisclosed income along with the declaration and, therefore, in terms of s. 67 of the Finance Act he could pay that tax within three months from the date of filing of the declaration along with interest for delayed payment. Since the declaration was filed on 30th December, 1997, three months expired on 29th March, 1998, which was a Sunday. He could deposit the tax on the following day, i.e., 30th March,1998, but he paid the same on 31st March, 1998, i.e., one day after the period of three months was over. On receipt of the declaration, the CIT, Rohtak, served a show-cause notice on the

petitioner asking for his explanation as to why the declaration filed by him be not deemed never to have been made under the scheme. In response to this notice, a representative of the petitioner appeared before the CIT on 6th May, 1998, and 12th May, 1998, and requested that delay in making the payment being only of one day, the same be condoned. The CIT took the view that the delay could not be condoned in view of s. 67(2) of the Finance Act and, therefore, by order dt. 21st July, 1998, the declaration was deemed never to have been made under the scheme. Hence, the present petition.

6. The argument of learned counsel for the petitioner is that the delay in depositing the tax was only of one day and, therefore, the CIT ought to have condoned the same since the Revenue had suffered no loss and the interest for the delayed period had also been deposited. He has placed reliance on a Division Bench judgment of this Court in Smt. Laxmi Mittal Vs. Commissioner of Income Tax, , Shri R. P. Sawhney, learned senior counsel for the Department, on the other hand, strenuously urged that the scheme, does not give any power to the CIT to condone the delay in the deposit of tax and, therefore, the CIT had no option but to reject the declaration filed by the petitioner, no matter that the delay was by one day only. From the rival contentions of the parties, the question that arises for our consideration is whether the CIT has power under the scheme to condone the delay in depositing the tax payable on the voluntarily disclosed income.

7. We have heard counsel for the parties and are of the view that the CIT was right in rejecting the declaration filed by the petitioner. Sec. 67(2) of the Finance Act, clearly stipulates that if the declarant fails to pay tax in respect of the voluntarily disclosed income before the expiry of three months from the date of filing of the declaration, the declaration filed by him shall be deemed never to have been made under the scheme. Neither this section nor any other provision of the scheme gives power to the CIT to condone the delay in depositing tax. In the absence of any such provisions and the language of the statute being mandatory, no power vests in the CIT to condone any delay under any circumstances. The scheme is a part of the taxing statute and was formulated with a view to give concession to a class of people who have evaded tax in the past by not disclosing their income and, therefore, its provisions have to be strictly construed. A person could be given the benefit of the scheme only if he falls within its four corners and not otherwise. It is true that the declaration could be made on or before 31st December, 1997, and where a person makes a declaration on 31st December, 1997, he could deposit the tax simultaneously with the declaration or within three months up to 31st March, 1998, but for those who filed the declaration earlier, the period of three months would be counted from the date of declaration and not from 31st December, 1997. In other words, the sine qua non for computing the period of three months for depositing the tax is the date of actual filing the declaration and not the last date permissible for filing such a declaration. No doubt, this Court in Laxmi Mittal''s (supra) took a view that the CIT could condone the delay in payment of tax and accept the

declaration but we are in respectful disagreement with that view. The observations made by the learned Judges are too wide and they proceeded on the basis as if 31st March, 1998, was the last date for the deposit of tax 31st March, 1998, is the last date only for those who filed their declaration on 31st December, 1997, and not for all declarants. Learned Judges have also made reference to a Circular dt. 3rd September, 1998, issued by the CBDT to hold that the tax could be accepted even after the expiry of 90 days and, therefore, inferred that the CIT had the power to condone the delay. This circular amongst others states that the period for calculating interest will be 90 days from the date of declaration and if the 90th day happens to be a bank holiday, payment on the 91st day being the next working day would be valid. The Board, in our opinion, has stated the obvious but this clause in the circular by no means gives power to the CIT to accept declarations where tax is deposited beyond the period of 90 days from the date of declaration. In the normal course, we would have referred this case to a larger Bench for decision but it is not necessary to adopt this course because even on the basis of the ratio laid down in Laxmi Mittal''s case (supra) the petitioner therein had given an explanation for her failure to make deposit within three months as she had met with an accident and that explanation was accepted by the Bench. In the case before us, the petitioner did not furnish any explanation whatsoever before the CIT when his representative appeared before the latter on 6th May, 1998, and 12th May, 1998, and sought condonation of delay only because it was only of one day. Why that delay occurred was not explained. Therefore, even if we follow the dictum in Laxmi Mittal''s case (supra) the declaration filed by the petitioner had to be rejected on account of want of any explanation for the delay. No doubt, the petitioner has offered some explanation in his writ petition but that is not enough. No fault can thus be found with the impugned order.

8. In the result, there is no merit in the writ petitions and the same stand dismissed. There is no order as to costs.

