(2008) 07 GUJ CK 0070

In the Gujarat High Court

Manilal Kunvarji Shah APPELLANT

Vs

J.G. Arora, Designated Authority and Another RESPONDENT

Date of Decision : 23-07-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Finance (No. 2) Act, 1998 — Section 89, 95
Income Tax Act, 1961 — Section 154, 155, 245D, 264

Citation : (2008) 07 GUJ CK 0070

Hon'ble Judges : K.A. Puj, J;Bankim N. Mehta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.A. Puj, J.—The petitioner has filed this petition under Article 226 of the Constitution of India challenging the order dated 23-2-1999 passed by the respondent the Commissioner, Gujarat-2, Baroda, rejecting the petitioner''s declaration filed u/s 89 of the Finance (No. 2) Act, 1998 made under Kar Vivad Samadhan Scheme (''KVSS'' for short).

2. This court has admitted the petition and Rule was issued by this court on 11-6-1998.

3. It is the case of the petitioner that during the assessment years 1991-92 and 1992-93, the petitioner was a partner of the firm, namely, M/s Mahavir Trading Company. The petitioner had filed his return of income for the respective years declaring his share income from the firm on the basis of returns of income filed by the firm, and as per the allocation of his share of income, according to the said returns of income of the firm. The said firm approached the Settlement Commission for settlement of its taxes for the assessment years 1991-92 and 1992-93. The Settlement Commission passed order u/s 245D(4) of the Income Tax Act, 1961, on 29-9-1997 whereby the income of the firm was computed and allocated the said income in the hands of its partners. As a result, the share income towards the petitioner from the firm was increased.

4. For the purpose of giving effect to the order of the Settlement Commission, the Assistant Commissioner, Circle 10(1), Ahmedabad, passed orders u/s 155 of the Act on 18-9-1998 rectifying the assessment orders made earlier, as a result of which, the petitioner was found liable to pay taxes for the assessment years 1991-92 and 1992-93. The petitioner preferred two revision petitions u/s 264 of the Act on 21-12-1998 for the respective years and the said revisions were pending. The petitioner filed a declaration in Form No. 1A of KVSS Rules seeking settlement of tax disputes for the assessment years 1991-92 and 1992-93. The respondent vide his order dated 22-2-1999 rejected the declaration on the ground that there was no tax arrear in petitioner''s case as on 31-3-1998 for the respective assessment years. The demand in the petitioner''s case has been determined on 18-9-1998, i.e., after 31-3-1998 by giving effect to the order of the Settlement Commission in case of the firm, in which the petitioner was a partner. Therefore, in view of the provisions of Section 95(i)(b) of the Finance (No. 2) Act, 1998, the petitioner''s case cannot be covered under the KVSS, 1998. Accordingly, the declaration filed by the petitioner for the assessment years 1991-92 and 1992-93 was dismissed as infructuous.

5. It is this order which is under challenge in the present petition.

6. Mr. S.N. Soparkar, learned senior Counsel appearing for the petitioner has submitted that the respondent has erred in not appreciating the scheme of the Act as also KVSS in proper perspective. Admittedly, the demand arose against the petitioner, pursuant to the order passed by the Settlement Commission on 29-9-1997. Once Settlement Commission passed the order, the assessing officer was bound to rectify the assessment, in the case of the petitioner, u/s 155(1)(a) of the Act. The assessing officer ought to have done that immediately after 29-9-1997, i.e., the date of the order of the Settlement Commission. If there was delay on the part of the assessing officer in passing the consequential order, pursuant to the order of the Settlement Commission, that would not lead to a conclusion that as on 31-3-1998, there was no tax liability. He has also referred to and relied on the Circular (F. No. 149/145/98-TPL), dated 7-10-1998 issued by the CBDT. Question No. 31 seeks the clarification as to what happens to the amount of tax arrear if the same is modified by an order u/s 154 passed after 31-3-1998. In reply to this question, the Board has clarified that the order u/s 154 would rectify the apparent mistake in the order passed on or before 31-3-1998 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. Mr. Soparkar has, however, submitted that identical issue arose before this court in Special Civil Appln. No. 2221 of 1999, decided on 1-7-2008 reported as Kailash T. Agrawal v. M.S. Thanvi, Designated Authority (2008) 10 DTR (Guj) 10, wherein this court has held that the contention based on the above circular of the Board dated 17-10-1998 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. The court, therefore, held that 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.

8. Mrs. Mauna M. Bhatt, learned standing Counsel appearing for the revenue relied on the above decision of this court which was rendered after considering the circular relied upon by the petitioner.

9. After having heard learned senior Counsel Mr. S.N. Soparkar, appearing for the petitioner, and Mrs. Mauna M. Bhatt, learned standing Counsel appearing for the revenue, and after considering the facts of the present case in light of the earlier decision of this court in the case of Kailash T. Agrawal v. M.S. Thanvi Designated Authority (supra), we are of the view that since there is no demand outstanding as on 31-3-1998, 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 absence of any error in the impugned order dated 23-2-1999 the petition fails and is accordingly dismissed. Rule is discharged without any order as to costs.

