

(2016) 12 DEL CK 0106
In the Delhi High Court
Case No : W.P.(C) 1706 of 1999

M/s. Inter Craft Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 14-12-2016

Acts Referred:

Income Tax Act, 1961 — Section 140A

Citation : (2017) 2 ADDelhi 224 : (2017) 295 CurTR 360 : (2017) 390 ITR 409

Hon'ble Judges : Mr. S. Ravindra Bhat and Ms. Deepa Sharma, JJ.

Bench : Division Bench

Advocate : Sh. Ashok Manchanda, Sr. Standing Counsel with Ms. Lakshmi Gurung and Ms. Easha Kadian, Advocates, for the Revenue; Ms. Shashi Kapila, Sr. Advocate with Sh. Pravesh Sharma and Sh. Sushil Kumar, Advocates, for the Petitioner

Final Decision : Dismissed

Judgement

Mr. S. Ravindra Bhat, J. - These matters were originally listed for orders on 12th December, 2016. Since 12th and 13th December, 2016 were declared holidays, the same is being listed for orders today, i.e. 14th December, 2016.

The petitioner in W.P.(C) 1706/1999 (hereafter "Inter Craft") challenges a demand by the respondent (hereafter called "the revenue"), demanding a sum of Rs. 72,17,068/- through notice dated 24.02.1999 (which was later amended to Rs. 68,61,775/-) under the provisions of the Kar Vivad Samadhan Scheme, 1998. It also seeks a declaration that its liability to pay under the Scheme is limited to Rs. 48,28,578/- (calculated @ 35%) on the basis of disputed income at Rs. 1,37,95,937/- by applying marginal rate of 46% tax. The other petitioner ("Old Village" hereafter) in WP(C) 1707/1999 challenges a similar demand for Rs. 27,10,363/- and Rs. 13,39,857/- and seeks a declaration that its liability under the Scheme is limited to Rs. 16,78,665/- .

2. The brief facts are that the Finance Act (No.2) of 1998 introduced, by Chapter IV, a Scheme known as the Kar Vivad Samadhan Scheme [hereafter "the

Scheme"], which came into force on 01.09.1998. This enabled the applicants to settle their tax disputes after making appropriate declaration to the designated authority. "Tax arrears" was defined as follows by Section 2(m) of the Finance Act (No.2) as follows:

(m) "tax arrear" means, -

(i) in relation to direct tax enactment, the amount of tax, penalty or interest determined on or before the 31st day of March, 1998 under that 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;

(ii) in relation to indirect tax enactment: -

(a) the amount of duties (including drawback of duty, credit of duty or any amount representing duty), cesses, interest, fine or penalty determined as due or payable under that enactment as on the 31st day of March, 1998 but remaining unpaid as on the date of making a declaration under section 88; or

(b) the amount of duties (including drawback of duty, credit of duty or any amount representing duty), cesses, interest fine or penalty which constitutes the subject matter of a demand notice or a show-cause notice issued on or before the 31st day of March, 1998 under that enactment but remaining unpaid on the date of making a declaration under section 88 but does not include any demand relating to erroneous refund and where a show-cause notice is issued to the declarant in respect of seizure of goods and demand of duties, the tax arrear shall not include the duties on such seized goods where such duties on the seized goods have not been quantified.

Explanation. - Where a declarant has already paid either voluntarily or under protest, any amount of duties, cesses, interest, fine or penalty specified in this sub-clause, on or before the date of making a declaration by him under section 88 which includes any deposit made by him pending any appeal or in pursuance of a court order in relation to such duties, cesses, interest, fine or penalty, such payment shall not be deemed to be the amount unpaid for the purposes of determining tax arrear under this sub-clause;"

3. By Section 88 of the Finance Act (No.2) of 1998, the "settlement of tax payable" was provided for in the following terms:

"88. Settlement of Tax Payable - Subject to the provisions of this Scheme, where any person makes, on or after the 1st day of September, 1998 but on or before the 31st day of December, 1998 a declaration to the designated authority in accordance with the provisions of Section 89 in respect of tax arrear, then notwithstanding anything contained in any direct tax enactment or indirect tax enactment or any other provision of any law for the time being in force, the amount payable under this Scheme by the declarant shall be determined at the rates specified hereunder, namely :-

(a) where the tax arrear is payable under the Income-Tax Act, 1961 (43 of 1961), -

(i) in the case of a declarant, being a company or a firm, at the rate of thirty-five per cent of the disputed income;

(ii) in the case of a declarant, being a person other than a company or a firm, at the rate of thirty per cent of the disputed income;

(iii) in the case where tax arrear includes income-tax, interest payable or penalty levied, at the rate of thirty-five per cent of the disputed income for the persons referred to in clause (i) or thirty per cent of the disputed income for the persons referred to in clause (ii);

(iv) in the case where tax arrear comprises only interest payable or penalty levied, at the rate of fifty per cent of the tax arrear;

(v) where the tax arrear includes the tax, interest or penalty determined in any assessment on the basis of search and seizure proceedings under section 132 or section 132A of the Income-tax Act, 1961 (43 of 1961) -

(A) in the case of a declarant, being a company or a firm, at the rate of forty-five per cent of the disputed income;

(B) in the case of a declarant, being a person other than a company or a firm, at the rate of forty per cent of the disputed income;"

4. According to the declaration filed by Inter Craft, the total disputed income-on the basis of which tax arrears had to be computed was Rs. 1,37,95,937/- as against the total assessed income of Rs. 2,11,76,055/- for AY 1995-96. The petitioner relies upon the assessment documents, including the returns filed and the balance sheet indicating that substantial amounts of Rs. 33,94,854/- (including TDS) were paid as advance tax. This, according to it, is the basis for the claim in the proceedings. According to Old Village, the tax @35% of disputed income of Rs. 47,96,187/- was Rs. 16,78,665/- .

5. The petitioners argue that in calculating and making the impugned demand, the tax authorities have ignored that credit ought to be given under Section 140A as the TDS amount. It is contended that if the Scheme is duly interpreted, the amounts paid are to be set-off against the tax arrears and that the sum payable is Rs. 48,28,579/- (for Inter Craft) and Rs. 16,78,665/- for Old Village, and not what was demanded by the respondent authorities. Learned counsel relies upon the authority of Karnataka High Court in Y. Venugopala Reddy v. CIT 2003 (263) ITR 30 (Kar); Rani Sati Devi Trust v. CIT 2003 (263) ITR 93 (Cal) and Mangilal. S. Jain v. CIT 2002 (257) ITR 31 (Kar).

6. The petitioners also rely upon the instructions issued by the Central Government, Ministry of Finance in relation to the Scheme, especially question no.18 and its answer which are in the following terms:

"Question No.18: Section 90(1) of the Scheme refers to the sum payable that may be determined by the designated authority. How is the sum payable to be worked out?

Answer: The sum payable is to be determined with reference to disputed income as defined in Section 87(3) to mean the whole or so much of the total income as is relatable to the disputed tax. The term "disputed income" as used in the Scheme does not refer to the income in the dispute by way of appeal etc. but it refers to the income which is relatable to the disputed tax. The term "disputed tax" has been defined to mean the tax determined and payable but remaining unpaid on the date of the declaration. The designated authority will work out the disputed income relatable to disputed tax by applying marginal rate applicable for the relevant assessment year for that assessee and thereafter determine the sum payable in accordance with Section 88 of the Scheme."

7. The respondent urges that in terms of the assessment order under Section 143(3), Old Village's total income was determined to be around Rs. 1.02 crores which was later reduced on appeal to Rs. 83,86,310/-. Under the Scheme the petitioner had declared the tax payable at Rs. 16,78,665/-. After due examination, the tax payable was determined at Rs. 27,10,363/-. The revenue highlights the petitioner's computation at Rs. 48,22,128/- as against the computed income and states that a compensation of Rs. 20,64,720/- was sought. The revenue highlights that in terms of Explanation to Section 140A this amount had to be adjusted against the interest of over Rs. 35 lakhs under Sections 234A/B etc. Thus, the petitioner was obliged to set-off the amounts paid first against the interest and unpaid amounts to be appropriated towards tax liability. The disputed tax liability (arrears) was Rs. 48,22,128/- and not 27,57,808/-. It is furthermore urged that in terms of the express terms of the Scheme even otherwise the amounts paid for any reason whatsoever, prior to the application, cannot be set-off. It is urged that having regard to the terms of the Scheme set-out in the clear provisions of law, the query to question no.18 could not prevail. Likewise the arguments of Inter Craft are refuted and it is stated that amounts deposited earlier towards advance tax, etc are to be adjusted first towards interest liability and not as contended in these proceedings.

8. At the outset, it is quite evident from the above discussion that the petitioner's grievance is limited to the Scheme for reduction of the demand for finalization of its request for settlement under the Scheme. Instead of Rs. 72,17,068/- in the case of Inter Craft (which was later modified to Rs. 68,61,775/-) the petitioner claims its liability is limited to Rs. 48,28,578/- while Old Village claims a reduced liability of Rs. 16,78,665/-. In essence, both petitioners argue that the liability is less.

9. Undoubtedly, there are some observations in the three judgments supplied by the petitioners which support them that Section 140A adjustment is not overridden by virtue of non-obstante clause in Section 88. This Court, however, notices that those observations did not give importance to the definition of "tax

arrear" under Section 2(m) of the Finance Act (No.2), especially the Explanation which underlines that declarations, voluntary payments or payments under protest of "any amount or duties, cesses, interest??????" would "not be deemed to be the amount unpaid for the purpose of determining tax arrear". In other words, it is very clear that the Explanation ipso facto excludes amounts paid prior to the declaration and that the entire unpaid amounts are to be treated as tax arrears. The second aspect is that the normal operation of law is predicated upon treatment of amounts paid and their appropriation as required by the provisions of the Income Tax Act. Here, the major bulk of the demands appear to have been made on 30.03.1995, i.e. much after the advance tax payments were due. Furthermore, these amounts were to be adjusted towards outstanding arrears for previous years. That such interest arrears existed is not in dispute. Therefore, the petitioners are not correct in contending that the amounts of advance tax paid had to be necessarily adjusted while determining the balance.

10. This Court is of the opinion that the dispute which has remained pending for long does not show that any substantial injustice was done warranting exercise of discretion. Concededly, the petitioner Inter Craft appears to have deposited the modified amount of Rs. 68,61,775/- during the pendency of these proceedings. In its case the claim would, therefore, undoubtedly not only involve interpretation of provisions of the Income Tax Act at the risk of doing violence to them but would also include an intricate exercise and mathematical calculation. Likewise in the case of Old Village, too, the argument is not tenable. The propositions that the petitioners advance are unsound in law and have no basis under the Scheme. Once the statute clarified that amounts paid towards tax are not to be deemed "unpaid" for any reason, the normal provisions which had applied, when they did during the course of assessment, could not have been reversed or given a go bye, which is what is asked by these petitioners. Doing so would be contrary to law.

11. For the foregoing reasons, this Court holds that the petitions are bereft of merit and are accordingly dismissed.