(1999) 09 AP CK 0019

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13506 of 1999 8 September 1999

PATCHALA SEETHRAMAJAH APPELLANT

Vs

COMMISSIONER OF Income Tax RESPONDENT

Date of Decision : 08-09-1999

Acts Referred:

Constitution of India, 1950 — Article 265
Income Tax Act, 1961 — Section 139, 64, 65, 66, 67

Citation : (1999) 107 TAXMAN 305

Hon'ble Judges : Rao, J;P. Venkatarama Reddi, J;B. Prakash Rao, J

Bench : Full Bench

Advocate : Ravi S., for the Petitioner and J. V. Prasad, for the Appellant;

Judgement

Rao, J.

This writ petition seeks refund of tax of Rs. 23,281 paid under the Voluntary Disclosure of Income Scheme, 1997 (''the Scheme'') which was enunciated under the Finance Act, 1997 (26 of 1997). The petitioner has filed a declaration on 27-12-1997 under the said scheme disclosing the income for the years 1991-92 and 1992-93, for which no returns were filed by him u/s 139(1) of the Income Tax Act, 1961 (''the Act''). Later, the petitioner had paid the tax as computed under the said declaration on 31-3-1998 and sought for the issuance of a certificate under the Scheme. However, the said payment of tax was beyond the prescribed period under the Scheme as there was a delay of one day. Since the declaration was filed on 27-12-1997, the tax had to be paid by the declarant within a period of three months from the date of declaration along with simple interest at 2 per cent per month as provided u/s 67 of the Scheme. Therefore, the respondents declined to grant the certificate u/s 67(2) of the Scheme in view of the delay in payment of the tax. Thereupon, the petitioner sought for the refund of the tax paid under the Scheme as the declaration as has been filed is deemed to be void. However, the respondents refused to entertain the said request under the proceedings No. VDIS''97/CIT/VJA/99/1781 dated 26-4-1999 on the ground that section 70 of the Scheme prohibits refund of tax paid under the scheme under any circumstances whatsoever.

2. Shri Ravi S., the learned counsel for the petitioner, relying on section 67(2) sought to contend that in the event of making any payment of tax beyond the period prescribed u/s 67(1) of the Scheme, subsection (2) of the section 67 itself contemplates that the declaration filed shall be deemed never to have been made under the Scheme. Therefore, such a declaration becomes a void declaration and as such, the refusal to ref und the tax paid under. the said void declaration is wholly unsustainable.

3. However, Shri J.V. Prasad, the learned senior standing counsel appearing on behalf of the respondents, sought to sustain the impugned action of refusal to refund the tax paid by placing reliance on section 70 of the scheme which, as mentioned supra, contemplates that any amount of tax paid shall not be refundable under any circumstances.

4. In view of the admitted facts, the only question which arises for consideration is as to whether a declarant under the Scheme who paid the tax beyond the prescribed period thereunder is entitled for refund of the same?

5. The scheme was enunciated under the Finance Act, 1997 (Act 26 of 1997) with a view to give concessional rate of tax and immunity in respect of disclosure of concealed income. The Scheme is a self-contained one providing the procedure. Therefore, one has to look into the provisions contained therein for any situation arising on the facts. Section 65 contemplates the filing of a declaration for any assessment year with all the particulars in the form specified therein. Section 66 contemplates the proof of payment of tax to be accompanied along with the declaration. However, section 67 provides for the payment of tax at a later stage not beyond the period of three months from the date of declaration with simple interest at the rate of 2 per cent per every month or part of a month and further, section 67(2) of the Scheme treats a declaration as no declaration if the tax is not paid within the said three months. For the sake of convenience, sections 66 and 67 of the Scheme are extracted hereunder:

"66. Time for payment of tax-The tax payable under this Scheme in respect of the voluntarily disclosed income shall be paid by the declarant and the declaration shall be accompanied by proof of payment of such tax.

67. Interest payable by declarant- (1) Notwithstanding anything contained in section 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 declarant 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 Scherne."

6. Thus, from a reading of the aforesaid provisions and the scope and ambit of the Scheme as contemplated, it is quite apparent that if one has to avail the benefit under the Scheme, he has to mandatorily comply with the requirements. It contemplates the payment of tax along with the declaration itself, but at the same time, making a provision for payment of tax at a later stage not beyond three months from the date of filing the declaration with interest. Further, sub-section (2) of section 67 stresses upon the mandatory requirement of payment of tax within the outer limit of time and in the event of any such non-payment of tax, the declaration shall be deemed never to have been made under the Scheme, i e., it will be non est. Section 70 of the Scheme contemplates that no amount of tax paid in pursuance of a declaration shall be refundable under any circumstances. Necessarily, it would only mean that the expression ''declaration'' used in section 70 should be a declaration as contemplated by section 66 read with section 67(1) of the Scheme. When the very scheme contemplates that a declaration without payment of tax is void and non est and the declaration filed by the assessee was not acted upon, the question of retention of the tax paid under such declaration will not arise. The revenue cannot retain any amounts paid under a declaration falling within the mischief of section 67(2). There is no provision under the Scheme whereby the revenue can retain the tax so paid in respect of a declaration which is void and non est. In the absence of any such authority of law, the retention of tax contrary to the very scheme is in the teeth of article 265 of the Constitution of India. Therefore, the provision u/s 70 of the Scheme cannot have any application to a situation where the tax is paid beyond the prescribed period and, accordingly, the retention of the said tax by the department is illegal and the petitioner is entitled to refund of the same.

7. This Court in Shankarlal Vs. Income Tax Officer and Others, , while considering the scope and effect of the Scheme, has, on a consideration of section 70 and the limitations on the tax refund contemplated thereunder, held that if this is understood as forfeiting the tax paid in cases where the declarations are ineligible u/s 64(2), such a forfeiture would be confiscatory and unconstitutional, unless it is properly qualified. It was further held:

".... It appears to us that the intention of this section was only to state that there will be no cash refund of the tax paid in pursuance of the declaration made under sub-section (1). It will not, however, stand in the way of adjustment of the amount if the declaration itself is not acceptable as not falling u/s 64(1)... ." (p. 555)

8. Therefore, in view of the above reasons, it cannot be said that the revenue can retain the tax paid and the petitioner is not entitled for the refund.

9. In the result, the writ petition is allowed with a direction to the respondents to refund the tax paid under the declaration dated 27-12-1997 to the petitioner herein within a period of two months from the date of receipt of a copy of this order unless adjustment is made towards any arrears. No costs.

