
(2014) 06 AP CK 0005

In the Andhra Pradesh High Court

Case No : W. P. Nos. 16179, 16183 and 16186 of 2000

S. Prasad Reddy

APPELLANT

Vs

Commissioner of Income-tax

RESPONDENT

Date of Decision : 25-06-2014

Acts Referred:

Income Tax Act, 1961 — Section 234A, 234B, 234C, 264, 271(1)(c)

Citation : (2014) 368 ITR 430 : (2014) 226 TAXMAN 265

Hon'ble Judges : L.N. Reddy, J;Challa Kodanda Ram, J

Bench : Division Bench

Advocate : S. Ravi, Senior Counsel, Advocate for the Appellant; S.R. Ashok, Senior Counsel, Advocate for the Respondent

Judgement

L. Narasimha Reddy, J.—The subject matter of these three writ petitions is similar. Hence, they are disposed of through a common judgment. The petitioners are the assesseees under the Income-tax Act (for short "the Act"). There was some delay on their part in filing income-tax returns for the assessment year 1995-96. While there was a default in payment of a portion of advance tax referable to the assessment year, there was deferment of payment of advance tax in respect of the other portion. Ultimately, the petitioners were assessed to tax and they were also placed under the obligation to pay the interest as provided for under sections 234A, 234B and 234C of the Income-tax Act, 1961. All of them approached the Commissioner of Income-tax, Hyderabad, the respondent herein by way of revisions under section 264 of the Act with a prayer to waive the interest payable under sections 234A, 234B and 234C of the Act. One day after the revisions were filed, the Central Government issued a notification for enforcement of the Kar Vivad Samadhan Scheme, 1998 (for short "the Scheme"), which provided for termination of the proceedings on payment of 50 per cent, of the tax arrears, that are the subject matter of the appeals or revisions.

2. The petitioners submitted applications before the respondent, before whom

the revisions were pending with a prayer to extend the benefit under the Scheme. Through separate orders dated January 27, 1999, the respondent declined to extend the benefit of the Scheme observing that he does not have the power to waive the interest leviable under sections 234A, 234B and 234C of the Act. Another reason furnished by him was that the notice issued to the petitioners under section 271(1)(c) of the Act proposing to levy penalty is also outside his powers. The said orders are challenged in these writ petitions.

3. Sri S. Ravi, learned senior counsel appearing for the petitioners, submits that the Scheme was evolved by the Central Government with a view to put an end to unnecessary litigation, even while protecting the interests of the Revenue. He contends that once an appeal or revision is pending and the assessee is prepared to pay 50 per cent of the tax arrears, as defined under the Scheme, the concerned authority has no option but to extend the benefit. He submits that the view taken by the respondent is contrary to the Scheme as well as the precedents on the subject.

4. Sri S.R. Ashok, learned senior standing counsel for the Department, on the other hand, submits that the filing of revision itself was a device invented by the petitioners to evade payment of the mandatory interest under the relevant provision of law. He submits that when the respondent does not have the power to waive the interest at all, the revision was just a perfunctory exercise and that the revisions were presented one day before the Scheme became operational, discloses the absence of bona fides in the matter. He submits that the Scheme is evolved only to rescue the genuine assesseees and not to confer the benefit, contrary to the provisions of the Act. He places reliance upon the judgment of the hon'ble Supreme Court in Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others,

5. As is too well known, the Act is a comprehensive code not only providing for levy of tax, interest and penalty but also for adjudication of the disputes in relation thereto. In view of the complexity and fluidity of the provisions of the Act, large amount of litigation is generated over the years. It is but natural that any assessee, who is under the obligation of payment of tax, penalty or interest, which he feels burdensome, would avail of the remedies provided for under the Act. The pendency of matters in large volume was certainly a matter of concern for the revenue. Methods were evolved to solve the problem, at least to certain extent. It is in this process that the scheme was framed.

6. The salient feature of the Scheme is that wherever an appeal or revision filed by an assessee is pending and the assessee is prepared to pay 50 per cent of the tax arrears, the proceedings would be terminated in his favour. The expression "tax arrears" is defined as

"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."

It is obvious that it takes in its fold not only the amount of tax due but also the penalty, as well as the interest determined on or before March 31, 1998.

7. In the instant case, the petitioners do not have any qualms about the levy of the tax. The subject matter of the revision filed by them is the interest, that became payable under sections 234A, 234B and 234C of the Act. There again, they wanted the waiver thereof and did not dispute the legality of the levy. The Income-tax Officer enforced the provisions, obviously because he did not have the power to waive interest. Therefore, the petitioners carried the matter in the revision before the Commissioner.

8. The Commissioner refused to extend the benefit to the petitioners, by observing that he does not have the power to waive the interest. That in fact, is the plank of argument on behalf of the Department, before us. The question as to whether the Commissioner had the power to waive interest or whether the petitioners have made out a case for such waiver, is totally outside the purview of the Scheme. What all it contemplates is that if the concerned assessee is prepared to pay 50 per cent of the tax arrears, the benefit must be extended. In a given case, the assessee may have an excellent case on the merits and there may be every likelihood of winning the case outright; or the case is so hopeless that there is hardly any scope for any relief being granted to the assessee. All these are outside the scope and purview of the Scheme.

9. The circumstances, under which the benefits under the Scheme can be extended, were explained by the hon'ble Supreme Court in Dr. (Mrs.) Renuka Datla and Others Vs. Commissioner of Income Tax, Karnataka and Another, . Their Lordships took the view that once the subject matter of appeal or revision is covered by the Scheme, the benefit becomes extendible without any option. This was reiterated in subsequent judgments. Recently, a Division Bench of this court, of which one of us (Justice Challa Kodanda Ram) is a party, passed an order extending the benefit in Y.V. Chander Vs. Union of India and Another, .

10. In the instant case, it is not in dispute that the revisions filed by the petitioners herein were pending by the time the Scheme was made operational. The reasons mentioned by the respondent in the orders passed by him refusing to extend the benefit under the Scheme are outside the scope of the Scheme.

11. We, therefore, allow the writ petitions and set aside the impugned orders. We direct the respondent to extend the benefit of the Scheme to the petitioners, after ensuring due compliance, as to payment of the stipulated amount. The miscellaneous petitions filed in these writ petitions shall also stand disposed of. There shall be no order as to costs.