(2008) 07 KL CK 0010

In the High Court Of Kerala

Case No : O.P. No. 22984 of 2000

S. Sudarsana Babu	APPELLANT
Vs	
Income Tax Officer	RESPONDENT

Date of Decision : 31-07-2008

Acts Referred:

Finance Act, 1997 — Section 64(1), 64(5), 66, 67
Income Tax Act, 1961 — Section 148

Citation : (2011) 339 ITR 424 : (2012) 20 TAXMAN 571

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : S. Arun Raj, for the Appellant; P.K.R. Menon, for the Respondent

Final Decision : Disposed Off

Judgement

C.N. Ramachandran Nair, J.—The petitioner is challenging exhibit P2 whereunder the petitioner''s application for benefit under the Voluntary Disclosure of Income Scheme, 1997, introduced by the Finance Act, 1997, was rejected by the Commissioner of income tax. I heard counsel for the petitioner and standing counsel appearing for the respondents. The petitioner made application under the Voluntary Disclosure of Income Scheme, 1997, u/s 64(1) of the Finance Act, 1997, on December 30, 1997. Though the application was to be filed before the Commissioner of income tax, the petitioner submitted the application before the Assessing Officer at Kollam on December 30, 1997. The officer immediately transmitted the same to the concerned authority, namely, the Commissioner of income tax at Trivandrum. The application reached the Commissioner on December 31, 1997, and exhibit P4 receipt was also issued from the Commissioner''s office. Though the Voluntary Disclosure of Income Scheme, 1997, application has to accompany payment of tax in terms of section 66 of the Act, section 67 of the Finance Act, 1997, authorises payment of tax along with interest within 90 days of making declaration. The petitioner admittedly did not remit the tax along with the declaration in terms of section 66 of the Act.

However, the petitioner remitted the tax along with interest u/s 67 on March 31, 1998. According to the Commissioner of income tax, payment ought to have been made on or before March 30, 1998, and on account of the delay of one day in making the payment, the petitioner was not entitled to the benefit of Voluntary Disclosure of Income Scheme, 1997,. After declining the benefit under the Voluntary Disclosure of Income Scheme, 1997, notice u/s 148 was issued to the petitioner for bringing to tax the escaped income which again is based on information available in the Voluntary Disclosure of Income Scheme, 1997, declaration.

2. Counsel for the respondent contended that the authority to entertain the application under the Voluntary Disclosure of Income Scheme, 1997, is the Commissioner of income tax and, therefore, the date of filing of declaration has to be reckoned with reference to the date on which the application was received by the Commissioner of income tax at Trivandrum, which is December 31, 1997. Counsel appearing for the petitioner contended that the respondents'' argument is not tenable because the declaration to the Commissioner was received by the Assessing Officer at Kollam on March 30, 1997, and the balance, i.e., transmission of the application by the Assessing Officer to the Commissioner, is with the Department. I am of the view that the Department''s contention that the date of filing the declaration has to be reckoned from the date on which the Commissioner actually received the application at Trivandrum is not tenable for the simple reason that if the application received by the Assessing Officer at Kollam reaches the Commissioner on 1st January or any later date on account of the delay taken by the Assessing Officer in transmitting the application, it should not lead to denial of the benefit of the Scheme to the applicant. In this case, it so happened that the application reached in one day from the Assessing Officer at Kollam to the Commissioner at Trivandrum. However, even if there was a delay of one or two days in the application reaching the Commissioner, Trivandrum, from the Assessing Officer at Kollam, then obviously the Department cannot reject the application on account of such delay because the application should be deemed to have been received by the Commissioner as on the date on which his sub-ordinate officer received it at Kollam. Even though the Assessing Officer is not the authority to entertain the application under the Voluntary Disclosure of Income Scheme, 1997, and u/s 64(5) the Commissioner is the authority to receive the application, when the assessee makes the declaration to the Commissioner, but delivers it to the Assessing Officer and such officer accepts it, then the date of application to the Commissioner should be certainly the date of receipt by the Assessing Officer, no matter how much time he may take to deliver it to the Commissioner. If the Department''s claim is accepted, then the same will lead to an anomalous situation that applications received in time by the assessing authorities would have to be rejected, if such applications did not reach the Commissioner on the last date. Therefore, I am of the view that the Department''s case that the date of making declaration is December 31, 1997, when the Commissioner''s office issued receipt of the same, is not correct and

the date of receipt of the application is December 30, 1997, when the petitioner delivered the application before the Assessing Officer. Exhibit P4 is only an acknowledgment of receipt of application and the date given therein has no significance because the assessee can always plead that the application was filed on December 30, 1997, when it was delivered to the Assessing Officer. Since the declaration is found to have been made by the petitioner on December 30, 1997, without being accompanied by payment of tax u/s 66 of the Finance Act, 1997, the tax with interest should have been paid on or before March 30, 1998. The petitioner admittedly delayed payment by one day and the Supreme Court in the decision in (2002) 83 ITD 774 This case appears to be Hemalatha Gorgya v. CIT [2003] 259 ITR 1 (SC) held that any delay in payment under the Voluntary Disclosure of Income Scheme, 1997, will be fatal to the claim. Consequently, the petitioner is rightly held to be not eligible for the Voluntary Disclosure of Income Scheme, 1997, benefit and I reject challenge against exhibit P4. However, I make it clear that the intention of the petitioner for settlement under the Voluntary Disclosure of Income Scheme, 1997, is very clear and the denial of the benefit is only on account of a misunderstanding on his side with regard to the last date on which amount was payable. Consequently, I direct the respondents to consider sympathetically the petitioner''s claim pursuant to the proceedings initiated u/s 148, particularly in regard to the levy of penalty, waiver of interest, etc. The O. P. is disposed of as above.

