(2000) 05 P&H CK 0031

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11453 of 1999 & Civil Writ Petition No. 11453 of 1999 23 May 2000

Sat Kartar Trading Co. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 23-05-2000

Acts Referred:
Income Tax Act, 1961 — Section 143, 256

Citation : (2001) 250 ITR 859

Hon'ble Judges : N.K. Sud, J;N.K. Sodhi, J

Bench : Full Bench

Advocate : A. K. Mittal with Akshay Bhan, for the Assessee R. P. Sawhney, with Rajesh Bindal, for the Revenue, for the Appellant;

Judgement

N.K. Sud, J.

This writ petition is directed against the intimation u/s 91 of the Finance (No. 2) Act, 1998, dated 26-2-1999, sent by the respondent to the petitioner informing it that the declaration filed by it under the "Kar Vivad Samadhan Scheme, 1998 (hereinafter referred to as "the KVS Scheme") was invalid. The relevant facts may first be noticed. The petitioner, a partnership firm, is an assessee within the jurisdiction of the Income Tax Officer, Faridkot. For the assessment year 1989-90, an assessment u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), was framed by the Income Tax Officer on 26-3-1999. (sic), wherein certain additions were made to the income declared by the petitioner in the return of income. One of the additions, which is relevant for the purpose of this writ petition, was on account of unexplained cash credits amounting to Rs. 1,50,000. On an appeal filed by the petitioner, the Commissioner (Appeals), Bhatinda, by his order dated 18-11-1991, deleted this addition of Rs. 1,50,000. However, the Income Tax Appellate Tribunal, on an appeal filed by the revenue restored this addition of Rs. 1,50,000 by its order dated 13-5-1998. Against the order of the Tribunal, the petitioner filed an application u/s 256(1) of the Act, seeking reference of questions of law arising out of its order dated 13-5-1998, to this court. The hearing of the said application was fixed on 4-12-1998, before the Tribunal. However, due to the inability of counsel for the petitioner to appear on that date, an application for adjournment was moved on 2-12-1998, and thereafter it is claimed that the petitioner did not receive any intimation from the Tribunal about the next date of hearing.

Meanwhile, the petitioner decided to put an end to the litigation and buy peace with the department by filing a declaration under the KVS Scheme which had been introduced by the Finance (No. 2) Act, 1998, for this purpose. Such a declaration was to be filed before the respondent, who was the designated authority under the KVS Scheme. The petitioner sent a copy of the declaration to him by registered post on 28-1-1999, and also faxed the declaration to his office on 29-1-1999. After the said declaration had been filed, the petitioner on 12-2-1999, received a copy of the order dated 29-1-1999, passed by the Tribunal dismissing its application u/s 256(1) of the Act. This order had been passed ex parte as the petitioner-applicant was not present on the date of hearing on 29-1-1999. The petitioner, thereafter filed an application before the Tribunal for the recall of the ex parte order dated 29-1-1999, on the ground that no notice about the fixation of reference application before the Tribunal on 29-1-1999, had been given to it and as such it was deprived of the opportunity of hearing which is a pre-requisite for disposal of a reference application. The Tribunal, by its order dated 27-5-1999, recalled the ex parte order dated 29-1-1999, and restored the reference application filed by the petitioner to its original position. However, before the order of recall had been passed, the respondent had passed the impugned order dated 26-2-1999, intimating the petitioner that its declaration under the KVS Scheme filed on 29-1-1999, was invalid as its reference application had already been rejected by the Tribunal on that very day and as such could not be said to be pending on that date. It is in the background of this factual position that the present controversy has to be resolved.

It may be pertinent to note that one of the conditions for making a declaration under the KVS Scheme was that some proceedings by way of appeal, reference, or writ petition should be admitted and pending before any appellate authority or the High Court or the Supreme Court on the date of filing of the declaration. For the sake of convenience, the relevant provisions contained in section 95 of the Finance (No. 2) Act of 1998, may be reproduced as under :

"95. Scheme not to apply in certain cases.The provisions of this scheme shall not apply

(1) in respect of tax arrear under any direct tax enactment,........

(c) to a case where no appeal, or reference or writ petition is admitted and pending before any appellate authority or the High Court or the Supreme Court on the date of filing of declaration or no application for revision is pending before the Commissioner on the date of filing declaration."

The short question for our consideration is whether the reference application filed by the petitioner before the Tribunal can be said to be pending on 29-1-1999. It is true that on 29-1-1999, when the declaration was filed with the respondent, the reference application of the petitioner had already been dismissed and as such no fault could be found with the order of the respondent dated 26-2-1999, intimating the petitioner that its declaration under the KVS Scheme was invalid as on the date of its filing no reference application was pending. However, it is also equally true that the Tribunal by its subsequent order dated 27-5-1999, has accepted the contention of the petitioner that it had no notice about the date of hearing in the reference application on 29-1-1999, and as such the ex parte order passed on that date was illegal and needed to be recalled. The Tribunal, therefore, recalled its ex parte order dated 29-1-1999, and restored the reference application filed by the petitioner to its original position. The effect of this order was that the impugned order dated 29-1-1999, ceased to exist and the position existing prior to its passing stood restored. Once the order dated 29-1-1999, is held to be non-existent, it is but natural that all consequential results flowing therefrom also ceased to have any effect. Accordingly, the impugned order dated 26-2-1999, rejecting the declaration filed by the petitioner on the basis of the order dated 29-1-1999, must also be held to have been rendered ineffective. It would, therefore, be in the interest of justice to vacate the impugned order dated 26-2-1999, and restore the matter to the file of the respondent with the observation that the declaration filed by the petitioner under the KVS Scheme on 29-1-1999, may be considered in the light of the fact that the reference application filed by the petitioner was pending before the Tribunal on that date. The respondent shall now process the declaration afresh and dispose of it in accordance with law.

In the result, the writ petition is allowed. However, there shall be no order as to costs.

