

(1999) 02 MP CK 0043

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3198 of 1998

Smt. Shashi Devi

APPELLANT

Vs

Income Tax Officer and Others

RESPONDENT

Date of Decision : 11-02-1999

Acts Referred:

Finance Act, 1997 — Section 64
Income Tax Act, 1961 — Section 131, 131(1)

Citation : (2001) ILR (MP) 310 : (2000) 241 ITR 216 : (1999) 107 TAXMAN 163

Hon'ble Judges : Ramesh Surajmal Garg, J

Bench : Single Bench

Advocate : B.L. Nema and Seema Agarwal, for the Appellant; Abhay Sapre and P. Shandiyal, for the Respondent

Judgement

R.S. Garg, J.—By this petition under Article 226 of the Constitution of India, the petitioner seeks to challenge the action of the respondents in issuing the commission u/s 131(1)(d) of the Income Tax Act, 1961, to the Valuation Officer and to quash the notices dated March 5, 1998, and June 25, 1998, issued by the Valuation Officer and to direct the Assessing Officer-respondent No. 1 to accept the valuation report submitted by the petitioner while disclosing her income under the Voluntary Disclosure of Income Scheme, 1997.

2. The brief facts necessary for disposal of the petition are that the petitioner, who is carrying on business of repairs of electrical fittings, etc., is assessed to Income Tax by respondent No. 1. For the assessment year 1996-97, she filed a return showing an income of Rs. 43,950. According to her, she started raising a construction of the property in the financial year 1993-94 and completed it by 1995-96. According to the petitioner, she had invested an amount of Rs. 10,89,000 in construction of the aforesaid house/ property. Out of this amount, she could explain the expenditure of Rs. 5,42,544 but the balance amount of Rs. 5,46,756 could not be explained by her, and, therefore, she made a disclosure under the Voluntary Disclosure of Income Scheme, 1997, promulgated by the

Government in accordance with Section 62 of the Finance Act, 1997 (Act No. 26 of 1997). The petitioner submits that according to the scheme a person could make a declaration in accordance with the provisions of Section 65 of the Finance Act for any assessment year of any income chargeable to tax which has escaped assessment by reason of omission or failure on the assessee's part to make a return or to disclose fully or truly all material facts necessary for his assessment or otherwise. According to the petitioner, the declaration so made has to be accepted by the Commissioner of Income Tax and such income is not to be included in the total income. The petitioner not being in a position to explain her income made a declaration to the Commissioner on December 30, 1997. The said disclosure was accepted by the Commissioner of Income Tax u/s 68(2) of the Scheme. It is contended that the Government had assured that in respect of investment made in the construction of a house property if any declaration is made it would not be a subject-matter of an investigation. Placing reliance upon an answer to question No. 16 of Circular No. 754 (see [1997] 226 ITR 8), dated June 10, 1997, it is contended that the Department could not insist upon any valuation certificate along with the declaration and it would be the responsibility of the declarant to declare the correct value. Referring to the answer to question No. 46 of Circular No. 755 (see [1997] 226 ITR 33), dated July 25, 1997, it is contended that no valuation could be got done by the Department but if on the basis of other information it is found that a higher amount was invested than the amount disclosed, then suitable proceedings under the Act can be taken in respect of the difference between the true value of investment and the amount disclosed. The petitioner submits that in view of the declarations made by the Government, the Assessing Officer should not have issued a notice purporting to be u/s 131(1)(d) of the Act. According to the petitioner, before making the declaration the property was got valued by the approved valuer who had given the correct valuation and as the correct valuation was given by the petitioner, there was no scope for invoking the provisions of Section 131(1)(d) of the Act. The petitioner says that issuance of the notice u/s 131(1)(d) of the Act and the commission issued to the Valuation Officer, etc., are bad and the same deserve to be quashed by this court.

3. The respondents in their return have stated that the petitioner is an assessee since 1992-93. She had constructed a five storeyed building with a basement floor and the area of the construction is 6,046 sq. feet. The period of the construction is between April, 1993 and March, 1996. According to the Department, the investments were made during the assessment years 1994-95, 1995-96 and 1996-97. An inspector inspected the property on February 28, 1998, in the presence of Shri Hukum Chand Jain, advocate. The inspector vide his report dated February 28, 1998, estimated the cost of construction at Rs. 17,00,000. A notice u/s 143(2) was issued for the assessment year 1996-97 to the assessee with the previous approval of the Deputy Commissioner of Income Tax, Range-II, Jabalpur. The notice was issued to examine the income returned on the points, viz., extent of income of Rs. 45,053 and the expenses claimed at

Rs. 18,510, receipts of gift of Rs. 90,000 from three sons, house property income of Rs. 21, 765 on account of rent received and the investment of Rs. 5,82,444 allegedly made in the construction. According to the Department, as there was a substantial difference between the investment estimated by the Department and that of the registered valuer, summons u/s 131(1)(d) was issued to the Valuation Officer of the Department. The Valuation Officer issued a notice to the assessee on March 15, 1998, u/s 131(1)(d) calling for documents, etc. A reminder was required to be issued for submitting the documents by April 17, 1998. By yet another reminder, the petitioner was required to submit the document intimating the date of inspection of property. As no document was submitted a third reminder was issued for submitting documents latest by July 31, 1998, giving the date of inspection as August 17/18, 1998. On August 17, 1998, the building was measured by the Valuation Officer from outside. The assessee filed a written submission submitting that on August 17, 1998, the officer from the Valuation Office came to her residence and a copy of the order passed in this case was shown to them but they refused to take the copy of the order. The Valuation Officer fixed the cost of construction at Rs. 25,00,669. According to the respondents, they are acting in accordance with law and as they are true to their words they are not making any investigation into the income declared under the Voluntary Disclosure of Income Scheme, 1997. They submit that the Valuation Officer had issued notices to the petitioner but the petitioner has not co-operated with the Department. It is further submitted by them that on April 9, 1998, the petitioner assessee made a representation to the Commissioner of Income Tax making a complaint that the Income Tax Officer could not make a reference to the Valuation Officer. According to them, the reference to the Departmental Valuation Officer is in accordance with law. It is submitted by them that the principles of promissory estoppel are not applicable to the facts of the case as the Department has already accepted the declaration pertaining to income which could not be explained by the petitioner. According to them, the Department has initiated the proceedings in relation to the valuation/ investment made by the assessee and to find out whether the assessee has given the correct picture of the investment. According to them, if more money has been spent than shown in the valuation report, the petitioner is required to explain the additional expenditure and the source of the income. I have heard the parties at length.

4. Section 64 refers to the voluntary disclosure of income. It provides that subject to the provisions of the scheme, where any person makes, on or after the date of commencement of the scheme (July 1, 1997), but on or before December 31, 1997, a declaration in accordance with the provisions of Section 65 in respect of any income chargeable to tax under the Income Tax Act for any assessment year for which he has failed to furnish a return u/s 139 of the Income Tax Act, which he has failed to disclose in a return of Income Tax furnished by him under the Income Tax Act before the date of commencement of the scheme ; which has escaped assessment by reason of the omission or failure on the part of such person to make a return under the Income Tax or to disclose

fully and truly all material facts necessary for his assessment or otherwise, then, notwithstanding anything contained in the Income Tax Act or in any Finance Act, Income Tax shall be charged at the rates specified in Section 64.

5. The conditions set out in Clauses (a), (b) and (c) of Section 64(1) are not cumulative but alternative. Fulfilment of any of the conditions specified in the abovesaid clauses entitles an eligible person to make a declaration u/s 65 in respect of the undisclosed income.

6. A declaration made u/s 64(1) relates to the income actually earned by the declarant. The scheme only permits the bringing forward of income to tax, it does not require investigation of the claim of the declarant. If a person makes a declaration, the Commissioner is under an obligation to accept such declaration and to grant a certificate in that regard on fulfilment of certain conditions laid down in that behalf. Once a declaration is made under the relevant scheme, so far as a declarant is concerned, it will be a presumption of law that the amount is to be accepted. Thereafter, it will no longer be open to the Revenue to enquire into the question whether in fact that amount so declared is the declarant's income or not or of the source from where the declarant obtained the money. It is, however, required to be clarified that the mere charge of the tax on the amount declared under the voluntary disclosure scheme cannot have the effect of converting the money into the income of the declarant if in fact it does not belong to him, This is so because the voluntary disclosure scheme only permits to bring forth for taxation the undisclosed income by the person to whom it belongs, and neither intends nor has the effect of converting the income belonging to another person behind the screen into the income of the declarant.

7. It is necessary that the assessee should establish the nexus between the voluntary disclosure and the assessment proceedings before the tax authorities. Unless this burden is discharged, it cannot be said that the mere filing of voluntary disclosure automatically absolves the assessee from discharging the obligation that is otherwise cast on him to point the nexus between the voluntary disclosure and the matter under enquiry before the assessing authorities.

8. According to Section 65, a declaration under Sub-section (1) of Section 64 is to be made to the Commissioner which shall be in such form and shall be verified in such manner as may be prescribed. Sub-section (2) of Section 65 provides who has to sign the declaration. Section 66 provides the time for payment of the tax and Section 67 authorises recovery of interest. According to Section 68, the voluntarily disclosed income is not to be included in the total income. Sub-section (2) of Section 68 provides that on an application made by the declarant the Commissioner shall grant a certificate to the declarant setting forth the particulars of the voluntarily disclosed income and the amount of Income Tax paid in respect of the same. Section 69 provides that voluntarily disclosed income is not to affect the finality of completed assessments, etc. Any tax paid on the voluntarily disclosed income is not refundable and a declaration made u/s 64(1) would not be admissible in evidence against the declarant and secrecy of

the declaration is to be maintained u/s 72.

9. Section 131 of the Income Tax Act, 1961, provides as under :

"131. Power regarding discovery, production of evidence, etc.--(1) The Assessing Officer, Deputy Commissioner (Appeals), Deputy Commissioner, Commissioner (Appeals) and Chief Commissioner or Commissioner shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely :--

- (a) discovery and inspection ;
- (b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath ;
- (c) compelling the production of books of account and other documents ; and
- (d) issuing commissions.

(1A) If the Director-General or Director or Deputy Director or Assistant Director, or the authorised officer referred to in Sub-section (1) of Section 132 before he takes action under Clauses (i) to (v) of that sub-section, has reason to suspect that any income has been concealed, or is likely to be concealed, by any person or class of persons, within his jurisdiction, then, for the purposes of making any enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under Sub-section (1) on the Income Tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other Income Tax authority. ...

(3) Subject to any rules made in this behalf, any authority referred to in Sub-section (1) or Sub-section (1A) may impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this Act :

Provided that an Assessing Officer or an Assistant Director shall not-

- (a) impound any books of account or other documents without recording his reasons for so doing, or
- (b) retain in his custody any such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Chief Commissioner or Director-General or Commissioner or Director therefor, as the case may be."

10. The officer mentioned in Sub-section (1) shall have the same powers as are vested in a court under the CPC who is trying the suit in respect of particular matters including issuing of commissions. In the present case undisputedly a commission has been issued to the Departmental Valuation Officer for ascertaining the value of the property. According to the petitioner, the

Department has no jurisdiction as it has given certain assurances in the scheme and as relying upon the scheme and the assurances given by the Department, the petitioner had declared her income, there is no scope for making any investigation.

11. The answer to question No. 16 given in Circular No. 754 (see [1997] 226 ITR 8), dated June 10, 1997, refers to submission of a valuation certificate along with the declaration. The circular states that in respect of immovable property, the Department would not insist upon any valuation certificate along with the declaration. The Government further states that it would be the responsibility of the declarant to declare the correct value. Reply to question No. 46 as contained in Circular No. 755 (see [1997] 226 ITR 33), dated July 25, 1997, was in relation to a hypothetical question. The question was whether after a person declares that his entire undisclosed income is invested in the construction of a building, the Department would subsequently get the building valued and would the Department take action against the person if excess amount of investment is discovered. The Department said that it was expected that the true investment will be disclosed under the scheme, no valuation would, therefore, be got done by the Department. That was not the end of the answer. It was further stated that however, if on the basis of other information it is found that a higher amount was invested than the amount disclosed, then suitable proceedings under the Act can be taken in respect of the difference between the true value of investment and the amount disclosed. The facts would show that the income was disclosed on December 31, 1997. The notice u/s 143(2) of the Income Tax Act was issued to the petitioner. The tax was paid on March 27, 1998, and before the same could be paid the matter was referred to the Departmental Valuation Officer/Cell on March 5, 1998.

12. According to the petitioner, she had declared the true investment, therefore, the Department is not entitled to go for further valuation either by a private agency or through the Department valuation cell. Learned counsel for the respondents submits that if on the basis of other information it is found that a higher amount was invested than the amount disclosed, then suitable proceedings under the Income Tax Act can be taken against the assessee.

13. Section 64 of the Finance Act, 1997, simply provides that a person would be entitled to make voluntary disclosure of the income under the scheme. The effect is that the authorities are not entitled to make any investigation into the source from where he has earned the income, but Section 64 does nowhere provide that the declaration relating to the explained income would also be taken to be correct. In the present case, the declarant submitted before the Department that she had spent a sum of Rs. 10,89,000 for construction of the property. She could properly explain the amount of Rs. 5,42,444, the balance amount of Rs. 5,46,756 could not be explained by her, therefore, she made a declaration under the VDIS, 1997. It is not the case of the assessee/applicant that the Department is making any investigation into the amount declared by her. The Department

has also not asked the petitioner to explain the source of income nor is it asking the petitioner that enquiries are to be made in relation to the income declared by her. In fact the Department having other information with it wants to make an investigation as to whether the amount shown to have been invested was in fact the true amount or this amount was on the lesser side. Learned counsel for the Department submits that the Department expected from the declarants that they would give honest declarations but if the honest declarations relating to the landed properties are not made then the Department is entitled to make investigation. He submits that the Department would not ask any explanation from the petitioner about the declared income. According to him, if the Department comes to the conclusion that more than Rs. 10,89,000 was invested in the construction of the property then the petitioner certainly would be required to show to the Department from where she got that extra money spent in raising the construction.

14. From the answer to questions Nos. 16 and 46, it does not appear that the Department ever assured any declarants that they would be bound to accept an untrue declaration. If a true declaration pertaining to the investment is made then that would be the end of the matter but if it comes to the knowledge of the Department that a higher amount was invested than the amount disclosed, then the Department certainly would be entitled to take suitable proceedings under the Act. Assuming in a case the declarant makes a declaration that he had invested a sum of Rs. 50,00,000 in raising the construction, out of this the declarant is able to explain Rs. 40,00,000 and declares the balance amount u/s 64 of the Act. If the Department learns that more than rupees one crore has been invested in raising the construction then simply because a declaration has been made by the declarant, the Department would not be forbidden from getting the property valued.

15. The submission of learned counsel for the petitioner that the Department is making an investigation on the basis of the declaration would not be correct. The Department is entitled to make an investigation into the income which has been explained and is certainly entitled to issue commissions for valuation of the property. When it is expected from an assessee that he would be honest and would pay the proper tax then it cannot be gainsaid that because some income has been declared, therefore, the Department would have no jurisdiction to make any investigation into the amount invested or the amount explained. In fact the Department wants to make an investigation into the amount truly invested in raising the construction. If the Department comes to the conclusion that more than Rs. 10,89,000 were spent in raising the construction they would certainly be entitled to take suitable proceedings under the Income Tax Act against the declarant/assessee.

16. For the reasons aforesaid, I have no reason to hold that the Department had no jurisdiction to issue a commission or make an investigation into the true amount spent in raising the construction. The petition deserves to and is

accordingly dismissed. There shall be no order as to costs.