
(1999) 02 MP CK 0008

In the Madhya Pradesh High Court

Case No : R.S. Garg, J. Writ Petition No. 3198 of 1998 11th February, 1999

SMT. SHASIR DEVI

APPELLANT

Vs

INCOME TAX OFFICER and Others

RESPONDENT

Date of Decision : 11-02-1999

Acts Referred:

Constitution of India, 1950 — Article 227
Finance Act, 1997 — Section 62, 64, 65, 67, 68
Income Tax Act, 1961 — Section 131, 132, 139, 143

Citation : (1999) 154 CTR 1

Hon'ble Judges : R.S. Garg, J; R. S. Garg, J

Bench : Division Bench

Judgement

R.S. GARG, J:

By this petition under Art. 227 of the Constitution of India, the petitioner seeks to challenge the action of the respondents in issuing the commission under s. 131(1)(d) of the IT Act to the Valuation Officer and to quash the notices dt. 5th March, 1998, and 25th June, 1998, issued by the Valuation Officer and to direct the AO Respondent No. 1 to accept the valuation report submitted by the petitioner while disclosing his income under Voluntary Disclosure of Income Scheme.

2. 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 the respondent No. 1. For the asst. yr. 1996-97, she filed a return showing an income of Rs. 43,950. According to her, she started raising 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 lacs 89 thousand 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, therefore, she made a disclosure under the Voluntary Disclosure of Income Tax Scheme 1997, promulgated by the

Government in accordance with s. 62 of the Finance Act, 1997 (Act No. 26 of 97). The petitioner submits that according to the scheme a person could make a declaration in accordance with the provisions of s. 65 of the Finance Act for any assessment year. Any income chargeable to tax has escaped assessment by reason of omission or failure on assesses part to make 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 CIT 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 CIT on 30th Dec., 1997. The said disclosure was accepted by the CIT under s. 68(2) of the scheme. It is contended that the Government had assured that in respect of investment made in the construction of house property if any declaration is made it would not be a subject-matter of any investigation. Placing reliance upon answer to question No. 16 of Circular No, 754 dt. 10th June, 1997 [published at (1997) 140 CTR 15], 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 answer to question No. 46 of Circular No. 755 dt. 25th July, 1997 [Published at (1997) 141 CTR (St) 11, 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 AO should not have issued a notice purporting to be under 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 s. 131(1)(d) of the Act. The petitioner says that issuance of the notice under 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 has 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 6046 sq. ft. The period of the construction is between April, 1993 to March, 1996. According to the Department, the investments were made during asst. yrs. 1994-95, 1995-96 and 1996-97. An Inspector inspected the property on 28th Feb., 1998 in presence of Shri Hukum. Chand Jain, Advocate. The Inspector vide his report dt. 28th Feb., 1998, estimated the cost of construction at Rs. 17,00,000. A notice under s. 143(2) was issued for asst. yr. 1996-97, to the assessee with the previous approval of the Dy. CIT, Range-II, Jabalpur. The notice was issued to examine the income returned on the points view 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 substantial difference between the investment estimated by the Department and that of registered valuer summons under s. 131(1)(d) was issued to the Valuation Officer of the Department. The Valuation Officer issued a notice to the assessee on 15th March, 1998, under s. 131(1)(d) for calling documents, etc. A reminder was required to be issued for submitting the documents by 17th April, 1998. Yet by another reminder, the petitioner was required to submit the documents intimating the date of inspection of property. As no documents were submitted a third reminder was issued for submitting documents latest by 31st July, 1998 giving the date of inspection as 17th and 18th of August, 1998. On 17th of August, 1998, the building was measured by the Valuation Officer from outside. The assessee filed a written submission submitting that on 17th Aug., 1998 the officer from the Valuation Office came to her residence and 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 Voluntary Disclosure 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 9th April, 1998, the petitioner assessee made a representation to the CIT making a complaint that the ITO 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 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. Sec. 64 refers to the voluntary disclosure of income. It provides that subject to the provisions of scheme, where any person makes, on or after the date of commencement of the scheme (1st July, 1997, but on or before 31st Dec., 1997, a declaration in accordance with the provisions of s. 65 in respect of any income chargeable to tax under the IT Act for any assessment year for which he has failed to furnish a return under s. 139 of the IT Act, which he has failed to disclose in a return of Income Tax furnished by him under the IT 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 IT Act or in any Finance Act, Income Tax shall be charged at the rates specified in s. 64.

5. The condition set out in cls. (a), (b) and (c) of s. 64(1) are not cumulative but

alternative fulfilment of any of the conditions specified in the above said clauses entitles an eligible person to make a declaration under s. 65 in respect of the undisclosed income.

6. A declaration made under 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 CIT 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 the 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 Disclosure Scheme only permits to bring forth for taxation the undisclosed income by person to whom it belongs, and neither intends nor has the effect of converting the income belonging to other 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 i.e. otherwise cast on him to appoint the nexus between the voluntary disclosure and the matter under enquiry before the assessing authorities.

8. According to s. 65, a declaration under sub-s. (1) or s. 64 is to be made to the CIT which shall be in such form and shall be verified in such manner as may be prescribed. Sub-s. (2) of s. 65 provides that who has to sign the declaration. Sec. 66 provides the time for payment of the tax and s. 67 authorises recovery of the interest. According to s. 68, the voluntarily disclosed income is not to be included into the total income. Sub-s. (2) of s. 68 provides that on an application made by the declarant the CIT 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. Sec. 69 provides that voluntarily disclosed income is not to affect finality of completed assessments, etc. Any tax paid on the voluntarily disclosed income is not refundable and a declaration made under s. 64(1) would not be admissible in evidence against the declarant and secrecy of the declarant is to be maintained under s. 72.

9. Sec. 131 of the IT Act, 1961 provides as under :

"Power regarding discovery production of evidence, etc.-(1) The Assessing Officer, Dy. CIT(A), and Chief CIT or CIT shall, for the purpose of this Act, have

the same powers as are vested in a Court under the CPC 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 Dy. Director or Asstt. Director, or the authorised officer referred to in sub-s. (1) of s. 132 before he takes action under cls. (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 purpose of making any enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under sub-s. (1) on the IT authorities referred to in that subsection, notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other IT authority.

(2) xxxxx xxxxx xxxxx

(3) Subject to any rules made in this behalf, any authority referred to in sub-s. (1) or sub-s. 1(A) 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 AO or an Asstt. 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 and such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Chief CIT or Director General or CIT or Director, therefor, as the case may be."

10. The officer mentioned in sub-s. (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. Answer to question No. 16 given in the Circular No. 754 dt. 10th June, 1997 (supra) 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 dt. 25th July, 1997 (supra) was in relation to a hypothetical question. The question was that after a person declares that his entire undisclosed income is invested in the construction of a building, whether the Department would subsequently get the building valued and whether 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 difference between the true value of investment and the amount disclosed. The facts would show that the income was disclosed on 31st Dec., 1997. The notice under s. 143(2) of the IT Act was issued to the petitioner. The tax was paid on 27th March, 1998 and before the same could be paid the matter was referred to the Departmental Valuation Officer/Cell on 5th March, 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 submit 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 IT Act can be take against the assessee.

13. Sec. 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 s. 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 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 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 lended 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 this from where she got that extra money spent in raising the construction.

14. From the answer to question 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 under s. 64 of the Act. If the Department learns that more than 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 the learned counsel for the petitioner that the Department is making an investigation on 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 10,89,000 rupees were spent in raising the construction they would certainly be entitled to take suitable proceedings under the IT 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.

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