
(2005) 05 KL CK 0035
In the High Court Of Kerala
Case No : O.P. No. 17081 of 1999

Thomas

APPELLANT

Vs

Assistant Commissioner of Income Tax

RESPONDENT

Date of Decision : 06-05-2005

Acts Referred:

Finance (No. 2) Act, 1998 — Section 85, 89
Income Tax Act, 1961 — Section 264

Citation : (2005) 4 KLT 443

Hon'ble Judges : A.K. Basheer, J

Bench : Single Bench

Advocate : P. Balachandran, for the Appellant; P.K. Raveendranatha Menon and George K. George, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Basheer, J.—The short question that arises for consideration in this Original Petition is whether the rejection of the declaration filed by the petitioner under the provisions of Kar Vivad Saraadhan Scheme (for short "the Scheme") is legally valid and sustainable?

2. The petitioner is an assessee under the Income Tax Act. Consequent on a search made at the residence of the petitioner, an order of block assessment was passed by the Assistant Commissioner of Income Tax for the period from April 1, 1986 to October 15, 1996. The above order of assessment was passed on October 29, 1997. It is the admitted position that the petitioner filed a revision petition against the above order on January 29, 1999 along with a petition to condone the delay in filing the revision petition. A medical certificate was also produced along with the petition for condonation of delay. According to the petitioner, he could not file a revision petition within time since he had undergone a surgery for Retinal Detachment.

3. Shortly after filing the revision petition, the petitioner had filed a declaration seeking the benefit of the Scheme as provided u/s 89 of the Finance (No. 2) Act

1998. However, the designated authority, the Commissioner of Income Tax took the view that the declaration submitted by the petitioner under the Scheme was not maintainable since "no valid proceedings" were pending before the revisional authority. A copy of the order dated February 25, 1999 passed by the Commissioner is on record as Ext.P9. Shortly thereafter, the Commissioner issued Ext.PIO communication dated March 3, 1999 informing the petitioner that the delay in filing the revision cannot be condoned since the petition for condonation was not properly stamped. It was also stated that since the Commissioner of Income Tax had "statutorily approved" the order of assessment, it was not revisable by the same authority. In response to the above communications/orders, the petitioner had given a reply a copy of which is on record as Ext.P11. But the Commissioner by his order dated April 21, 1999 held that the petitioner had not established that he was prevented by sufficient reasons in filing the revision petition. He further took the view that the Commissioner had no jurisdiction to revise the order of assessment which was statutorily approved by him. Thus, the revision petition filed by the petitioner was rejected. The primary prayer in this Original Petition is to issue a writ of certiorari to quash Exts.P9, P10 and P12 orders passed by the Commissioner.

4. Kar Vivad Samadhan Scheme, 1998 was introduced by Finance (No. 2) Act 1998. The Scheme was in force with effect from September 1, 1998 to January 31, 1999. The Scheme envisaged a simplified procedure for liquidation of tax arrears. The assessee had to furnish a declaration to the designated authority in accordance with the provisions of Section 89 in respect of tax arrears "notwithstanding anything contained in any direct tax enactment or indirect tax enactment or any other provision of any law for the time being in force". It was further provided that the designated authority shall determine the tax payable by the declarant/assessee at the rates specified under the Scheme.

5. It is not necessary to refer to the various provisions of the Scheme at length in order to deal with the controversy which has cropped up in this case. But a reference to the relevant portion of Section 85 of the Scheme is necessary which reads thus:

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

(i) in respect of tax arrear under any direct tax enactment,--

(a) ...

(b) ...

(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".

(emphasis supplied).

6. It is contended by learned Counsel for the petitioner that the order passed by the designated authority, the Commissioner of Income Tax, rejecting the declaration under the Scheme on the ground that no valid revision petition was pending at the time when the declaration was made, is legally unsustainable. Learned Counsel submits that a revision petition as provided u/s 264 of the Income Tax Act was filed by the petitioner against the order of assessment albeit with a petition to condone the delay. The relevant statutory provision in Finance (No. 2) Act, 1998 does not mandate that the revision petition ought to have been admitted to the file. The revisional authority has got ample power to condone the delay, if it is satisfied that the revision petitioner was prevented from approaching the authority due to sufficient reasons. Therefore, the designated authority who, incidentally, is the revisional authority as well, ought to have accepted the declaration. Is this contention tenable?

7. The thrust of the argument of the learned Counsel is that the declarant need only satisfy the designated authority that a revision petition was pending on the date when the declaration under the Scheme was filed. It is contended by the learned Counsel that Section 95(i)(c) does not postulate that the revision petition ought to have been admitted and pending on the date of filing of the declaration. Learned Counsel points out that in clause (c) the statutory stipulation is only that a revision petition must be pending before the authority on the date of filing of the declaration, whereas in the case of appeal, reference or Writ Petition, such a proceeding must have been admitted and pending before any appellate authority, High Court or the Supreme Court. The omission of the word "admitted" in the case of revision petitions necessarily implies that the designated authority had only to ascertain whether an application for revision was pending before the revisional authority. It is further contended by the learned Counsel that as on the date of filing of the declaration before the designated authority, the application for revision filed by the petitioner was pending before the revisional authority. Therefore, the designated authority was not justified in rejecting the declaration even before passing any orders on the delay petition as well as the revision petition.

8. But Shri Raveendranatha Menon, learned Senior Standing Counsel for the Department submits that evidently the petitioner was trying to come within the fold of the benevolent scheme by filing an application for revision with a petition to condone the long delay. The Scheme was due to close on January 31, 1999. Though the order of assessment was passed on October 29, 1997, the application for revision was filed only on January 29, 1999. Learned Senior Standing Counsel points out that the declaration was filed by the petitioner on the same day, viz. January 29, 1999. This clearly shows that the application for revision was filed by the petitioner to enable him to get the benefit of the Scheme. Though there is some force in the above contention, the mere fact that the petitioner had filed the revision petition and the declaration simultaneously on the eve of the closure of the Scheme will not disentitle him from getting the benefit of the Scheme. Learned Counsel for the petitioner has invited my attention to a decision of the

Gujarat High Court in *Shatrushailya Digvijaysingh Jadeja Vs. Commissioner of Income Tax*, in support of his contention that the declaration could not have been rejected on the ground that the delay in filing the revision petition was not condoned and therefore no revision was pending. It is true that the Gujarat High Court in the above case has held that the expression "pending" in Section 95(i) (c) in relation to revisions means "factually pending". The mere fact that the revision petition was not filed within the period of limitation, did not mean that it was not "pending". The Division Bench of the Gujarat High Court had taken the above view after expressing dissent from the contra view taken by the Karnataka High Court in *Gopal Films Vs. Deputy Commissioner of Income Tax and Others*, and by the Calcutta High Court in *Paresh Premji Rajda v. C.L.T.* (1999) 238 ITR 11. In *Gopal Film*'s case the Karnataka High Court held thus:

"But, when a revision is filed beyond time, unless the delay is condoned, it cannot be said that the revision is pending. In such a case only when it is admitted by condoning the delay, the revision proceedings can be said to be pending...."

In *Paresh Premji*'s case (*supra*), the Calcutta High Court held that if the delay is not condoned, the revision application filed u/s 264 of the Income Tax Act will have to be treated as non-est."

9. Learned Counsel for the petitioner has also invited my attention to a decision of this Court in *Lukkose John Thoppil Vs. Commissioner of Income Tax*, . In this case the assessee had challenged the order of assessment before the revisional authority u/s 264 of the Income Tax Act. In the revision the assessee had challenged the order levying interest on him. The quantum of interest was also under challenge in the revision. The assessee had filed the declaration under the Scheme while the revision petition was pending before the revisional authority. But even before considering the declaration under the Scheme, the revisional authority took up the revision petition for hearing. The assessee alerted the revisional authority about the pendency of the declaration under the Scheme and requested that the hearing of the revision petition may be kept in abeyance till a decision was taken on the declaration. But the revisional authority held that the revision petition was not maintainable since the challenge in the revision pertained only to levy of interest. Consequently, the declaration filed by the assessee under the Scheme was also rejected. A learned Single Judge of this Court allowed the Original Petition filed by the assessee and held that what was relevant for disposal of the declaration under the Scheme was only that a revision, appeal or writ petition was pending at the time when the declaration was filed. The question whether the revision petition filed by the assessee was maintainable and whether any relief could be granted in the revision petition etc. were not relevant. It was further observed by this Court thus:

"According to me, to read the word "revision" in Section 95(c) of the Scheme as a revision which is maintainable or in which relief could be granted will be amounting to re-writing the section. It is one of the cardinal principles of

interpretation of statutes that unless there is an intention to the contrary, the words in a statute should be given their ordinary meaning."

The above judgment of the learned Single Judge was later affirmed by a Division Bench of this Court in Commissioner of Income Tax Vs. Leelamma John, .

10. Undoubtedly, there is considerable force in the contention of the petitioner that on February 25, 1999 when the declaration was rejected by the designated authority, the application for revision filed by him albeit with a petition to condone the delay, was pending consideration. But curiously, the delay petition as well as revision petition were rejected only on April 21, 1999. It is contended by the petitioner that the rejection of the declaration by the designated authority is clearly against Section 95(i)(c) of Finance (No. 2) Act 1998. But, I am afraid that in view of the decision of their Lordships of the Supreme Court in Computwel Systems P. Ltd. Vs. W. Hasan and Another, , the petitioner cannot contend for the position that the application for revision filed by him was pending when the declaration was rejected by the designated authority. In the above case the assessee had filed a revision with an application to condone the delay of 1 year, 10 months and 10 days. Subsequently, the assessee filed the declaration under the Scheme. The designated authority took the view that the declaration was not maintainable since the delay in filing the revision petition was not condoned. The High Court had upheld the order of the designated authority. The three Judge Bench of the Apex Court agreed with the view taken by the High Court and held that unless the delay was condoned, the revision petition cannot be held to be pending.

11. Having regard to the entire facts and circumstances and in view of the decision of the Supreme Court in Computwel System's case (supra) the Original Petition is liable to be dismissed. I do so. No costs.