
(2014) 03 AP CK 0165

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 5476, 5477, 5693 and 6251 of 1999

Y.V. Chander

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 06-03-2014

Acts Referred:

Income Tax Act, 1961 — Section 143(3) 264 95(i)(c)

Citation : (2014) 364 ITR 190

Hon'ble Judges : G. Chandraiah, J;Challa Kodanda Ram, J

Bench : Division Bench

Advocate : M.V.J.K. Kumar and Sri C.V. Narasimham, for the Appellant; S.R. Ashok for Income-tax, for the Respondent

Judgement

Challa Kodanda Ram, J.—Inasmuch as the subject matter in all the four writ petitions is one and the same, these cases are taken up together for disposal by this Common Order. W.P. Nos. 5476, 5477 and 5693 arise from the same set of facts and the three writ petitioners are shareholders and Directors of a Company under the name and style "M/s. Lakshmi Granites Ltd." A search was conducted at the premises of the firm and at the residences of the Directors. Subsequently, in pursuance of the returns filed by the petitioners for the assessment year 1995-96, they were assessed to income tax and tax liability and interest were determined as payable u/s 143(3) of the income tax Act, 1961 (for short "the Act"). Whereas in W.P. No. 6251 of 1999, the petitioner is a company engaged in the business of manufacturing and trading rolled steel products, such as bars, flats, rounds, etc. By Finance (No. 2) Act, 1998, a Scheme, popularly known as Kar Vivad Samadhan Scheme, 1998 (for brevity "the K.V.S.S.") was introduced. The object of the Scheme was to bring pending litigations to an end by way of recovering tax arrears. The Scheme makes an offer by the Government for settling tax arrear, locked in litigation at the substantial discount. It is a Scheme for not only settling litigation but also recovering tax arrear. The Scheme provides that any tax arrear under Direct or Indirect tax laws can be settled by declaring them and paying the prescribed amount in respect of tax arrear. It also

offers some other benefits and immunities from penalty and prosecution. An assessment order for the assessment year 1995-96 was passed u/s 143(3) of the Act and all the petitioners desired to take advantage of the K.V.S.S. While so, all the writ petitioners filed declarations in terms of the K.V.S.S. before due date as prescribed under the Scheme. In all the cases, the petitioners claimed that they had filed revisions before the Commissioner exercising their right u/s 264 of the Act, and as they are pending, it is stated that they would satisfy the conditions of the Scheme in all respects. The declarations filed by the petitioners in W.P. Nos. 5476, 5477 and 5693 of 1999 came to be rejected by the designated authority stating that the subject matter of the relief sought for is not within the scope of revisionary jurisdiction u/s 264 of the Act. In W.P. No. 6251 of 1999, declaration filed by the petitioner-company under the Scheme was rejected stating that "I am of the view that the subject matter of the purported relief is not amenable to assumption of jurisdiction u/s 264 of the Act and that the application was evidently filed by way of pretence for the collateral purpose of getting the declaration admitted under the K.V.S.S. In essence, in all the cases, the reason for rejection of the declarations filed by the petitioners under the Scheme is one and the same i.e. as on the date of filing the declarations, there is no dispute pending in the eye of law as the revisions filed by them u/s 264 of the Act are not maintainable and are beyond the scope of jurisdiction u/s 264 of the Act. These rejection orders are assailed before us. Sri M.V.J.K. Kumar and Sri C.V. Narasimham, learned counsel for the writ petitioners, submit that keeping in view the objects of the K.V.S.S., it is not open for the designated authority to reject the declarations filed by the petitioners on the ground that the orders are incapable of being revised and the same do not fall within the scope of Section 264 of the Act. They also submit that the only requirement for the purpose of availing the benefits of the Scheme is that there should be tax arrears and proceedings pending before one or the other authorities. If these twin conditions are satisfied, their declarations are entitled to be considered and processed under the Scheme. They place heavy reliance on the judgment of the Supreme Court reported in Dr. (Mrs.) Renuka Datla and Others Vs. Commissioner of Income Tax, Karnataka and Another, and another judgment reported in Commissioner of Income Tax, Rajkot Vs. Shatrusailya Digvijaysingh Jadeja, On the other hand, Sri. S.R. Ashok, learned Senior Counsel for the income tax Department, while pointing out the dates on which the declarations have been filed under the K.V.S.S., submits that so far as the cases of the petitioners in W.P. Nos. 5476, 5477 and 5693 of 1999 are concerned, it is on account of the search and seizure operations, the petitioners voluntarily filed their returns before the assessing officer which were processed in terms thereof. It is only for the purpose of taking undue advantage and benefit under the K.V.S.S., the petitioners invented a cause and filed revisions before the Commissioner in terms of Section 264 of the Act. He further submits that in the cases where the returns are voluntarily filed and the same have been accepted in toto in terms of the returns filed by the assesseees, there can be no cause of action for the petitioners to file revisions inasmuch as there is nothing to be revised by the authorities. In

other words, he would submit that there are no bona fides and the very filing of the revisions is for achieving collateral purpose of availing the benefits of the Scheme which they are otherwise not entitled to. He further submits that the object of the Scheme is to put an end to the litigation but not to create further litigation.

2. Having heard the learned counsel for both the parties and perused the judgments of the Supreme Court as cited supra, we are in entire agreement with the learned counsel for the petitioners that while processing the declarations filed by the assesseees under the Scheme, there is no scope for the designated authority to consider the object and motive of a particular declarant in filing the declarations in terms of the Scheme. What all the designated authority is required to consider is that whether the petitioners are eligible to file such declarations in terms of the Scheme, and if so, the designated authority is left with no option but to process the same. Similarly, the arguments advanced by the learned Senior Counsel were, in fact, advanced before the Apex Court in the case of Commissioner of Income Tax (supra) and the arguments are set out in paragraph seven of the reported judgment. While elaborately analyzing the Scheme, the Apex Court had categorically held as follows:

In the case of Dr. Mrs. Renuka Delta (supra), this Court has held on interpretation of Section 95(i)(c) that if the appeal or revision is pending on the date of filing the declaration u/s 88 of the Scheme, it is not for the DA to hold that the appeal/revision was "sham", "ineffective" or "infructuous" as it has.

In the case of Raja Kulkarni and Others Vs. The State of Bombay, this Court laid down that when a section contemplates pendency of an appeal, what is required for its application is that "an appeal should be pending and in such a case there is no need to introduce the qualification that it should be valid or competent. Whether an appeal is valid or competent is a question entirely for the appellate Court before whom the appeal is filed to decide and this determination is possible only after the appeal is heard but there is nothing to prevent a party from filing an appeal which may ultimately be found to be incompetent, e.g. when it is held to be barred by limitation. From the mere fact that such an appeal is held to be unmaintainable on any ground whatsoever, it does not follow that there was no appeal pending before the Court.

3. In the light of the authoritative pronouncement of the judgment of the Supreme Court dealing with the issue, we are inclined to allow the four writ petitions with a direction to the designated authority to process the declarations filed by the petitioners in terms of the K.V.S.S. and pass appropriate orders thereon. At this juncture, the learned counsel for the writ petitioners submit that the petitioners, in pursuance of the interim orders passed by this Court, had paid the disputed arrears of tax in terms of the K.V.S.S. In view of the submission, the designated authority is directed to consider the fact of payment of arrears of tax and give appropriate credit while passing final orders. With the above observations, the Writ Petitions are allowed. No order as to costs.