

C. Dhanapalan Vs. Cit

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Court : Kerala

Decided On : Aug-22-2001

Reported in : [2001]119TAXMAN304(Ker)

Appellant : C. Dhanapalan

Respondent : Cit

Advocate for Pet/Ap. : N. Venkatarama Iyer, *for the Assessee* George K. George, *for the Revenue*

Judgement :

Purchase of peace by putting an end to disputes was the noble idea in introducing the Kar Vivad Samadhan Scheme. It sounds irony, the instant case has paved way for a new controversy on the application of the Scheme itself. The Kar Vivad Samadhan Scheme, 1998 (the Scheme) was introduced in the Finance Act, 1998. The Scheme makes an offer by the government for settling tax arrears, locked in litigation, by giving substantial discount. Section 95 of the Finance (No. s) Act, 1998 contemplates certain categories which are not entitled for the benefits under the Scheme. To the extent it is relevant for the purpose of resolution of the issue raised in the original petition, the provision is quoted below :

'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) in a case where prosecution for concealment has been instituted on or before the date of filing of the declaration under section 88 under any direct tax enactment in respect of any assessment year, to any tax arrear in respect of such assessment year under such direct tax enactment or in respect of a person who been convicted for concealment on or before the date of filing the declaration;

(b) in a case where an order has been passed by the Settlement Commission under sub-section (4) of section 245D of the Income Tax Act or sub-section (4) of section 22D of the Wealth Tax Act, as the case may be, for any assessment year, to any tax arrear in respect of such assessment year under such direct tax enactment;

(c) to a case where no appeal or reference or writ petition is admitted and pending before any appellate authority or 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, here italicised in print supplied)

The dispute in this case relates to the pendency of a revision petition leading to the interpretation of sub-clause (c) of clause 95(1).

2. The petitioner is an assessee on the files of the Income Tax Officer, Ward No. II, Kollam. Aggrieved by the orders of assessment for the years 1980-81 to 1984-85, the petitioner preferred appeals before the Appellate Assistant Commissioner, Thiruvananthapuram, which were disposed of on 24-12-1985. Against the said order in appeals. the petitioner filed revision petition as evidenced by Ext. P1. It is significant to note that the date of revision is 16-1-1990. Since there was a delay of almost four years, the petitioner also filed Ext. P2 petition to condone the delay and that is dated 18-1-1990. The revision petition was seen posted on 7-1-1991 and 9-11-1993. Thereafter it was posted to 23-11-1993 and again to 8-12-1993. In the absence of any response from the assessee or his representative the revision petition was dismissed on 23-12-1993. As seen from Ext. P6 the main reason for dismissal is that there was inordinate delay of more than four years in filing the revision petition and no reasons have been adduced by the assessee to explain the delay. Thereafter as per Ext. P7 dated 24-10-1996, after almost three years,

the petitioner filed an application for rectification of mistakes under section 154 of the Income Tax Act, 1961 (hereinafter referred to as the Act). It is submitted in the said application that the petitioner had already made arrangements for adjournment of the case on 8-12-1993 and that the petitioner had offered sufficient explanation for the delay in filing the revision petition. Those crucial aspects having not been considered by the revisional authority, the petitioner contended that he was entitled for an amendment of the order under section 154.

3. While the said petition for rectification of the order was pending, the government introduced the Scheme. The petitioner contending that he was an eligible declarant filed Ext. P8 declaration. However, the respondent rejected the declaration stating as follows :

'With reference to the above you are informed that there is no valid revision petition pending as on the date of filing the declaration. The revision petition filed was dismissed by the Commissioner on 23-12-1993. Hence your declaration does not satisfy the terms of Kar Vivad Samadhan Scheme.'

The said communication is under challenge in this original petition.

4. Shri N. Venkatarama Iyer, the learned counsel for the petitioner submits that the Scheme is one introduced to put an end to litigation and also to see that the tax is collected from the assessee. According to the learned counsel, the rectification petition having not been disposed of, there is a pending litigation between the petitioner and the department. To put it on clearer terms it is submitted that the petitioner's case should be treated as if his revision was pending. There is also a further submission that the Scheme being a beneficial piece of legislation, the Scheme should be given a purposive interpretation so as to render the benefit of the Scheme to an assessee like the petitioner.

5. Shri George K. George, the learned counsel appearing for the revenue contends that the Scheme being a self contained Code, it has to be construed strictly. It is also submitted that being a concession extended to an assessee, the Scheme has to undergo strict interpretation and there is no need to stretch it so as to rope in an assessee like the petitioner. It is further contended that the

government had already issued a clarification on 3-9-1998 exactly to the point wherein it was clarified that the pendency of a petition under section 154 for rectifying a mistake in an order passed under section 264 of the Act cannot be termed as 'pendency of the revision petition before the Commissioner' and, hence, such a person was not entitled to the benefit of the Scheme. The learned counsel also relied on two decisions, firstly by a Division Bench of the Andhra Pradesh High Court in Dr. (Mrs.) Renuka Datla v. CIT : [1999]240ITR463(AP) . The Division Bench was of the view that the provisions contained in the Finance Act, 1998 introducing the Scheme should be given a strict interpretation, since the provisions relate to granting exemption. At page 471 of the said decision it is held as follows :

'... Diverse considerations and a host of economic factors play a role in moulding the policy of the state in bringing into force a scheme of this nature. By a process of judicial interpretation, the courts should refrain from making embellishments or refinements in the scheme in the name of promoting the objective better. The court in exercise of jurisdiction under article 226, cannot ordain that the scheme should go the whole hog to achieve the avowed purpose and it should be more comprehensive or more relief oriented. Various decisions of the Supreme Court from the 1960s eloquently convey the message that the courts should be slow and cautious in interfering with the classification made in fiscal legislation and the modalities evolved for charging and recovering the taxes. We cannot expect a scheme or provision intended to extend tax relief to be most comprehensive giving coverage to every possible situation. Logical deductions and analogies do not always hold good.'

In another decision of the Karnataka High Court in Gopal Films v. Dy. CIT : [1999]237ITR655(KAR) , the learned judge in unmistakable terms had made it clear that even when a revision is filed along with a petition to condone the delay, it cannot be said that there was pendency of revision. At page 662 it is held as follows :

'The object of the KVS Scheme is to realise the revenue locked up in litigations pending at different levels, by giving incentive to honest taxpayers. Having regard to the provisions of the KVS Scheme, pendency of a proceeding either by way of

appeal or revision or reference or writ petition should be a bona fide pendency. When a matter has attained finality and when no litigation is pending, creation of an artificial pendency, after the announcement of the scheme, merely to obtain the benefit of the scheme is impermissible. Any attempt to create such artificial pendency merely for availing of the benefit of the KVS Scheme, would defeat and dilute the scheme....'

That was a case where an attempt was made to maintain a revision petition as 'pending' by filing a belated revision petition along with a petition to condone the delay and on that ground the assessee sought the benefits under the Scheme.

6. The learned counsel for the petitioner relies on a decision of this court in *Lukkose John Thoppil v. CIT* . In that case the authority to accept the declaration under the Scheme was the revisional authority itself. That authority dismissed the revision petition as not maintainable and then rejected the declaration on the ground that the revision was not pending. Rejecting such an unreasonable stand this court held that for claiming benefit under the Scheme what was necessary was only pendency of a revision petition at the time when the declaration was filed. It was not for the revisional authority to hold that the revision petition was not maintainable and hence to reject the declaration. In case there was a revision petition pending on the date of the declaration, the authority had to accept the declaration. The relevant issue is dealt with at page 4 of the said decision as follows :

'Even otherwise, I am of the view that for the disposal of the declarations under the Kar Vivad Samadhan Scheme what is necessary is to find out whether there is a revision or appeal pending. Section 95(c) of Chapter IV of the Kar Vivad Samadhan Scheme states that the provisions of this scheme shall not apply 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 the declaration or no application for revision is pending before the Commissioner on the date of filing of the declaration. In this case, the revision petitions were filed on 28-10-1998. The declarations were filed on 2-11-1998. Thus, it cannot be said that the revision petitions were not pending on the date of

filing of the declarations. The further question whether the revision petitions filed were maintainable or any reliefs could be granted in the revision petitions, according to me, is not relevant. The object of the scheme appears to be to put an end to litigation and also to see that the tax is collected from the assessee. 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 learned counsel strongly relies on the observation in the judgment that the object of the Scheme appears to be to put an end to litigation and also to see that the tax is collected from the assessee.

7. The scheme contemplated only four types of litigation : (1) appeals, (2) references, (3) writ petitions, and (4) revision petitions pending on the date of filing of the declaration. As held by Sankarasubban, J. for claiming a benefit under the Scheme 'what is necessary is to find out whether there is a revision or appeal pending'. By any stretch of imagination it cannot be said that in the instant case Ext. P1 revision filed by the petitioner is pending. The same was dismissed as early as on 23-12-1993. What is pending is only a petition for rectification under section 154. The pendency of such a litigation by way of a petition under section 154 is not an item included for relief under the self contained Code, the Scheme. True, the Scheme is a beneficial piece of legislation and the petitioner has not taken any steps to create a pendency for obtaining benefit under the Scheme. But what is to be noted is that it is not a litigation settlement scheme pure and simple; it is really a recovery scheme. After all it is a concession extended to an assessee. A concession cannot be claimed as a matter of right. Any scheme extending concession has to be understood strictly in terms of the scheme only and nothing more and nothing less. I am fortified in my view by a decision of the Apex Court in *International Cotton Corpn. (P) Ltd. v. CTO* (1975) 35 STC 1. The Apex Court repelling a contention of discrimination held as follows :

'A concession is not a matter of right. Where the legislature taking into consideration the hardships caused to a certain set of taxpayers gives them a certain concession it does not mean that, that action is bad as another set of taxpayers similarly situated have not been given a similar concession. It would not be proper to strike down the provision of law giving concession to the former on the ground that the latter are not given such concession. Nor is it possible for this court to direct that the latter set should be given a similar concession. That would mean legislation by the court and the court has no legislative powers....'

8. In the above circumstances, it cannot be said that a revision petition filed by the petitioner which was dismissed on 23-12-1993 can be said to be pending on the ground of a rectification petition dated 24-10-1996 filed under section 154 is pending. Thus, according to me, the respondent is fully justified in rejecting the declaration filed by the petitioner as per Ext. P9.

There is no merit in the original petition and it is, accordingly, dismissed.

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