Karnataka High Court Gopal Films vs Deputy Commissioner Of ... on 18 February, 1999 Equivalent citations: ILR 1999 KAR 1857, 1999 237 ITR 655 KAR, 1999 237 ITR 655 Karn Author: R V Raveendran Bench: R Raveendran JUDGMENT R. V. Raveendran, J. 1. Sri M. V. Seshachala, learned counsel for the Income-tax Department, is directed to take notice for the respondents. 2. In regard to the return of income submitted by the petitioner-firm for the assessment year 1995-96, the Assistant Commissioner of Income-tax, Circle 5(1), Bangalore, determined the total income-tax and interest payable thereon under Section 143(1)(a) of the Income-tax Act, 1961 ("the Act" for short), as Rs. 18,33,470, Rs. 7,36,698 and Rs. 2,15,796, respectively, as per order dated March 29, 1996 (annexure-A). The petitioner appears to have paid in all Rs. 9,52,494 between February 28, 1997, and October 12, 1998. The Recovery Officer, Range-5, Bangalore, informed the petitioner by letter dated October 15, 1998, that a sum of Rs. 3,60,000 is still due in regard to the assessment year 1995-96, made up of Rs. 3,34,771 towards interest under Section 220(2) and Rs. 18,500 towards penalty, Rs. 3,581 as interest thereon and Rs. 3,148 towards costs and charges. 3. The Kar Vivad Samadhan Scheme, 1998 ("the Scheme", for short), was introduced with effect from September 1, 1998, by the Finance (No. 2) Act, 1998, for settling tax arrears, locked in litigation, at a substantial discount. Section 88 enables any person to make a declaration to the designated authority in respect of any tax arrear as on March 31, 1998, to avail of the benefit of the discounts/concessions provided under the scheme. Such declaration is required to be made after September 1, 1998, and before December 31, 1998 (later extended to January 31, 1999). Section 95 of the Scheme provides that the Scheme will not apply in certain cases. Section 95(i)(c) makes it clear that the scheme shall not apply in respect of any tax arrear under any direct tax enactment 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 the declaration. 4. When the Scheme came into force on September 1, 1998, no litigation was pending before any authority or court in regard to any tax arrear of the petitioner relating to the assessment year 1995-96. The petitioner, however, filed an application for revision on January 5, 1999 (annexure-C), under Section 264 of the Act before the third respondent challenging the order dated March 29, 1996, passed under Section 143(1)(a) of the Act. As the application was filed beyond the limitation period of one year, the petitioner sought condonation of delay on the following ground : "The petitioner-firm prays before your honour to kindly condone the delay in filing of the revision petition inasmuch as the appellants counsel, Sri Shivagangappa, was sick for a prolonged period and subsequently expired on August 7, 1996, and thereby could not attend to the affairs of the petitioners which was plunged in pell mell and confusion and as no other person was aware of the state of affairs and true position." 5. Immediately after filing the said revision petition on January 5, 1999, the petitioner also filed a declaration under Section 88 of the Finance (No. 2) Act, 1998, on January 6, 1999, claiming the benefit under the Scheme, by alleging that a revision petition filed on January 5,

1999, was pending on the date of declaration. 6. The third respondent dismissed the revision petition on January 12, 1999, by the following order (annexure-E) : "The assessee has filed a revision petition under Section 264 on January 5, 1999, for the assessment year 1995-96 against the order under section 143(1)(a) dated March 29, 1996. The petition made under Section 264 is beyond the due date prescribed under the Income-tax Act, 1961. Since, the revision petition made is out of time, the petition is dismissed as not maintainable." 7. Thereafter the third respondent sent a communication dated January 29, 1999 (annexure-F), rejecting the declaration dated January 6, 1999, filed by the petitioner under the Scheme relating to the assessment year 1995- 96, on the following ground : "The Kar Vivad Samadhan Scheme, 1998, prescribes two conditions and they are as under : (i) There should be arrears as on March 31, 1998 ; (ii) There should be an appeal/revision admitted by the appellate authority/Commissioner of Income-tax ; Both the above conditions are mandatory and if any one of the conditions is not satisfied, then the declaration filed under the K. V. S. S. will be treated as never to have been made. In your case condition No. (ii) mentioned above is not satisfied. Hence, the declaration filed is treated as never to have been made. This is for your information." 8. The petitioner is aggrieved. According to the petitioner, the revision filed under Section 264 of the Act could not have been dismissed on the ground of delay without hearing him on the question of delay. He, therefore, submits that the rejection of the revision is opposed to the principles of natural justice. In regard to the rejection of the declaration under the scheme, the petitioner contends that the requirement of the scheme is that an appeal or reference or writ petition should be admitted and pending on the date of filing declaration or an application for revision should be pending before the Commissioner on the date of declaration. The petitioner contends that the word "admitted" in Section 95 of the Finance (No. 2) Act, 1998, applied only to appeals, references and writ petitions ; and in so far as revisions are concerned, mere filing of the revision and pendency thereof is sufficient to become eligible to file a declaration under the Scheme and there is no requirement that the revision application should be "admitted' as there is no provision for admission of a revision under Section 264. He, therefore, contends that the rejection of the declaration by the third respondent is erroneous. 9. Hence, the petitioner has filed this petition for the following reliefs : (a) For quashing the order dated January 12, 1999 (annexure-E), passed by the third respondent rejecting its revision petition filed by the petitioner on January 5, 1999, under Section 264 of the Act ; (b) For quashing the order dated February 29, 1999 (annexure-F), passed by the third respondent rejecting the declaration filed by the petitioner on January 6, 1999, under the KVS Scheme ; (c) For quashing the consequential notice January 2, 1999 (annexure-G), issued by the second respondent in Form No. ITCP. 25 ; (d) For a direction to the third respondent to accept the declaration dated January 6, 1999, filed by it under the KVS Scheme ; (e) For a declaration that the declaration dated January 6, 1999, filed by the petitioner under Section 89 of the Finance (No. 2) Act, 1998, is valid, maintainable and in accordance with law. 10. Therefore, two questions arise for consideration : (1) Whether the rejection of the revision filed

under Section 264 of the Act on the ground of limitation without hearing the petitioner requires interference. (2) Whether the third respondent was justified in rejecting the declaration dated January 6, 1999, filed by the petitioner under the KVS Scheme, by treating it as never to have been made. 11. Re : Point (1) : Section 264 of the Act provides for revision by the Commissioner, either suo motu or on an application by the assessee. Sub-section (3) of Section 264 provides that the period of limitation for making an application for revision by the assessee, under Section 264 of the Act is one year from the date on which the order was communicated to the assessee or the date on which he otherwise comes to know of it, whichever is earlier. The proviso to Sub-section (3) enables the Commissioner to admit an application for revision, after the expiry of that period, if he is satisfied that the assessee was prevented by sufficient cause from making the application within that period. 12. Where the revision is filed out of time, with a request for condonation of delay, the Commissioner should apply his mind to find out whether there was sufficient cause for not filing the revision within the prescribed time and exercise his discretion in furtherance of justice. The words"sufficient cause" should be liberally construed, where there is no negligence or want of bona fides on the part of the assessee and the revisional authority will have to condone the delay, if he is satisfied that there was sufficient cause for the delay in filing the revision. Though there are divergent views as to whether the revisional authority should give a hearing to the party concerned before rejecting the request for condonation of delay, the prevalent later view is that an oral hearing should be given, when sought by the applicant. In this case, the petitioner did not seek an oral hearing. Therefore, the petitioner cannot have a grievance in regard to the absence of an oral hearing before rejection of the revision on the ground of limitation. 13. Even assuming that an oral hearing ought to have been given, the question that arises is whether the rejection of the revision petition on the ground of delay without giving a hearing to the petitioner, should be interfered with in exercise of the power under Article 226 of the Constitution. The Supreme Court in S. L. Kapoor v. Jagmohan, AIR 1981 SC 138, while observing that non-observance of natural justice is itself prejudice and independent proof of prejudice is not necessary, further held that where on the admitted facts or indisputable facts only one conclusion is possible or permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs. Applying the said principle, let me examine the facts of this case. 14. The revision was filed on January 5, 1999, against the order dated March 29, 1996 (served on April 25, 1996). The only reason given by the petitioner for seeking condonation of delay is that its counsel died on August 7, 1996. Even assuming that the petitioner's counsel died on August 7, 1996, and that some time is required for making alternative arrangements, no cause is made out for the enormous delay. There was still more than eight months time to file a revision, when the petitioner's counsel died. There is absolutely no explanation for the delay beyond the period of limitation, that is from April 25, 1997, to January 5, 1999. It should be remembered that the petitioner went on making payment towards the amount

due under the order dated March 29, 1996, on February 28, 1997, July 7, 1997, August 8, 1997, August 10, 1998, September 18, 1998, and October 12, 1998. The period from April 25, 1997, to January 5, 1999, which is nearly twenty months remains unexplained. Whenever a party wants delay to be condoned, he should show sufficient cause. If no cause is shown at all, the only conclusion that can be reached is that the delay cannot be condoned, particularly when lack of bona fides is evident. Where only one conclusion can be reached, there is no need to send back the matter on the ground that the principles of natural justice have been violated by failure to give an oral hearing. Therefore, even if an oral hearing was required to be given, the order passed without such oral hearing does not call for interference as I am satisfied that even if an opportunity had been granted, the only conclusion that could have been reached by the Commissioner is that there was no sufficient cause for condoning the delay in filing the application for revision. The petitioner has not made out any ground to interfere with annexure-E, dated January 12, 1999. 15. Re : Point (2) : The contention of the petitioner is that mere pendency of the revision petition on January 6, 1999, was sufficient to enable the petitioner to file a declaration under Section 88 of the Finance (No. 2) Act, 1998, and there is no need for its admission to hold that the revision petition was pending. 16. The contention of the petitioner that "admission" is not a condition precedent to hold that the revision petition is "pending" for purposes of Section 95 of the Finance (No. 2) Act, 1998, may be correct in so far as revisions initiated by the Commissioner on his own motion and revision proceedings initiated on an application made by the assessee within the period of limitation of one year provided under Sub-section (3) of Section 264 are concerned. But, where 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 ; and on condonation of delay by the Commissioner and admission, the pendency would relate back to the date of filing of the revision petition. The proviso to Sub-section (3) of Section 264 of the Act, in terms provides that where there is delay in filing a revision petition, the Commissioner should admit the revision by condoning the delay, on sufficient cause being shown. In this case, there is a long unexplained delay and there is no condonation of such delay. Therefore, it cannot be said that a revision was pending on January 6, 1999. Hence, mere filing of a belated application seeking revision, on January 5, 1999, will not entitle the petitioner to contend that a litigation was pending in regard to the assessment year 1995-96 and that, therefore, a declaration could be made under Section 88. 17. 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. Hence, rejection of the petitioner's declaration is proper as no revision or other litigation was "pending" on January 6, 1999, when the declaration was filed. 18. Hence, the challenge to annexures-E, F and G is rejected. The petition is rejected with costs of Rs. 2,000 payable to the respondents. 19. Sri M. V. Seshachala, is permitted to file his memo of appearance in six weeks.