Commissioner Of Income Tax,Rajkot vs Shatrusailya Digvijaysingh Jadeja on 1 September, 2005

Equivalent citations: 2005 (7) SCC 294, AIR 2005 SUPREME COURT 4000, 2005 AIR SCW 4693, 2005 TAX. L. R. 802, (2005) 8 JT 50 (SC), (2005) 147 TAXMAN 566, 2005 (8) JT 50, 2005 (2) UJ (SC) 1425, 2005 (6) SLT 534, 2005 (7) SCALE 78, (2005) 36 ALLINDCAS 159 (SC), (2005) 277 ITR 435, (2005) 197 CURTAXREP 590, (2005) 8 SCJ 395, (2006) 190 TAXATION 3, (2005) 6 SUPREME 123, (2005) 7 SCALE 78

Bench: B.P. Singh, S.H. Kapadia

CASE NO.:
Appeal (civil) 4411 of 2003

PETITIONER:
Commissioner of Income Tax,Rajkot.

RESPONDENT:
Shatrusailya Digvijaysingh Jadeja

DATE OF JUDGMENT: 01/09/2005

BENCH:
B.P. SINGH & S.H. KAPADIA

JUDGMENT:

J U D G M E N T KAPADIA, J.

The question which arises for determination in this civil appeal filed by the department is whether the department was right in rejecting the Kar Vivad Samadhan Scheme declarations filed by the respondent-assessee on the ground that the assessments had become final in the year 1992-93 (when the assessee's appeals were dismissed for failure to pre-deposit self-assessed tax) and that the respondent herein had filed revisions under the Income Tax Act and Wealth Tax Act in November/December, 1998 only to obtain the benefit of Kar Vivad Samadhan Scheme, 1998, which came into force w.e.f. 1.9.1998. According to the department, the revisions filed by the assessee were time barred and as such they were not "pending" in terms of section 95(i)(c) of the said Scheme.

The undisputed facts which lie within a very narrow compass are as follows:

> In respect of assessment years 1984-85 to 1991-92, the assessee was liable to pay tax under assessment orders passed vide section 143(3) of the Income Tax Act, 1961 and also under the assessment orders passed under the Wealth Tax Act, 1957.

Being aggrieved by the assessment orders, the assessee herein, preferred appeals to the Commissioner (A) under section 246 of the said Act. However, the assessee failed to pre-deposit the self-assessed tax and consequently, the appeals came to be dismissed in the year 1992-93.

The Finance (No.2) Act, 1998 introduced a scheme called Kar Vivad Samadhan Scheme (for short "the Scheme"). The said Scheme was contained in Chapter IV of the Finance Act and consisted of sections 86 to 98 (both inclusive). The said scheme came into force w.e.f. 1.9.1998 in respect of tax arrears outstanding as on 31.3.1998 and was in force up to 31.1.1999.

On 28/29.12.1998, the assessee herein filed appeals and revisions as mentioned in the statement given herein below:

STATEMENT OF APPEALS AND REVISION PETITION VIS-@-VIS DECLARATIONS IN RESPECT OF KVSS UNDER INCOME TAX ACT. Assessment year Appeals/ Revision Petition Filed Date of filing of Appeal / Revision Petition Date of filing KVSS declaration Date of order on KVSS Declarations Status on KVSS declarations Date of order on application for condonation of delay in filing of Appeal/ Revision Status on the application for condonation of delay in filing Appeal/ Revision 1980-81 Appeal 13/15.01.99 Last Week of Jan., 1999 15/22/23.2.99 & 5.3.99 Accepted Delay condoned 1981-82 Appeal 13/15/01.99 Last Week of Jan., 1999 15/22/23.2.99 & 5.3.99 Accepted Delay condoned 1984-85 Revision 26.11.98 to 8.12.1998 28/29.12.98 9.2.1999 Rejected 31.3.2000 Delay not condoned 1985-86 Revision 26.11.98 to 8.12.1998 28/29.12.98 9.2.1999 Rejected 31.3.2000 Delay not condoned 1986-87 Revision 26.11.98 to 8.12.1998 28/29.12.98 9.2.1999 Rejected 31.3.2000 Delay not condoned 1987-88 Revision 26.11.98 to 8.12.1998 28/29.12.98 9.2.1999 Rejected 31.3.2000 Delay not condoned 1988-89 Appeal 13/15.01.99 Last Week of Jan., 1999 15/22/23.2.99 & 5.3.99 Accepted Delay condoned 1988-89 Revision 26.11.98 to 8.12.1998 28/29.12.98 9.2.1999 Rejected 31.3.2000 Delay not condoned 1989-90 Appeal 13/15.01.99 Last Week of Jan., 1999 15/22/23.2.99 & 5.3.99 Accepted Delay condoned 1989-90 Revision 26.11.98 to 8.12.1998 28/29.12.98 9.2.1999 Rejected 31.3.2000 Delay not condoned 1990-91 Appeal 13/15.01.99 Last Week of Jan., 1999 15/22/23.2.99 & 5.3.99 Accepted Delay condoned 1990-91 Revision 26.11.98 to 8.12.1998 28/29.12.98 9.2.1999 Rejected 31.3.2000 Delay not condoned 1991-92 Appeal 13/15.01.99 Last Week of Jan., 1999 15/22/23.2.99 & 5.3.99 Accepted Delay condoned 1991-92 Revision 26.11.98 to 8.12.1998 28/29.12.98 9.2.1999 Rejected 31.3.2000 Delay not condoned 1992-93 Appeal 13/15.01.99 Last Week of Jan., 1999 15/22/23.2.99 & 5.3.99 Accepted Delay condoned 1993-94 Appeal 13/15.01.99 Last Week of Jan., 1999 15/22/23.2.99 & 5.3.99 Accepted Delay condoned On the above facts, the department's case before us is that the scheme was enacted to resolve the pending litigation;

that the purpose of the scheme was not to create artificial pendency of litigation; that the revisions were not pending on 1.9.1998 when the scheme came into force as the revisions were filed in November and December, 1998 along with applications for condonation of delay and consequently, such revisions did not come within the meaning of the word "pendency" as mentioned in section 95(i)(c) of the said Scheme. On behalf of the department, it was further pleaded that under the IT Act, there was a difference between an appeal and a revision; that the remedy of filing an appeal is available to an assessee under section 246 as a matter of right whereas the remedy of filing revision under section 264 was a discretionary remedy. On facts, it was pleaded that the revisions filed by the assessee were not bonafide as the appeals under section 246 stood dismissed in the year 1992-93 for failure to pre-deposit self- assessed tax; that the revisions filed were also not bona fide as they were filed only to obtain the benefit of the said scheme; that the revisions were filed under section 264 before the commissioner after a long delay and they were rightly dismissed by the commissioner subsequently for want of sufficient cause to condone the delay.

Shri K.P. Pathak, learned ASG appearing on behalf of the department would submit that the scheme was a self-contained Code; that it stood on its own force different from the Income Tax Act/Wealth Tax Act; that the intention of the Scheme as reflected in the speech of former finance minister indicated that the purpose of the Scheme was to bring to an end pending litigation and not to create an artificial litigation in respect of assessments which had attained finality. In this connection, learned counsel pointed out that in the present case the department had in fact resorted to execution proceedings and a part of the arrears was also realized through the auction sale of the lands of the assessee and, therefore, there was no bona fide pendency of litigation on the date when the assessee filed his declarations under the Scheme. The learned counsel submitted that there was a difference between an appeal under section 246 and revisions under section 264 of the IT Act; that under the proviso to section 264, the commissioner was empowered to condone the delay in filing of revision if he was satisfied that the assessee was prevented by sufficient cause from preferring the revision within the prescribed time. It was submitted that the revision petition was not pending in terms of section 95(i)(c) of the Scheme; that the delay in filing the revisions was not condoned and, consequently, the assessee was not eligible to take the benefit of the scheme. In this connection, learned counsel placed reliance on the judgment of this Court in the case of Computwel Systems P. Ltd v. W. Hasan & Another reported in (2003) 260 ITR 86.

Per contra, Shri M.L.Varma, learned senior counsel appearing on behalf of the assessee submitted that revisions and appeals were filed by the assessee along with the condonation applications; that, however, declarations pertaining to the assessment years covered by the appeals under sections 246 were accepted by the designated authority (for short "DA") under the Scheme though the applications for condonation of delay were pending decision whereas the DA rejected the declarations filed by the assessee covered by the revisions without waiting for the commissioner to exercise his authority to condone the delay under the proviso to section 264 of the IT Act. Learned counsel made the grievance that no reason has been given by the department for rejecting one set of declarations concerning revisions under section 264 while accepting declarations concerning appeals under section 246 of the IT Act, though in both the cases, applications for condonation of delay were filed and pending.

On the question of law, learned counsel invited our attention to section 95(i)(c) and submitted that the scheme was a Code by itself; that the object of the scheme was to recover the taxes locked in the pending litigation and for the purposes of the applicability of the scheme, appeals, references, revisions, writ petitions pertaining to the tax cases were all put at par under section 95(i)(c) of the Scheme. It was urged on behalf of the assessee that if a revision or an appeal was pending on the date of the filing of the declaration under the Scheme, it was not open to the DA to hold that the appeals/revisions were sham, ineffective or infructuous. In this connection, reliance was placed on the judgment of this Court in the case of Dr. Mrs. Renuka Datla & Others v.

Commissioner of Income-Tax & Another reported in (2003) 259 ITR 258.

The basic point which we are required to consider in this case is the meaning of the word "pending" in section 95(i)(c) of the said Scheme.

The object of the scheme was to make an offer by the Government to settle tax arrears locked in litigation at a substantial discount. It provided that any tax arrears could be settled by declaring them and paying the prescribed amount of tax arrears, and it offered benefits and immunities from penalty and prosecution. In several matters, Government found that large number of cases were pending at the recovery stage and, therefore, the Government came out with the said Scheme under which it was able to unlock the frozen assets and recover the tax arrears.

In our view, the Scheme was in substance a recovery scheme though it was nomenclatured as a "litigation settlement scheme" and was not similar to the earlier Voluntary Disclosure Scheme. As stated above, the said Scheme was a complete Code by itself. Its object was to put an end to all pending matters in the form of appeals, reference, revisions and writ petitions under the IT Act/WT Act. Keeping in mind the above object, we have to examine section 95(i)(c) of the Scheme, which was different from appeals under section 246, revisions under section 264, appeals under section 260A etc. of the IT Act and similar provisions under the W.T. Act. Under the I.T. Act, there is a difference between appeals, revisions and references. However, those differences were obliterated and appeals, revisions and references were put on par under section 95(i)(c) of the Scheme. The object behind section 95(i)(c) in putting on par appeals, references and revisions was to put an end to litigation in various forms and at various stages under the IT Act/Wealth Tax Act and, therefore, the rulings on the scope of appeals and revisions under the IT Act or on Voluntary Disclosure Scheme, will not apply to this case.

One more aspect needs to be looked into. The Finance (No.2) Act, 1998 introduced a Scheme called Kar Vivad Samadhan Scheme, 1998. It was a recovery scheme. Under the Scheme, the tax arrear had to be outstanding as on 31.3.1998. Under section 87(f), "disputed tax" was defined to mean total tax determined and payable under the IT Act/Wealth Tax Act in respect of an assessment year but which remained unpaid as on the date of making of the declaration from which TDS, self- assessed tax, advanced tax paid, if any, had to be deducted under section 90; the DA had to determine the amount payable and for that purpose, he had to determine the tax arrear as well as the disputed amount as defined under section 87(f). Thus, the DA had to make an assessment of tax arrears, disputed amount and amount payable for each year of assessment; that appeal was barred against

the order under section 90 (see section 92); that such determination had to be done within 60 days from the receipt of the declaration and based thereon the DA had to issue a certificate. In other words, till the completion of the aforestated exercise, the appellant could not have paid the amount of tax and, therefore, the appellant was not liable to pay interest as his liability accrued only after the ascertainment of the amount payable under section 90. In the present matter, that exercise has been completed; that taxes have been recovered by sale of lands; that amounts have been paid pursuant to the determination by the DA, may be under the orders of the High Court and, therefore, we do not wish to reopen the matter.

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 the filing of the declaration under section 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 v. The State of Bombay reported in AIR 1954 SC 73, 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.

To the same effect is the law laid down by the judgment of this Court in the case of Tirupati Balaji Developers (P) Ltd. v. State of Bihar & Others reported in (2004) 5 SCC 1, in which it has been held that an appeal does not cease to be an appeal though irregular and incompetent.

For the aforestated reasons, orders of the designated authority rejecting the declarations filed by the assessee are quashed. We do not find any infirmity, to this extent, in the impugned judgment of the High Court. The appeal is accordingly dismissed, with no order as to costs.