(2012) 07 KL CK 0213

High Court Of Kerala

Case No: WP (C) .No. 28378 of 2004

T.M.Varghese		APPELLANT
	Vs	
The Commissioner of Income Tax, Public Library Building, Sastri Road, Kottayam and The Income Tax Officer, Ward-1, Alleppey		RESPONDENT

Date of Decision: July 23, 2012

Acts Referred:

- Income Tax Act, 1961 - Section 143(1)(a), 234B, 244A

Hon'ble Judges: K. Vinod Chandran, J

Bench: Single Bench

Advocate: K.R. Sudhakaran Pillai and Sri. Sajith Kumar V, for the Appellant; Jose Joseph, Senior Standing Counsel for I.T., for the Respondent

Final Decision: Dismissed

Judgement

Justice K. Vinod Chandran

1. The petitioner is an individual assessee under the second respondent. The petitioner in the above writ petition challenges Ext.P1 order of the Commissioner rejecting the claim of refund made by the petitioner in the year 1992-93. The brief facts leading to the above writ petition is that, the assessment of the petitioner for the year 1992-93 was completed and there were amounts remaining due and payable to the department as per the assessment completed for the said year. The petitioner in the subsequent years was also assessed under the Income Tax Act, 1961 (hereinafter called as ''Act'') and in the year 1996-97 an intimation u/s 143(1)(a) dated 26.03.1997 was allegedly sent to the petitioner. The petitioner disputes the receipt of the same. The above mentioned intimation u/s 143(1)(a), according to the department, clearly spoke of a refund for the year 1996-97 coming to Rs. 1,50,000/- which together with interest u/s 244A was shown as adjusted towards the interest

arrears of 1992-93.

2. Subsequently, the petitioner approached the authority under the Kar Vivad Samadhan Scheme 1998 (hereinafter called as ''Scheme'') for settlement of the arrears of the assessment year 1992-93. The said application was dated 17.12.1998. In pursuance of the application, on the authority under the Scheme calling for the amounts pending for the said year; the second respondent, being the Assessing Officer of the petitioner, had intimated a demand of tax coming to Rs. 1,96,580/- and interest u/s 234B coming to Rs. 2,09,768/-. The petitioner on being granted a certificate under the scheme had settled the amounts certified thus clearing off the arrears in the year 1992-93.

3. It is the contention of the learned counsel for the petitioner that subsequently it was realised that there was remaining an amount of Rs. 1,50,000/- as refund due from the department in the year 1996-97; which the department claimed as having been adjusted against the dues of 1992-93. Since the demand intimated to the authority under the scheme did not show such adjustment, it was contented that the said amounts are liable to be refunded by the department to the petitioner. The petitioner had first made such a request by letter dated 04.01.2001 produced as Ext.P2 in the original petition. On being issued with Ext.P3 rejection letter the petitioner was before the first appellate authority by way of an appeal which was withdrawn by Ext.P6. The subsequent application for revision by Ext.P7 dated 26.02.2004 was dismissed by the Commissioner by Ext.P1 order.

4. The learned counsel for the petitioner would contend that Ext.P1 order would clearly show that the intimation u/s 143(1) (a) for the year 1996-97 was not received by the petitioner and that the certificate issued under the Kar Vivad Samadhan Scheme did not reflect the deduction of the adjustment of the refund for the year 1996-97. The learned Standing Counsel for the department however would contend that Ext. P1 would only show that an acknowledgment of the receipt of the notice u/s 143 (1)(a) was not in the files. The despatch of the notice was evidenced from the file and the fact that the petitioner had been claiming the deduction for Rs. 1,66,500/-, even going by Ext. P2 would show that the petitioner was aware of the refund of Rs. 1,50,000/- together with interest of Rs. 16,500/- and the consequent adjustment. According to the learned Standing Counsel this is so evident since the refund was of an amount of Rs. 1,50,000/- and 16,500/- rupees was towards interest, which the petitioner would not have been known about without the receipt of the intimation u/s 143(1)(a). It is also pointed out that the Commissioner had noticed in Ext.P1 order as to the long delay in making an application for revision; which again was not against a specific order. It was also noticed that even if Ext.P3 letter dated 08.01.2001 is treated as the impugned order the revision filed in the year 2004 is grossly delayed.

5. I have given anxious consideration to the facts as disclosed from the records with reference to the provisions of the Kar Vivad Samadhan Scheme,1998. It is admitted

that for the year 1996-97 there was refund of Rs. 1,50,000/- and the said amounts together with interest coming to Rs. 16,500/- was adjusted towards the interest of the arrears for the year 1992-93. The same was also intimated by a notice u/s 143(1)(a) to the petitioner. Though the petitioner would take a contention that he did not receive the same; from the facts discernible as also the averments made by the petitioner, it is clear that he was aware of such a refund which along with interest was adjusted towards the year 1992-93. Before the authority under the Scheme also, the petitioner did not choose to make any objection regarding the report made by the Assessing Officer.

6. The computation of the tax payable on settlement under the Scheme of 1998 is as per Clause 8 of the said scheme. The actual computation of the amounts under the Scheme as per Sub Clause(a) of Clause 88 reads as under:

where the tax arrear is payable under the Income Tax Act 1961(43 of 1961),-

(i) in the case of a declarant being a company or a firm at the rate of 35% of the disputed Income

(ii) in the case of a declarant, being a person other than a company or a firm, at the rate of 30% of the disputed income.

Sub Clause ii as extracted above would be applicable to the petitioner herein being an individual assessee. The settlement of tax payable and the amounts certified for payment would hence depend only on the disputed income; the interest component not at all being taken into account for deciding the settlement under the Scheme. In the light of the contentions of the department that the amount was adjusted towards the interest due for the year 1992-93, the reflection of any adjustment or reduction in the quantum of interest; in the intimation of the Assessing Officer to the authority under the scheme would not have made any difference. The amounts certified to be paid on account of the settlement under the Scheme is only based on the income. The petitioner could not have been caused any prejudice. The learned counsel for the petitioner would take me through the decision reported in Parekh Brothers Vs. Commissioner of Income Tax and Others, where in a Division Bench of this Court had highlighted the duty of the Income Tax Department to assist the tax payer in getting eligible relief. In the present case; true, the assessing Officer, the second respondent had not computed the demand of the year 1992- 93 properly; atleast with respect to the interest component. However, as noticed above even if the reduction was reflected before the authority under the Scheme that would not have made any difference since the interest component was not at all taken into account for deciding the liability under the scheme. In such circumstances, I am afraid, the Division Bench decision does not help the petitioner in any manner. The adjustment of the refund amounts together with interest, did not at all prejudice the petitioner under the Kar Vivad Samadhan Scheme, 1998. It is also pertinent that the revision itself was delayed. Ofcourse the petitioner contends that the same was due

to the appeal filed against the letter of rejection. That alone in my opinion cannot enable the petitioner to file a delayed revision. Be that as it may since this Court has found that there is no prejudice caused to the petitioner and that there is absolutely no illegal enrichment by the department; this Court is of the opinion that no revision can be ordered at this stage and the petitioner''s claims for the same is devoid of merit.

The writ petition hence is dismissed without costs.