

(2002) 03 MP CK 0045
Madhya Pradesh High Court
Case No: Writ Petition No. 808 of 2001

Radhika Prakashan P.
Ltd.

APPELLANT

Vs

Union of India (UOI)
and Another

RESPONDENT

Date of Decision: March 6, 2002

Acts Referred:

- Finance (No. 2) Act, 1998 - Section 89

Citation: (2002) 256 ITR 265 : (2002) 3 MPLJ 317 : (2003) 126 TAXMAN 232

Hon'ble Judges: Arun Mishra, J

Bench: Single Bench

Advocate: Manindar Bhatti, for the Appellant; Rohit Arya, for the Respondent

Final Decision: Allowed

Judgement

Arun Mishra, J.

The petitioner is seeking the issue of writ to the respondents to accept the declaration under 89 of the Finance (No. 2) Act of 1998 for the assessment year 1990-91 which was filed on January 28, 1999, under the "Kar Vivad Samadhan Scheme".

The petitioner is a company engaged in publication of a newspaper "Swadesh". The petitioner filed the return of income on December 31, 1990, declaring loss of Rs. 1,09,240. The Assessing Officer completed the assessment u/s 143(3) of the Income Tax Act, 1961, on March 31, 1993, on a total income of Rs. 2,78,760. The Assessing Officer made a total addition of Rs. 3,88,000 to the disclosed income. Aggrieved by the order of the Assessing Officer, an appeal was preferred before the Commissioner of Income Tax (Appeals), Bhopal. The Commissioner of Income Tax (Appeals), Bhopal, confirmed the various additions made by the Assessing Officer. Aggrieved by the order of the Commissioner of Income Tax (Appeals), Bhopal, the

petitioner filed an appeal to the Income Tax Appellate Tribunal, Indore Bench, Indore, registered as ITA No. 503/Ind of 1994. The appeal was dismissed in default of appearance of counsel for the petitioner on September 4, 1998. Miscellaneous application was filed for restoration ; the Tribunal vide order dated June 1, 1999 (annexure P/2), recalled the order and restored the appeal, The appeal was ultimately dismissed on May 10, 2000. While the appeal of the petitioner was pending before the Tribunal, the Union of India introduced the "Kar Vivad Samadhan Scheme, 1998". The scheme was operative from September 1, 1998, to January 31, 1999. The scheme was aimed to provide for quick and voluntary settlement of tax dues which were locked in litigation. The petitioner filed a declaration u/s 89 of the Finance (No. 2) Act of 1998. In this declaration the petitioner worked out the disputed tax payable at Rs. 60,713 and offered to pay this tax. The respondent as per order dated February 26, 1999, filed the declaration as no appeal was pending on the date of filing of declaration. The petitioner moved an application annexure P/8 on July 8, 1999, pointing out that the restoration was accepted on June 1, 1999, and appeal was still pending before the Tribunal. Thus, his declaration u/s 89 should be revived and considered on the merits. The same did not find favour with the respondent-Commissioner of Income Tax and the prayer was disallowed on September 13, 1999, as per order annexure P/9.

The respondents in their return contend that no appeal was pending before the appellate authority on January 28, 1999, the declaration filed by the petitioner u/s 89 was rejected on the ground that the appeal was not pending on the date of filing declaration. The precondition for admittance of a declaration u/s 88 of the Finance (No. 2) Act of 1998 was that an appeal or reference was preferred to writ petition should have been admitted and pending before any appellate authority or High Court or Supreme Court on the date of such declaration which was not satisfied in the instant case. The case stood dismissed in default of appearance and was restored later on and the factum of restoration does not enure to the favour of the petitioner.

A rejoinder is filed on behalf of the petitioner pointing out that the issue whether on restoration of appeal it reverts back to the original date has not been answered by the respondents. Parties were locked in litigation ; the scheme was operative from September 1, 1998 to January 31, 1999, and within the said period the declaration was filed. Once the appeal was restored on June 1, 1999, it reverts back to the date of filing in 1994 and the dismissal in default made on September 4, 1998, stands wiped out. Thus, the declaration should have been considered on the merits and decided in accordance with law on restoration of the appeal.

Learned counsel for the petitioner submits that once the appeal was restored the order of dismissal in default of appearance stands wiped out and the appeal has to be treated as pending on the relevant date between September 1, 1998, and January 31, 1999. The appeal was restored on June 1, 1999, and was filed in the year 1994.

He places reliance on a Division Bench decision of the Punjab and Haryana High Court in [Sat Kartar Trading Co. Vs. Commissioner of Income Tax](#),

Learned counsel for the respondents contends that on the date of dismissal of the declaration filed under the Kar Vivad Samadhan Scheme, the appeal was not restored ; hence the order of rejection is proper. The appeal has been later on dismissed on the merits hence the question cannot be reopened.

In [Sat Kartar Trading Co. Vs. Commissioner of Income Tax](#), the appeal was dismissed in default of appearance on December 4, 1998 ; the declaration was filed on January 29, 1999 ; on that date the reference application of the petitioner had already been dismissed ; no fault was found in the initial rejection. It was held that when the reference was revived on May 27, 1999, and the case was restored the effect of the order was that the basis of the order rejecting the declaration was wiped out. The original position stood restored and the reference was pending on the relevant dates. The rejection of declaration was rendered ineffective and it was directed that the declaration filed by the petitioner should be considered in accordance with the "Kar Vivad Samadhan Scheme".

The fact-situation in the instant case is the same as was obtainable in [Sat Kartar Trading Co. Vs. Commissioner of Income Tax](#), The appeal has been dismissed on the merits later on after its restoration cannot come in the way of the petitioner for consideration of his case as per more beneficial provision, "Kar Vivad Samadhan Scheme" framed under the Finance (No. 2) Act of 1998.

In my opinion order P/9 rejecting the prayer to consider the declaration under the Kar Vivad Samadhan Scheme is bad in law ; it ought to have been considered on the merits, the appeal was pending on the date of passing of the order P/9. Merely the appeal has been decided subsequently on May 10, 2000, cannot come in the way of consideration of declaration made under the scheme of the Kar Vivad Samadhan.

The term "restoration" itself contemplates that the original position reverts back and the application filed by the petitioner annexure P/8 on July 8, 1999, was wrongfully rejected. The matter should have been considered on the merits in accordance with the "Kar Vivad Samadhan Scheme, 1998". The declaration in the instant case was filed on January 28, 1999, in accordance with the Kar Vivad Samadhan Scheme, 1998. Costs on parties.