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(2001) 169 CTR 41 : (2001) 250 ITR 147

Andhra Pradesh High Court

Case No: Writ Petition No. 3501 of 2001 27 April 2001 A.Y. 1993-94 and 1994-95

K. VENKATA REDDY	APPELLANT
Vs	
Commissioner of Income Tax and Another	RESPONDENT

Date of Decision: April 27, 2001

Acts Referred:

- Income Tax Act, 1961 - Section 119

Citation: (2001) 169 CTR 41 : (2001) 250 ITR 147

Hon'ble Judges: S.R. Nayak, J; S. Ananda Reddy, J

Bench: Full Bench

Advocate: A. V Krishna Kaundinya, for the Assessee, J. V Prasad, for the Revenue, for the Appellant;

Judgement

S. Ananda Reddy, J.

This writ petition is filed praying for the issue of a writ of mandamus declaring that the Communication No. CIT.AP.II/KVSS/190 of 1998-99, dated 17-12-1999, issued by the first respondent is illegal, arbitrary and a conse uential declaration that the payment dated 27-3-1999, made by the petitioner is valid and to direct the respondents to issue to the petitioner a certificate as re uired under the Kar Vivad Samadhan Scheme, 1998.

2. The petitioner is an individual, who was in arrears of tax to the Income Tax Department for the assessment years 1993-94 and 1994-95. While so, in the year 1998, the Government of India, Ministry of Finance, declared a scheme called the "Kar Vivad Samadhan Scheme, 1998 (hereinafter referred to as "the KVS Scheme" or "the Scheme"), with an object of reducing litigation, collecting revenues by the government at an early date and for de-clogging the legal system by reducing the number of appeals, writ petitions, revisions, etc., pending as on that date. As per the scheme all the

assessees, who are in due of payment of tax, interest, penalty, etc., as on 31-3-1998, which is disputed before any authority are entitled to make a declaration during the period of the scheme from 1-9-1998 to 31-12-1998, and pay the tax at the declared concessional rate. According to the petitioner, in pursuance of the said scheme, he filed his declaration before the first respondent on 28-12-1998. The said declaration was for the assessment years 1993-94 and 1994-95, showing the tax arrears at Rs. 74,390 and Rs. 1,14,598, respectively. A certificate of intimation in Form No. 2A u/s 90(1) of the Finance (No. 2) Act, 1998, was issued to the petitioner. In terms of the intimation, the petitioner was re uired to pay Rs. 27,498 for the assessment year 1993-94 and Rs. 50,462 for the assessment year 1994-95. According to the petitioner, the above two payments were made by means of che ue on 27-3-1999, drawn on the Rajadhani Bank, Barkathpura, in a sum of Rs. 77,958 and it was presented along with the challan before the department, the receipt of which, by the department, was not in dispute. The petitioner also addressed a letter to the first respondent on 22-4-1999, informing him of the payments made by the petitioner by enclosing copies of the two challans evidencing the payments. But, however, it is stated that the petitioner received a letter dated 8-3-2000, from the second respondent stating that the declarations filed by the petitioner for the assessment years inuestion were treated as non est and were lodged, as the payment was not made in time. By the same letter, the petitioner was also asked to clear off the tax dues for the two assessment years inuestion. The petitioner thereafter addressed a letter dated 19-7-2000, to the first respondent re uesting him to treat the payments made by the petitioner as payments made in pursuance of the scheme and re uested for the issue of the certificate, under the KVS Scheme, 1998. The petitioner also further stated that he was informed that the che ue was cleared on 12-4-1999, and as the same was not cleared before the period of 30 days from the date of receipt of the intimation, it was not treated as payment under the Scheme. It is further stated that the petitioner has also brought to the notice of the first respondent that as per the judgment of the Supreme Court in the case of COMMISSIONER OF Income Tax, BOMBAY SOUTH, BOMBAY Vs. OGALE GLASS WORKS LTD., , as well as the judgment of the Gujarat High Court in Kangold (India) Ltd. Vs. Commissioner of Income Tax, , the date of presentation of the che ue, if honoured, would amount to payment on that date and, therefore, the presentation of the che ue on 27-3-1999, should be treated as payment and if so, the petitioner is entitled for the issue of a certificate under the KVS Scheme, 1998. The petitioner''s re uest was not acceded to by the respondents by letter dated 11-8-2000, where it was also intimated that an earlier communication was also sent to the petitioner on 17-12-1999, but the same could not be served on the petitioner as it was returned unserved, intimating that the petitioner''s re uest could not be acceded to. Hence, the present writ petition.

3. On behalf of the respondents, a counter has been filed admitting all other factual assertions of the petitioner, except the fact that the che ue presented on 27-3-1999, could be realised only by 12-4-1999, and, therefore, it amounts to non-payment of the amount under the Scheme within the period of 30 days. It is stated specifically that u/s 90(1) of

the Scheme, Form No. 2A was issued on 25-2-1999, and the petitioner was under an obligation to pay the said amount within 30 days. As the said amount was not paid within the period of 30 days, the petitioner is not entitled to the benefit of the Kar Vivad Samadhan Scheme. It is also stated that though the petitioner presented the che ue on 27-3-1999, the amount was not credited to the government account within the period of 30 days. Hence, the petitioner is not entitled for the benefit of the Kar Vivad Samadhan Scheme.

From the above, the issue that arises for consideration is whether the payment of the amount due under the Scheme by che ue dated 27-3-1999, would amount to payment as on the date of the presentation of the che ue or the payment would be as on the date of realisation of the said amount ?

The petitioner relied upon the decision of the Apex Court in the case of Ogale Glass Works Ltd.''s case (supra). It was a case where the issue was whether the income was received in the Indian State or in British India u/s 4(1)(a) of the Indian Income Tax Act, 1922. In that case the payment was effected by che ue issued by the government for the supply of goods manufactured by the assessee. Incidentally, the issue as to the date of payment fell for consideration. The Apex Courtuoted the following with approval :

"In Byles on Bills, 20th edition, page 23, the position is summarised pithily as follows :

''A che ue, unless dishonoured, is payment."

To the same effect are the passages to be found in Hart on Banking, fourth edition, volume I, page 342. In Felix Hadley and Co. v. Hadley (1898) 2 Ch 680, Byrne J., expressed the same idea in the following passage in his judgment at page 682 :

In this case I think what took place amounted to a conditional payment of the debt ; the condition being that the che ue or bill should be duly met or honoured at the proper date. If that be the true view, then I think the position is exactly as if an agreement had been expressly made that the bill or che ue should operate as payment unless defeated by dishonour or by not being met ; and I think that that agreement is implied from giving and taking the che ues and bills inuestion."

The following observations of Lord Maugham in Rhokanna Corporation v. IRC (1938) AC 380, are also apposite :

Apart from the express terms of section 33, sub-section (1), a similar conclusion might be founded on the well known common law rules as to the effect of the sending of a che ue in payment of a debt, and in the fact that though the payment is subject to the condition subse uent that the che ue must be met on presentation, the date of payment, if the che ue is duly met, is the date when the che ue was posted"."

Thereafter it is held (page 539) :

"That in one view of the matter there was, in the circumstances of this case, an implied agreement under which the che ues were accepted unconditionally as payment and, on another view, even if the che ues were taken conditionally, the che ues not having been dishonoured but having been cashed, the payment related back to the dates of the receipt of the che ues and in law the dates of payments were the dates of the delivery of the che ues."

The Apex Court also considered the issue in the case of Jiwanlal Achariya Vs. Rameshwarlal Agarwalla, , with reference to the provisions of section 20 of the Limitation Act and it was held as under :

"Where the payment is by che ue and is conditional, the mere delivery of the che ue on a particular date does not mean that the payment was made on that date unless the che ue was accepted as unconditional payment. Where the che ue is not accepted as an unconditional payment, it can only be treated as a conditional payment. In such a case, the payment for purposes of section 20, Limitation Act, 1908, would be on the date on which the che ue would be actually payable at the earliest, assuming that it will be honoured. The fact that a che ue is presented later than the date it bears and then paid is immaterial for it is the earliest date on which the payment could be made that would be the date where the conditional acceptance of a post-dated che ue becomes actual payment when honoured....

Where a post-dated che ue is accepted conditionally and it is honoured, the payment for purposes of section 20 of the Limitation Act, can only be on the date which the che ue bears and cannot be on the date the che ue is handed over, for the che ue, being post-dated, can never be paid till the date on the che ue arrives."

4. This issue was also considered by the Gujarat High Court in the case of Kangold (India) Ltd."s case (supra), with reference to the Voluntary Disclosure of Income Scheme, 1997, under the Finance Act, 1997. In that case the petitioner made a declaration on 30-12-1997, under the Scheme. As per section 67 of the Finance Act, 1997, the petitioner has to make payment of tax on the disclosed income within three months from the date of filing the declaration. The petitioner contended that though the tax payable under the Scheme was paid on 30-3-1998, he was not granted a certificate u/s 68(2) of the Finance Act, 1997. In the writ petition, the petitioner contended that the certificate was not granted to him on the ground that the tax was paid on the 91st day of the filing of the declaration and the tax paid on 30-3-1998, according to him, was within the period. It was held by the Gujarat High Court that the language of section 67(1) of the Finance Act is very clear that the declarant has to make payment of tax within three months from the date of filing of the declaration and the department could not insist that the period should be counted in days and not by months. Any circular making a provision contrary to the provisions of section 67(1) could not be held to be valid and the department could not insist that the tax ought to have been paid within 90 days. It was also held that it is settled legal position that in case of payment by che ue, the payment is deemed to have been made on the date of

delivery of the che ue and not on the date of encashment when the che ue was honoured. Though the che ue was encashed on 3-4-1998, it was held that the payment must be deemed to have been made on 30-3-1998, when the challan dated 30-3-1998, was submitted by the petitioner to the department along with the che ue. Therefore, the payment of tax was within the period prescribed and the petitioner was entitled for the grant of certificate under the provisions of section 68(2) of the Finance Act. The Gujarat High Court also referred to and relied upon the judgment of the Apex Court in Ogale Glass Works Ltd."s case (supra). For the department, however, the judgment in the case of VYSHNAVI APPLIANCES (P) LTD. Vs. CENTRAL BOARD OF DIRECT TAXES and Another, of this court was referred to. This was also a case under the Voluntary Disclosure of Income Scheme, 1997. There admittedly the tax was paid on the 91st day after the declaration was filed by the assessee. Thereafter, the petitioner filed an application u/s 119(2)(b) of the Income Tax Act, 1961, to the Central Board of Direct Taxes for condoning the delay of one day in payment of the tax relatable to the income voluntarily disclosed. The Board declined to condone the delay. Thereafter, a writ petition was filed and this court felt that there was no scope for any interference with the impugned action of the Board as there was no legal infirmity to grant the relief to the petitioner.

It would be convenient to extract the relevant Treasury Rules dealing with payment by che ues, i.e., rules 80 and 81 of the Central Treasury Rules, in order to consider the rival contentions :

"80. Demand drafts shall not be distinguished from che ues for the purpose of these rules and, provided that a che ue tendered in payment of government dues is accepted under the provisions of rule 79 and is honoured on presentation, payment shall be deemed to have been made

(i) if the che ue is handed over to the government"s bankers or to a government officer authorised to receive money on behalf of the government, on the date on which it is so handed over ; or

(ii) if it is sent by post in pursuance of an instruction to make payment by post, on the date on which the cover containing it is put into the post :

Provided that where a che ue is marked as not payable before a certain date, the payment shall not be deemed to have been made until the date on which it becomes payable.

Note : The provisions of clause (ii) above apply mutatis mutandis to payments made to the government by postal money order or by any other recognised mode of remitting money by post.

81. Special rules for the acceptance from the public of che ues, bank pay orders and bank credit challans in some departments are prescribed in their departmental

regulations."

A reference to the above Treasury Rules, which provides for payment by che ues, would make things clear. Rule 80 of the Treasury Rules says that the payment made through a che ue would be deemed to have been made on the date of the presentation of the che ue, if it is honoured. But, however, rule 81 of the Treasury Rules specifically empowers the department, which undertakes to accept the che ues from the public to prescribe any overriding conditions. Therefore, it would be appropriate to look into the exact provision, which contemplates the payment of the tax, after receiving the intimation.

Section 90 of the Finance (No. 2) Act provides for determination and payment of the tax in pursuance of the declaration filed u/s 88 of the Finance (No. 2) Act, which reads as under :

"90. Time and manner of payment of tax arrear.(1) Within sixty days from the date of receipt of the declaration u/s 88, the designated authority shall, by order, determine the amount payable by the declarant in accordance with the provisions of this Scheme and grant a certificate in such form as may be prescribed to the declarant setting forth therein the particulars of the tax arrear and the sum payable after such determination towards full and final settlement of tax arrears :

Provided that where any material particular furnished in the declaration is found to be false, by the designated authority at any stage, it shall be presumed as if the declaration was never made and all the conse uences under the direct tax enactment or indirect tax enactment under which the proceedings against the declarant are or were pending shall be deemed to have been revived :

Provided further that the designated authority may amend the certificate for reasons to be recorded in writing.

(2) The declarant shall pay the sum determined by the designated authority within thirty days of the passing of an order by the designated authority and intimate the fact of such payment to the designated authority along with proof thereof and the designated authority shall thereupon issue the certificate to the declarant ...

Provided that where the declarant has filed a writ petition or appeal or reference before any High Court or the Supreme Court against any order in respect of the tax arrear, the declarant shall file an application before such High Court or the Supreme Court for withdrawing such writ petition, appeal or reference and after withdrawal of such writ petition, appeal or reference with the leave of the court, furnish proof of such withdrawal along with the intimation referred to in sub-section (2)."

A perusal of the above sub-section (2) shows that the declarant has to make the payment determined by the designated authority within 30 days of the passing of the order by the designating authority and intimate the fact of such payment to him. Here admittedly the

first respondent, who is the designated authority, passed the order on 25-2-1999. According to the petitioner, in pursuance of the said intimation he presented the challan along with a che ue to the department on 27-3-1999, and intimated the same to the first respondent. Now, the dispute is whether the said presentation of the che ue on 27-3-1999, would amount to the payment of tax within the time prescribed u/s 90(2) of the Finance (No. 2) Act, 1998. It is not in dispute that the amount was realised only on 12-4-1999. The contention of the petitioner is that the challan was presented along with the che ue on 27-3-1999, and it amounts to the payment of the tax within 30 days. If the said date, i.e., 27-3-1999, is treated as the date of payment, it is a payment within the period of 30 days, as provided u/s 90(2) of the Finance (No. 2) Act. But according to the respondents, as the amount was not realised within 30 days, it could not be treated as an effective payment. The provision, which refers to payment within 30 days, does not refer to the mode of payment. It only says that the declarant shall pay the amount within a period of 30 days. If rule 80 of the Treasury Rules is applied, the date of presentation of the che ues should be treated as the date of payment. Though rule 81 provides for imposition of any condition as to the realisation of the che ues if presented, such conditions were not imposed in section 90(2) of the Finance (No. 2) Act. In the absence of any such condition imposed in the Act, it is not open to the respondents to contend that the date of realisation should be treated as the date of payment and if so treated the payment made by the petitioner is beyond the period of 30 days. We are unable to accept the contention of the revenue. It is settled law that payment of any amount by a che ue, would be the date of the presentation of the che ue, if it is not dishonoured. It is not the case of the department that the che ue presented by the petitioner was dishonoured. But their claim is only that the che ue was realised after the prescribed period of 30 days. It is not open to the department to deny the benefit to the petitioner on that ground, in view of the above settled position with which we are in agreement.

Under the above circumstances, the impugned proceeding of the first respondent is declared as illegal and not in accordance with law and conse uently the first respondent is directed to issue the certificate as provided under the Kar Vivad Samadhan Scheme, 1998, treating the payment made by the petitioner by way of che ue on 27-3-1999, as the payment made within the time prescribed under the Kar Vivad Samadhan Scheme, 1998.

The writ petition is accordingly allowed. No costs.