Nabha Investments Pvt. Ltd. Vs Union of India (UOI) and Others

Court: Delhi High Court

Date of Decision: July 24, 2000

Acts Referred: Income Tax Act, 1961 â€" Section 263

Citation: (2000) 55 DRJ 256

Hon'ble Judges: D.K. Jain, J; Arun Kumar, J

Bench: Division Bench

Advocate: M.S. Syali and Manoj Sharma, for the Appellant; R.D. Jolly, Senior Standing Counsel and Prem Lata Bansal, Jr. Standing Counsel, for the Respondent

Judgement

D.K. Jain, J.
By this petition under Articles 226 and 227 of the Constitution of India, the petitioner, a private limited investment company,

impugned the legality and validity of the notice dated 7th April, 1999 issued by the Commissioner of Income Tax, Delhi-IV, respondent No. 2

herein, in exercise of the powers conferred on him by Section 263 of the Income Tax Act, 1961 (for short the Act) to show cause as to why the

assessments made by the joint Commissioner of income tax(Assessments). Special Range-VIII, on 24th February 1998 for the assessment years

1987-88,1989-90,1991-92,1992;93,1993-94 and 1994-95 be not set aside and suitable directions for re-doing the same as per law be not

issued to the Assessing Officer as in his opinion the said assessment, orders are erroneous insofar as they are prejudicial to the interests of the

Revenue.

Shorn of unnecessary details, the facts material for the purposes of this petition are:

The petitioner deals in shares, stocks and securities. In its returns of income for the relevant assessment years the petitioner computed income on

sale of certain shares under the head income from capital gains" on the plea that these shares were not acquired for the purposes of business of the

company but as an investment by the company. The Assessing officer did not agree with the petitioner; treated the receipts from sale of such

shares as profits from business and accordingly taxed the same under the head" profits and gains of business". The petitioner challenged the said

orders. It appears that in the first instance the Income Tax Appellate Tribunal set aside the assessments in respect of some of the years and

restored back the same to the Assessing Officer for fresh assessments in accordance with its directions. Subsequently assessments in respect of

other years were also set aside by the Commissioner of income tax(Appeals with a direction to the Assessing Officer to re-do the same as per the

directions of the Tribunal. While re-assessment proceedings were pending, in the year 1997, the Government of India, respondent No. 1 herein,

announced a Voluntary Disclosure if In- come Scheme, 1997 (herein after referred to as the VDIS). It was clarified by the Central Board of Direct

Taxes that where an assessment order had been set aside, an assessed could make a declaration under the VDIS. It is averred that in order Jo be

absolutely certain about its status, the petitioner, through its Chartered Accountants, sought certain clarifications from the Commissioner if income

tax-I, Convener of the VDIS. The Commissioner, vide his letter dated 30th December, 1997, issued the following clarifications:

The Committee understands that the assesses wants clarifications of the following points:

i) Whether in case the assessments pending before the CIT(A)are set aside, the refund could be raised and whether the said refunds would be paid

by the Department on behalf of the assessed to VDIS account with regard to the taxes payable under VDIS. In nut-shell the set aside assessments

are likely to give rise to refunds and the assessed for these set aside assessments only wants to VDIS declaration and use refunds for the part

payment of the VDIS. Whether it is possible?

(ii)The balance amount of VDIS could be paid by the assessed i.e. the amount not covered by the refunds shall be paid by the assessee?

The Committee has considered the above two questions and agrees that the refunds can be paid by the department on behalf of the assessed to

RB1 account VDIS, account assessee.

However, before this, the assesses shall have to file an affidavit that the refunds arising out of set aside assessments shall go towards VDIS. In

case, the department is not able to determine the expected amount of refund and is not able to pay the expected amount of refund to RBI towards

VDIS, the assessed shall have to pay balance within the stipulated period with interest, failing which the amount paid shall stand forfeited and

declaration made would stand rejected.

It is claimed that in the light of the said clarification, the petitioner filed its declaration under VDIS on 31st December, 1997 in respect of the

aforenoted assessment years, declaring an additional income of Rs.4,31,50,728/-, representing the difference between the income by way of

treatment of sale of shares as business income (as computed by the Assessing Officer) and income on account of the same being treated as capital

gains (as computed by the petitioner). It appears that in order to determine as to what amount will become refundable to the petitioner, which

could be deposited by the department on petitioner''s account against the tax payable under VDIS, on 24th February, 1998, respondent No. 2

completed re-assessments in respect of the said assessment years, by taking into consideration the declaration made by the petitioner under the

VDIS. The declaration made by the petitioner is said to have been accepted by the Department inas much as a certificate u/s 68(2)of the VDIS

was is sued to the petitioner on 7th April, 1998.

As a result of the orders dated 24th February, 1998, substantial refunds (Rs.1,58,73,268/-) became due to the petitioner. However, since interest,

which, according to the petitioner works out to Rs.77,48,750/-, had not been granted on the refunds determined to be due to the petitioner by

virtue of orders passed on 24th February, 1998, the petitioner moved an application, dated 26th February, 1998,under Section 154 of the Act,

praying for grant of refund on account of interest under Sections 244 & 244A of the Act. Since nothing was heard from the department, the

petitioner filled a representation before the Chief Commissioner on 5th August, 1998 seeking a direction to the jurisdictional Commissioner to

allow refund an accordance with law. However, having failed to get any response to the said representation, the petitioner filed a write petition

(No. 958/99) seeking a direction to the respondents to decide their representation dated 5th August, 1998 as also the application, dated 26th

February, 1998, filed u/s 154 of the Act. The said writ petition was disposed of vide order dated 9th April,1999 with a direction to the

respondents to decide the application filed u/s 154 of the Act within two weeks.

It is alleged that instead of deciding the said application, on or about 12th April, 1999, the petitioner received the impugned notice seeking to re-

open all the assessments completed on 24th February, 1998.For the sake of ready reference, relevant portion of the impugned notice is extracted

below:

The declaration under VDIS was filed by you on 31.12.1997 and tax payable under the Scheme in respect of the voluntarily disclosed income

was not paid on or before the date of declaration and, Therefore, the declaration was not accompanied by proof of payment of such tax as

required u/s 66 of the scheme. Before filing the declaration you had made a petition dated 29.12.1997 before the GIT, Delhi-I who was appointed

as Convener of VDIS 1997 which was an ad hoc committee formed by the CCIT, Delhi, seeking clarification as to whether the refund of some tax

that might arise on account of your proposed VDIS declaration could be paid by the Department to meet your tax liability arising from your

proposed declaration. The Committee acting through CIT, Delhi-I issued clarification that, if set aside assessments are likely to give rise to refunds

and the assessed for these set aside assessments only wants to file VDIS declaration and use refunds for the part payment for the VDIS, it would

be possible for the Department to make payment of the refunds on behalf of the assessed to the RBI in VDIS account of the assessee.This

clarification did not entitle you to a refund as such, as legally understood u/s 240 of the I.T.Act, 1961, in as much as refund becomes legally due

when the assessment is set aside only on making fresh assessment as per law. In your case, it was the duty of the A.Q. to merely quantify the

amount of tax that would be refunded to you in the event of final acceptance of the VDIS declaration and after such quantification, pay the amount

as quantified to the RBI on your behalf to meet your VDIS liability as per your own request.

Instead of following the aforesaid line as indicated above, the AO passed the assessment orders u/s 143(3) read with Sections 250 or 254, as the

case may be, for different assessment years on 24.2.1998, giving you credit for the income declared under VDIS for different years thereby

reducing the income originally assessed so as to determine as total income the income as returned by you. The refund of tax already paid by you or

collected after the original assessment from you was treated by the A.O., by virtue of these assessment orders, as regular refunds giving an

impression that interest under Sections 244(1A) & 244A, as the case may be, would be payable to you for different assessment years on account

of delayed refunds of tax with reference to the dates of payments thereof earlier. The orders passed by the AO in this manner is considered to be

erroneous in so far as it is prejudicial to the interests of revenue. It is erroneous because no such order u/s 143(3) could have been passed by the

A.O. to allow deduction of income declared under VDIS, 1997 without payment of taxes on the declared-income as required under Sections 66

& 67 of VDIS-1997 and without issue of final certificate by the CIT as required under Sub-sections (1) & (2) of Section 68 of the scheme. The

taxes on the amount declared by you were paid only on 20.3.98 &30.3.98 the refund of tax as per the order of the Ao was paid to the RBI on

your behalf and the balance amount was paid by you directly. Certificate u/s 68(2) was issued by the CIT only on 7.4.1998. The orders are

prejudicial to the interest of the revenue because, on the strength of these illegal orders in which deduction was allowed to you in respect of

voluntarily disclosed income, you have claimed interest under Sections 244A and 244(1A) of the I.T.Act of a very substantial amount. The

A.O.ought not to have passed the assessment orders in a hurry in the manner as he did specially when the same had already been set aside and the

VDIS declaration as made by you had not been finally accepted by the CIT and the conditions precedent for such acceptance relating to payment

of tax etc. had not been fulfilled ""The action of respondent No. 2 in issuing the notice u/s 263 of the Act is challenged mainly oft the grounds that:

(j) it is without jurisdiction inas much as the conditions precedent for exercise of powers u/s 263(1) of the Act, namely, the assessment orders

passed by the Assessing officer on 24th February, 1998, which were erroneous and prejudicial to the interests of the Revenue, are missing ;(ii) the

entire premise of the impugned notice, namely, that instead of completing the assessments the Assessing Officer should have only estimated the

amount refundable, is illogical and misconceived because even assuming it was so, this order would have still amounted to ""any proceeding under

the Act"" of the tax due, the refund to the amount would have to be granted in view of Section 237 of the Act and consequently, interest under

Sections 244 and 244A of the Act would have become payable and, therefore ,no prejudice was caused to the Revenue by the assessment orders

passed by the Assessing Officer on 24th February, 1998.

In the common affidavit in opposition filed on behalf of respondent Nos. 2&3, the petition is resisted, inter alia, on the grounds that :(i) as per

Section 68 of the VDIS the amount of voluntarily disclosed income is not to be included in the total income of the declarant in an assessment year

provided the income tax in respect of voluntarily disclosed income is paid by the declarant within the time specified in Section 65 or 66 of the

VDIS, whereas in the instant case the petitioner did not pay the tax as required u/s 66 along with the declaration form; (ii) after the clarification to

the effect that refund due to the petitioner could be paid by the Department to the Reserve Bank of India in VDIS account was issued by the

commissioner of Income Tax, the As sassing Officer was required to merely quantify the amount of tax that may be refunded to the petitioner in the

event of final acceptance of VDIS but the Assessing Officer erroneously passed assessment orders on 24th February, 1998 giving credit for the

amount of income declared under the VDIS when the necessary certificate under VDIS, accepting the declaration of the petitioner, had not been

issued; and (iii) if the taxable income of the petitioner was not reduced by the amount of income declared under VDIS, as done by the Assessing

Officer, then the petitioner would have been assessed at a higher figure and would not have been in titled to any refund let alone any interest as

claimed by the petitioner. It is, thus, asserted that since instead of merely quantifying the amount which could have become refundable to the

petitioner in the event of final acceptance of VDIS declaration, the Assessing Officer had erroneously excluded from the total income of the

petitioner the income disclosed under the VDIS while passing the assessment orders on 24th February, 1998 enabling the petitioner to claim

interest as payable on regular refunds, the said orders were erroneous in so far as they were prejudicial to the interests of Revenue.

We have heard Mr. M.S. Syali, learned senior counsel for the petitioner and Mr. R.D. Jolly, learned senior standing counsel for the respondents.

It is contended by Mr. Syali that the assessment orders passed by the Assessing Officer on 24th February, 1998, excluding from the total income

the amount declared under the VDIS, in terms of Section 68 of the VDIS, could not be said to be erroneous and prejudicial to the interests of the

Revenue because the payment of income tax along with interest u/s 67 of the VDIS relates back to the date of declaration and, Therefore,

ultimately on the issue of certificate of declaration on 7th April, 1998, the Assessing Officer was duty bound to pass the same orders and in that

event the refund due would have attracted interest u/s 244(lA) for a longer period. Further, if the petitioner had made payment of tax under the

VDIS from its own pocket instead of the payment being made by the Department, on acceptance of declaration, he would have become entitled to

same amount of refund on final adjudication u/s 68 of the VDIS and, Therefore, the source of payment has no bearing on the question of grant of

interest u/s 244(lA) of the Act.

It is also emphasised that if the present stand of the respondents that the amount of Rs. l,58,73,268/-was not a refund within the meaning of

Section 237 was correct, then the Department could not have made an adjustment of Rs. 94,33,615/-out of the said amount against the

outstanding demands against the petitioner in respect of the other years. It is urged that the Department cannot be permitted to change its stand

according to its own convenience.

On the other hand, while supporting the action initiated by respondent No. 2, Mr. Jolly has submitted that since the income assessed after the set

aside was the same as in the original assessment, Section 237 of the Act was not applicable as it was not a case of excess tax paid. It is contended

that it was merely a case of adjustment u/s 68 of the VDIS, which cannot be termed as excess chargeable tax. Thus, the entire emphasis of Mr.

Jolly is that no interest is payable to the petitioner on the refund which had become due by virtue of their declaration under the VDIS. We have

given thoughtful consideration to the entire matter.

Section 263(1) of the Act clothes the Commissioner with the suo motu supervisory jurisdiction to call for and examine the records of any

proceeding under the Act and after making such enquiry as he deems necessary, if he considers that any order passed therein by the Assessing

Officer is erroneous in so far as it is prejudicial to the interests of the Revenue, he may pass such orders thereon as the circumstances of the case

may justify, which may include an order enhancing, modifying or cancelling the assessment and direction to make a fresh assessment. Though,

undoubtedly, revisional powers conferred on the Commissioner under the Section are of wide amplitude but a bare reading of the section makes it

clear that the pre-requisite to the exercise of jurisdiction by the Commissioner under the said provision is :(i) that the order passed by the Assessing

Officer is erroneous, and (ii) that it is prejudicial to the interests of the Revenue. If either of the conditions is missing i.e. if the order of the Assessing

Officer is erroneous but is not prejudicial to the interests of the Revenue or if it is not erroneous but is prejudicial to the interests of the Revenue

recourse cannot be had to the provisions contained in Section 263(l) of the Act. It is not that every order which is erroneous is also prejudicial to

the interests of the Revenue.

Neither the expression ""erroneous"" nor the phrase ""prejudicial to the interests of the Revenue ""have been defined in the Act. In Black''s Law

Dictionary (7th Edition), the terms ""erroneous"", ""erroneous assessment"" and ""erroneous judgment"" have been respectively defined as :""involving

error ; deviating from the law"": an assessment that deviates from the law and creates a jurisdictional defect, and that is Therefore invalid: a judgment

issued by a Court with jurisdiction to issue it, but containing an improper application of law.

In this connection, we may refer to a recent decision of the Supreme Court in MALABAR INDUSTRIAL CO. LTD. Vs. COMMISSIONER

OF INCOME TAX, where in it has been observed that Section 263(l)""cannot be invoked to correct each and every type of mistake or error

committed by the Assessing Officer; it is only when an order is erroneous that the Section will be attracted. An incorrect assumption of facts or an

in-correct application of law will satisfy the requirement of the order being erroneous. In the same category falls the orders passed without applying

the principle of natural justice or without application of mind.

As to what is meant by the Phrase ""prejudicial to the interests of the Revenue"", in Malabar Industrial Company''s case (supra) their lordships have

observed that it is not an expression of art and understood in its ordinary meaning it is of wide import and is not confined to loss of tax. Referring to

the decisions of the Calcutta High Court in DAWJEE DADABHOY and CO. Vs. S. P. JAIN AND ANOTHER., , Commissioner of Income

Tax, Mysore Vs. T. Narayana Pai, , Commissioner of Income Tax Vs. Gabriel India Ltd., and COMMISSIONER OF Income Tax Vs. SMT.

MINALBEN S. PARIKH., wherein loss of tax was treated as prejudicial to the interests of the Revenue, the Supreme Court observed as follows:

The phrase"" prejudicial to the interests of the Revenue"" has to be read in conjunction with an erroneous order passed by the Assessing Officer

Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue. For

example, when an Income Tax Officer adopted one of the course permissible in law and it has resulted in loss of Revenue; or where two views are

possible and the Income Tax officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order

prejudicial to the interests of the Revenue, unless the view taken by the Income Tax officer is unsustainable in law. It has been held by this court

that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing officer accepting

the same as such will be erroneous and prejudicial to the interests of the Revenue.

From the afore-extracted observations, what emerges is that it is not necessary that every order passed by the Assessing Officer, which may result

in loss of Revenue, is to be treated as an erroneous order in as much as it is prejudicial to the interests of the Revenue. An order is erroneous if the

view taken by the Assessing Officer is not in accordance with law. If an order is in accordance with law the decision of the Income Tax Officer

cannot be regarded as erroneous merely because in the opinion of the Commissioner it should have been made or written in a different manner.

The Section does not visualise change of opinion or substitution of the judgment of the Commissioner for that of the Income Tax officer. It is

axiomatic that if the order is not erroneous, it will not vest the Commissioner with the power to invoke Section 263(1) of the Act, even if he is of

the opinion that the order in question is prejudicial to the interests of the Revenue.

Therefore, the first question that arises for consideration is whether the assessment orders passed by the Assessing Officer on 24th February, 1998

can nee said to be unsustainable in law and thus, erroneous within the meaning of Section 263(1) of the Act?. To answer the question, reference to

some of the provisions of the VDIS would be necessary.

As noted above, VDIS, introduced vide Finance Act, 1997, is contained in Sections 62 to 78, forming part of Chapter-IV. It was introduced to

grant an opportunity to those who had not disclosed their income earlier and had made themselves liable for levy of interest, penalty and

prosecution under the Act to declare their income by paying tax at the concessional rate prescribed in the Scheme. It remained operative from 1st

July, 1997 to 31st December, 1997.

Sub-section (1) of Section 64 of the Finance Act provides that subject to the provisions of the scheme, where any person makes, on or after the

date of commencement of the Scheme, but on or before December, 1997, a declaration in accordance with the provisions of Section 65 in respect

of any income chargeable to tax under the Act for any assessment year-(a) for which he has failed to furnish a return u/s 139 of the Act; (b) which

he has failed to disclose in a return of income furnished by him under the Act before the date of commencement of the Scheme;(c) which has

escaped assessment by reason of omission or failure on the part of the said person to make a return under the Act or to disclose fully and truly all

material facts necessary for his assessment or otherwise, then, notwithstanding anything contained in the Act or in any other Finance Act, income

tax shall be charged in respect of the income so declared at the rates specified in the said provision. Sub-section (2) of Section 64, , however,

makes Sub-section (1) of the said section inapplicable under the two conditions, enumerated in Clauses(i) and (ii) of Sub-section (2) but, in the

present case, we are not concerned with these clauses. The effect of the provision is that if a person declares income) identified in Sub-clauses (a)

to (c) of Sub-section (1) of Section 64, and which has escaped assessment, that income will be charged to tax at a concessional rate.

Section 65 prescribes the manner in which the declaration is to be made. Section 66 stipulates time for payment of tax and provides that tax

payable under the scheme in respect of voluntarily disclosed income shall be paid by the declarant and the declaration shall be accompanied by

proof of payment of such tax. Section 67, however, permits a decelerante to file a declaration without paying tax but in that event, the tax has to be

paid within three months from the date of filing of the declaration along with simple interest at the prescribed rate and proof of such payment has to

be filed within the said period of three months. Sub-section (2)of Section 67 also provides that if the declarant fails to pay the tax in respect of the

voluntarily disclosed income before the expiry of three months from the date of filing of the declaration, the declaration filed shall be deemed never

to have been made under the VDIS. Since a lot of emphasis is laid by learned counsel for the petitioner on the provisions of law contained in

Section 68, for the sake of ready reference, the Section is reproduced below:

68. Voluntarily disclosed income not to be included in the total income: (1) The amount of the voluntarily disclosed income shall not be included in

the total income of the declarant for any assessment year under the Income Tax Act, if the following conditions are fulfilled ,namely: (i) the

declarant credits such amount in the books of account, if any, maintained by him for any source of income or in any other record, and intimates the

credit so made to the Assessing Officer; and

(ii) the Income Tax in respect of the voluntarily disclosed income is paid by the declarant within the time specified in Section 65 or Section 66. (2)

The Commissioner shall, on an application made by the declarant, grant a certificate to him setting forth the particulars of the voluntarily disclosed

income and the amount of Income Tax paid in respect of the same"". Section 68 provides that the amount of voluntarily disclosed income shall not

be included in the total income of the declarant for any assessment year under the Act, if the declarant credits the amount in the books of account

and intimates the credit to the Assessing Officer and pays Income Tax within the specified time-frame. Sub-section (2) requires the Commissioner

to grant a certificate to the declarant setting forth the particulars of the voluntarily disclosed income and the amount of Income Tax paid in respect

of the same. Section 70 declares that any amount of tax paid in pursuance of the declaration made under Sub-section (1) of Section 64, shall not

be refundable under any circumstances.

After the introduction of the VDIS, a large number of queries were received by the CBDT from the public and in response thereto the CBDT

issued various circulars in the form of questions and answers to clarify the doubts raised. One of the clarifications so issued and recorded in the

minutes of meeting held between the AS-SOGHAM and the CBDT on 23rd July, 1997 reads as follows:

Q. Where during the course of the appeal proceedings, the entire assessment has been set aside and the Assessing Officer is required to frame an

altogether fresh assessment order, can the declarant make disclosure of income for the concerned assessment year?

A. If on the date of declaration, there is no surveying assessment, there should not be any difficulty for the declarant to make any disclosure for the

concerned assessment year.

The said clarification left no scope for doubt that the petitioner was entitled to file declaration under the VDIS. As per Section 66 the petitioner

was required to pay the tax before making the declaration because the proof of payment of tax was to accompany the declaration. Section 67

gave an option to the petitioner to pay the lax within three months from the date of filing of the declaration along with interest at the specified rate. It

however appears that the petitioner did not have sufficient funds to make the payment for the income which it was proposing to declare under the

scheme and, Therefore, in this context that the afore-extracted clarification dated 30th December, 1997, agreeing to pay on behalf of the assesses

the refund due to it was issued by the Commissioner of Income Tax, acting as the Convenor of the Scheme. Therefore, there is no controversy

with regard to the time of payment because the certificate dated 7th April, 1998 issued under Sub-section (2) of Section 68 clearly records the

dates of payment of tax as 20th March, 1998 and 30th March, 1998. Similarly, there is no dispute that in terms of Section 68 the income.

Subject-matter of declaration filed by the petitioner, was not to be included in the total income of the petitioner for any of the assessment years in

respect where of declaration was made. As highlighted above, the main issue is whether the Assessing Officer was justified in passing the

assessment orders in respect of years covered under the declaration on 24th February, 1998, giving credit for the income disclosed without waiting

for the payment of the tax in terms of Section 67 of the Act and issue of certificate u/s 68(2) of the Finance Act or he should have merely

quantified and paid on behalf of the petitioner to the RBI the amount of tax that would have been refundable to the petitioner in the event of final

acceptance of its declaration, as is suggested by the Commissioner in the impugned notice. According to the petitioner against the total tax payable

on the income declared under the VDIS, a sum of Rs.64,39,653/- was paid by the Department in the VDIS account on 20th March, 1998 and the

balance amount of Rs.95,69,300/-was paid by the petitioner directly on 30th March, 1998. It is, thus, evident that as on 24th February, 1998,

when the Assessing Officer passed assessment orders, giving credit for the income declared under the VDIS, tax in terms of Section 67 had not

been paid. Though a bare perusal of the aforenoted provisions of law does not leave any scope for doubt that on payment of tax with interest

within the extended period of three months, the declaration relates back to the date of its filing but strictly speaking, giving effect to the declaration

in terms of Section 68 before the tax under the Scheme was paid and a certificate under the Section had been issued, in our view, Was not in

accordance with the provisions of the VDIS. We, Therefore, feel that the assessment orders passed by the Assessing Officer on 24th February,

1998 were erroneous.

Having held that the orders dated 24th February, 1998 are erroneous in a much as the provisions of the VDIS have not been correctly applied by

the Assessing Officer, the next question requiring consideration is whether these were prejudicial to the interests of the Revenue as well. It would

appear from the afore-extracted portions of the impugned notice that according to the Commissioner the orders are prejudicial to the interests of

the Revenue because on the strength of these illegal orders in which deduction was allowed to the petitioner in respect of voluntarily disclosed

income, the petitioner had claimed interest under Sections 244A and 244(1A) of the Act of a very substantial amount. In our view the entire

premise, namely, the interest under Sections 244A or 244(1A) of the Act has become due to the petitioner on account of the said orders is not

correct inas much as on payment of tax due under the VDIS and on issue of certificate for the declaration on 7th April, 1998 the amount (s)

voluntarily disclosed has to be excluded from the total income of the petitioner and, Therefore, the Assessing Officer was obliged to give effect to

the declaration on or after 7th April, 1998. The declaration under the VDIS has to be given full effect to irrespective of its consequence. In other

words, the necessary credit for the income declared under the Scheme and the consequent refund could not be denied to the petitioner after 7th

April, 1998 and if, on account of this adjustment/credit, interest under the Act becomes payable to the petitioner, it cannot be said to be prejudicial

to the interests of the Revenue. Needless to add that adjustment in the total income for the relevant assessment year for the income disclosed under

the VDIS and tax paid thereon has to be in terms of Section 68 and credit for the tax paid on the other income has to be given under the

provisions of the Act. In our view, Therefore, petitioner''s declaration under the VDIS having been ultimately accepted, the mere fact that some

interest may also become due to it, when the declaration is given effect to, it cannot be said that this order will be prejudicial to the interests of the

Revenue. Once a certificate u/s 68(2) is issued, the provisions of the VDIS have to be applied in letter and spirit regardless of the result.

For the foregoing reasons, we hold that even if it is held that the orders passed by the Assessing Officer on 24th February, 1998 were erroneous,

still resort to Section 263(1) of the Act cannot be had because the second condition precedent, namely, the orders were prejudicial to the interests

of the Revenue, is utterly lacking in the present case, and, Therefore, the show cause notice was issued without jurisdiction. Accordingly, the writ

petition is allowed; the impugned notice is quashed and the rule is made absolute.

It is pointed out that the application filed by the petitioner u/s 154 of the Act, demanding interest on the refund granted to it, was dismissed by the

Assessing Officer on the ground that the assessment orders itself were under review by the Commissioner and the matter will be clear only after the

Commissioner gives his final judgment in the proceedings initiated u/s 263 of the Act. Since the notice issued by the Commissioner u/s 263 of the

Act has been quashed by us, the Assessing Officer is, directed to fee consider petitioner''s application dated 26th February, 1998 in accordance

with law within six weeks from today. We, ""however, make it clear that we have not expressed any opinion on the merits of the petitioner''s claim

for interest u/s 244(1A) and if otherwise permissible in law, this judgment will not preclude the respondents from taking any appropriate

proceedings under the Act, if it is felt that pursuant to the passing of assessment orders on 24th February, 1998, credit for the tax paid is not in

accordance with the provisions of the Act. In the circumstances of the case we leave the parties to bear their own costs.