SMT. SUSHILA RANI

v.

COMMISSIONER OF INCOME TAX AND ANR.

FEBRUARY 4, 2002

[S. RAJENDRA BABU AND RUMA PAL, JJ.]

Income Tax Act, 1961—Section 245—Kar Vivad Samadhan Scheme, 1998—Ss. 88, 89 and 90.

Assessee filed declarations for computing tax arrears under KVSS Scheme and objected to adjustment of refund before Revenue—On being satisfied with the correctness of declarations a certificate determining arrears of tax was issued under Section 90(1) of the Scheme—Tax deposited—No demand/arrear of tax certificate was issued—Assessee filed refund application—Revenue issued notice for amendment in the certificate issued earlier—Assessee filed Writ Petition before High Court—Disposed of without expressing opinion, however, observed that question relating to lack of jurisdiction in issuing notice could be considered by the Department—On appeal, held, a certificate issued under Section 90(1) of KVSS making a determination as to the sum payable under the Scheme is conclusive as to the matter stated therein and cannot be re-opened in any proceeding except on the ground of false declaration—Basis of notice is that the adjustment already made had not been taken note of while calculating tax arrears under the Scheme and not suspecting it to be fake declaration--Therefore matter cannot be reopened.

Appellant, widow of original assessee, filed three separate declarations for the assessment years 1988-89, 1989-90 and 1990-91 and requested for computing tax arrears under the Kar Vivad Samadhan Scheme, 1998 while appeals were pending before the Revenue, CIT and ITAT for these assessment years. Assessee also submitted in the declarations about the adjustment of refund by the Department for the assessment years 1989-90 and 1991-92 as involuntary and coercive. Revenue/Respondent No. 1 on being satisfied with the correctness of the declarations in every respect, issued a statutory certificate under the provisions of Section 90(1) of the KVSS. Assessee deposited the entire tax amount as determined by the Revenue under the said Scheme. Revenue

A also issued a certificate under Section 90(2) of the Scheme certifying the receipt of payments from the assessee towards full and final settlement of tax arrears and granting immunity from instituting and proceeding under the Act. Thereafter another certificate was issued to the effect that no arrears or demand of any kind was outstanding against the assessee as per records of the Revenue.

B

Assessee submitted a representation to the Revenue for refund of all amounts with interest as per provisions of the Act upon finalisation of the declarations made by the assessee under the provisions of the KVSS. Revenue issued a show-cause notice to the assessee to explain why C certificate issued earlier under Section 90(1) of the KVSS be not amended on the ground of wrong calculation. Assessee filed a writ petition in the High Court, challenging the jurisdiction of issuance of notice. High Court did not express any opinion on the facts of the case and observed that appellant may highlight the question relating to lack of jurisdiction before the Department for consideration. Hence this appeal.

D

Allowing the appeal, the Court

HELD : 1. A certificate issued under Section 90(1) of the Kar Vivad Samadhan Scheme (KVSS) making a declaration as to the sum payable E under the KVSS, is conclusive as to the matter stated therein and cannot be reopened in any proceedings under any law for the time being in force, except on the ground of false implication by the declarant. Therefore, before issue of a notice, there should be a satisfaction that the declarant has made a false declaration. There is no such allegation in the course of the notice issued. The whole basis of the notice is only that adjustments F already made had not been taken note of and not the false declaration and that information was available with the Department even at the time of finalisation of the proceedings under Section 90 of the KVSS. Therefore the matter could not be reopened at this stage. [814-H; 815-A-B]

G 2.1. Appellant in the course of the declarations filed specifically stated that any adjustment of refund towards tax arrears of the appellant by the Department in the earlier years without following the mandatory procedure of Section 245 of the Income Tax Act would still remain as tax arrears for the purpose of the KVSS and it is on that basis the declarations were accepted by the Department. Having accepted the claim of the H appellant on that basis it will not be permissible for the respondents now

to turn around and take a different stand. [815-G-H] A

2.2. Even assuming that the authorities under KVSS have inherent powers to correct an error of clerical or arithmetical nature, the same should be obvious, apparent or patent as not to admit of any debate or discussion. Such an error cannot be stated to be an inadvertent error of clerical or arithmetical nature, so plain as to be rectified without much ado. [816-B] B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 938 of 2002.

From the Judgment and Order dated 17.7.2000 of the Delhi High Court in C.W.P. No. 3788 of 2000. C

P. Chidambaran, Maninder Singh, Ms. Pratibha and M. Singh for Ms. Kavita Wadia for the Appellant.

Mukul Rohatagi, Additional Solicitor General, Nikhil M. Shakhardande and B.V. Balaram Das for the Respondents. D

The Judgment of the Court was delivered by

RAJENDRA BABU, J. Leave granted. E

The appellant before us is the widow of the original assessee under the Income Tax Act, 1961 [hereinafter referred to as 'the Act']. For the assessment year 1988-89, an appeal was pending before the Commissioner of Income Tax [Appeals] while for assessment years 1989-90 and 1991-92, appeals were pending before the Income Tax Appellate Tribunal. On 23.1.1999, the F appellant set out the details of the matters in dispute in the said appeals requesting the Department to indicate or compute the tax arrears as per the Kar Vivad Samadhan Scheme, 1998 [for short 'KVSS'] so that all disputes in relation to these three assessment years can be resolved. As there was no response from the Department till January 30, 1999, the appellant submitted three separate declarations under Sections 88 and 89 of the KVSS. The G appellant had also pointed out the mandatory nature of Section 245 of the Act and the decision of the Allahabad High Court in the case of *U.P. State Mineral Development Corporation Ltd.* v. *Additional CIT,* which held that refunds adjusted without notice to assessee is not valid. In the declaration for the assessment year 1989-90, the attention of the Department was also invited H

A to adjustments of Rs. 3,94,503 and Rs. 18,02,409 by invoking a bank guarantee which according to the appellant was involuntary and coercive. Similarly, in the declaration for the assessment year 1991-92, the attention of the Department was invited to involuntary set off of a refund of Rs. 81,869 in view of the non-compliance and non-observance of the mandatory provision of Section 245 of the Act.

B

Respondent No. 1 on receipt of the declarations for the three assessment years evaluated and verified the same in accordance with the provisions of the KVSS and on being satisfied with the correctness of the declaration in every respect, issued, on 26.2.1999, a statutory certificate prescribed in Form C 2A and Rule 4(a) under the provisions of Section 90(1) of the KVSS. The appellant in all the three declarations computed that the amount required to be deposited under the KVSS for these three assessment years would be Rs. 13,55,018 and respondent No. 1 by the certificate issued on 26.2.1999 assessed the amount of tax payable by the appellant to be Rs. 14,40,189 in place of Rs. 13,55,018 as claimed by the appellant. On receipt of the said certificate D under Section 90(1) of the KVSS from respondent No. 1, the appellant deposited the said sum of Rs. 14,40,189 under separate challans. On deposit of the entire amount demanded by respondent No. 1 as per the KVSS for these assessment years a communication was addressed on behalf of the appellant dated 22.3.1999 for issue of certificate under Section 90(2) of the E KVSS and for the deemed withdrawal of the appeals filed on behalf of the appellant for these three years which were pending adjudication. Respondent No. 1 issued a certificate in Form 3 as required under Rule 5(a) and Section 90(2) of the KVSS on 31.3.1999 in favour of the appellant certifying the receipt of payments from the appellant towards full and final settlement of the tax arrears determined in the order dated 26.2.1999 and granting immunity F from instituting any proceeding for prosecution of any offence under the Act or from imposing any penalty under the said Act. Thereafter on 11.8.1999 certificate was issued by the Department to the effect that no arrears or demand of any kind is outstanding against the appellant as per the records of the respondents. On 26.10.1999, the appellant submitted a representation G requesting the respondents to refund all the amounts along with interest as per the provisions of the Act upon the finalisation of the declarations made by the appellant under the provisions of the KVSS. This claim resulted in the issue of a notice on 23.6.2000 under Section 90(1) of the KVSS calling upon the appellant to explain as to why, the notice issued under Section 90(1) of the KVSS earlier be not amended, on the ground that the determination made H by the Department for the three assessment years in question was on the

Department's wrong understanding of the judgment of the Allahabad High Court. A

On 14.7.2000, the appellant filed a writ petition in the High Court challenging the issuance of the notice dated 23.6.2000 being CWP No. 3788/2000 on the ground that the same is without jurisdiction. The High Court took the view that what is under challenge in the writ petition is only a show cause notice and it would be open to the appellant to highlight the question relating to lack of jurisdiction before the Commissioner when the matter is taken up for further consideration and it would be proper for the Commissioner to decide the question as to whether he has jurisdiction under the second proviso to Section 90(1) of the KVSS to act in the manner as proposed by the Commissioner in the impugned notice. The High Court did not express any opinion on the facts of the case and disposed of the writ petition. Hence this appeal by special leave. B C

The KVSS was introduced by the Central Government with a view to collect revenues through direct and indirect taxes by avoiding litigation. In fact the Finance Minister while explaining the object of the KVSS stated as follows: D

> "Litigation has been the bane of both direct and indirect taxes. A lot of energy of the Revenue Department is being frittered in pursuing large number of litigations pending at different levels for long periods of time. Considerable revenue also gets locked up in such disputes. Declogging the system will not only incentivise honest tax payers, enable Government to realize its reasonable dues much earlier but coupled with administrative measures, would also make the system more user-friendly....." E F

An examination of the scheme of Sections 89, 90 and 91 of the KVSS would reveal that every person entitled to make a declaration under the said scheme was obliged to submit the declaration on or before 31.1.1999; that a period of 60 days has been stipulated under Section 90(1) for the designated authority under the scheme to determine the amount payable by the declarant and the certificate to this effect under Section 90(1) has to be granted by the designated authority after determination towards full and final settlement of the tax arrears within a period of sixty days. Thereafter, except on ground of false declaration made by the declarant, every order passed under sub-section (1) of Section 90 determining the sum payable under the scheme, is absolutely conclusive as to the matters stated thereunder and no matter covered by such G H

A order can be reopened in any other proceeding under any law for the time being in force. After this determination under Section 90(1) of the KVSS, another certificate is issued under Section 91 of the KVSS on the basis of which immunity is granted to the declarant from instituting any proceeding for prosecution for any offence under any direct tax enactment or indirect tax enactment.

B

The basis upon which the notice dated 23.6.2000 impugned in these proceedings is as under:

"As noticed in order u/s 90(1) dt. 26.2.99, the tax arrears have been determined on disputed income for the assessment years 1988-89, C 89-90 and 91-92 without considering the collections already adjusted against demands raised. The adjustments already made should have been taken into account when calculating the tax arrears. As such there is a mistake in calculation which needs rectification.

The correct position for the various assessment years is as under:

D *Assessment Year 1988-89*

Since no tax arrears are outstanding as on 31.3.1998, benefit of KVSS allowed vide order dt. 31.3.1999 u/s 90 (2) is to be withdrawn.

Assessment Year 89-90

E As per the information furnished by the Assessing Officer, tax arrears amounting to Rs. 27,60,655, comprising of interest only are outstanding. Amount payable under KVSS on these arrears comes to Rs. 13,80,328, which is 50% of the tax arrears.

Assessment Year 1991-92

F As per the information furnished by the Assessing Officer, tax arrears amounting to Rs. 2,31,091, comprising of interest only are outstanding. On this, the amount payable under KVSS comes to Rs. 1,15,545, which is 50% of the tax arrears.

You are hereby given this show cause notice so as to explain why the G order dt. 26.2.99 u/s 90(1) in F. No. 2A be not amended as mentioned above, under the second proviso to Sec 90(1) of the Finance (No. 2) Act, 1998 of KVSS."

We may notice that a certificate issued under Section 90(1) of the KVSS making a determination as to the sum payable under the KVSS, is H conclusive as to the matters stated therein and cannot be reopened in any

proceedings under any law for the time being in force, except on the ground of false declaration by any declarant. Therefore, before issue of a notice, there should be satisfaction that the declarant has made a false declaration. There is no such allegation in the course of the notice issued. All that is stated is that "adjustments already made should have been taken into account when calculating the tax arrears. As such there is a mistake in calculation, which needs rectification". The whole basis of the notice is only that adjustments already made had not been taken note of. If this is the basis of the issuance of the notice and not the false declaration and that information was available with the Department even at the time of the finalisation of the proceedings under Section 90 of the KVSS, we fail to understand as to how the matter could be reopened at this stage. That information was already available with them and there is no false declaration in that regard. In that view of the matter, the notice issued is without jurisdiction.

In this regard, it is relevant to point out that in the counter affidavit filed by the Department, it is stated as follows:

> "The declaration of the assessee was processed by taking the taxes outstanding at the figures as claimed by the assessee despite the fact that as per the records of the department, substantial portion of the demand stood paid up by way of adjustment of refund and revocation of bank guarantee as early as in the years 1993, 1994, 1996 and 1997. The decision of Hon'ble Allahabad High Court was neither specifically relied upon nor was the claim of assessee specifically rejected by the designated Authority i.e., Commissioner of Income Tax. Accordingly, settlement under the Kar Vivad Samadhan the Commissioner of Income Tax Delhi-VII ordered scheme was considering Rs. 53,80,335 as disputed taxes in arrears for all the three years and as per the provisions of the scheme, the amount payable for settlement was determined at Rs. 14,40,188 u/s 90(1) of the said Act (Copy enclosed as Annexure-A). The assessee paid the said amount and accordingly certificate under the said scheme for settlement u/s 90(2) of the said Act dt. 31.03.99 was issued. (Copy enclosed as Annexure-B)."

The appellant in the course of the declarations filed specifically stated that any adjustment of refunds towards tax arrears of the appellant by the Department in the earlier years without following the mandatory procedure of Section 245 of the Act would still remain as tax arrears for the purpose of the KVSS and it is on that basis the declarations were accepted by the Department. Having accepted the claim of the appellant on that basis, it will

not be permissible for the respondents now to turn around and take a different stand.

Even assuming that the authorities under KVSS have inherent powers to correct an error of clerical or arithmetical nature, the same should be so obvious, apparent or patent as not to admit of any debate or discussion. In this case, the respondents have to establish adjustment of refund, which had been made against arrears after due notice to the appellant and which is denied by her, and hence admits of investigation of facts and serious debate on the question. Such an error cannot be stated to be an inadvertent error of clerical or arithmetical nature, so plain as to be rectified without much ado.

In that view of the matter, we allow this appeal, set aside the order made by the High Court by allowing the writ petition filed by the appellant and quash the notice issued on 23.6.2000 by the Department calling upon the appellant to explain as to why the order issued earlier under Section 90(1) of the KVSS be not amended. No order as to costs.

S.K.S. Appeal allowed.