

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE N.TUKARAMJI

W.P.No.6987 of 2004

ORDER: *(per Hon'ble Sri Justice P.SAM KOSHY)*

Heard Ms. Sravani, learned counsel representing Mr. Challa Gunarajan, learned counsel for the petitioner; Ms. Sunitha, learned counsel for respondent No.1 and Mr. B. Mukerjee, learned Senior Counsel appearing on behalf of Mr. Gadi Praveen Kumar, learned Deputy Solicitor General of India appearing for respondent No.2. Perused the entire record.

2. The present writ petition has been filed assailing the order passed by the Commissioner of Income Tax, Hyderabad under Section 264 of the Income Tax Act, 1961 (for short, the 'Act') *vide* F.No.Hyd./CIT-V/264/5/03-04, decided on 21.10.2003.

3. The present writ petition was immediately filed assailing the said order and there is an interim order in the operation in favour of the petitioner since then.

4. The issue involved in the present writ petition is whether the assessee who has settled the dispute with the respondents under the Kar Vivad Samadhan Scheme, 1998 (for short, 'KVSS') in the matter covered under section 143(1)(a) of the Act, would the respondent authorities be permitted to continue with the scrutiny proceedings further under section 143(3) of the Act.

5. The Assessment year involved in the present writ petition is 1996-97. The petitioner had submitted the return within time. Subsequently, the respondents issued notice under Section 143(2) of the Act subjecting the assessment to scrutiny. Eventually, notice under Section 143(1)(a) of the Act was also issued on 03.03.1998. Immediately upon receipt of the same, the petitioner approached the Designated Authority under the KVSS, who in turn passed an order under Section 90 of the KVSS on 26.02.1999 followed by the issuance of Form 3 on 31.03.1999.

6. Even though the matter stood settled under the KVSS, the respondents continued with the proceedings under section 143(3) of the Act and an order of assessment was passed on 12.03.1999. The said assessment order was subjected to challenge before the commissioner of Income Tax by way of a revision under Section 264 of the Act. The Revisional Authority has subsequently rejected the revision petition vide the order dated 21.10.2003 leading to the filing of the present writ petition.

7. Learned counsel for the petitioner placed his reliance to the decision of the Hon'ble Supreme Court in the case of ***Killick Nixon Ltd., Mumbai Vs. Deputy Commissioner of Income Tax, Mumbai***

and others¹, wherein, the Hon'ble Supreme Court in paragraph Nos.8, 9 and 19 held as follows:

"8. A look at the material provisions of KVSS is necessary to appreciate the contentions urged:

"87. In this Scheme, unless the context otherwise requires:

(e) "disputed income", in relation to an assessment year means the whole or so much of the total income as is relatable to the disputed tax;

(f) "disputed tax" means the total tax determined and payable in respect of an assessment year under any direct tax enactment but which remains unpaid as on the date of making the declaration under [Section 88](#):

(m) "tax arrear" means –

(1) in relation to direct tax enactment, the amount of tax penalty or interest determined on or before the 31st day of March, 1998 under that enactment in respect of an assessment year as modified in consequence of giving effect to an appellate order but remaining unpaid on the date of declaration;

88. [Section 88](#) - "Subject to the provisions of this Scheme, where any person makes, on or after the 1st day of September, 1998 but on or before the 31st day of December, 1998, a declaration to the designated authority in accordance with the provisions of [Section 89](#) in respect of tax arrear, then, notwithstanding anything contained in any direct tax enactment or indirect tax enactment or any other provision for any law for the time being in force, the amount payable under the Scheme by the declarant shall be determined at the rates specified hereunder, namely :-

(a) 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 thirty-five percent of the disputed income;"

[Section 90](#) - (i) "Within sixty days from the date of receipt of the declaration under [Section 88](#), the designated authority shall, by order, determine the amount payable by the declarant in accordance with the provisions of the Scheme and grant a

¹(2003) 1 SCC 145

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;"

Section 94 -"For the removal of doubts, it is hereby declared that, save as otherwise expressly provided in sub-section (3) of **Section 90**, nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the declarant in any assessment or proceedings other than those in relation to which the declaration has been made."

9. The Scheme of the KVSS is to cut short litigations pertaining to taxes which were frittering away the energy of the Revenue Department and to encourage litigants to come forward and pay up a reasonable amount of tax payable in accordance with the Scheme after declaration thereunder.

19. As far as the provisions of KVSS are concerned, we agree with the contention of the learned Senior Counsel for the assessee that the order to be made by the Designated Authority under **Section 90** is a considered order which is intended to be conclusive in respect of tax arrears and sums payable after such determination towards full and final settlement of tax arrears. Once the declarant makes payment of the amount so determined under **Section 90**, the immunity under **Section 91** springs into effect. We are also of the view that upon such declaration being made, tax arrears being determined, paid and certificate issued under the KVSS, there is no jurisdiction for the Assessing Officer to reopen the assessment by a notice under **Section 143** of the Act except where the case falls under the proviso (2) of sub-section (1) of **Section 90** as it is found that any material particular furnished in the declaration is found to be false. In the present case, it is not the case of the Revenue that any material particular furnished by the appellant-assessee in the declaration was found to be false. Consequently, the Assessing Officer could not have re-opened the assessment by a notice under **Section 143** of the Act".

A plain reading of the principles of law laid down by the Hon'ble Supreme Court in the case of **Killick Nixon (supra)**, what has really culled out is once when a litigant has accepted to settle the matter under the KVSS, then the respondent authorities would not have any further scope of pursuing with the same assessment which the petitioner as also the Department have accepted under the KVSS. The aforesaid view gets further fortified by a recent decision of the

Division Bench of the Bombay High Court in the case of **City Bank N.A. Vs. S.K. Ojha** in W.P.No.2189 of 2000, dated 09.05.2023, where again, the decision rendered by the Hon'ble Supreme Court in the case of **Killick Nixon (supra)** has been reiterated.

8. In view of the aforesaid legal position as it stands, we are of the considered opinion that the impugned order dated 21.10.2023 passed by the Revisional Authority under Section 264 of the Act as also the Assessment Order passed under Section 143 on 12.03.1999 would not be sustainable. In the light of the matter having being settled between the parties under the KVSS vide the impugned order dated 26.02.1999 and as a consequence of which, form 3 was issued on 31.03.1999, the Writ Petition stands allowed and the two impugned orders dated 21.10.2003 and 12.03.1999 stands set aside/quashed.

Consequently, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

P.SAM KOSHY, J

N.TUKARAMJI, J

Dated: 11.01.2024
Pvt

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE N.TUKARAMJI

W.P. No. 6987 of 2004

(per the Hon'ble Sri Justice P.SAM KOSHY)

Dated: 11.01.2024

Pvt