A DR. (MRS.) RENUKA DATLA AND ORS.

v.

COMMISSIONER OF INCOME TAX KARNATAKA AND ANR.

DECEMBER 17, 2002

B [RUMA PAL AND B.N. SRIKRISHNA, JJ.]

Finance Act, 1998—Kar Vivad Samadhan Scheme, 1998—Sections 87(m)(i), 88 and 95(1)(c)— Scheme—Applicability of—Original assessment with respect to Assessment year 1992-93—Subsequent modifications thereof to give effect to appellate order—Demand not met by assessees—Declaration u/s 88 filed—Rejection of declaration by designated authority and High Court—On appeal—Held, Scheme is applicable to such assessees also—In the facts of the case it cannot be said that no appeal was pending in respect of tax arrears—Income Tax Act, 1961—Ss. 234A, 234B and 234C.

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Income tax of the appellant was assessed by assessment order dated 31.3.1995 in respect of assessment year 1992-93. Assessee-appellant preferred appeal before Commissioner (appeals) objecting to additions in the assessment order. Appellant also challenged the levy of interest under Sections 234A, 234B and 234C of Income Tax Act, 1961. Commissioner (appeals) confirmed some of the additions and set aside some additions for re-determination and modification by the assessing authority. Her challenge to the levy of interest was disallowed. Appellant filed appeal against the order of Commissioner (appeals), before Income Tax Appellate Tribunal.

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Pursuant to the order of Commissioner (appeals), the assessing officer by order dated 17.11.1997 modified the assessment order dated 31.3.1995 and deducted the additions set aside by Commissioner (appeals). Subsequently levy of interest was also deleted. Appellant paid the amount, as computed by order dated 17.11.1997 and as modified by subsequent order, before 31.3.1998. So far as the additions which were set aside for re-determination by the assessing officer were concerned, the appellant conceded the computation made by the department. The assessing officer recorded the concession and by order dated 31.12.1998 recomputed the appellants' total income. However, the assessing officer imposed interest under Sections 234A, 234B and 234C of Income Tax Act. The demand

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raised by the assessing officer was not met by the appellants. A

Appellant filed declaration under Section 88 of Finance Act, 1998 in respect of the assessment year 1992-93. The designated authority under the Kar Vivad Samadhan Scheme, 1998 rejected the declaration filed by the appellant on the ground that the assessee could not avail the benefit of the Scheme as there was no arrears on 31.3.1998; that the appeal said B to be pending was on levy of interest which had been waived and hence there was no dispute; and that the arrear that was sought to be settled related to the current demand raised on 31.12.1998 which was entirely different from the arrear demand.

Appellant filed writ petition before High Court against the Order C of competent authority and the same was dismissed upholding the reasons given by the competent authority. Hence the present appeals by assessees.

Allowing the appeals, the Court

HELD: 1. Order of the High Court is set aside since the appellants' D case formally fulfilled the criteria for being considered under Chapter IV of Finance Act, 1998. [174-E]

2. A person could avail of the benefit of the scheme, if (1) there was a determination of the amount of tax etc. on or before 31.3.1998; and (2) E the determination has been modified in consequence of giving effect to an appellate order; and (3) the declaration had been filed in the prescribed form before the designated authority between 1.9.1998 and 31.12.1998 and (4) the amount of the modified demand has remained unpaid on the date of declaration; and (5) an appeal or reference or writ petition before the authorities or court in respect of the items (1), (2) and (4) on the date of F the filing of the declaration is pending. [174-G-H; 171-A-B]

3. Both, the Commissioner (Appeals) as well as the High Court have proceeded upon an interpretation of the phrase 'tax arrears' *de hors* the definition under Section 87(m) of the Finance Act. In this case, there was a determination of the amount taxed by the original assessment order G before 31.3.1998. The determination was modified by the orders dated 17.11.1997 and 31.12.1998 pursuant to the order of Commissioner (Appeals). The determination on 31.12.1998 was not a fresh assessment for the purposes of the Kar Vivad Samadhan Scheme, 1998 but modification of the original 'determination'. Whether the modified H

A **demand is as a result of concession or otherwise is not a relevant consideration for the purposes of Sec.87(m). The Section itself makes no such distinction between a conceded demand and any other for the purposes of the Scheme. [170-G; 173-F-G]**

4. However, not all "tax arrears" under S.87(m) Finance Act are B **entitled to the benefit of the Scheme. If no appeal etc. is pending in respect of the tax arrears, the benefit of the Scheme is not available under Section 95(1)(c). If an appeal etc. is pending, it is not for the designated authority to question the possible outcome of the appeals, nor for the High Court to hold that the appeal was "sham", "ineffective" or "infructuous" as it** C **has. High Court erred in holding that the entire demand raised on 31st December 1998 had been consented to by the appellant. In computing the demand on 31st December, 1998 the assessing officer included not only those items which had been remitted by Commissioner (Appeals) for re-determination, and which were conceded to by the appellant, but also the items which had been confirmed by Commissioner (Appeals) which had** D **not been conceded and were the subject matter of appeal before the Tribunal. Thus the question of imposition of interest under Sections 234A, 234B and 234C of Income Tax Act, 1961 and the determination in respect of certain items even according to the High Court, was the subject matter of appeal. In the facts of the case therefore, it cannot be said that there** E **was no appeal pending in respect of the tax arrears pertaining to those items within the meaning of Sec.95(1)(c). [174-B-D]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4731 of 2000.

F From the Judgment and Order dated 20.8.1999 of the Andhra Pradesh High Court in W.P. No. 14195 of 1999.

WITH

C.A. Nos. 4732 and 4733 of 2000.

G M.L. Verma, Mukesh K. Giri and S. Madhu Sudhan Babu for the Appellants.

R.P. Bhatt, M/s. P.S. Narasimha, Ananga Bhattacharya, P. Sridhar, Ms. Asha G. Nair and B.V.B. Das for the Respondents.

H The Judgment of the Court was delivered by

RUMA PAL, J. The grievance of the appellants in these three appeals arises out of an order passed by the Respondent No.1 rejecting the appellants' declarations which the appellants had filed under the "Kar Vivad Samadhan Scheme, 1998" (referred to briefly as "the Scheme").

The scheme was introduced by and is contained in Chapter IV of the Finance (No.2) Act, 1998 (referred to hereafter as the Act). It was in force between 1st September, 1998 and 31st January 1999. Briefly, the scheme permits the settlement of "tax arrears" as defined in Section 87(m) of the Act. The relevant extract of the definition reads:

> "tax arrears" means, -
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> (i) 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;"

We have emphasised the dates which have a bearing on the case, namely, (a) 31.3.98 and (b) the date of declaration. In other words, only those tax arrears which had been determined before 31.3.98 and which remained unpaid as on the date of the declaration would qualify for settlement under the scheme. The determination under Section 87(m)(i) by definition, therefore, is that which was modified and not the modification itself. It is to be noted that there is no requirement under Section 87(m) for the modification to have been completed on or before 31.3.1998. To hold that the modification must also be completed by 31st March 1998 would mean, as rightly submitted by learned counsel for the appellants, that in respect of a determination on 31st March 1998, the appellate order and consequent modification would all have to be completed on the same date. That, given the language of section 87(m) would be practically impossible and, clearly could not have been intended.

The other sections which are pertinent are Sections 88, 89 and 95. Section 88 in so far as it is relevant provides:

> **88- Settlement of tax payable.** 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

A provision of any law for the time being in force, the amount payable under this Scheme by the declarant shall be determined at the rates specified hereunder".

Section 89 provides that:

B **89- Particulars to be furnished in declaration.** - A declaration under section 88 shall be made to the designated authority and shall be in such form and shall be verified in such manner as may be prescribed".

Section 95 of the scheme excludes certain tax arrears from the benefit of the scheme. In this case we are concerned with the particular exclusion C from the purview of the scheme which is contained in Section 95 (i) (c) of the Act . It reads:

95. Scheme not to apply in certain cases:- The provisions of this scheme shall not apply-

D (i) in respect of tax arrears under any direct tax enactment.

(a) xxx xxx xxx xxx

(b) xxx xxx xxx xxx

(c) to a case where no appeal or reference or writ petition is E admitted and pending before any appellate authority or High Court or the Supreme Court on the date of filing of declaration or no application for revision is pending before the Commissioner on the date of filing declaration;

The use of the double negative as emphasised above, positively stated F means that the benefit of the scheme will be available only when an appeal reference etc. are pending in respect of the tax arrears.

On an analysis of these provisions, it is clear that a person could avail of the benefit of the scheme, if

G (1) there was a determination of the amount of tax etc. on or before 31.3.1998; (Sec. 87(m) (i)) and

(2) the determination has been modified in consequence of giving effect to an appellate order; (ibid) and

(3) the declaration had been filed in the prescribed form before the H designated authority between 1.9.1998 and 31.12.1998 (Sections

88, 89) and

(4) the amount of the modified demand has remained unpaid on the date of declaration; (Sec.87 m (i)) and

(5) an appeal or reference or writ petition before the authorities or court in respect of the items (1), (2) and (4) on the date of the filing of the declaration is pending; (Sec. 95 (1) (c))

As the appellants' declarations were rejected by the respondent No.1, on identical grounds on an interpretation of the same provisions of the scheme, it is sufficient to consider the facts relating to Civil Appeal No. 4731 of 2000 (*Dr. (Mrs.) Remika Datla* v. *The Commissioner of Income Tax, Karnataka (Central) and Anr.*) to resolve the issues raised.

The assessment year in this appeal is 1992-93. By an order dated 31.3.1995 the appellant was assessed to tax under Section 143 (3) of the Income Tax Act, 1961 by the Assistant Commissioner. The total tax with interest determined was Rs. 44,50,568. After adjustment of pre-paid taxes Rs. 40,74,820 remained payable. The appellant preferred an appeal before the Commissioner (Appeal) (referred to as 'CIT(A)') objecting to the following additions in the assessment order:

(i) Share of profit from M/s. Raju Investment taken at Rs. 6,85,668 as against Rs. 1,85,250 shown in the return.

(ii) Unexplained investment in acquisition of jewellery Rs. 23,07,809

(iii) Value of stones other than diamonds studded in jewellery Rs. 1,09,419

(iv) Unexplained cash found from locker : Rs. 2,50,000

(v) Interest on debentures not shown in return Rs. 3,690

(vi) Unexplained amount received from Bombay: Rs. 45,000

(vii) Unexplained investment in acquisition of 8000 shares in Duphar Interfran Ltd. Rs. 80,000

(viii) Unexplained investment in acquisition of shares of M/s Techno Pharma Pvt. Ltd., Rs. 1,25,000

(ix) Unexplained investment in acquisition of shares in M/s. V.R. Transports. Rs. 24,000.

A The appellant also challenged the levy of interest under Sections 234A, 234B and 234C.

By his order dated 30.9.1997, the CIT(A) partly allowed the appeal by confirming the additions in respect of items (iii), (iv), (v) and (viii), setting aside the additions in respect of items (ii), (vi), (viii) and (ix) and remitting B the matter back to the Assessing Officer for re-determination and modification of the amount under item (i). The appellant's challenge to the levy of interest was disallowed.

The appellant filed an appeal before the Income Tax Appellate Tribunal in which the appellant not only impugned the decision of the CIT (A) to the C extent that it confirmed the additions under items (iii) and (vii) but also the direction to the Assessing Officer regarding the quantum of modification under item (i) and re-determination in respect of items (vi), (vii) and (ix). In addition, the appellant challenged the confirmation of the levy of interest under Sections 234A, 234B and 234C.

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Pursuant to the order of CIT (A), the Assessing Officer by order dated 17.11.1997 modified the assessment order for the assessment year 1992-93 in respect of item (i) and deducted the additions set aside by the CIT(A). The income was re-computed as Rs. 12,16,303 and the tax thereon at Rs. 6,56,042. Interest was levied on the income under Sections 243A, 243B and 243C. E After crediting the appellant with the amounts already paid, a sum of Rs. 23,044.00 was calculated as the balance due.

By a subsequent order dated 2.1.1998, the assessing officer deleted the levy of interest under Sections 243A, 243B and 243C as the Director General (IT) had in the meanwhile, by an order dated 31.10.1997 directed waiver of F the interest. The appellant paid the amount as computed by the order dated 17.11.1997 as modified on 2.1.1998 before 31.3.1998.

As far as those additions which were set aside for re-determination by the Assessing Officer were concerned, the appellant conceded the departments G computation and filed a letter dated 29.12.1998 to this effect before the Assessing Officer. The Assessing Officer recorded the concession and by order dated 31.12.1998 re-computed the appellant's total income. However, despite the DGIT's order, the assessing officer imposed interest under Sections 234A, 234B and 234C. After giving credit for the amount paid by the appellant, the tax liability for the assessment year 1992-93 was worked out at Rs. H 22,05,925. The order dated 31.12.1998 also directed the demand to be paid

"as per demand notice and challan enclosed". Criminal proceedings under Section 271 (1) (c) were initiated separately. The demand raised by the assessing officer was not met by the appellants.

The appellant filed her declaration under Section 88 of the Act in respect of the assessment year 1992-93 on 28.1.1999. The CIT (A) who was the designated authority under the scheme rejected the declaration filed by the appellant by his order dated 26.2.1999. Three reasons were given for the rejection:

> "1. There does not exist any arrears on 31.3.1998 as seen from the facts stated above.
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> 2. The appeal said to be pending is on levy of interest, which has been waived. Hence, there is no dispute.
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> 3. The arrear that is sought to be settled relates to the current demand raised on 31.12.1998 which is entirely different from the arrear demand".

The appellant impugned the order of the CIT (A) by way of a writ petition before the High Court. The High Court dismissed the writ application upholding the first and second reasons of the CIT (A) as set out above. The High Court held that the appellant's declaration was rightly rejected because there were no tax arrears as the demand had been conceded to and interest had been directed to be waived by the DGIT.

In our opinion, both the CIT(A) as well as the High Court have proceeded upon an interpretation of the phrase 'tax arrears' de hors the definition under Section 87(m) as quoted above. In this case, there was a determination of the amount taxed by the original assessment order on 31.3.1995 i.e. before 31.3.1998. The determination was modified by the orders dated 17.11.1997 and 31.12.1998 pursuant to the CIT(A)'s order. The determination on 31.12.1998 was not a fresh assessment for the purposes of the scheme but the modification of the original 'determination' by the assessment order dated 29.3.1996. It is not in dispute that the modified demand was not paid by the appellant on the date when the declaration was filed. Whether the modified demand is as a result of concession or otherwise is not a relevant consideration for the purposes of Sec.87 (m). The section itself makes no such distinction between a conceded demand and any other for the purposes of the scheme. Section 87(f) appears to fortify the position by the definition of 'Disputed

A tax' as "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". The word "determined" is not qualified by the process by which the determination is made.

However, not all "tax arrears" under S. 87(m) are entitled to the benefit
B of the scheme. If no appeal etc. is pending *in respect of* the tax arrears, the benefit of the scheme is not available under Section 95(1)(c). If an appeal etc. is pending, it is not for the designated authority to question the possible outcome of the appeals, nor for the High Court to hold that the appeal was "sham', "ineffective" or "infructuous" as it has. In any event, the High Court
C erred in holding that the entire demand raised on 31st December 1998 had been consented to by the appellant. In computing the demand on 31st December, 1998 the assessing officer included not only those items which had been remitted by the CIT(A) for re-determination, and which were conceded to by the appellant, but also the items which had been confirmed by the CIT(A) which had not been conceded and were the subject matter of
D appeal before the Tribunal. Thus the question of imposition of interest under Section 234A, 234B and 234C and the determination in respect of items (iii) and (vii) referred to above, even according to the High Courts view, was the subject matter of appeal. In the facts of the case therefore, it cannot be said that there was no appeal pending in respect of the tax arrears pertaining to
E those items within the meaning of Sec. 95(1)(c).

Since the appellant's case formally fulfilled the criteria for being considered under Chapter IV of the Act, we set aside the order of the High Court. The order by which the declaration filed by the appellant under the scheme was rejected is quashed and the respondents are directed to consider
F the declaration filed by the appellant under Section 88 of the Act within a period of eight weeks from today.

As stated at the outset, the facts in all the three appeals are factually similar. For the same reasons, the orders of the Designated authority rejecting the declarations in each of the appeals must be quashed with the same
G directions. All the three appeals are, therefore, allowed without any order as to costs.

K.K.T. Appeal allowed.