CASE NO.:
Appeal (civil) 6266 of 2000

PETITIONER:
HEMALATHA GARGYA

RESPONDENT:
COMMISSIONER OF INCOME TAX

DATE OF JUDGMENT: 28/11/2002

BENCH:
RUMA PAL & B.N. SRIKRISHNA

JUDGMENT:
JUDGMENT

2002 Supp(4) SCR 382

The following Order of the Court was delivered

The issue involved in all these appeals is whether the time for payment fixed under Sec. 67 of the Voluntary Disclosure of Income Scheme, 1997 (referred to hereafter as 'the Scheme') is extendable.

The issue has given rise to conflicting views taken not only by different High Courts but also by different Benches of the same High Court. On the one hand, the decisions Smt. Laxmi Mittal v. Commissioner of Income Tax, reported in 238 ITR 97 (P&H), E. Prahalatha Babu v. Commissioner of Income Tax, 241 ITR 457(Mad) and Commissioner of Income Tax v. E. Prahalatha Babu, 249 ITR 309 (Mad) have held that the period is extendable, whereas on the other hand, the decisions in Kamal Sood v. Union of India, 241 ITR 567(P&H); Vyshnavi Appliances Pvt. Ltd v. Central Board of Direct Taxes and Anr., 243 ITR 101(AP); Smt. Atamjit Singh v. Commissioner of Income Tax, 247 ITR 356 (Karn) and M. Kuppan v. Commissioner of Income Tax. 249 ITR 543 (Mad); K. Dilip Kumar v. Astt. Commnr. of Income Tax and Ors., 241 ITR 16 (Ker), have held that the period mentioned for payment of the tax due on the undisclosed income was inflexible.

The scheme was introduced by and is contained in the Finance Act, 1997. It came into force with effect from 1st July, 1997 and remained in operation till 31st March, 1998. Section 64 of the Scheme provides that subject to the provisions of the Scheme, where any person makes, on or after the date of the commencement of the Scheme, but on or before the 31st December, 1997, a declaration in accordance with the provisions of Sec. 65 in respect of any income chargeable to tax under the Income Tax Act, 1961 for any assessment year in respect of which such person had either (a) failed to furnish a return or (b) failed to disclose in his return such income or which has escaped assessment by reason of omission or failure on the part of such person to make a return under the Income Tax Act or (c) to disclose fully and truly all material facts necessary for the assessment, then such person would be entitled to pay tax on such undisclosed income, if the assessee is an individual, at the rate of 30% thereof. We need not consider the case of a company or a firm, as the assessee before us are all individuals.

Section 65 deals with the particulars to be furnished in such declaration. These need not be set out in detail as there is no dispute with regard to the declarations filed by the assessees in the appeals before us.

We are concerned with Sections 66 and 67 and the language used therein, since the answer to the question framed at the outset would depend on the interpretation of the provisions of these sections. These Sections provide:

"66. The tax payable under this Scheme in respect of the voluntarily disclosed income shall be paid by the declarant and the declaration shall be accompanied by proof of payment of such tax."

Interest payable by declarant.

67. (1) Notwithstanding anything contained in Section 66, the declarant may file a declaration without paying the tax under that section and the declarant may file the declaration and the declarant may pay the tax within three months from the date of filing of the declaration with simple interest at the rate of two per cent for every month or part of a month comprised in the period beginning from the date of filing the declaration and ending on the date of payment of such tax and file, the proof of such payment within the said period of three months.

(2) 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 by him shall be deemed never to have been made under this Scheme."

Voluntarily disclosed income not to be included in the total income.

In the several appeals which have been filed before us, some of the appellants are the assessees. In each: of their cases it is not in dispute that they had not paid the tax within the time prescribed either under Sec, 66 or within the extended time under Sec. 67(1). The period of default is varied and the explanations given in each of the assessees' cases are also different. All of them however, have contended that the reason for non-payment was beyond their control. The assessees have relied upon those decisions referred to earlier which held that the period mentioned in Sec. 67(1) was extendable. According to the assessees the purpose of the Scheme was to unearth black money which was in circulation. The time fixed under Sec. 67(1) is not rigid according to the assesses, not only because there was express provision for making payment of interest in case of delayed payment but also because the Revenue would be benefitted by disclosure of undisclosed income, quick recovery of the same with payment of interest by 31st March, 1998 (since the Scheme was operative till that date) thus fulfilling the object of the Scheme. It is further submitted that because the Scheme was operative until 31st March, 1998, therefore, it was open to a person to file a declaration on the last date, namely, 31st December, 1997 and make payment by 31st March, 1998 under Sec. 67 (1). It would be discriminatory and entirely arbitrary if persons who had submitted their declarations voluntarily earlier were penalised for doing so by insisting on payment on an earlier date. The next submission of the assessee is that even if the provisions of Sec. 67(1) were mandatory, nevertheless, the Court could under certain circumstances dilute the severity of its operation, provided the assessees were acting bona fide. Reference has been made to the decision of this Court in M/s. Hindustan Steel Ltd. v. State of Orissa reported in [1969] 2 SCC 627 in this context. The assessees have also argued that the first decision in the field was the decision of the Punjab and Haryana High Court in 238 ITR 51 Laxmi Mittal case (supra) where the High Court had held that the period fixed under Sec. 67(1) was not immutable and that for sufficient reason the time could be extended. The Department had not chosen to challenge that decision and had accepted that interpretation. It is contended on the basis of the decisions of this Court in Union of India and Ors. v. Kaumudini Narayan Dalai and Anr., 249 ITR 219 and Union of India v. Satish Panalal Shah 249 ITR 221 that the Revenue cannot pick and choose cases in which they would challenge a similar decision unless there was just cause. According to the assessees, there was no cause shown justifying the Department's decision to challenge the principle enumerated in Laxmi Mittal's case (Supra) only in the case of a few assessees. It was submitted that in any case this Court should not interfere under Art. 136 in those matters decided in favour of the assessees by the High Court. The final submission of the assessees is that the Revenue Authorities could not be permitted to retain the payments made

by the assessees under the Scheme and contend at the same time that the assessees were not entitled to the benefit of the Scheme. The Revenue could either accept the payment as having been made under the Scheme. and if not, refund the same to the assessees.

In some of the appeals, the appellants are the Revenue Authorities. They have contended that the Scheme did not form part of the Income Tax Act, 1961, but formed self-contained Code in which there was no provision whatsoever for extension of time in the event the period under Sec. 67(1) lapsed. According to the learned counsel appearing on behalf of the Revenue, the provisions of the Scheme make it clear that the Scheme envisaged the payment to be made first whereafter the declaration was to be filed with proof of such payment. It is only with a view to dilute the rigidity of this requirement that Sec. 67 allowed the assessee to make payment subsequent to the making of the declaration but subject to making payment of interest at the rate of 2% per month upto a period of three months and not further. Apart from the reasoning adopted by the various High Courts in the decisions in favour of the Revenue, it has been contended that the language used in Sec. 67(2) makes it amply clear that the period specified was mandatory. Even if there were any doubt, according to settled principles of interpretation no extension could be granted beyond the period of three months as specified under Sec. 67 (1). It has further been submitted that since there were conflicting decisions of the different High Courts there was sufficient cause for the Department to agitate the issue before this Court. Finally, it is submitted that as far as the payments made by the assessees were concerned if any payment had been made but not in terms of the Scheme, clearly the Department could not retain such payment and would either have to refund it or set it off in accordance with the prescribed procedures available under the Income Tax Act, 1961.

We are of the view that the submissions of the Revenue must be accepted. A plain reading of the provisions of the Scheme would show that the tax payable under the Scheme "shall be paid: within the time specified is the general rule provided in Sec. 66, namely, payment prior to the making of a declaration, the exception to this general rule has been carved out by Sec. 67(1) which allows a declarant to file a declaration without paying the tax. This exception, however, is subject to two conditions; viz., (1) the payment of tax within three months from the date of the filing of the declaration together with (2) the payment of simple interest at the rate of 2% for every month or part of a month. The period of interest is to commence from the date of filing the declaration and shall end with the date of payment of tax. It may be noted that under Section 67(1) not only must these two conditions be fulfilled within the period of three months but proof of such payment must also be filed within the same period.

The use of the word "shall" in a Statute, ordinarily speaking, means that the statutory provisions is mandatory. It is construed as such unless there is something in the context in which the word is used which would justify a departure from this meaning. There is nothing in the language of the provisions of the Scheme which would justify such a departure. On the other hand the provisions of Sec. 67(2) make it abundantly clear that if the declarant fails to pay the tax within the period of three months as specified, the declaration filed shall be deemed never to have been made under the Scheme. In the words the consequences of non-compliance with the provisions of Sec. 67(1) relating to the payment have been provided. It is well-settled that when consequences of the failure to comply with the prescribed requirement is provided by the statute itself, there can be no manner of doubt that such statutory requirement must be interpreted as mandatory (See : Maqbool Ahmad and Ors. v. Onkar Pratap Narayan Singh. AIR (1935) Privy Council, 85, 88.

Besides the scheme has conferred a benefit on those who had not disclosed their income earlier by affording them protection against the possible legal consequences of such non-disclosure under the provisions of the

Income Tax Act. Where the assessees seeks to claim the benefit under the statutory scheme they are bound to comply strictly with the conditions under which the benefit is granted. There is no scope for the application of any equitable consideration when the statutory provisions of the Scheme are stated in such plain language.

Seen from the angle of the Designated authority, which is created under the Scheme, it is clear that the authority cannot act beyond the provisions of the Scheme itself. The power to accept payment under the Scheme has been prescribed by the statute. There is no scope for the Revenue Authorities to imply a provision not specifically provided for which would in any way modify the explicit terms of the Scheme.

In the decision in Laxmi Mittal's case, the High Court had relied upon a circular issued by the Central Board of Direct Taxes under Sec. 119 (2) (b) of the Income Tax Act, 1961. The circular has not been brought on record. Assuming that the High Court's reproduction of the contents is incorrect, all that the circular said was that the date for calculating interest would be 90 days from the date of declaration and if the 90th day happens to be a Bank holiday, payment on the 91st day being, the next working day, would be valid. This circular certainly does not mean that the Board had thereby empowered the Commissioner under Sec. 119 (2)(b) to extend the period for the making of payment on sufficient cause being shown. All that the circular does is state what is provided in Sec. 10 of the General Clauses Act, 1897 and Sec. 4 of the Limitation Act, 1963. It is a general rule of interpretation and not an order empowering the Commissioner. In any event, it is doubtful whether the Board could have empowered the Commissioner to extend the time fixed by Sections 66 and 67 of the Scheme under Sec. 119 (2)(b) of the Income Tax Act, 1961 given the wording of the Scheme and the fact that the Scheme does not form part of the Income Tax Act, 1961 at all.

In none of the decisions of the High Courts which have held that the time prescribed under Sec. 67(1) was not rigid has any legal basis been relied on, the decision to extend the time appears to have been arrived at on considerations of equity. This approach, in our opinion, was incorrect, as the court had no power to act beyond the terms of the Statutory Scheme under which benefits had been granted to the assessee. By so holding we make it clear we do not intend to reopen those decisions which have become final in favour of the assessees. It may also be noted that in one of such decisions, the Revenue had sought to prefer an appeal before this Court by way of a special leave petition which was dismissed in limine. It needs hardly to be stated that such dismissal would not operate as confirmation of the reasoning in the decision sought to be appealed against, nor does such dismissal by itself operate as an argument in favour of the assessee and against the Revenue.

The decisions of this Court in Union of India and Ors. v. Kaumudini Narayan Dalai and Anr., (Supra) and Union of India v. Satish Panalal Shah, (Supra) do not, as contended by the assessees, hold that the Revenue can never challenge an interpretation which they have not chosen to do so earlier. First, it appears to us that the principle appears to be limited to decisions of the jurisdictional High Court. Additionally, the decisions make it clear that given "just cause", the Department could challenge the interpretation subsequently. We accept the submission of the Revenue that in this case, decisions of other High Courts holding to the contrary as well as the subsequent conflicting decision of the Punjab and Haryana High Court itself would come within the phrase "just cause".

The submissions of the assessees that this Court can dilute the rigour of Sec. 67(2) on the basis of the ratio in M/s. Hindustan Steel Ltd v. State of Orissa, [1969] 2 SCC 627 is unacceptable. That was a case which dealt with the imposition of a minimum penalty for failure to carry out a statutory obligation. The Court held that such an order imposing penalty is the result of a quasi-criminal proceeding and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance

of the law or acted in conscious disregard of its obligation. Because of its quasi-criminal character, the Court held that the element of mens rea or bona fides was to be imported which would justify the authority who was competent to impose the penalty to refuse to impose penalty even when the statute provided for a fixed minimum penalty on proof of default.

There is no question of imposition of penalty under the Scheme. What has been prescribed under Sec. 67(2) is merely the consequence of the failure to comply with Sec. 67(1). There is as such no question of importing the doctrine of mens rea or exercising any discretion contrary to the provisions of Sec. 67(2).

The submission of the assessees that, this Court should not interfere under Art. 136 of the Constitution in those cases where the Revenue is in appeal is unacceptable because the issue is purely one of law and given the divergent opinions of the different High Courts, it is an appropriate case where this Court should interfere and settle the difference finally.

As a consequence, in our view, the appeals preferred by the assessees must be and are hereby dismissed whereas the appeals preferred by the Revenue Authorities must be and are hereby allowed. However, having held that the assessees are not entitled to the benefit of the Scheme since the payments made by them were not in terms of the Scheme, we direct the Revenue Authorities to refund or adjust the amounts already deposited by the assessees in purported compliance with the provisions of the Scheme to the concerned assessees in accordance with law. All the appeals are accordingly disposed of without any order as to costs.