

Punjab-Haryana High Court

Smt. Laxmi Mittal vs Commissioner Of Income-Tax on 22 March, 1999

Equivalent citations: 1999 238 ITR 97 P H

Bench: J G Agarwal

JUDGMENT

By The Court

1. The petitioner is aggrieved by the order dt. 27th July, 1998, passed by the CIT, Patiala, by which the declaration under the Voluntary Disclosure of Income Scheme, 1997, has been "treated as non est." A few facts may be noticed.

2. The Government of India had introduced the Voluntary Disclosure of Income Scheme, 1997. Under this scheme a persons entitled to make the declaration of the income by 31st December, 1997. Thereafter, under s. 67 of the scheme, the tax and interest, etc., if any, had to be paid within three months. The petitioner made a declaration of an amount of Rs. 20,42,274. This declaration was made on 27th December, 1997. Along with the declaration, the petitioner had paid an amount of Rs. 2,682 by way of tax. The remaining amount of tax, viz., Rs. 5,50,000 could have been deposited on or before 27th March, 1998. The petitioner submits that when she was going to get the money for making the deposit, she had an accident. Along with her husband, she was admitted to a nursing home. A copy of the certificate dt. 28th March, 1998, issued by Dr. Raj Kumar Sharma has been produced as annexure-P-3. In this situation, the deposit could not be made on 27th March, 1998. The amount of Rs. 5,50,000 along with Rs. 33,000 as interest was actually deposited on 30th March, 1998. Thus, according to the respondent, there was a delay of three days. On this account, the declaration made by the petitioner has been treated as non est. The petitioner claims that the delay had occurred on account of reasons totally beyond her control. Under the circular dt. 3rd September, 1998, the authority has the discretion to extend the period. In the present case also the discretion should have been exercised. Its failure to do so is arbitrary and unfair.

3. The respondent contests the petitioner's claim and maintains that in view of the provisions of s. 67 of the scheme the deposit had to be made within three months. On account of failure, the declaration is non est. Thus, the period cannot be extended and the order passed by the CIT is legal and valid.

4. Learned counsel for the parties have been heard.

5. It is admitted position that under the scheme a declaration could be made on or before 31st December, 1997. It is also not disputed that the deposit of the tax could be made simultaneously with the declaration or within three months thereafter. In case the tax was not deposited along with the declaration, interest at the rate of 2 per cent for every month or "part of a month" had to be made. Still further, it is clear to us that since the declaration could have been made on or before 31st December, 1997, the last date for deposit of tax along with interest would expire on 31st March, 1998. We may also add that the provisions of a taxing statute are normally construed liberally and, if possible, in favour of the assessee. Added to all this is the fact that the petitioner has given an explanation for her failure to make the deposit on 27th March, 1998. She had met with an accident. She had got injuries. She was admitted to a nursing home. These facts have not even been denied. The respondent has not disputed the correctness of the averments made by the petitioner.

6. Mr. Sawhney submits that s. 67 lays down as inflexible rule and according to this provision the deposit has to be made within a period of three months from the date of declaration. Any failure renders the declaration and the deposit non est. This contention cannot be accepted. The Government of India has itself issued a circular dt. 3rd September, 1998. By this circular it has been, inter alia, provided by the Board that the period for calculating interest will be 90 days from the date of declaration. If the 90th day happens to be a bank holiday, payment on the 91st day being the next working day would be valid. Thus, it is clear that s. 67 does not embody a totally inflexible rule. When things are beyond the control of the citizen, certain moving space

is normally allowed. This is precisely what the petitioner is wanting in the present case.

7. Taking the totality of circumstances into consideration it appears that the petitioner was unable to make the deposit on account of reasons beyond her control. The Revenue has suffered no loss as the interest for three months, viz., Rs. 33,000, has been deposited by the petitioner. Still further, it is also clear that a declaration under the scheme could be made on or before 31st December, 1997. The tax along with interest could have been deposited on or before 31st March, 1998. Any deposit before that should not be considered as being beyond the scheme. In any event, the interest having been paid, the Revenue has suffered no loss.

8. Resultantly, the order passed by the CIT on 27th July, 1998, a copy of which has been produced as annexure-P-4 with the writ petition, is set aside. In the circumstances, there shall be no order as to costs.