IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2326 OF 1999

M/s. Tigrania Steel Corporation .. Petitioner

v/s.

The Commissioner of Income Tax
City-VIII, & Ors. .. Respondents

Mr. P.J. Pardiwala, Senior Counsel a/w Mr. K.B. Bhujle for the petitioner
Mr. A.R. Malhotra for the respondents

CORAM : M.S. SANKLECHA &
S.C. GUPTE, J.J.

DATED : 30th SEPTEMBER, 2016.

P.C.

1. This petition under Article 226 of the Constitution of India challenges :-

(a) the Order dated 31st October, 1997 passed by the Assessing Officer under Section 154 of the Income Tax Act, 1961 (the Act) rectifying the order dated 21st March, 1997 to withdraw the relief of 50% of penalty under Section 271(1)(c) of the Act; and

(b) the order dated 30th November, 1998 passed by the Designated Authority under the *Kar Vivad Samadhan Scheme, 1998* (Samadhan Scheme) rejecting the petitioner's application.

2. This petition was admitted on 29th September, 1999. However, interim relief was refused.

3. Today, at the final hearing, the petitioner is only pressing for relief in respect of the order dated 30th November, 1998 passed by the Designated Authority under Samadhan Scheme. The Finance No.2 Act, 1998, in Chapter IV thereof from Section 86 to Section 98 therein, introduced the Samadhan Scheme.

4. Briefly, the facts relevant to the challenge to the order dated 30th November, 1998 are as under :-

(a) Assessment order dated 28th September, 1999 for A.Y. 1989-90 assessed the petitioner to an income of Rs.20.95 lakhs. This was on account of an addition made to the petitioner's income of Rs.16.25 lakhs. Penalty proceedings were also simultaneously initiated under Section 271(1)(c) of the Act.

(b) By order dated 17th December, 1990, the Assessing Officer held that addition of Rs.16.25 lakhs warranted a penalty under Section 271(1)(c) of the Act. Consequently, a penalty of Rs.8.53 lakhs under Section 271(1)(c) of the Act was imposed.

(c) Thereafter, in 1996, the petitioner made application to Commissioner of Income Tax for waiver of penalty imposed by order dated 17th December, 1990 under Section 273A(1) as well as 273A(4) of the Act.

(d) The petitioner's application for waiver under Section 273A(1) of the Act was rejected by order dated 26th March, 1996. However, by order dated 11th March, 1997, the Chief Commissioner of Income Tax granted his approval to 50% waiver of penalty imposed. This was communicated to the Assessing Officer by the office of Commissioner of Income Tax. Consequent to the above, the Assessing Officer on 21st March, 1997 passed an order waiving 50% of the penalty levied by order dated 17th December, 1990.

(e) In the meantime, the respondent Revenue had already launched a prosecution being Case No. 178 of 1997 under Section 276(1) and 277 r/w 278-BB of the Act r/w Sections 191, 192 and 193 of the Indian Penal Code for concealment of income, filing a false return of Income and making a false statement of Income to the extent of Rs.16.25 lakhs before the Additional Chief Metropolitan Magistrate.

(f) However, as the penalty imposed under Section 271(1)(c) of the Act had been reduced by 50% by order dated 21st March, 1997, the petitioner filed an application for discharge before the Additional Chief Metropolitan Magistrate. On 19th June, 1997, the Metropolitan Magistrate passed an order discharging the petitioner and its partners from the prosecution in Case No. 178 of 1997. This on the basis that the penalty imposed under Section 271(1)(c) of the Act was reduced / waived to the extent of 50% and in terms of Section 279(1A) of the Act the assessee could not be proceeded against for an offence under Section 276(1) and / or 277 of the Act in relation to any penalty imposed under Section 271(1)(c) of the Act. In the above view, the petitioner and its partners were discharged from prosecution launched by the Income Tax Department by an order dated 19th June, 1997 of the Additional Chief Metropolitan Magistrate.

(g) On 14th September, 1998, the petitioner filed a declaration under the Samadhan Scheme, seeking to settle the outstanding penalty and interest payable aggregating to Rs.2.12 lakhs.

(h) By the impugned order dated 30th November, 1998, the Designated Authority rejected the petitioner's declaration dated 14th September, 1998. This on the ground that the prosecution for concealment of income had already been instituted before the date of filing of the declaration, therefore, the benefit of the Samadhan Scheme cannot be extended in view of the clear mandate of Section 95(i)(a) of the Finance No.2 Act, 1988. Further, the reliance by the petitioner on the direction dated 7th October, 1958 issued by the Central Board of Direct Taxes in terms Section 96 of the Finance No.2 Act, 1988, clarifying that where a person against whom prosecution has been launched has been discharged by a competent Court, then a declaration made under the Samadhan Scheme would be valid for the purpose of being entertained, was negatived. This by holding that the impugned order dated 19th June, 1997 of the Additional Chief Metropolitan Magistrate discharging the petitioner is not final, for the reason that a Criminal Revision Petition has been filed by the Revenue before the High Court and the same was at the relevant time awaiting admission. In the above view, the Designated Authority rejected the petitioner's declaration made in terms of the Samadhan Scheme.

5. Before dealing with the submissions, it would be necessary to reproduce Section 95(1)(c) of the Samadhan Scheme and the relevant extract of Circular dated 7th October, 1998 as under :-

> ***"Scheme not to apply in certain cases.***
> *(i) in respect of tax arrears under any direct tax enactment –*
> *(a) in a case where prosecution for concealment has been instituted on or before the date of filing of declaration under Section 88 under any direct tax enactment in respect of any assessment year, to any tax arrears in respect of a person of such assessment year under such direct tax enactment or in respect a person who has been convicted for concealment on or before the date of filing the declaration.*
> *(b) & (c) .....*
> *(ii) (iii) (iv) & (v) ..... "*

<u>Extract of Circular dated 7th October, 1998 :-</u>

"Question No.33 :- Where prosecution has been launched for any particular year but the assessee has since been discharged by the competent Court, can the declaration be made under the Scheme ?
Answer : Yes."

6. Mr. Pardiwala, learned Senior Counsel appearing on behalf of the petitioner points out that the Criminal Revision Petition filed by the Income Tax Department in this Court was rejected for non-removal of office objections as far back as on 25th November, 1998. Thus, the entire basis of the impugned order that the petitioner's application for settlement cannot be entertained notwithstanding the clarification issued under Section 96 of the Finance No.2 Act by holding that the direction does not contemplate a situation of the Revenue taking up the issue of discharge of an accused assessee by a Criminal Court in Revision Petition before a superior forum. In any case, it is further submitted that on the plain reading of the directions given by the Central Board of Direct Taxes, dated 7th October, 1998 under Section 96 of Samadhan Scheme as the petitioner had been discharged by a Criminal Court prior to its making an application for settlement under the Samadhan Scheme, the petitioner's application ought to have been entertained. Therefore, Section 95(1)(c) of the Samadhan Scheme will have no application.

7. Mr. Malhotra, learned Counsel for the Revenue submits that the orders passed by the Authorities under the Act are all bad in law. However, no submission in particular was made in respect of petitioner's grievances that the order dated 30th November, 1998 of the Designated Authority rejecting the petitioner's declaration is without jurisdiction.

8. We find merit in the submission made on behalf of the petitioner. As clarified by the Circular dated 7th October, 1998 issued under Section 96 of Samadhan Scheme, a mere initiation of criminal proceedings would by itself not be a bar, if the assessee concerned has been discharged. The only exclusion is of pending proceedings for conviction or conviction prior to filing of the declaration. The Circular dated 7th October, 1998 clarifies that where an assessee has been discharged before the filing of the declaration, then, he is entitled to avail of the Samadhan Scheme. The Designated Authority in terms of Section 96 of the Finance (No.2) Act, 1988 is obliged to follow the Circular. In this case, the petitioner has been discharged before it filed its application of settlement. Thus, the Designated Authority was bound to accept the application made for settlement under the

Samadhan Scheme.

9. In any case, it may be mentioned that basis of ignoring the discharge by the Criminal Court was because the Revenue could prefer a Criminal Revision Petition before a superior forum. This in the present facts becomes academic, for the reason that the Criminal Revision Petition filed by the Income Tax Department has been rejected for non-removal of office objection as for back as on 25th November, 1998 and the Revenue has taken no steps till date to have the matter restored. It appears that the Revenue itself was not serious about prosecuting the Criminal Revision Petition filed by it to this Court.

10. In the above view, without considering the other contentions raised by the petitioner, we set aside the order dated 30th November, 1998 passed by the designated Authority under the Samadhan Scheme and restore the issue for fresh consideration, to include satisfaction of all other requirements. In terms of Section 90 of the Finance No.2 Act, the designated Authority is required to dispose of an application under the Samadhan Scheme within 60 days from the date of its receipt. In the above view, the designated Authority is directed to dispose of the petitioner's pending application under the Samadhan Scheme within 60

days from the date of communication of this order.

11. It is made clear that other issues which have been urged in the petition are not been considered in view of the fact that at this stage the petitioner has restricted its challenge to the order dated 30th November, 1998 passed by the designated Authority under the Samadhan Scheme.

12. Accordingly, petition is disposed of in the above terms. No order as to costs.

(S.C. GUPTE, J.) **(M.S. SANKLECHA, J.)**