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

WRIT PETITION NO. 606 OF 1999

Hind Filters Limited … Petitioner
Versus
Urvashi Saxena & Ors. …Respondents

Mr. Madhur Agrawal, with Mr. B.G. Yewale, i/b Rajesh Shah & Co. for the Petitioner.
Mr. Sham V. Walve, for the Respondent Nos. 1 to 3.

CORAM: M.S.SANKLECHA &
RIYAZ I. CHAGLA, JJ.
DATED: 5TH FEBRUARY 2018

PC:-

1. This Petition under Article 226 of the Constitution of India challenges the certificate dated 3 February 1999 for Assessment Year 1995-96 issued by the Respondent No.1 Designated Authority i.e. Commissioner of Income Tax under Kar Vivad Samadhan Scheme, 1998 ("**Samadhan Scheme**"). This Samadhan Scheme is issued as a part of Finance (No.2) Act, 1998. The impugned certificate dated 3 February 1999 did not accept the declaration filed by the Petitioner under Section 88 of the Samadhan Scheme stating that the tax payable is Rs.20,56,855/- and determined the amount of tax payable at Rs.26,93,414/- under Section 90(1) of the Samadhan Scheme i.e. the tax payable at 35% of the disputed income of Rs.76,95,469/-.

2. For the Assessment Year 1995-96, the Assessing Officer by an order dated 31 December 1997 under Section 143 (3) of the Act determined the Petitioner's income at Rs.5.10 Crores. As against an income declared of Rs.4.08 Crores in the return of income. The tax arrears in the Income Tax computation form by the Revenue, the tax determined at Rs.8.38 Crores and interest payable under Section 234 (B) at Rs.38.06 lakhs. However, after adjustment of the self assessment tax and advance tax determined the net tax arrears at Rs.45.25 lakhs. The amount of self tax paid was not adjusted against the interest payable under Section 234 B of the Act. This Income Tax computation form was communicated to the Petitioner along with the notice of demand issued to the Petitioner under Section 156 of the Act for the Assessment Year 1995-96.

3. Being aggrieved with the Assessment order dated 31 December 1997 of the Assessing Officer for the Assessment Year 1995-96, the Petitioner had preferred an appeal to the Commissioner of Income Tax (Appeals), CIT(A). This Appeal was awaiting disposal till the Petitioner availed of the Samadhan Scheme.

4. The Finance (No.2) Act, 1998 introduced the Samadhan

Scheme which had come into effect from 1 September 1998. It *inter alia* gave an opportunity to Assessee's in whose cases there were unpaid taxes as on 31 March 1998 remaining unpaid till the date of filing of the declaration to opt for the Samadhan Scheme. This scheme was introduced essentially to reduce the pending disputes and give an opportunity to the assessee to settle their disputes.

5. On 8 December 1998, the Petitioner filed a declaration under Section 88 of the Samadhan Scheme with the Designated Authority. In its declaration the Petitioner declared that the disputed tax payable under the scheme as on 31 March 1998 and as the date of filing the declaration was Rs.27,03,296/-/. The disputed income on that basis was Rs.58.76 lakhs resulting is the tax payable @ 35% of the Scheme was Rs.20.56 lakhs.

6. On 3 February 1999, the Respondent No.1 issued the impugned certificate under Section 90(1) of the Samadhan Scheme not accepting the Petitioner's declaration dated 8 December 1998 and holding that the amount payable under the Samadhan Scheme was Rs.26,93,414/-. The aforesaid determination of tax payable at Rs.26.93 lakhs was arrived at by

the designated authority, reducing the amount of interest payable of Rs.9,04,256/- under Section 234 B of the Act till 27 November 1995 out of the self assessment tax of Rs.11,26,081/- paid by the Petitioner along with its return of income. This consequently resulted in higher unpaid tax as on 31 March 1998 and on the filing of the declaration on 8 December 1998.

7. Consequent to the issue of the above certificate dated 3 February 1999, the Petitioner addressed a representation to the designated authority – Respondent No.1 in respect of the determination of the tax payable determined therein. It pointed out that on a plain interpretation of the provisions of the Samadhan Scheme, the amount payable thereunder would be as per the declaration filed on 8 December 1998 of Rs.20.56 lakhs and not Rs.26.93 lakhs as determined under the certificate. The aforesaid representation was disposed of by Respondent No.1 by communication dated 15 February 1999 to hold that the above amount of Rs. 26.93 lakhs has been determined in accordance with the provisions of the Act.

8. Mr. Agrawal, the learned counsel for the Petitioner in support of the Petition submits as under:-

(a) The determination of the tax payable at Rs.26,93,414/- in the impugned certificate dated 3rd February 1999 is contrary to the plain reading of Section 140A of the Act when read with the explanation to Sub-Section 1B thereto;

(b) The working of the competent authority – Respondent No.1 is contrary to working communicated to the Petitioner by the Assessing Officer by his Income Tax computation form along with the notice of demand under Section 156 dated 3rd February 1997. The aforesaid communication determines that the amount of Rs.11.26 has been adjusted against outstanding payment of tax to arrive at Rs.45.25 lakhs and not adjusted against the interest payable under Section 234 B of the Act; and

(c) In any event, the impugned certificate dated 3 February 1999, is contrary to the instructions dated 3 September 1998 issued under Section 96 of the Samadhan scheme by Central Government to all the Commissioners of Income Tax – Designated Authority under the Samadhan Scheme. In the above instruction it has been clarified that the where the tax arrears comprise tax and interest both, then part payment would be appropriated first towards principal tax and only thereafter towards the interest.

9. Mr. Walve for the Respondent supports the impugned certificate dated 3rd February 1999 under Section 90(1) of the Samadhan Scheme. However he is is not in position to make any submission contesting the binding nature of the instructions dated 3rd September 1998 issued by the Central Government under Section 96 of the Scheme.

10. For the purpose of disposing of this Petition, the larger issue of computation of the statutory provision need not be examined. This Petition can be disposed of on a narrow issue of the certificate dated 3rd February 1999 being contrary to and in defiance of the instructions dated 3rd September 1998 issued by this Government under Section 96 of Samadhan Scheme. Section 96 of the Scheme *inter alia* empowers the Central Government from time to time to issue instructions and directions to the authorities as it may deem fit for the proper administration of the scheme and the authorities executing the scheme are required to follow and observe the directions, instructions and orders of the Central Government issued under Section 96(1) of the Scheme. This is to ensure that there is uniformity of treatment in respect of declaration filed all over the country under the Scheme. The instructions dated 3rd September 1999 issued under Section 96 of the Scheme by the Central Government has instructed the

manner of adjustment of tax arrears when it comprises of both tax and interest out of payment made of an arrears. It states that the payment made has to be appropriated first with regard to the tax and only then with regard to interest payable. In particular question 4 and answer thereto as mentioned in the above clarification is reproduced below:-

> ***Question No.4 :-*** *Where the tax arrear comprises tax and interest, how will the part payment be first appropriated towards tax or interest**?***
> ***Answer :-*** *The part payments are appropriated first towards tax and then towards interest.*

11. The Affidavit in Reply dated 9th April 1999 by the Respondent No.1 – the Designated Authority itself in terms states that it has worked out the amount payable for the purpose of certificate dated 3 February 1999 by first adjusting the part payment made towards interest and only thereafter is balance amount of Rs.96,844/- out of advance tax was adjusted towards tax payable. This action of the Designated Authority in issuing the certificate dated 3 February 1999 is contrary to the binding instructions dated 3rd September 1998 of the Central Government under the Samadhan Scheme.

12. In the above view, the impugned certificate dated 3rd February 1999 issued under Section 91 of the Samadhan scheme is quashed and set aside. The Petitioner's declaration is restored to the designated authority – Respondent No.1 for issuing a fresh certificate and determining the amount payable in accord with the instructions dated 3rd September 1998 issued by the Central Government under Section 96 of the Finance Act i.e. to first adjust the amount paid towards the tax payable and only thereafter to adjust the balance towards interest paid on the date of filing of the declaration.

13. The necessary certificate should be issued by the Respondent No.1 – Designated Authority as expeditiously as possible and preferably within 16 (Sixteen) weeks from today along with corrected relief, if any.

14. The Writ Petition is disposed of in the above terms. No order as to costs.

(RIYAZ I. CHAGLA J.) **(M.S.SANKLECHA, J.)**