

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

WRIT PETITION NO.2005 OF 2001

M/s. Kuber Builders a registered partnership)
firm having office at 1112, Raheja Center,)
214 Nariman Point, Mumbai – 400 021.)...Petitioner

Versus

Union of India, Through Chief Commissioner)
of Income Tax, Aayaker Bhavan,)
Mumbai – 400 021.)...Respondent

Mr. C.M. Kothari, Advocate for Petitioner.
Mr. Suresh Kumar a/w. Ms. Sumandevi Yadav, Advocate for
Respondent.

**CORAM : UJJAL BHUYAN, &
MILIND N. JADHAV, JJ.**

**RESERVED ON : 05th March 2020.
PRONOUNCED ON : 26th JUNE 2020.**

JUDGMENT (PER MILIND N. JADHAV, J.) :-

1. By this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs :-

“(a) This Hon’ble Court be pleased to declare the appropriation of Rs.3,11,206/- made by the T.R.O. towards the Tax demand of the A. Y. 1987-88 out of

sum of Rs.6,00,000/- deposited with the Respondent by the Petitioner under the said High Court order dated 13/8/91 as illegal;

(b) This Hon'ble court be pleased to declare that the Petitioners are entitled for the benefit of the Kar Vivad Samadhan Scheme so far as they relate to the Tax dispute / Tax arrears of A.Y.1987-88.

(c) This Hon'ble court be pleased to set aside and or quash the Certificate of Intimation issued under Section 90 (1) of the Finance (No.2) Act, 1998 under Kar Vivad Samadhan Scheme Rules 1998, dated 26/2/99.

(d) This Hon'ble Court be pleased to issue Writ of Mandamus or any other writ or order in the nature of Mandamus against the Respondents directing them to consider the Petitioners' case for Kar Vivad Samadhan Scheme and accord the benefit there under as may be applicable to the Petitioners.

(e) This Hon'ble court be pleased to direct the Respondents to adjust the illegally appropriated sum of Rs.3,11,206/- towards the tax liability if any fixed under the Kar Samadhan Scheme for the tax dispute / arrears of the A.Y. 1987-88.

(f) Pending the hearing and final disposal of the Petition the Respondents, their officers and their employees be restrained from recovering any amount from the Petitioners by way of tax, interest or penalty

under the Income Tax Act, 1961 in respect of A.Y. 1987-88 pursuant to the letter dated 19-7-91 at Exhibit 'A' to the Petition or under any further order.

(g) Ad-interim order in terms of prayer (f) may be granted.

(h) Such other and further relief as the nature and circumstances of this case may require may be granted."

2. This Court after hearing the matter on 17.10.2001 had passed the following interim order :-

"1. Heard. In the matter of Writ Petition No.2490 of 1991, this court issued the following order :

1. The Petitioners do pay to the Respondents a sum of Rs.6,00,000/- (Rupees Six Lakhs) in pursuance of the letter dated 19th July, 1991 being Exhibit 'Q' to the Writ Petition No.2492/91 and Exhibit 'H' to the Writ Petition No.2493/91 in the manner following :-

a) Rs.50,000/- by a cheque, dt.15.8.1991.

b) Rs.5,50,000/- within 8 weeks from today.

2. The Respondents and / or Officers shall not take any proceedings for the recovery of the amounts mentioned in the letter, dated 19.7.1991 for a period of eight weeks;

3. *If the said amount of Rs.6,00,000/- is paid within the period stipulated above, the demand notices in respect of the amounts mentioned in the letter dated 19th July, 1991 are stayed till the hearing and final disposal of the quantum Appeal for the assessment year 1985 -86;*

4. *In default, the Respondents are at liberty to enforce the demand;*

5. *Petition to stand disposed off accordingly."*

2. *Mr. Kothari today submitted that these quantum appeals have been dismissed by the Tribunal on 28th February 2001. As per submissions advanced by Mr. Kothari, the Respondents and their officers are recovering the said amount of assessment tax from the Petitioner and therefore Petitioner is making a prayer for a rule as well as rule nisi.*

3. *Mr. Chatterjee is also heard on behalf of the Respondents.*

4. *We issue the rule, returnable on 6th November, 2001 with the intimation to the litigating parties that on that date this Writ Petition would be finally decided. The Respondents are permitted to file the affidavit in the meanwhile.*

5. *Rule issued in terms of prayer clauses (a) and (b). Interim relief in terms of prayer clause (f).*

6. All concerned to act on the ordinary copy of this order, duly authenticated by the Court Associate."

3. At the outset, it may be necessary to advert to the relevant facts in the present case to decide the petition.

3.1 The petitioner is a registered partnership firm and is an assessee. The petitioner filed its income tax return for the assessment year 1987 - 1988 showing total loss of Rs.28,890.00. The Assistant Commissioner of Income Tax in assessment under Section 143 (3) of the Income Tax Act, 1961 (hereinafter for brevity referred to as "**the Act**") disallowed the aforesaid loss shown by the petitioner and determined income of the petitioner at Rs.7,83,760.00 and fixed the tax liability at Rs.3,11,206.00 for the assessment year 1987 - 88. The petitioner filed appeal before the Commissioner of Income Tax (Appeals) ("**CIT (Appeals)**") in short and hereinafter referred to as the "**first Appellate authority**") which was partly allowed. Being aggrieved the petitioner filed further appeal before the Income Tax Appellate Tribunal (hereinafter referred to as the "**Tribunal**"). This second appeal before the Tribunal came to be dismissed

subsequently on 28.02.2001 (as stated in the petition). Hence, the tax liability of the petitioner for the assessment year 1987-88 of Rs. 3,11,206.00 became final.

3.2. However during the pendency of the above second appeal before the Tribunal, the petitioner received a demand notice dated 19.07.1991 from the Tax Recovery Officer - 29 calling upon the petitioner to make payment of composite tax demand for two years, viz. Rs.3,11,206.00 in respect of assessment year 1987 - 88 and Rs.9,33,020.00 in respect of assessment year 1985 - 86.

3.3. The petitioner filed two separate writ petitions viz; writ petition No.2492 of 1991 (against tax demand for assessment year 1987 - 88) and writ petition No.2493 of 1991 (against tax demand for assessment year 1985 - 86), *inter alia*, challenging the composite demand notice for the respective assessment years in this Court.

3.4. By common order dated 13.08.1991 this Court stayed the demand notice dated 19.07.1991 during the

pendency of the respective quantum appeals, subject to the petitioner making a payment of Rs.6,00,000.00 towards the aggregate demand of Rs.12,44,126.00 as stated in the demand notice as condition precedent for staying the recovery proceedings. The petitioner deposited the amount of Rs.6,00,000.00 with the Income Tax Department pursuant to the above order on or about October, 1991. The demand notice dated 19.7.1991 was, therefore, stayed.

3.5. In 1998 the Government of India introduced a scheme known as Kar Vivad Samadhan Scheme, 1998 (hereinafter referred to as “the KVSS scheme, 1998”) for settlement of disputes relating to income tax or any other direct tax, which was unpaid or under litigation. The feature of the said scheme was that all arrears of income tax could be settled at current rate and interest and penalty could be wholly / 50% waived.

3.6. The petitioner considered itself eligible and entitled under the KVSS scheme, 1998 and therefore filed its declaration in form 1A under the Kar Vivad Samadhan Rules,

1998 before the designated authority for settlement of its liability for assessment year 1987 - 88 only. The designated authority after considering the petitioner's application issued a Certificate of Intimation dated 26.02.1999 to the petitioner, *inter alia*, determining the 50% amount of Rs.6,16,838.00 payable under the KVSS scheme, 1998 for assessment year 1987 -88. This amount computed under the Certificate of Intimation was only in respect of penalty and interest payable under Section 220(2) r/w Sections 271(1)(a), 271(1)(b) and 271(1)(c) of the Act for the assessment year 1987-88.

4. Mr. C.M. Kothari learned counsel appearing for the petitioner submitted that in terms of the order dated 13.08.1991 passed by this Court the sum of Rs.6,00,000.00 was deposited by the petitioner for stay of recovery proceedings and not towards any specific demand relating to income tax. He submitted that the demand notice dated 19.07.1991 as received from the Tax Recovery Officer was in respect of two outstanding demands, namely, Rs.3,11,206.00 for assessment year 1987 - 88 and Rs.9,33,020.00 for assessment year 1985 - 86. He submitted that pursuant to

the application made by the petitioner under the Kar Vivad Samadhan Scheme for assessment year 1987-88, Revenue was not justified in adjusting the deposit amount of Rs.6,00,000.00 against the outstanding liability of the petitioner and no appropriation should have taken place. He submitted that it was incorrect on the part of the Revenue to appropriate Rs.3,11,206.00 towards the outstanding tax liability of assessment year 1987 - 88. He submitted that if at all the Revenue had to adjust any amount, the adjustment / appropriation by the Tax Recovery Officer should have first been towards outstanding liability of assessment year 1985 - 86 and only after satisfaction of the said liability, the liability of assessment year 1987 - 88 ought to have been satisfied. He submitted that by appropriating and adjusting an amount of Rs.6,00,000.00 towards outstanding amount of the petitioner for the assessment year 1985 - 86 and 1987 - 88, the Kar Vivad Samadhan Scheme was not correctly complied in respect of the petitioner's case despite the petitioner making the appropriate application (for A.Y. 1987-88 only) and the Revenue issuing the Certificate of Intimation dated 26.02.1999. He therefore submitted the

petitioner had no option than to file the present petition for seeking multiple reliefs as prayed for. He submitted that the petitioner was denied the benefit of Kar Vivad Samadhan Scheme.

4.1 Mr. Kumar, learned standing counsel, Revenue however has supported the action taken by the respondents.

5. We have perused the pleadings, the demand notice dated 19.07.1991, the application made by the petitioner declarant dated 29.12.1998 under Kar Vivad Samadhan Scheme and the Certificate of Intimation dated 26.02.1999 issued by the Revenue. We may state that the petitioner had filed a declaration in form 1A dated 29.12.1998 under the Kar Vivad Samadhan Scheme for settlement of the outstanding demand / tax liability for assessment year 1987 – 88 only. In the declaration filed by the petitioner, according to the petitioner the total tax liability payable by the petitioner was Rs.2,74,316.00. However on consideration of the petitioner's case, the Revenue issued Certificate of Intimation dated 26.02.1999 under the Kar Vivad Samadhan Scheme and

determined the amount of Rs.6,16,838.00 being the 50% liability payable by the petitioner for assessment year 1987 - 88 which has been computed and levied against penalty and interest only. Thus, outstanding liability under the Kar Vivad Samadhan Scheme was determined by the Revenue for assessment year 1987 - 88 at Rs.6,16,838.00 towards penalty and interest only. However, by letter dated 24.03.1999 the Commissioner of Income Tax informed the petitioner that out of the initial deposit amount of Rs.6,00,000.00 made by the petitioner in compliance of order dated 13.08.1991, a sum of Rs.3,61,201.00 was adjusted against the outstanding demand for assessment year 1987 - 88 which was pending as per the notice dated 19.07.1991 and the balance amount of Rs.2,38,799.00 ($6,00,000.00 - 3,61,201.00 = 2,38,799.00$) was adjusted towards the arrears of assessment year 1985 - 86 which was due and pending. The petitioner was therefore called upon to make payment of the outstanding demand as per the Certificate of Intimation dated 26.02.1999.

6. The present petition has been filed to declare that the appropriation of Rs.3,11,206.00 out of the deposit amount was illegally done by the Revenue. The notice of demand dated 19.07.1991 as it stood issued by the Revenue was in respect of two assessment years namely 1985 - 86 (Rs.9,33,020.00) and for assessment year 1987- 88 (Rs.3,11,206.00). So far as assessment year 1987 - 88 is concerned, the petitioner applied under the Kar Vivad Samadhan Scheme and the liability of the petitioner @ 50% of the total liability was determined at Rs.6,16,838.00 towards penalty and interest only. The letter dated 24.3.1999 has taken into cognizance the declaration dated 29.12.1998 filed by the petitioner in form 1A under the Kar Vivad Samadhan Rules and the subsequent Certificate of Intimation dated 26.02.1999 issued by the Revenue to the petitioner.

7. We may state that the present writ petition was primarily filed as a sequel to earlier two writ petitions bearing writ petition No.2492 of 1991 and writ petition No.2493 of 1991, in which this Court was pleased to pass a common order on 13.08.1991, which reads thus :-

“1. The Petitioners do pay to the Respondents a sum of Rs.6,00,000/- (Rupees Six Lakhs) in pursuance of the letter, dated 19th July, 1991 being Exhibit ‘Q’ to the writ petition No.2492/91 and Exhibit ‘H’ to the writ petition No.2493/91 in the manner following :-

- a) Rs.50,000/- by a cheque, dt.15.8.1991.*
- b) Rs.5,50,000/- within 8 weeks from today.*

2. The Respondents and / or Officers shall not take any proceedings for the recovery of the amount mentioned in the letter, dated 19.7.1991 for a period of eight weeks;

3. If the said amount of Rs.6,00,000/- is paid within the period stipulated above, the demand notices in respect of the amounts mentioned in the letter, dated 19th July, 1991 are stayed till the hearing and final disposal of the quantum appeal for the assessment year 1985-86;

4. In default, liberty to respondents to enforce the demand;

5. Petition to stand disposed off accordingly.”

8. The above two writ petitions were filed challenging the composite demand notice dated 19.07.1991. The said demand notice which was in respect of two assessment years viz. 1985-86 and 1987-88 came to be stayed on the petitioner

complying with the direction of deposit of Rs. 6,00,000.00 contained in paragraph No.3 of the above order. The petitioner deposited the amount of Rs.6,00,000/- with the Revenue and thus the demand notice was stayed. Paragraph No.3 of the order also records that the stay would be in effect till the hearing and final disposal of quantum appeal for the assessment year 1985-86. In the present petition, the petitioner has not furnished the outcome of the pending quantum appeal for the assessment year 1985-86.

9. The relief claimed in the present petition are two fold. Prayer clauses 'a' and 'e' pertain to appropriation and adjustment of Rs.3,11,206.00 out of the deposit amount of Rs.6,00,000.00 by the petitioner towards tax liability for assessment year 1987-88. Prayer clauses (b), (c) and (d) pertain to the declaration filed by the petitioner for availing benefit under the Kar Vivad Samadhan Scheme for the assessment year 1987-88 and challenge to the Certificate of Intimation issued by the Revenue on accepting the application of the petitioner under the said scheme.

10. In so far the issue of adjustment of Rs.3,11,206.00 is concerned, *prima-facie*, it appears that the said amount was the crystallized final tax demand that was mentioned in the demand notice dated 19.07.1991. However, on the petitioner filing and availing benefit of the Kar Vivad Samadhan Scheme, the Revenue issued the Certificate of Intimation for the same showing the total outstanding demand towards interest and penalty that was liable to be paid by the petitioner @ 50% i.e. Rs.6,16,838.00. Thus, the liability of the petitioner in so far assessment year 1987-88 was concerned was crystalized and determined under the Kar Vivad Samadhan Scheme at Rs.6,16,838.00. As against this, the Revenue had already adjusted and appropriated the amount of tax demand of Rs.3,11,206.00 out of the deposit of Rs.6,00,000/- made by the petitioner in October 1991. It is to be noted that, in so far this demand of Rs.3,11,206.00 was concerned it was only towards the tax demand payable by the petitioner. The amount of penalty and interest payable by the petitioner under Section 220(2) read with Sections 271(1)(a), 271(1)(b) and 271(1)(c) was computed @ 50% i.e Rs.6,16,838.00 by the Commissioner of Income Tax, City - XIV, Mumbai in 1999 as due and payable by the petitioner under the KVSS. Therefore, since the liability of

the petitioner for the assessment year 1987-88 against the tax demand of Rs.3,11,206.00 being crystallized, the petitioner was called upon to pay interest and penalty @ 50% as determined at Rs.6,16,838.00 over and above the aforesaid tax liability of Rs. 3,11,206.00 for the assessment year 1987-88 (which was appropriated by the Income Tax Department). However, if the said tax demand was appropriated and adjusted (as it was received in October 1991), then the petitioner cannot be burdened with payment of penalty and interest in the year 1999, merely because the interim order in WP 2490/1991 did not give such directions for adjustment and appropriation. In any event, since October 1991, the Income Tax Department was in receipt of Rs. 6,00,000.00 from the petitioner.

11. In so far the reliefs in prayer clauses (b), (c) and (d) are concerned, the same relate to the declaration filed by the petitioner under Kar Vivad Samadhan Scheme for settlement of its liability for assessment year 1987-88. Once the petitioner had filed its declaration dated 29.12.1998 under the said scheme, the same was considered by the Revenue and after due consideration the Revenue issued the Certificate of Intimation under Section 90(i) of the Finance (No.2) Act, 1998 in

respect of Kar Vivad Samadhan Scheme, 1998 read with Kar Vivad Samadhan Scheme, Rules 1998 in form No.2-A thereof, declaring the 50% liability payable towards penalty and interest by the petitioner at Rs.6,16,838.00. Once, this liability of the petitioner was crystallized on the petitioner's own application, the petitioner was called upon to pay this amount. However in the case of the petitioner, since the amount of Rs.3,11,206.00 (tax liability) was deposited by the petitioner in the year 1991 and the same was adjusted by the Revenue for the outstanding demand for assessment year 1987-88, the petitioner could not have been held to be liable to pay any penalty and interest which has been computed in the Certificate of Intimation issued on 26.02.1999. Further the Certificate of Intimation also does not give the precise period for which the penalty and interest under Section 220(2) read with Sections 271(1)(a), 271(1)(b) and 271(1)(c) has been computed / calculated by the Revenue. In view thereof, there is force in the submissions made by the petitioner that the Certificate of Intimation does not give the precise period for which the penalty and interest has been computed / calculated by the Revenue and merely gives a lumpsum computation and further that the petitioner is not liable to pay any interest and penalty as levied.

12. We may state that it is also an admitted position that the petitioner had already deposited Rs.6,00,000.00 with the Revenue in October 1991. Since the Revenue had appropriated the same towards petitioner's tax liability for the assessment year 1987-88, the computation / calculation of penalty and interest for the said assessment year in the Certificate of Intimation dated 26.2.1999 was therefore, not justified.

13. We, therefore, conclude that the petitioner is not liable to pay any interest on the amount of Rs.3,11,206.00 as the Tax Recovery Officer - 29, Mumbai had adjusted the amount of Rs.3,61,201.00 out of the deposit amount of Rs.6,00,000.00 made by the petitioner in October 1991;

14. In view of the above, the petition is disposed of by issuing the following directions:-

- (a) The Certificate of Intimation dated 26.02.1999 which confers liability on the petitioner towards payment of penalty and interest under the Act for the assessment year 1987-88 is set aside;

- (b) The respondents / Revenue are directed to compute and intimate to the petitioner within a period of 8 weeks any outstanding penalty and interest, if payable, by the petitioner for the assessment year 1987-88 until the date of deposit (i.e. October 1991) by the petitioner of the amount of Rs.6,00,000.00 with the Revenue;
- (c) If the petitioner is liable to pay any penalty and interest, the same shall be adjusted from the balance amount of Rs. 6,00,000.00, if any, held by the Revenue;
- (d) If the Revenue holds any further balance amount after adjusting the above penalty and interest, if any, the same shall be adjusted towards the outstanding liability for assessment year 1985-86;
- (e) Rule is discharged;
- (f) Petition is disposed of on the above terms;
- (g) Parties to bear their own costs.

(MILIND N. JADHAV, J.)

(UJJAL BHUYAN, J.)