IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 440 OF 2008

M/s. Anand Nagar & Company & Anr. ....Petitioners.
v/s.
The Chief Commissioner of Income Tax-Thane
& Others ....Respondents.

Mr. S. Sriram with Ms. Ushashi Datta i/b. PDS Legal for Petitioners.
Mr. Sham Walve with Mr. Pritesh Chatterjee for Respondents.

CORAM: K. R. SHRIRAM &
AMIT B. BORKAR,JJ.
DATED : 9th DECEMBER, 2021.

P.C:-

1. Kar Vivad Samadhan Scheme, 1998 (KVSS) sought to provide a quick and voluntary settlement of tax dues outstanding as on 31st March, 1998 both on the direct tax enactment as well as indirect tax enactment by offering waiver of a part of the arrears of tax and interest and providing insulation against institution of prosecution and imposition of penalty. Petitioner No.1 sought to take advantage of the Scheme and filed declaration under the provisions of KVSS to settle the tax payable.

2. Petitioner No.1 filed a declaration on 31st January, 1999 declaring disputed income to be Rs.3,04,156/- and tax payable at 30% being Rs.91,247/- in terms of clause (iii) to Section 88 (A) of the Finance Act (No.2) Act, 1998 (the said Act).

3. Respondent No.2 issued 'order to pay' in Form of Intimation No.413 dated 24th February, 1999 determining the amount payable under

clause (iv) to Section 88 (A) of the said Act. As per this 'order to pay', the amount payable under KVSS was Rs.7,25,991/- being 50% of interest. Respondent No.2 had relied upon a report dated 17th February, 1999 given by Respondent No.3, copy of which has not been made available to Petitioners. It is alleged that Respondent No.2 converted declaration from clause (iii) to clause (iv) of Section 88(A) of the said Act. Clause (iii) and clause (iv) in sub-section (a) of Section 88 of the said Act reads as under:-

> ***"Section 88:-***
>
> *(a) Where the tax arrear is payable under the Income Tax Act, 1961 (43 of 1961),-*
>
> *(i) …….*
>
> *(ii) ……..*
>
> *(iii) in the case where tax arrears includes income- tax, interest payable or penalty levied, at the rate of thirty-five per cent of the disputed income for the persons referred to in clause (i) or thirty per cent of the disputed income for the persons referred to in clause (ii),*
>
> *(iv) in the case where tax arrears comprises only interest payable or penalty levied, at the rate of fifty percent of the tax arrears."*

4. Without going into details, it is Petitioners' case as submitted by Shri Sriram that Respondent No.2 concluded that amount payable would be covered under Clause (iv) of Section 88 (A) of the said Act because the tax payable by Petitioner had already been adjusted against refund to be given by the Revenue to one of the partners of Petitioner No.1 firm.

5. Shri Sriram submitted that the adjustment has been held to be illegal by Commissioner of Income Tax (Appeals) [CIT(A)] and in an

appeal filed by the legal heirs of the said partner, the ITAT has confirmed the order of CIT (A). Shri Sriram submitted that, therefore, the Tribunal having held that the adjustment by Revenue of the tax payable by Petitioner against the refunds due to its partner was illegal, the liability of the firm to pay the tax gets revived and, therefore, on the date the declaration was filed there was tax arrears that included income tax and interest and therefore, Court should endorse Petitioners' stand that only 35% of the tax arrears, i.e., income tax and interest was payable and not 50% of the interest which has been claimed by Respondents.

6. The reason why we are not going into details is because Respondents, in its reply opposing the Petition, have averred that Petitioners' Chartered Accountant, by a letter dated 5th August, 1998, has informed the Revenue that refund of Rs.2,21,995/- that was due to a partner of the Firm – late Shri Kanhaiyalal Jain be adjusted against demand for Assessment Year 1987-88 against M/s. Anand Nagar & Company, i.e., Petitioner No.1. A copy of the said letter is also annexed at Ex. 'C' to the affidavit in reply. In the rejoinder, there is no denial of addressing this letter.

7. We have to observe that even in the Petition, Petitioner is totally silent about having addressed the said communication dated 5th August, 1998. Petitioner No.2 is a partner of Petitioner No.1-Firm and he ought to have disclosed to the Court and been truthful to the Court and not suppressed that such a communication was so addressed and the

adjustment was made at the request of Petitioner No.1 firm. That was a material fact that has been suppressed. Courts have consistently deprecated parties or litigants who are economical with truth and who resort to falsehood and unethical means for achieving their goals.

8. If clever drafting has created the illusion of a cause of action, the Court must nip it in the bud at the first hearing by examining the party searchingly. An activist judge is the answer to irresponsible law suits said V. R. Krishna Iyer, J. (as he then was) in ***T. Arivandandam V/s. T. V. Satyapal***[1].

9. In ***Dalip Singh V/s. State of Uttar Pradesh***[2], the Court bemoaned that a new creed of litigants has cropped up who do not have any respect for truth and they shamelessly resort to falsehood and unethical means for achieving their goals. Such a litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief.

10. It will also be useful to reproduce paragraph 1 and 2 of *Dalip Singh V/s. State of U.P. and Ors.* (Supra) and they read as under :

> *"1. For many centuries Indian society cherished two basic values of life i.e. "satya" (truth) and "ahimsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-*

1. (1977) 4 SCC 467
2. (2010) 2 SCC 114

> *Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.*
>
> *2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final. "*

11. The Apex Court and this Court have, on many occasions, stated that if a party comes to the Court with unclean hands, which in this case petitioner have, the party should be dealt with very strongly and substantial costs also should be imposed on the party. The conduct of petitioner in suppressing a material fact intends to impede and prejudice the administration of justice. Judiciary is the bedrock and handmaid of orderly life and civilized society. In ***Sciemed Overseas Inc. V/s. BOC India Ltd.***[3] the Apex Court has lamented about the unhealthy trend in filing of affidavits which are not truthful. Para 2 of the said judgment reads as under :

> *"2. A global search of cases pertaining to the filing of a false affidavit indicates that the number of such cases that are reported has shown an alarming increase in the last fifteen years as compared to the number of such cases prior to that. This is illustrative of the malaise that is slowly but surely creeping in. This 'trend' is certainly an unhealthy one that should be strongly discouraged, well before the filing of false affidavits gets to be treated as a routine and normal affair."*

3. 2016 All SCR 370

12. Kuldip Singh, J. (as he then was) in ***S.P. Chengalvaraya Naidu (Dead) by LRs. V/s. Jagannath (Dead) by LRs.***[4], in paragraph 5 observed :

> *"5. .... We are constrained to say that more often than not, process of the Court is being abused. Property–grabbers, tax-evaders, bank loan-dodgers and other unscrupulous persons from all walks of life find the Court process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation."*

13. In ***Oswal Fats and Oils Limited V/s. Additional Commissioner (Administrator), Bareilly Division, Bareilly***[5], the Apex Court followed the same principal that if a person is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the Court not only has the right but a duty to deny relief to such person. The observations of the Hon'ble Supreme Court in *S. P. Chengalvaraya Naidu V/s. Jagannath (Dead) by LRS* (Supra) are relevant in this context. The Court observed as under :

> *"The Courts of law are meant for imparting justice between the parties. One who comes to the Court must come with clean hands ..... We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation."*

The Apex Court also observed in paragraph 6 of the said judgment that :

4. (1994) 1 SCC 1
5. (2010) 4 SCC 728

> *"A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another".*

14. In the circumstances, we are not inclined to entertain the Petition.

15. Petition dismissed.

(AMIT B. BORKAR,J.) **(K. R. SHRIRAM,J.)**