

CASE NO.:
Appeal (civil) 4403-4410 of 2003

PETITIONER:
Shatrusailya Digvijaysingh Jadeja

RESPONDENT:
Commissioner of Income Tax, Rajkot.

DATE OF JUDGMENT: 01/09/2005

BENCH:
B.P. SINGH & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

KAPADIA, J.

These appeals by special leave have been filed against an additional direction given by the Gujarat High Court vide judgment dated 25.9.2002 holding the appellant liable to pay interest under the Kar Vivad Samadhan Scheme, 1998 (for short "the Scheme") on the tax arrears to be determined by the designated authority (for short "DA").

The appellant filed a writ petition in the Gujarat High Court against the rejection of the declarations made by the assessee under the said Scheme.

By the impugned judgment, the High Court held that the declarations filed by the appellant herein were competent as the assessee's revision applications were pending on the date of filing of the declarations. The department was, therefore, directed to entertain the declarations, to determine the amount payable and to grant a certificate under section 90(1).

The decision of the Gujarat High Court dated 25.9.2002 was challenged by the department before this Court vide Civil Appeal No.4411 of 2003. By judgment pronounced today by this Court, we have upheld the decision of the Gujarat High Court in holding that the declarations filed by the assessee under section 88 of the Scheme were competent and that the High Court was right in directing the DA to determine the amount payable under section 90(1) of the Scheme.

In these appeals, the only grievance of the appellant is that the additional direction given by the impugned judgment making the appellant liable to pay interest on the amount payable under section 90 was illegal and without authority of law.

Mr. M.L. Varma, learned senior counsel appearing on behalf of the appellant submitted that under the Scheme, there was no provision for charging interest in cases where the DA wrongly refused to accept the declarations filed by the assessee under section 88, as found by the High Court. He contended that the appellant cannot be faulted particularly when it is found that the DA had erred in rejecting the declarations filed under section 88; that by the impugned judgment, the DA was required to undertake the assessment under section 90 and determine the amount payable on the basis whereof the DA was required to issue a certificate and on that basis the appellant had

to pay the amount; that the appellant cannot be asked to pay interest on the amount which was not ascertainable at the relevant time for error on the part of the DA and in the circumstances, the additional direction given by the High Court should be cancelled.

The Finance (No.2) Act, 1998 introduced a Scheme called Kar Vivad Samadhan Scheme, 1998. It was a recovery scheme. Under the Scheme, the tax arrear had to be outstanding as on 31.3.1998. Under section 87(f), "disputed tax" was defined to mean total tax determined and payable under the IT Act/Wealth Tax Act in respect of an assessment year but which remained unpaid as on the date of making of the declaration from which TDS, self-assessed tax, advanced tax paid, if any, had to be deducted under section 90; the DA had to determine the amount payable and for that purpose, he had to determine the tax arrear as well as the disputed amount as defined under section 87(f). Thus, the DA had to make an assessment of tax arrears, disputed amount and amount payable for each year of assessment; that appeal was barred against the order under section 90 (see section 92); that such determination had to be done within 60 days from the receipt of the declaration and based thereon the DA had to issue a certificate. In other words, till the completion of the aforesaid exercise, the appellant could not have paid the amount of tax and, therefore, the appellant was not liable to pay interest as his liability accrued only after the ascertainment of the amount payable under section 90.

For the aforesaid reasons, on the facts of this case, we set aside the additional direction given by the impugned judgment directing the appellant to pay interest, particularly when the department had wrongly rejected the declarations filed under section 88.

Accordingly, these appeals are allowed, with no order as to costs.