

single cadre post and the petitioner had been transferred/sent on deputation from the said post which had been substantively held by him. Thus, in the eventuality of being repatriated to his parent department, he would be entitled to be posted back to his substantive post that is Director of Agriculture, Punjab. We refrain ourselves from dealing with this contention as the same is pre-mature. If on repatriation the petitioner is not given posting in accordance with law as per the petitioner, he would be at liberty to challenge the same before an appropriate forum.

(29) For the foregoing discussion, we allow this petition by way of granting writ of certiorari and quash the impugned order dated 10th June, 1999,—*vide* which the petitioner has been ordered to continue on the post of Managing Director, PUNSEED till further orders. However, the Government is at liberty to re-appoint the petitioner as Chariman-cum-Managing Director, PUNSEED for which he has given the consent in the petition and also verbally. In case the Government does not decide to post the petitioner as Chairman-cum-Managing Director, PUNSEED, the Government shall recall the petitioner and give him posting in accordance with law. No order as to costs.

R.N.R.

Before N.K. Sodhi and N.K. Sud, JJ.

KAMAL SOOD,—*Petitioner:*

versus

UNION OF INDIA AND ANOTHER,—*Respondents.*

C.W.P. No. 1887 of 1999

26th October, 1999

Finance Act, 1997—S. 67(2)—Voluntary Disclosure of Income Scheme, 1997—Declarant under V.D.I.S. depositing tax alongwith interest late by one day—No explanation for delay—Commissioner was within jurisdiction in rejecting the declaration under section 67(2) which does not give power to condone delay in depositing tax—Scheme is to be construed strictly—The 90 days period granted for depositing tax from the date of declaration cannot be extended.

[Smt. Laxmi Mittal v. Commissioner of Income Tax, 238 I.T.R. 97 (D.B.), dissented]

Held that, the Commissioner was right in rejecting the declaration filed by the petitioner. Section 67(2) of the Finance Act clearly stipulates that if the declarant fails to pay tax in respect of the voluntarily disclosed income before expiry of three months from the date of filing

of the declaration, the declaration filed by him shall be deemed never to have been made under the scheme. Neither this section nor any other provision of the scheme gives power to the Commissioner to condone the delay in depositing tax. In the absence of any such provision and the language of the statute being mandatory, no power vests in the Commissioner to condone any delay under any circumstances. The scheme is a part of the taxing statute and was formulated with a view to give concession to a class of people who have evaded tax in the past by not disclosing their income and, therefore, its provisions have to be strictly construed.

(Para 7)

Further held, that no doubt this Court in *Laxmi Mittal v. Commissioner of Income Tax*, 238 I.T.R. 97 took a view that the Commissioner could condone the delay in payment of tax and accept the declaration but we are in respectful disagreement with that view. The observations made by the learned Judges are too wide and they proceeded on the basis as if 31st March, 1998 was the last date for the deposit of tax, 31st March, 1998 is the last date only for those who filed their declaration on 31st December, 1997 and not for all declarants. Learned Judges have also made reference to a circular dated 3rd September, 1998 issued by the Central Board of Direct Taxes to hold that tax could be accepted even after the expiry of 90 days and, therefore, inferred that the Commissioner had the power to condone the delay. This circular amongst others states that the period for calculating interest will be 90 days from the date of declaration and if the 90th day happens to be a Bank holiday, payment on the 91st day being the next working day would be valid. The Board, in our opinion, has stated the obvious but this clause in the circular by no means gives power to the Commissioner to accept declarations where tax is deposited beyond the period of 90 days from the date of declaration. In the normal course, we would have referred this case to a larger Bench for decision but it is not necessary to adopt this course because even on the basis of the ratio laid down in *Laxmi Mittal's* case, the petitioner before us would not be entitled to any relief. Even if we follow the dictum in *Laxmi Mittal's* case, the declaration filed by the petitioner had to be rejected on account of want of any explanation for the delay. No doubt, the petitioner has offered some explanation in his writ petition but that is not enough. No fault can thus be found with the impugned order.

(Para 7)

Harpawan Kumar, Advocate, *for the petitioner.*

R.P. Sawhney, Sr. Advocate with Rajesh Bindal, Advocate, *for the respondents.*

JUDGMENT

N. K. Sodhi, J.

(1) This order will dispose of two writ petitions No. 1887 and 2195 of 1999 in which common questions of law and fact arise. Since arguments were addressed in civil writ petition 1887 of 1999, the facts are taken from this case.

(2) Challenge in this petition filed under Article 226 of the Constitution is to the order dated 21st July, 1998 passed by the Commissioner of Income Tax, Rohtak under Section 67(2) of the Finance Act, 1997 whereby the declaration filed by the petitioner under the Voluntary Disclosure of Income Scheme, 1997 was rejected.

(3) Petitioner is doing business in timber and is a partner in the firm called M/s Public Timber Traders, Mathura Road, Faridabad. He is assessed to income tax in Ward No. 1 at Faridabad in the State of Haryana. The Government of India by the Finance Act, 1997 introduced a scheme called 'Voluntary Disclosure of Income Scheme, 1997' (for short the scheme). It is contained in Chapter-IV of the Finance Act consisting of Sections 62 to 78 (both inclusive). The purpose of introducing the scheme is to mobilise and channelise funds into priority sectors of the economy and to offer an opportunity to persons who have evaded tax in the past, to declare their undisclosed income, pay a reasonable tax and in future adopt the path of rectitude and civic responsibility. In other words, this was an amnesty scheme in line with similar schemes declared by the Government previously. The sole object of the scheme is to unearth the maximum black money and put the same to productive use. Under the scheme a person could voluntarily disclose his income for which he had failed to furnish a return under section 139 of the Income Tax Act, 1961 or which he had failed to disclose in a return of income furnished by him or which had escaped assessment by reason of his omission of failure to make a return or to disclose fully and truly all material facts necessary for his assessment or otherwise. Such voluntarily disclosed income was taxed at the rate of 30%. The declaration was to be made to the Commissioner in the prescribed form. The tax payable under the scheme in respect of the voluntarily disclosed income was to be paid by the declarant and the declaration was to be accompanied by proof of payment of such tax. Section 67 of the Finance Act which is relevant for our purpose is reproduced hereunder for facility of reference :

"67. Interest payable by declarant—(1) Notwithstanding anything contained in Section 66, the declarant may file a declaration without paying the tax under that section and the declarant

may file the declaration and the declarant may pay the tax within three months from the date of filing of the declaration with simple interest at the rate of two per cent for every month or part of a month comprised in the period beginning from the date of filing the declaration and ending on the date of payment of such tax and file the proof of such payment within the said period of three months.

(2) If the declarant fails to pay the tax in respect of the voluntarily disclosed income before the expiry of three months from the date of filing of the declaration, the declaration filed by him shall be deemed never to have been made under this scheme."

(4) Under this provision the declaration could be filed without paying the tax and in that event the declarant was required to pay tax within three months from the date of filing of the declaration. Sub section (2) provides that if the declarant fails to pay tax before expiry of three months from the date of filing of the declaration, the declaration filed by him shall be deemed never to have been made under the scheme.

(5) The petitioner before us filed the requisite declaration on 30th December, 1997 declaring an undisclosed income of Rs. 1,25,000. The tax payable on this income was Rs. 37,500. He did not pay tax on the undisclosed income alongwith declaration and, therefore, in terms of Section 67 of the Finance Act he could pay that tax within three months from the date of filing of the declaration alongwith interest for delayed payment. Since the declaration was filed on 30th December, 1997 three months expired on 29th March, 1998 which was a Sunday. He could deposit the tax on the following day i.e. 30th March, 1998 but he paid the same on 31st March, 1998 i.e. one day after the period of three months was over. On receipt of the declaration the Commissioner of Income Tax, Rohtak served a show cause notice on the petitioner asking for his explanation as to why the declaration filed by him be not deemed never to have been made under the scheme. In response to this notice, a representative of the petitioner appeared before the Commissioner on 6th May, 1998 and 12th May, 1998 and requested that delay in making the payment being only of one day, the same be condoned. The Commissioner took the view that delay could not be condoned in view of Section 67 (2) of the Finance Act and, therefore, by order dated 21st July, 1998 the declaration was deemed never to have been made under the scheme. Hence the present petition.

(6) The argument of the learned counsel for the petitioner is that the delay in depositing the tax was only of one day and , therefore, the Commissioner ought to have condoned the same since the revenue had suffered no loss and the interest for the delayed period had also been

deposited. He has placed reliance on a Division Bench Judgment of this court in *Smt. Laxmi Mittal v. Commissioner of Income Tax* (1). Shri R.P. Sawhney, learned senior counsel for the department, on the other hand, strenuously urged that the scheme does not give any power to the Commissioner to condone the delay in the deposit of tax and, therefore, the Commissioner had no option but to reject the declaration filed by the petitioner no matter that the delay was of one day only. From the rival contentions of the parties, the question that arises for our consideration is whether the Commissioner has power under the scheme to condone the delay in depositing the tax payable on the voluntarily disclosed income.

(7) We have heard counsel for the parties and are of the view that the Commissioner was right in rejecting the declaration filed by the petitioner. Section 67(2) of the Finance Act, clearly stipulates that if the declarant fails to pay tax in respect of the voluntarily disclosed income before expiry of three months from the date of filing of the declaration, the declaration filed by him shall be deemed never to have been made under the scheme. Neither this section nor any other provision of the scheme gives power to the Commissioner to condone the delay in depositing tax. In the absence of any such provision and the language of the statute being mandatory, no power vests in the Commissioner to condone any delay under any circumstances. The scheme is a part of the taxing statute and was formulated with a view to give concession to a class of people who have evaded tax in the past by not disclosing their income and, therefore, its provisions have to be strictly construed. A person could be given the benefit of the scheme only if he falls within its four corners and not otherwise. It is true that the declaration could be made on or before 31st December, 1997 and where a person makes a declaration on 31st December, 1997 he could deposit the tax simultaneously with the declaration or within three months up to 31st March, 1998 but those who filed the declaration earlier, the period of three months would be counted from the date of declaration and not from 31st December, 1997. In other words, the *sine qua non* for computing the period of three months for depositing the tax is the date of actually filing the declaration and not the last date permissible for filing such a declaration. No doubt, this court in *Laxmi Mittal's case (supra)* took a view that the Commissioner could condone the delay in payment of tax and accept the declaration but we are in respectful disagreement with that view. The observations made by the learned Judges are too wide and they proceeded on the basis as if 31st March, 1998 was the last date for the deposit of tax, 31st March, 1998 is the last date only for those who filed their declaration on

31st December, 1997 and not for all declarants. Learned Judges have also made reference to a circular, dated 3rd September, 1998, issued by the Central Board of Direct Taxes to hold that tax could be accepted even after the expiry of 90 days and, therefore, inferred that the Commissioner had the power to condone the delay. This Circular amongst others states that the period for calculating interest will be 90 days from the date of declaration and if the 90th day happens to be a Bank holiday, payment on the 91st day being the next working day would be valid. The Board, in our opinion, has stated the obvious but this clause in the circular by no means gives power to the Commissioner to accept declaration where tax is deposited beyond the period of 90 days from the date of declaration. In the normal course, we would have referred this case to a larger Bench for decision but it is not necessary to adopt this course because even on the basis of the ratio laid down in Laxmi Mittal's case (*supra*) the petitioner before us would not be entitled to any relief. In Laxmi Mittal's case (*supra*) the petitioner therein had given an explanation for her failure to made deposit within three months as she had met with an accident and that explanation was accepted by the Bench. In the case before us, the petitioner did not furnish any explanation whatsoever before the Commissioner when his representative appeared before the latter on 6th May, 1998 and 12th May, 1998 and sought condonation of delay only because it was only of one day. Why that delay occurred was not explained. Therefore, even if we follow the dictum in Laxmi Mittal's case (*supra*) the declaration filed by the petitioner had to be rejected on account of want of any explanation for the delay. No doubt, the petitioner has offered some explanation in his writ petition but that is not enough. No fault can thus be found with the impugned order.

(8) In the result, there is no merit in the writ petition's and the same stand dismissed. There is no order as to costs.

R.N.R.

Before Jawahar Lal Gupta & V.M. Jain, JJ

DR. RADANANDAN JIWAN DASH,—*Petitioner*

versus

DR. N.K. GANGULY & ANOTHER,—*Respondents*

C.W.P. No. 16547 OF 1999

20th December, 1999

*Post Graduate Institute of Medical Education and Research,
Chandigarh, Rules, 1967—Rl. 7—Rule 7(4) provides the appointment*