

Shamsunder Sales Corporation and Another

Vs

Commissioner of Income-tax, Karnataka, III and Another

C.A. No.5200 of 1990

(S. Ranganathan, S.C. Agarwal JJ)

05.11.1990

ORDER

1. Special leave granted.

2. We propose to dispose of the appeal now itself as it involves a very short point. The appellant had filed an application u/ S. 273A of the Income-tax Act, 1961, before the Commissioner of Income-tax on 6th Feb. 1986. This application was made in pursuance of what has been described as 'an amnesty Scheme' promulgated by the Department on 2-1-1986. It is unnecessary to set out that details of the Scheme. No orders were passed on the application filed by the appellant. He, therefore, approached the High Court of Karnataka by way of Writ Petition. A learned single Judge disposed of the Writ Petition on 16-12-1988 on the ground that the appellant could not take advantage of the amnesty scheme because it was in force only till 31-3-87 and the appellant had not applied in time. The appellant thereupon filed a writ appeal before a Division Bench of the High Court which, however, rejected the writ appeal by holding that since amnesty application had been filed after criminal proceedings lodged against the petitioners the application was not voluntary, and that there was, therefore, no merit in the appeal.

3. It is submitted on behalf of the appellant that all he is seeking is that his application u/ S. 273A read with amnesty scheme should be considered and disposed of by the Commissioner. The application had been filed before 31-3-1987 which was the last date for the filing of applications under the scheme. It was, therefore, not belated. The criminal proceedings against the appellant were lodged only in 1988 and therefore the Appellate Bench does not appear to be correct in saying that the amnesty application was filed after the criminal proceedings were lodged against the petitioner. In these circumstances, we are constrained to set aside the order of the High Court, both the learned single Judge and of the Division Bench.

4. We would like to make it clear that our direction is only that the application filed by the appellant u/ S. 273A should be considered and disposed of in the light of the language of the section. The Commissioner is directed to pass appropriate orders on the application expeditiously, if possible, not later than three months from today.

5. The appeal is disposed of accordingly. Interim orders, if any, will stand vacated.

6. It will be open to the appellant to request the Commissioner to hold up the prosecution pending the disposal of the application. If such an application is made the Commissioner will dispose it of in

accordance with law.

7. With these observations, the appeal is disposed of.

Order accordingly.

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