THE HON'BLE SRI JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.19519 of 2004

ORDER: (Per Hon'ble Sri Justice Dilip B. Bhosale)

The petitioner, in the instant writ petition under Article 226 of the Constitution of India, has challenged the order dated 18.02.2004, passed by the Income Tax Settlement Commission, Chennai on the settlement application No.2/VIJ/113/96-IT, seeking rectification of the order dated 17.05.1999 for the assessment years 1992-93 to 1995-96, passed under Section 245D(4) of the Income Tax Act, 1961 (for short 'the Act'). The order impugned in the writ petition is under Section 245(F)(1) read with Section 154 of the Act.

Learned counsel appearing for the petitioner at the outset invited our attention to the judgment of this Court dated 01.03.2013 passed in a group of petitions bearing Writ Petition No.17213 of 2004 with connected writ petitions and submitted that Settlement Commission has no power to rectify its earlier order passed under section 245D(4) of the Act. He submitted that the very same question fell for consideration of the Division Bench of this Court in the aforementioned writ petitions and it is held that an application for rectification under Section 154 of the Act is impermissible and beyond the jurisdiction of the Commission.

Having confronted with this, learned counsel appearing for the respondents-Revenue fairly stated that the question raised by the petitioner is squarely covered by the judgment of this Court dated 01.03.2013 passed in Writ Petition No.17213 of 2004 and connected petitions. In other words, he submitted that the order impugned in the present writ petition may be set aside in view of the said judgment.

We have perused the judgment of this Court dated 01.03.2013. We find, in those writ petitions also it was urged that the Commission has no power to rectify its earlier order passed under Section 245D(4) of the Act. This Court, while addressing the question, after considering the judgments of the Supreme Court in **CIT Vs. Anjum M.H. Ghaswala and others**[1], **Brij Lal Vs. Commissioner of Income Tax**[2] and **Gadde Venkateswara Rao Vs. Government of Andhra Pradesh**[3], in the concluding paragraphs observed thus:

> "The appropriate course of action for Revenue ought to have been to challenge the order of the Commission perhaps by way of Certiorari. An application for rectification under Section 154 of the Act was however impermissible and beyond the jurisdiction of the Commission, as held in **Brij Lal** (2 supra).
>
> On the aforesaid analysis, the order of the Settlement Commission dated 26.02.2004 cannot be sustained and is accordingly quashed.
>
> In the facts and circumstances W.P.Nos.17207; 17217; 18661 and 18840 of 2004 which involve identical facts and circumstances as in W.P.No.17213 of 2004, are also allowed and the several orders of the Settlement Commission dated 26-02-2004 impugned in the above writ petitions are also quashed."

In this view of the matter, we are left with no option to set aside the impugned order passed by the Income Tax Settlement Commission dated 18.02.2004. Order accordingly.

The Writ Petition is accordingly allowed in terms of this order with no order as to costs. Miscellaneous petitions pending in the writ petition, if any, also stand disposed of.

(DILIP B. BHOSALE, J)

(A.RAMALINGESWARA RAO, J)

05.02.2015
vs

---

[1] (2001) 252 ITR 1 (SC)

[2] (2010) 328 ITR 477

[3] AIR 1966 SC 828