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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1502 OF 2016

Valuable Properties Pvt. Ltd. ..Petitioner
Versus
The Deputy Commissioner of
Income Tax, Central Circle-1 & Ors. ..Respondents

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Mr. J. D. Mistri, Senior Counsel, a/w Madhur Agarwal i/b. Atul Jasani for the Petitioner.
Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the Respondents.

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CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 5th JULY, 2016

P.C.:

1. At the request of the learned counsel appearing for the parties, the Petition is being finally disposed of at the stage of admission.

2. This Petition under Article 226 of the Constitution of India challenges notices dated 8th June, 2016, 14th June, 2016 and 23rd June, 2016. All issued under Section 142(1) of the Income Tax Act, 1961 (the Act) in respect of the assessment years 2008-09 and 2009-2010.

3. The petitioner's grievance is that the impugned notices are without

jurisdiction, as the assessment for the A.Ys. 2008-09 and 2009-2010 have been admitted for consideration by the Settlement Commission as is evident from the order dated 10th May, 2016 passed under Section 245D(2C) of the Act. This is particularly so in view of Section 245F(2) of the Act which provides when an application for settlement is allowed to be proceeded with under Section 245D(2C) of the Act, then till such time as an order is passed under Section 245D(4) of the Act, the Settlement Commission alone would have jurisdiction in relation to proceedings in respect of the assessment years which has been admitted by it. In support of its stand, the petitioner invites our attention to paragraph 10 of the order dated 10th May, 2016 which reads as under:-

> *"In conclusion, we feel that the applicants have successfully rebutted the various averments made on behalf of the Department, and also disclosed the manner of earning the income hitherto undeclared to the Department. Hence, we are of the considered view that in the absence of any evidence which could prove fatal to the respective application of the applicants and render the applications as not being full and true at this juncture, we do not invalidate such applications at this stage, and as such, allow them to be taken to further proceedings under Section 245D(4)."*

4. As against the above, Mr. Suresh Kumar, the learned counsel

appearing for the Revenue submits that in paragraph 9.1 of the order dated 10th May, 2016 passed by the Settlement Commission seems to indicate that only for those assessment years the applications for settlement have been admitted where the petitioner has disclosed additional income which was not disclosed during the regular assessment proceedings. In particular our attention is invited to the following observation in paragraph 9.1 of the order which reads as under:-

> *"Having examined the rival arguments we feel that settlement of a case to be done in accordance with the provisions of Section 245C(1) read with Section 245D(4). However, since we find that the aggregate tax paid is well above the threshold limit we treat the applications as valid and take it forward to the next stage of proceedings under Section 245D(4) when the effects of the aforesaid provisions will be given and only the incomes disclosed for each of the years hitherto not declared before the Assessing Officer, would qualify for settlement."*

The impugned notices are sought to be justified by the Revenue on the basis of the aforesaid observation of the Settlement Commission.

5. At this stage, in view of that the concluding paragraph in the order of the Settlement Commission dated 10th May, 2016 allowing the application for settlement to proceed with further, the impugned notices

are without jurisdiction. However, the distinction which is sought to be made on behalf of the Revenue does not find any mention in the operative part of the order dated 10th May, 2016. Therefore according to us, the impugned notices are without jurisdiction as it is not open to an Assessing Officer to oust the jurisdiction of Settlement Commission in the face of Section 245F(2) of the Act. In case the Revenue reads the order differently particularly in view of the sentences extracted herein above relied upon by Mr. Suresh Kumar then the appropriate remedy would be to seek a clarification and/or rectification of the order dated 10th May, 2016 from the Commission before issuing the impugned notices. The Assessing Officer is a creature of the statute and must not act in a manner which would denude the Commission of the powers bestowed upon it under the Act. Therefore at this stage, we see no reason to let the impugned notices continue and therefore, we quash and set aside the impugned notices dated 8th June, 2016, 14th June, 2016 and 23rd June, 2016.

6. However, while allowing the Petition we make it clear that in case the period of limitation to issue the impugned notices has not expired a further period of six weeks would be excluded for computing the period of limitation to issue the notices. We also note the petitioner's contention

that the entire proceedings are academic as the period to pass an order for the Assessment Years 2008-09 and 2009-10 as expired. We have merely recorded the submissions and not examined it as not required for the present. Therefore we cannot comment upon it.

7. The Petition is allowed in above terms. No order as to costs.

(A. K. MENON, J.) **(M. S. SANKLECHA, J.)**

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