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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2951 OF 2004

Rajesh M. Shah ..Petitioner
Versus
The Income Tax Settlement Commission
& Ors. ..Respondents

....
Mr. B. V. Jhaveri a/w S. Sriram for the Petitioner.
....

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

DATE : 4th AUGUST, 2016

P.C.:

This petition under Article 226 of the Constitution of India challenges the two orders dated 19th March, 2004, one passed by the Income Tax Settlement Commission (I.T. Commission) and the other by the Wealth Tax Settlement Commission (W.T. Commission) respectively. One impugned order dated 19th March, 2004 has been passed by the I.T. Commission under Section 154 r/w Section 245D(4) of the Income Tax Act, 1961 (I.T. Act) while the other impugned order has been passed by the W.T. Commission under Section 35 r/w Section 22D(4) of the Wealth Tax Act, 1957 (W.T. Act).

2. The challenge to both the orders is on the basis that the I.T. Commission as well as the W.T. Commission do not have powers to rectify its final orders passed under Section 245D(4) of the I.T. Act and under Section 22D(4) of the W.T. Act, prior to 1st June, 2011 when sub-clause(6B) was introduced both into Section 245D of the I.T. Act and 22D of the W.T. Act.

3. The issue with regard to the power of the I.T. Commission to rectify an assessment order is no longer res integra as the Apex Court has now in ***Brij Lal and Ors. v/s. Commissioner of Income Tax 328 ITR 477*** decided the issue by holding that the I.T. Commission cannot reopen the concluded proceedings by invoking powers of rectification under Section 154 of the Act. The Apex Court has, inter alia, observed as under:-

> *"On the contrary, under Section 245-I the order of the Settlement Commission is made final and conclusive on matters mentioned in the application for settlement except in the two cases of fraud and misrepresentation in which case the matter could be reopened by way of review or recall. Like the Income-tax Appellate Tribunal, the Settlement Commission is a quasi-judicial body. Under Section 254(2), the Income Tax Appellate Tribunal is given the power to rectify but no such power is given to the Settlement Commission. Thus, we hold that the Settlement Commission cannot reopen its concluded*

proceedings by invoking Section 154 of the Act. Lastly, one must keep in mind the difference between review/recall of the order and rectification under Section 154. The Schedule of Chapter XIX-A does not contemplate invocation of Section 154 otherwise there would be no finality to the assessment by settlement which is different from assessment under Chapter XIV where there is an appeal, revision etc.”

4. The provisions of the W.T. Act with regard to settlement as provided in Chapter VA of W.T. Act is similar to Chapter XIX A of I.T. Act. So also the powers of rectification in Section 35 of the W.T. Act is similar to Section 154 of the I.T. Act. Therefore the principle in Brijlal (supra) would be equally applicable in respect of orders passed by the W. T. Commission.

5. Accordingly, in the above view, the Rule is made absolute and the two orders dated 19th March, 2004 passed by the I. T. Commission and the W.T. Commission respectively are quashed and set aside.

6. Rule is made absolute in above terms. No order as to costs.

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

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