IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.22685 of 2004
&
W.M.P.No.27423 of 2004

Mohan Aluminium Pvt. Ltd.,
228, Premvihar Upper Palace Orchards
Sadhashiv Nagar
Bangalore - 560 080 ... Petitioner

vs.

1. Income Tax Settlement Commission
   Additional Bench
   488-489 Anna Salai
   Chennai - 600 035

2. Union of India
   Represented by the Chairman
   Central Board of Direct Taxes
   North Block, New Delhi

3. Commissioner of Income Tax III
   Central Revenue Building
   Queens Road, Bangalore - 560 001

4. Assistant Commissioner of Income Tax
   Circle 12(1), 14/3, Rastrothana Bhavan
   IV Floor Nrupathanga Road (Opp RBI)
   Bangalore ... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari calling for the records of the first respondent Income Tax Settlement Commissioner Additional Bench, Chennai in its File Settlement Application No.12/111/76/95-IT dated 03.02.2004 and quash the same

For Petitioner : Mr.J.Balachander
For Respondents : Mr.T.Pramod Kumar Chopda

O R D E R

Heard Mr.J.Balachander, learned counsel for the petitioner and Mr.T.Pramod Kumar Chopda, learned senior standing counsel appearing for the respondents.

2. The petitioner has filed this writ petition challenging the order passed by the Settlement Commissioner Additional Bench, Chennai dated 28.10.2002 for the Assessment Year 1995-96. The only issue to be decided is as to what would be the terminal date for charging interest under Section 234B of the Income Tax Act, 1961.

3. The facts in the instant case are as follows:

The petitioner filed return of income for the relevant Assessment Year on 30.11.1995. An intimation under Section 143 (1)(a)of the Act was given by the Assessing Officer on 14.11.1996. But even before that the petitioner had filed a petition before the Settlement Commission on 01.01.1996 under Section 245 C of the Act. Thus, due to the filing of the petition before the Commission, the Assessing Officer did not proceed further with the intimation under Section 143 (1) (a) of the Act. The Settlement Commission passed an order under Section 245D(1) of the Act entertaining the settlement application on 04.07.1997. Ultimately, the case was settled under Section 245D (4) of the Act vide order dated 28.10.2002. As against the said order, the Revenue preferred an appeal to the Hon'ble Supreme Court and the matter was heard along with the other connected matters and the Hon'ble Supreme Court had remanded the matter for fresh consideration. At this stage, it has to be pointed out that the terminal date for charging of interest as per the order passed by the Settlement Commission dated 28.10.2002 was 14.11.1996 i.e., the date on which the intimation under Section 143 (1) (a) of the Act was given. The appeal filed by the Revenue as against the order of the Settlement Commission in the petitioner's case and the other similar matters were allowed and the matter was remanded to the Settlement Commission for fresh consideration with the following direction:

> “To sum up, the inevitable conclusion is that interest has to be charged for the period beginning from the first day of April next following the relevant financial year upto the date of commission's order at the rate applicable, on interest chargeable under Section 234B, when an order u/s.245D(4) is passed, followed by quantification u/s.245D(6). The Settlement Commission on such remand directed that the interest is chargeable upto the date of order under Sub-Section 4 of Section 245D, which is in the petitioner's case on

28.10.2002 and the same is questioned by the petitioner in this writ petition.”

4. The learned counsel on either side would submit that the dispute with regard to what would be the terminal date for charging interest in such case was put to rest by the Constitution Bench of the Hon'ble Supreme Court in Brij Lal and Ors. Vs. Commissioner of Income Tax reported in (2010) 328 ITR 477 wherein the Hon'ble Supreme Court held that the terminal date for charging interest will be the date on which the order under Section 245D (1) is passed i.e., the date on which the Settlement Commission entertains the application for settlement. By applying the said decision to the instant case, the appropriate date for charging interest would be 04.07.1997.

Accordingly, the writ petition is allowed and the impugned order dated 03.02.2004 is set aside and it is ordered that the interest under Section 234A shall be charged upto the date of order under Section 245D (1) i.e., 04.07.1997 in stead of 28.10.2002 i.e, order under Section 245D (4) of the Act. The fourth respondent is directed to pass the consequential order pursuant to the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

gpa

To

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   Chennai - 600 035

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Bangalore

+1 CC to J. Balachander, Advocate Sr.No.50388

W.P.No.22685 of 2004

MP (CO)
MD : 22/09/2016