NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 07.09.2017

Delivered on 22.09.2017

Writ Petition (T) No. 4990 of 2009

1. Commissioner of Income-tax, Raipur
2. Asstt. Commissioner of Income-tax, Circle-1(2), Raipur

---- Petitioners

Versus

1. The Settlement Commission, Additional Bench, 100. Middletown Row, 2nd Floor, Kolkata
2. Bajrang Power & Ispat Ltd. 522/C, Urla Industrial Estate, Raipur

---- Respondents

Writ Petition (T) No. 5375 of 2009

1. Commissioner of Income-tax, Raipur
2. Dy. Commissioner of Income-tax, Circle-2(1), Raipur

---- Petitioners

Versus

1. Income Tax Settlement Commission, Additional Bench, 100. Middletown Row, 2nd Floor, Kolkata
2. M/s Chhattisgarh Kshetriya Grih Nirman Sahakari Samiti Maryadit, Raipur

---- Respondents

Writ Petition (T) No. 5416 of 2009

1. Commissioner of Income-tax, Raipur
2. Dy. Commissioner of Income-tax, Circle-2(1), Raipur

---- Petitioners

Versus

1. Income Tax Settlement Commission, Additional Bench, 100. Middletown Row, 2nd Floor, Kolkata
2. Shri Rajkamal Singhania, 15/480, Circuit House Chowk, Civil Lines, Raipur

---- Respondents

Writ Petition (T) No. 5417 of 2009

1. Commissioner of Income-tax, Raipur
2. Dy. Commissioner of Income-tax, Circle-2(1), Raipur

---- Petitioners

Versus

1. Income Tax Settlement Commission, Additional Bench, 100. Middletown Row, 2nd Floor, Kolkata
2. M/s Singhania Enterprises, 15/480, Circuit House Chowk, Civil Lines, Raipur

---- Respondents

Writ Petition (T) No. 5418 of 2009

1. Commissioner of Income-tax, Raipur
2. Dy. Commissioner of Income-tax, Circle-2(1), Raipur

---- Petitioners

Versus

1. Income Tax Settlement Commission, Additional Bench, 100. Middletown Row, 2nd Floor, Kolkata
2. Smt. Usha Devi Singhania, 15/480, Circuit House Chowk, Civil Lines, Raipur

---- Respondents

Writ Petition (T) No. 5426 of 2009

1. Commissioner of Income-tax, Raipur
2. Dy. Commissioner of Income-tax, Circle-2(1), Raipur

---- Petitioners

Versus

1. Income Tax Settlement Commission, Additional Bench, 100. Middletown Row, 2nd Floor, Kolkata
2. Shri Manish Raj Singhania, 15/480, Circuit House Chowk, Raipur

---- Respondents

Writ Petition (T) No. 5425 of 2009

1. Commissioner of Income-tax, Raipur
2. Dy. Commissioner of Income-tax, Circle-2(1), Raipur

---- Petitioners

Versus

1. Income Tax Settlement Commission, Additional Bench, 100. Middletown Row, 2nd Floor, Kolkata
2. Shri Rohit Singhania, 15/480, Circuit House Chowk, Civil Lines, Raipur

---- Respondents

Writ Petition (T) No. 5437 of 2009

1. Commissioner of Income-tax, Raipur
2. Dy. Commissioner of Income-tax, Circle-2(1), Raipur

---- Petitioners

Versus

1. Income Tax Settlement Commission, Additional Bench, 100. Middletown Row, 2nd Floor, Kolkata
2. Shri Lalit Kumar Singhania, 15/480, Circuit House Chowk, Civil Lines, Raipur

---- Respondents

Writ Petition (T) No. 5434 of 2009

1. Commissioner of Income-tax, Raipur
2. Dy. Commissioner of Income-tax, Circle-2(1), Raipur

---- Petitioners

Versus

1. Income Tax Settlement Commission, Additional Bench, 100. Middletown Row, 2nd Floor, Kolkata
2. Shri Rishi Raj Singhania, 15/480, Circuit House Chowk, Civil Lines, Raipur

---- Respondents

Writ Petition (T) No. 5436 of 2009

1. Commissioner of Income-tax, Raipur
2. Dy. Commissioner of Income-tax, Circle-2(1), Raipur

---- Petitioners

Versus

1. Income Tax Settlement Commission, Additional Bench, 100. Middletown Row, 2nd Floor, Kolkata
2. M/s. Manish Trading Co., 15/480, Circuit House Chowk, Civil Lines, Raipur

---- Respondents

Writ Petition (T) No. 5556 of 2009

1. Commissioner of Income-tax, Raipur
2. Dy. Commissioner of Income-tax, Circle-2(1), Raipur

---- Petitioners

Versus

1. Income Tax Settlement Commission, Additional Bench, 100. Middletown Row, 2nd Floor, Kolkata
2. Smt. Manju Devi Singhania, 15/480, Circuit House Chowk, Raipur

---- Respondents

Writ Petition (T) No. 5419 of 2009

1. Commissioner of Income-tax, Raipur
2. Dy. Commissioner of Income-tax, Circle-2(1), Raipur

---- Petitioners

Versus

1. Income Tax Settlement Commission, Additional Bench, 100. Middletown Row, 2nd Floor, Kolkata
2. M/s Shiva Enterprises, 15/480, Circuit House Chowk, Civil Lines, Raipur

---- Respondents

For Petitioners	:	Smt. Naushina Afrin Ali, Advocate
For Respondent no.2	:	Shri Neelabh Dubey, Advocate

Hon'ble Shri Justice P. Sam Koshy

C A V ORDER

These are bunch of writ petitions preferred by the Income Tax Department questioning the validity and veracity of the order of the Income Tax Settlement Commission, Kolkata dated 27.03.2008 Annexure P-1.

2. The brief facts relevant for adjudication of the present dispute are that a search and seizure proceeding under Section 132 (1) of the Income-tax Act was conducted on the business as well as residential premises of respondent no.2 in each of the writ petitions. During the course of search proceedings, certain incriminating documents, book of accounts and other materials were found and huge unexplained deposits/investments running into several crores were detected. For the purpose of assessment of the undisclosed income, notices under Section 153 BC was issued on 22.11.2000. After sometime, the assessee filed an application before the Settlement Commission on 05.07.2002. The proceedings went on for a considerable period of time. Meanwhile, the Finance Act, 2007 came into force and the newly added Section 245 HA was introduced which envisages the provision of abatement of proceeding before Settlement Commission. In view of the amended provision, if the settlement application was not disposed of by 31st of March, 2008 under the provisions of Section 245 HA of the Act, all such proceedings before the Settlement Commission would have stood abated and the matter would have to be decided afresh by the Assessment Officer. The respondent no.2 in each of the cases preferred a petition before the High Court of Kolkata. One such petition was registered as WP No. 315 of 2008 which came up for hearing on 20.03.3008, on which date, the High Court of Kolkata as an interim measure passed the following order:

> "In the meantime, the Settlement Commission shall dispose of the application of the petitioner pending before the Commission in accordance with the provisions of the Income Tax Act, 1961."

3. Taking aid of the said order passed by the High Court of Kolkata, the Settlement Commission meanwhile issued the impugned order Annexure P-1 dated 27.03.2008 in each of the cases under Section 245D (4) of the Income Tax Act accepting the income as offered by each of the respondent assessees without proper verification or examination of the correctness of the income offered by them.

4. It is this action and order of the Settlement Commission which is under challenge in the present writ petitions.

5. Learned counsel appearing for the Income Tax Department submits that, the Settlement Commission is required to follow a set of norms prescribed under the provisions of the Act itself while proceeding with a settlement case. That it has miserably failed to abide by the directives and the statutory requirement under the law and that the decision making process by the Commission was erroneous and without any basis. As per the petitioners, the Settlement Commission has totally ignored and disregarded the mandatory requirement and have gone to the extent of waiving the procedure prescribed under the Act. The order passed by the Settlement Commission thus is without any basis. According to the petitioners, the Settlement Commission got carried away by the interim order dated 20.03.3008 passed by the High Court of Kolkata in Writ Petition No.315 of 2008 whereas even the Kolkata High Court had ordered for conclusion of the proceeding strictly in accordance with the provisions of law. Since the statute prescribes the manner in which the Settlement Commission has to proceed and decide, it was duty bound on its part to ensure that the provisions of law are duly complied with. The petitioners referred to paragraph-4 of the impugned order whereby it has been observed by the Commission that since it is not practicable to examine the records and investigate the case for proper settlement as there is a direction by the High Court, they are inclined to pass an order under Section 245 D(4) of the Income Tax Act. This observation itself is an indication of there being total non application of mind as also the impugned order to have been passed without any sufficient basis rather only on the submissions put forth by respondent no.2 assessee. This procedure for disposing of the settlement proceedings is illegal and per se in direct contravention to the statutory provisions which were mandatorily required to be followed while disposing of settlement proceedings. Once when the Settlement Commission was of the view that it was not practicable for the Commission to examine the record and investigate the case, it ought to have deferred the proceedings or should have brought to the notice of the department for approaching the High Court for a suitable direction. The High Court never intended to direct the Commission that the proceeding be concluded ignoring the statutory provisions. It was thus prayed for quashment of Annexure P-1 and for remitting the matter back to the Settlement Commission for deciding afresh.

6. Per contra, learned counsel appearing for respondent no.2 raised objection so far as the maintainability of the writ petitions are concerned. According to him, it is a case where the Settlement Commission has passed the impugned order Annexure P-1 purely in accordance with the provisions of law. Further the order has been passed in the light of an order passed by the Kolkata High Court on 20.03.3008 whereby the High Court of Kolkata had directed the Commission to decide the case by the next date of hearing which was fixed on 28th of March. Since the Commission has decided the case in the light of an order passed by the Kolkota High Court, any subsequent proceeding arising out of the outcome of the direction given by the Kolkata High Court has to be filed in the High Court of Kolkata and not in the High Court of Chhattisgarh. Thus, the present writ petitions are not maintainable for lack of jurisdiction.

7. That the petitioners should not have any grievance if the Settlement Commission has disposed of the matter for the reason that the Income Tax Department was granted ample opportunity to submit their reply and report covering all the issues raised by the respondent no.2 seeking for settlement. That the respondent no.2 had moved an application for settlement on 05.07.2002 and in spite of various directions asking the Department to submit their report, the Department could file it only on 13.03.2008 and which proves that it was the Income Tax Department who were delaying in proceedings. As such, if ultimately the Settlement Commission keeping in mind the subsequent amendment which was brought to the Income Tax Act has closed the matter accepting the proposal of settlement of the respondent no.2, the same cannot be said to be either contrary or without application of mind rather it is a case where the order seems to be just and reasonable purely taking note of the statutory provisions i.e. new amendment which was brought to the Income Tax Act by way of Section 245 HA. It was further argued that when the proceedings were pending before the Settlement Commission since 2002 on wards, it cannot be said that the Settlement Commission has shown any sort of haste in concluding the proceedings but has proceeded to decide the matter with the available factual matrix and record. The statute itself prescribes a procedure wherein if the department fails to submit their report before the Settlement Commission within the prescribed time limit, as per the proviso to Section 245D as amended in 2007, it could proceed to pass an order under Sub Section 4 without such report. In the instant case, though the application for settlement was filed in July 2002 but till March 2008 the Income Tax Department for reasons best known to them did not file their reply/objection/report. Thus, the impugned order cannot be faulted with and the petitions deserve to be rejected.

8. Having considered the contentions put forth by the counsel appearing on either side and on perusal of the record, the issues which require to be adjudicated upon are; i) Whether the writ petitions filed by the petitioners before this High Court are tenable or not or it should have been filed before the High Court of Kolkata. ii) Whether the impugned order passed by the Settlement Commissioner particularly on the basis of the observation in the impugned order of it being practicably not possible to scrutinize the documents on record, can be said to be proper, legal and justified.

9. So far as the first issue of jurisdiction is concerned, undisputedly respondent no.2 in each of the writ petitions had their business in the State of Chhattisgarh, that the Income Tax Department conducted a search/seizure proceeding at their premises in the State of Chhattisgarh and the territorial jurisdiction for assessment of the tax in respect of respondent no.2 in each writ petition was the Income Tax Department in the State of Chhattisgarh.

10. The admitted facts are that a search proceeding was initiated on 20.08.2000 under Section 132 (1) of the Income Tax Act. A notice under Section 153 BC for the purpose of assessment of undisclosed income was issued on 22.11.2000 to which respondent assessees also filed their return.

Pending the assessment proceedings, the respondents assessees filed an application on 05.07.2002 for settlement of the assessment proceedings under Chapter 19A of the Act. The settlement proceedings which were initiated in the year 2002 went on till 2008 when suddenly the respondent assessees filed a writ petition before the Kolkata High Court challenging the vires of Section 245HA and in the process also sought for relief of a direction to the Settlement Commission for early disposal of the long pending dispute. The said writ petition came up for hearing for the first time on 20.03.2008 where the Kolkata High Court passed an order directing the Settlement Commission to dispose of the application of the petitioners pending before the Commission in accordance with the provisions of the Income Tax Act.

11. Based upon the said direction of the Kolkata High Court, the Settlement Commission i.e. respondent no.1 passed the impugned order Annexure P-1 on 27.03.2008, in the garb of the directives given by the Kolkata High Court under Section 245 D(4) of the Income Tax Act. What is relevant to be considered is the order under challenge is an order passed under Section 245 D (4) of the Income Tax Act. The Settlement Commission having passed an order under Section 245 D(4), the proceeding culminates and the impugned order passed becomes a fresh cause of action altogether. Once it is a fresh cause of action, the aggrieved person has the liberty of challenging the same wherever part cause of action has arisen. In the instant case, since the assessment proceedings came within the territorial jurisdiction of the state of Chhattisgarh, the proceedings could be in the State of Chhattisgarh and it could also be filed at the place where the Settlement Commission locates which in the instant case is Kolkata. Thus, the petitioners had an option of choosing the forum between the High Court of Kolkata and the High Court of Chhattisgarh for challenging the order passed by the Settlement Commission.

12. So far as the objection of the respondent no.2 that the decision of the Settlement Commission was pursuant to a direction given by the High Court of Kolkata is concerned, the same by itself cannot be considered to be a ground and reason to challenge the subsequent development before the same High Court as what is under challenge is the veracity of an order passed invoking the provisions of Section 245 D(4). What is also pertinent to take note is the fact that the writ petition which was filed before the Kolkata High Court by the assessees got dismissed. Since the impugned order under Section 245 D (4) is an independent order passed in exercise of its statutory powers conferred upon the Settlement Commission and where the challenge is on the merits of the order, the Income Tax Department had an option of either approaching the Kolkata High Court or they could have filed it in the High Court of Chhattisgarh which they have done at high Court of Chhattisgarh and which in the opinion of this Court cannot be said to be in any manner bad in law or without jurisdiction. Thus, the objection pertaining to the jurisdiction of this High Court does not have much force and the same deserves to be and is accordingly rejected.

13. So far as the second issue testing the veracity of the impugned order is concerned, what has to be seen is whether the decision was in accordance with the procedure prescribed under the statute or not. Whether the mandatory requirement under the Act has been followed by the Commission or not? Whether the Settlement Commission could have by itself waived off the procedure prescribed while passing the impugned order? Whether even at the instance of the interim order of the Kolkata High Court dated 20.03.2008 the Settlement Commission could have kept away the statutory requirements while hearing a settlement proceeding under Chapter 19A of the Act. In a nutshell, what has to be seen is the decision making process of the Settlement Commission rather than the decision itself.

It would be relevant at this juncture to refer to the relevant portion of the impugned order wherein the Settlement Commission in paragraph-4 has held as under:

> "At this juncture, it is not practicable for the Commission to examine the records and investigate the case for proper settlement. However, to comply with the direction of the Hon'ble Court, we hereby pass an order u/s. 245 D (4) of Income Tax Act, 1961, after giving an opportunity to be heard to the applicant and to the Commissioner."

14. Taking the said observation of the Settlement Commission what has to be looked into is; i) whether there has been an application of mind while passing the impugned order ii) whether the decision of the Commission could be said to have been applying a judicious approach?

15. As per Section 245 D (2B), immediately on an application filed for settlement is allowed to be proceeded, the Settlement Commission shall call for a report from the Commissioner who should furnish his report within a period of 30 days from the receipt of the communication from the Settlement Commission. Sub Section (2C) of of Section 245D further envisages that where a report of the Commissioner called for under Sub Section (2B) is furnished, the Settlement Commission may on the basis of the report declare the application in question as invalid and shall send copy of such order to the applicant and to the Commissioner. Sub Section (2D) further envisages a situation where the application which has not been declared invalid and also the application which has been allowed to be further proceeded, the Settlement Commission may call for the records from the Commissioner and after examination of such records may proceed further and pass an appropriate order. Section 245 D (4) provides the method and procedure for the Settlement Commission to act upon after the report of the Commissioner is submitted before it.

16. Keeping all these provisions in mind when we look at the impugned order it clearly reflects that the Settlement Commission perhaps has shown a bit of haste in concluding the proceeding. Paragraph-4 of the impugned order which stands reproduced in the preceding paragraph clearly shows that while passing the impugned order the Settlement Commission had not examined the records nor had it investigated the case but only because there was a direction given by the High Court of Kolkata it proceeded to decide the matter without examination of the records and investigating the matter.

17. If we look into the interim direction given by the Kolkata High Court in its order dated 20.03.2008, it is evidently clear that the Kolkata High Court also had not directed the Commission to overlook the provisions of the Income Tax Act. True it is that the High Court of Kolkata had ordered the Settlement Commission to decide the case meanwhile but at the same time the High Court of Kolkata had also made an observation that the application has to be decided **"in accordance with the provisions of the Income Tax Act"**. This observation of the High Court of Kolkata leaves no ambiguity in anybody's mind that the Settlement Commission was required to follow the provisions of law as is required under Chapter 19A. It is also not a case where the Income Tax Department had not submitted its report/objection/reply even though at a belated stage. Once such report/objection/reply had been filed, the Commission was duty bound to act in accordance with the procedure prescribed under Section 245D. The observation made in paragraph-4 of the impugned order clearly reflects giving a go bye to the statutory provisions which were mandatorily to be complied with while disposing off the settlement application. This clearly amounts the impugned order to have been passed without proper application of mind and the approach also cannot be termed to be a judicious approach.

18. Once when the Settlement commission itself reaches to the conclusion that it is not practicable for it to examine the record and investigate the case, it ought to have laid its hand off and could have either intimated the Kolkata High Court regarding paucity of time to examine and investigate or could have asked the Department to move an appropriate application for grant of extension of time from the Kolkata High Court. In the absence of either of the steps, closing of a matter and passing an order without examination of the records or without proper investigation would naturally vitiate the entire proceedings which otherwise has a force of law and where the principles of fairness, reasonableness and a judicious approach were mandatorily required. Thus, in the opinion of this Court, the impugned order would not stand the test of reasonableness. Once when the decision making process itself is found to be in contravention to the statutory provision, it is but natural that the decision would not be a justified order in the eye of law. If the statute casts an obligation as regards the procedure to be adopted by the Settlement Commission, no deviation would/may be permitted under the law and it was duty bound to comply with the statutory requirements. Thus, what has been assessed being without examination of records as also without proper investigation, the same is not legally sustainable and deserves to be set aside.

19. The order under Section 245(4) of the Settlement Commission all the more had to be after due consideration of the procedure prescribed and after thorough investigation and examination of records for the reason that an order passed by the Settlement Commission under Section 245 D(4) is final and conclusive in terms of 245(I) of the Act.

20. For the aforesaid reasons this Court is of the opinion that the impugned order as it stands is not sustainable and the same deserves to be and is accordingly set aside. The matter is remitted back to the Settlement

Commission to decide the application of the assesses afresh after affording an opportunity of hearing to the parties in accordance with law without being influenced by any observation made by this Court while passing this order. Considering the fact that it is a matter where the application for settlement was filed in the year 2002, it is expected that the Commission shall take a prompt and expeditious decision.

Sd/-
P. Sam Koshy
Judge

Khatai