NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPT No.96 of 2013.

Smt. Shanti Devi Agrawal W/o Shri Ram Kumar Agrawal, Aged About 74 Years Pyarelal Agrawal Marg, Ramsagar Para, Ps Azad Chowk, Raipur 482001

---Petitioner

Versus

1. Union Of India & Ors. Through Secretary Central Board Of Direct Taxes, Ministry Of Finance, Department Of Revenue, North Block New Delhi.
2. The Income Tax Settlement Commission Through Secretary, Additional Bench, 10c Middleton Road, Second Floor, Kolkata 700071
3. The Chief Commissioner Of Income Rtax, Central Revenue Building, Civil Lines, Raipur C.G.
4. The Commissioner Of Income Tax, Central Revenue Building, Civil Lines, Raipur C.G.
5. The Deputy Commissioner Of Income Tax, Circle 2(1), Civil Lines, Raipur C.G.
6. Shri Manish Pilliwar, Architect & Engineer, Govt. Approved Valuer, 25, South Avenue, Choubey Colony Raipur Ps Azad Chowk, Distt Raipur, C.G.

---Respondents

For Petitioner	:	Shri Siddharth Dubey, Advocate
For Respondents No.1 to 5	:	Shri Amit Choudhary and Shri Ajay Kumrani, Advocates

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Hon'ble Shri Justice P. Sam Koshy

Order On Board

Delivered on 22/09/2017.

1. The present writ petition has been filed by the assessee under article 226 of the constitution of India assailing the order of the Settlement Commission-respondent No.2 decided on 28/06/2013 on a settlement application filed by the petitioner under Section 245-A of the Income Tax Act and have also sought for quashment of consequential order passed by the assessing officer dated 27/08/2013 vide Annexure-P2.
2. The brief facts relevant for adjudication of the issue involved in the case is that, the respondent department conducted a search at the petitioner's residential premises under Section 132 of the Act. Subsequent to the search and the proceeding drawn thereafter, the petitioner preferred for settlement of her case before the respondent and accordingly filed an application for settlement under Section 245-A of the Act.

3. The dispute was pertaining to the assessment year 2004-2005 to 2010-2011. The petitioner had disclosed additional income of Rs.38,01,091/- for the assessment year 2004-2005 to 2010-2011 against various items of income.

4. The first application was dismissed. However, on the subsequent application being made, the same was admitted and entertained and was finally decided vide the impugned order dated 28/06/2013.

5. The respondent No.2 further made an addition of Rs.97,34,210/- as undisclosed income spent in renovation of the house property at Fafadi, Raipur. This addition was made on the basis of valuation report of the registered valuer. The petitioner accepts the entire order of the Respondent No.2-Settlement Commission except for its finding in paragraph 5.12 to 5.14.

6. The sole contention of the petitioner was that, the finding of the Settlement Commission was based on the valuation report as submitted by the registered valuer. It is this report of the registered valuer which is questioned by the petitioner in the present writ petition stating that, the report is contrary to the provision of the act and has adversely prejudiced the rights of the petitioner and therefore is prima-facie erroneous.

7. The counsel for the petitioner took the court through the provision of Section 142-A of the Income Tax Act and submitted that, the Act envisages that for the purpose of making an assessment or re-assessment, the accessing officer may refer to the valuation officer to make an estimate of such value of the property so referred and submit a report in this regard. According to the counsel for the petitioner, valuation officer has been defined in Section 2 'R' of the Wealth Tax Act. The counsel for the petitioner further contended that, once when Section 142-A requires the reference to the valuation officer for the purpose of assessment or re-assessment then even for proceeding before the Settlement Commission, the authority deciding the settlement proceeding ought to have referred the matter to the valuation officer in the department and should have got the property assessed. Having not done so and getting the property valued from the registered valuer, the Settlement Commission has ignored the provisions of Income Tax Act while proceeding with the settlement proceedings, thus requiring the quashment off to the extent of its finding from paragraph 5.12 to 5.14.

8. According to the counsel for the petitioner, there cannot be a practice and procedure of the respondent department adopting two separate practice and procedure under the same Act for two different provisions. According to the counsel for the petitioner, once when the proceeding under Section 142-A requires a reference to be made to the valuation officer, it should be the

same procedure which also ought to be applied by the Income Tax Settlement Commission for settlement of the cases.

9. The counsel for the petitioner relied upon the recent decision of ***Kerala High Court 2017 391 ITR 374 (KER)***. The counsel for the petitioner further referring to the provision of Section 69-B of the Income Tax Act submitted that, the ingredients required for Section 69-B is that, the assessee has to be found to have first made an investment and is found to be the owner of the said property. Further the amount expended must exceed the amount recorded in that behalf, in the books of account maintained by the assessee, coupled with the facts that the assessee is not in a position or does not offer any explanation about such excess amount or the explanation submitted if any is not satisfactory.

10. The counsel for the petitioner relying upon the decision of Supreme Court reported in ***1993 ITR Volume 201 page 611(SC)*** highlighted the fact that, if it is prima-facie brought to the notice of the High Court under article 226 in respect of any error of law or a procedural lapse on the part of department, this court in exercise of its extra-ordinary writ jurisdiction under Article 226 of the Constitution Of India can scrutinise it and can determine the illegality of the procedure followed. The High Court in exercise of its power of judicial review would not scrutinise the decision but the decision making process.

11. The counsel for the revenue however opposing the petition submitted that, it is a case where the petitioner has suppressed material facts at the time of assessment being made and it is only when the search and seizure was conducted the unaccounted income of the petitioner could be detected and it is only thereafter that the petitioner moved an application for settlement of the case and it was on an application moved at the instance of petitioner that the settlement commission took cognizance of the matter and decided to proceed further in accordance with the provision for settlement under the Act.

12. Once when the proceedings have been initiated at the behest of the petitioner and order has been passed, the petitioner subsequently cannot turn around and cry foul of the proceedings.

13. It was also the contention of the counsel for the revenue that, the decision of the Settlement Commission is binding on the petitioner as the commission was constituted at the request and behest of the petitioner.

14. According to the counsel for the respondents, the decision of the Settlement Commission in engaging registered valuer for the purpose of assessing the fair market value of the property seized cannot be faulted with, as it is a

normal practice and procedure which is adopted by the department under such circumstances and that there is nothing new which the respondent have adopted or there is nothing in the provision of law which prohibits the Settlement Commission from adopting such a practise.

15. According to the counsel for the Income Tax Department, the Settlement Commission cannot be equated with that of an authority who could be brought within the ambit of Section 2(7A) of the Income Tax Act. According to the petitioner, since it was a proceeding drawn exclusively under chapter '19' A of the Income TaxAct.

16. The counsel for the department referring to Section 245-I submitted that, the decision of the Settlement Commission has to be accepted of having attained finality and the same should not be permitted to be reopened on petty issues.

17. Having heard the rival contentions put forth on either side and on perusal of record what is undisputed is the fact that, there was a search conducted on the premises of the petitioner and during the course of the search, certain additional income were discovered which were unaccounted or were unexplained or were not disclosed fully. That in order to ensure that the dispute raised by the department comes to an end and with an intention of bringing end to litigation, the petitioner herself approached for settlement of the dispute by moving an appropriate application before the Settlement Commission invoking chapter '19' A.

18. On an application made by the petitioner, the Settlement Commission entrusted the details of the additional income and materials seized to the registered valuer to submit the valuation report. Based on the report of the registered valuer, the Settlement Commission passed an order.

19. If we peruse the proceedings it reflects that, the petitioner at no point of time did question, the matter being sent to the registered valuer during the pendency of the matter before the Settlement Commission. It is only now, after the final order has been passed that the petitioner has filed the present Writ Petition raising all these issues.

20. The Settlement Commission's decision is always considered to be final as Section 245-I specifically envisages the fact that, every order passed by the Settlement Commission shall be conclusive and no matters covered under such order be permitted to be reopened in any proceeding under this Act or under any other law for the time being in force.

21. The only ground of challenge which has been raised by the counsel for the petitioner is the fact that, the Settlement Commission ought to have referred the matter to the valuation officer in the department to make an estimate and submition of report valuing the nature of work/property assigned to be valued instead of getting the valuation report from the registered valuer.

22. When we look into the provision of chapter '19' A, it does not any where prescribe a procedure wherein the Settlement Commission has to refer a matter to the Valuation Officer for valuing the nature of work/property assigned to be valued. Further reading of the provision of chapter '19' A would show that, the Settlement Commission has been empowered with its own procedures for the disposal of the application for settlement moved by re-assessee.

23. When we peruse Chapter 19-A of the Act, it reflects that it is a complete Code in itself so far as settlement of cases are concerned. This chapter provides for a complete mechanism for the settlement commission to be adopted other than the procedure prescribed under the Act for the disposal of the normal assessment or re-assessment proceedings. This providing of a separate mechanism under chapter 19-A to the settlement commission itself makes it clear that the legislature itself wanted the settlement commission to act independently. Further, under the said chapter the decisions of the settlement commission is said to be conclusive inasmuch as it does not provide for remedy of revision, review or appeal to the assessee.

24. What also cannot be brushed aside is the fact that proceedings under chapter 19-A commences on an application being made by an assessee who can file such an application at any stage of proceedings which is pending against him by submitting in the manner prescribed the full and true disclosure of income which has not been disclosed before the assessing authority giving additional information on account of tax payable and all other particulars in the form required before the settlement commission seeking for settlement under Section 245-C of the Act. On receipt of such application by the assessee under Section 245-C of the Act, procedure prescribed under Section 245-D of the Act is to be followed. Section 245-D (4) of the Act provides as under :

> "***After examination of the records and the report of the commissioner, if any, received under sub-section (3), and after giving an opportunity to the applicant and to the commissioner to be heard, either in person or through a representative duly authorised in***

> ***this behalf and after examining such further evidence as may be placed before it <u>or obtained by it</u>, the settlement commission may, in accordance with he provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the commissioner under sub-section (1) or sub-section (3)".***

25. Going through the procedure prescribed under Section 245-D of the Act, it also emerges that the settlement commission on receipt of application under Section 245-C of the Act has to examine the records and call for report of the Commissioner (IT) and after giving an opportunity to the applicant as well as to the commissioner to be heard either in person or through their authorized representatives and after examination of such **further evidence as placed before it or obtained by the commission**, it may pass such an order as it thinks fit in accordance with Act.

26. A perusal of Sub-section 4 of Section 245-D of the Act has a catch in itself inasmuch as the settlement commission has been empowered while hearing a proceeding for settlement to examine the evidences produced by the parties or may "obtain the evidence" itself and perhaps it is for this reason that Sub-section-4 of Section 245-D of the Act has also a reference of the term "**<u>obtained by it</u>**" which is to be placed before it.

27. If we give emphasis on this term "obtained by it" as is referred to in Sub-section 4 and thereafter look into the proceedings, it would clearly reveal that upon the application for settlement being filed by an assessee, the commission could get the property valued by a registered valuer. Under such circumstances, if the commission has got the property assessed from a registered valuer, in the opinion of this court, that by itself would not vitiate the action of the commission.

28. What is pertinent to mention is the fact that, except for the alleged procedural lapse of not referring to the valuation officer of the Settlement Commission, petitioner has not adduced any sufficient material to hold that the valuation done by the registered valuer is without any basis. It is also not the case of the petitioner that said procedure and practice of the Settlement Commissioner in getting the valuation done by the empaneled registered valuer been adopted only in the case of the petitioner thereby to show discrimination in the procedure and practice while dealing with the case of

the petitioner and that such a procedure is not normally initiated by the Settlement Commission.

29. For the aforesaid reasons, this court is of the opinion that no strong case has been made out by the petitioner for interfering with the finding arrived at by the Settlement Commission. This court further has no hesitation in reaching to the conclusion that, the Settlement Commission, by not making reference to the valuation officer for valuing the nature of work/property assigned to be valued and getting the valuation done by the empaneled registered valuer, has not committed any procedural lapse.

30. Since, no other grounds was raised to assail the order of the Settlement Commission, the Writ Petition deserves to be and is accordingly rejected.

Sd/-
(**P. Sam Koshy)**
JUDGE

Sumit