IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLAT SIDE CIVIL JURISDICTION

WRIT PETITION NO. 4875 OF 2014

Commissioner of Income Tax (Central), Pune .. Petitioner.
v/s.
Income Tax Settlement Commission
(ITSC), Additional Bench & Another .. Respondents.

Mr. Tejveer Singh, for the Petitioner.
Mr. V.S. Hadade, for Respondent No.2.

CORAM: M.S.SANKLECHA, &
A.K.MENON, JJ.
DATE : 25th JANUARY, 2017.

P.C:-

This Petition under Article 226 of the Constitution of India, challenges a notice dated 14th October, 2013 issued under Section 245(D4) of Income Tax Act, 1961 (the Act) passed by the Settlement Commission (Commission). The impugned order dated 14th October, 2013 settles the dispute between the Assessee and the Revenue for the Assessment Years 2006-07 to 2012-13.

2 The grievance of the Petitioner before us is that the impugned order dated 14th October, 2013 of the Commission settling the dispute has been passed, ignoring the statutory provisions of the Act. This ignoring of the statutory provisions is in defiance of the mandate of Section 245D(4) of the Act which requires the settlement to be done in accordance with the provisions of the Act.

3 In support of the above grievance, Mr. Tejveer Singh, learned Counsel appearing for the Petitioner states that certain expenditure claimed by the Respondent-Assessee could not be allowed in view of Explanation-I to Section 37 of the Act. It is submitted that a statement was recorded of the Managing Director of the Respondent-Assessee during the course of a search wherein it was stated that certain expenditure have been incurred in cash and partly are not allowable as business expenditure under the Act. We asked Mr. Tejveer Singh whether it was ever the submission of the Revenue before the Commission at the hearing that in view of the above statement, the expenditure claimed should be disallowed.

4 Mr. Tejveer Singh, in response to the above, invited our attention to paragraph 9.4 of the impugned order which records the submission made on behalf of the Revenue before the Commission, which reads as under:-

> *"**9.4:-** In this context, CIT(DR) has submitted that the expenses as per the paper must be proved to have been incurred by the applicant and the recipients should confirm having received these amounts. CIT(DR) further contended that the paper does not give the details of amount, how much has been received by whom, and in what capacity he was connected with the applicant. It was further submitted that this paper may not be a genuine one. It was argued by CIT(DR) that Shri Tapadia or Shri Vineet Malhotra might have accepted the payments in their hands to substantiate a much bigger claim of expenditure of the applicant company. He further stated that their statement of acceptance should not give credence to the story of the applicant. It was stretched further that the claim should not be allowed because the amount is not specified to be in crores, lacs, thousands etc."*

From the reading of the paragraph, one cannot even infer that any submission was made on behalf of the Revenue that expenditure claimed by the Assessee, cannot be allowed, as it is hit by Explanation-I to Section 37 of the Act.

5 As against the above, we notice that the Applicant-Respondent had contended before the Commission in response to the above submission by the Petitioner-Revenue that there is no requirement to prove the expenditure. This for the reason that the statement of expenditure on which a reliance is placed, was found during search and would be covered by Section 132(4A) of the Act which requires a presumption to be drawn that, it is true, genuine and correct.

6 We find that the Commission on consideration of the rival submission concluded that out of total amount of expenditure of Rs.21.5 Crores written on paper only Rs.19.6 Crores have been claimed by the Respondent-Asssessee as an expenditure in determining expenditure on which the tax is paid. The Commission allowed the expenditure as claimed on the basis of the seized document found during the course of search. The Commission was not at any point of time called upon by the Revenue during the hearing before it to disallow the expenditure because it does not satisfy the test of Explanation -I to Section 37 of the Act. The only contention on behalf of the Revenue before the Commission was that the Assessee must be asked to prove the expenditure, it claims to have incurred. It was in that context, that the Commission held that there is no requirement to prove the expenditure, as the noting found in the seized documents during search, are presumed to be true and correct. Therefore,

the grievances made by the Revenue before us, cannot be sustained in view of the fact that the issue which is now urged before us, was not urged before the Commission during the course of hearing. Thus, there would be no occasion for the Commission to give a ruling on the issue now raised before us by the Petitioner.

7 In the above view, we see no reason to entertain the present Petition.

8 Accordingly, **Writ Petition disposed of**. No order as to costs.

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