IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.07.2017

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No. 20191 of 2003
and
W.P.M.P.No.s.25216 & 25217 of 2003

M/s.Sri Sastha Oil Stores,
130, Main Road,
Dindigul. ...Petitioner

Vs.

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

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

3. The Commissioner of Income Tax,
Central Revenue Buildings,
Bibikulam, Madurai 625 002.

4. The Income Tax Officer,
Ward I(2),
Palani Road, Kottapatti,
Dindigul - 624 002.

...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the first respondent Income Tax Settlement Commission, Additional Bench, Chennai in its File Settlement Application No.21/IV/74/95-IT dated 21.03.2003 and quash the same.

For Petitioner : Mr.R.Kumar
for Mr. C.V. Rajan

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

O R D E R

Heard Mr.R.Kumar, the learned counsel for M/s. C.V.Rajan, the learned appearing for the petitioner and Mr.A.P.Srinivas, the learned Senior Standing Counsel for the respondents.

2. The petitioner has filed this Writ Petition, challenging the order passed by the Income Tax Settlement Commission, Additional Bench, Chennai, under Section 245F[I] of the Income Tax Act, 1961.

3. The counsel on either side submitted that the issue involved in this Writ Petition is squarely covered by the decision of this Court, in the case of (R.Vijayalakshmi Vs Income Tax Settlement Commission and Others) reported in [2016] 73 Taxmann.com 367 [Madras], wherein, it has been held as follows :-

> "7. After hearing the learned counsel for the parties and perusing the materials placed on record, the first issue to be answered is with regard to the power of the Commission to reopen its proceedings. Section 245-I of the Act states that any order of the Commission passed under Section 245 shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in that Chapter, be reopened in any proceeding under the Act or under any other law for the time being in force. The said provision does not confer the power of review on the commission. It is settled legal position that power of review is to be specifically conferred on the authority by the statute and power of review is not inherent with the authority. However, when the statute does not provide power of review with the authority and if it is done, it has to be termed as wholly without jurisdiction. Sub section (1) of Section 245 (F) which states that Settlement Commission shall have all powers which are vested in Income Tax Authority under the Act cannot be read in isolation but it should be read in tandem with Section 245(I) and if it is done, then it is to be held that there is no power of review conferred on the Commission to

reopen the proceedings. This position held the field till an amendment was inserted under Section 6(b) of Section 245D by Finance Act 2011 with effect from 1.6.2011. Even the said provision is not a power of review. But the phraseology used by the legislation is "rectification" and such rectification can be done on any mistake apparent from the record. Therefore, such power exercisable under sub Section 6D of Section 245D can be exercised only to rectify a mistake and such mistake should be apparent from the record. Thus, even as per the amendment made by Finance Act, 2011, power of review is not conferred on the Settlement Commission.

8. In the case of Smt.U.Narayanamma, Writ Petitions were filed challenging the orders passed by the Settlement Commission on the ground that the Commission has no power to rectify its earlier order even under Section 245D of the Income Tax Act, 1961. The Hon'ble Division Bench of the Andhra Pradesh High Court after taking into consideration the decision of the Hon'ble Supreme Court in Brij Lal, held that the order passed by the Settlement Commission rectifying its earlier order cannot be sustained and must perish. In the said case, rectification was sought for by the commission on the ground that the order passed by the Commission was contrary to the Board's circular. The Court held that even otherwise, it is an error within the jurisdiction of the Commission and it was not an error which went to the root of its jurisdiction and held that if at all revenue had to question the same, it should be by a writ of certiorari. The said decision squarely applies to the facts of the present case.

9. One more observation that is required to be made in the instant case is that the Revenue while rectification/recalling of the order passed by the Commission, referred to a decision of the Hon'ble Supreme Court in the case of Hindustan Bulk Carriers and Damani Bros, with respect to the terminal date for charging of interest under Section 234B. Admittedly, these decisions were rendered by

the Hon'ble Supreme Court much after the final order was passed by the Commission under Section 245D(4).

10. Rudimentary legal principle is that subsequent development of law cannot be a ground to exercise review jurisdiction and that cannot be taken into consideration as an error apparent on the face of the record. Hence, on that ground also, the Department should be non suited. Hence for all the above, order of the Settlement Commission is held to be unsustainable and it is accordingly quashed. Consequently, the orders dated 19.1.2005, 13.12.2004 and 19.1.2005 and order dated 14.7.2005, 4.2.2005, insofar as it relates to the computation of terminal date for charging the interest under Section 234B alone and the order passed by the Settlement Commission dated 8.8.2007 are quashed.

11. After the above order was dictated, the learned Standing Counsel for the respondent Department submitted that if the order passed by the third respondent is quashed, then it would amount to setting aside the rate of interest as ordered by the Commission. The Revenue need not have any apprehension in this regard and this Court has held that the order passed by the Commission dated 16.7.1998,15.10.1998 and 16.7.1998 under Section 245D(4) has become final and the Department will be entitled to interest only as ordered by the commission."

4. Thus, following the above decision, this Writ Petition is allowed and the impugned order passed by the first respondent/Settlement Commission, dated 21.03.2003, insofar as it relates to computation of terminal date for charging the interest under Section 234B of the Income Tax Act, 1961 is quashed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

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

2. The Chairman,
   The Union of India,
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   Dindigul - 624 002.

+1cc to Mr.A.P.Srinivas, Advocate sr.50347

+1cc to Mr.T.N.Seetharaman, Advocate sr.50854

Writ Petition No. 20191 of 2003

pvs(co)
ss(6/10/2017)