

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2017

CORAM

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

WP.No.6566 of 2004

&

W.M.P. No. 7781 of 2004

1. M/s. M.A. Jacob & Company,
No.16, Evening Bazaar,
Chennai 600 003.
2. M /s. Flooring & Furnishing Company,
No.18, Evening Bazaar,
Chennai 600 003.
3. M/s. Jacob's Cleaning Products Company,
No.17, Evening Bazaar,
Chennai 600 003.
4. M/s. M.A. Jacob's Furnishing Department,
No.22, Evening Bazaar,
Chennai 600 003.
5. M/s. M.A. Jacob's Carpets &
Furnishing Company,
10 & 11, Damodharan Street,
No.38-A, Cathedral Road,
Chennai 600 086. ..Petitioners

Vs.

1. Commissioner of Income Tax - IV
Chennai - 600 034.
2. Income Tax Settlement Commission,
640, Anna Salai, Nandanam,
Chennai 600 035. ..Respondents

Prayer: Petition under Article 226 of the Constitution of India
praying for issue of a Writ of Certiorari to call for the
records relating to the order dated 19.02.2004 passed by the 2nd
respondent and quash the same.

For Petitioners :: Mr.Kumarpal R. Chopra

For Respondents :: Mr.A.P. Srinivas

O R D E R

Heard Mr.Kumarpal R.Chopra, learned counsel for the petitioners and Mr.A.P.Srinivasan, learned Senior Standing counsel for the respondents.

2. The petitioners have filed this writ petition challenging the order passed by the 2nd respondent, namely, the Income Tax Settlement Commission, dated 19.02.2004.

3. In respect of the assessment years 1988-89 to 1992-93, relating to petitioner Nos. 1 to 4 and for the assessment year 1995-96, relating to the fifth petitioner, the Settlement Commission passed a consolidated order dated 07.01.2000 under Section 245D(4) of the Income Tax Act, 1961. The effect of the said order is granting waiver of interest under Sections 234A & 234B. In the said orders, the terminal date for charging of interest under Section 234B was fixed as date of completion of proceedings under Section 143(1)(a) or upto the date of assessment under Section 143(3) or upto the date of return, as the case may be, for all the assessment years, referred above. The petitioners are said to have paid a sum of Rs. 12,57,974/-, pursuant to the orders passed by the Settlement Commission. While so, on 30.10.2003, the petitioners received a notice from the Departmental representative on behalf of the 1st respondent herein requiring the petitioners to file their counter to a miscellaneous petition filed before the Commission for varying its order dated 07.1.2000. The petitioners were aggrieved as they cannot be saddled with liability alone and the 1st respondent cannot be permitted to withdraw the concessions unilaterally. Further, the 1st respondent had misquoted the recent pronouncement of the Honourable Supreme Court in the miscellaneous petition and the petitioners filed a counter and contested the matter before the Settlement Commission. The petitioners contended before the Settlement Commission that the 1st respondent wanted to apply the ratio of the judgment of the Honourable Supreme Court in the case of CIT Vs. Hindustan Bulk Carriers, [2003] 259 ITR 475 (SC) which was decided on 07.01.2000 and the whole matter had concluded by the payment of money within the stipulated time. Thus, it was submitted that the very idea of applying the judgment retrospectively in a concluded matter is unknown to law. Further, it was contended that the 1st respondent cannot be allowed to go back on a settlement already arrived at before the Settlement Commission, before whom certain voluntary disclosures were made by the petitioners only on account of the fact that it would be conclusive and there would be an end to all disputes. In spite of such contest before the Settlement Commission, the Settlement Commission has passed the impugned order and has re-opened the earlier order passed by it. This has been challenged by the petitioners before this Court in this writ petition.

4. In an identical circumstance, in the case of R. Vijayalakshmi V. Income Tax Settlement Commission, Addl. Bench 488/489, Anna Salai, Chennai- 35 and 2 others, in W.P. Nos. 5553 to 5558 of 2008, this Court considered as to whether the action of the Commission in entertaining the miscellaneous petition after the conclusion of the proceedings is valid and whether the terminal date for charging interest could be altered based on a subsequent decision of the Honourable Supreme Court. Both the above issues were answered in favour of the assessee and against the Revenue. The operative portion of the order dated 26.07.2016 reads 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 01.06.2011. 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 Brin 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 Bul Carrirs 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...."

5. The Revenue does not dispute the legal principle laid down in the above decision, which has been followed by this Court in several other cases as well. Thus, by applying the above decision to the petitioners in the present case, the only conclusion that can be arrived at, is to hold that the impugned order is not sustainable. Accordingly, the writ petition is allowed and the impugned order is quashed. No costs. Connected W.M.P. is closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

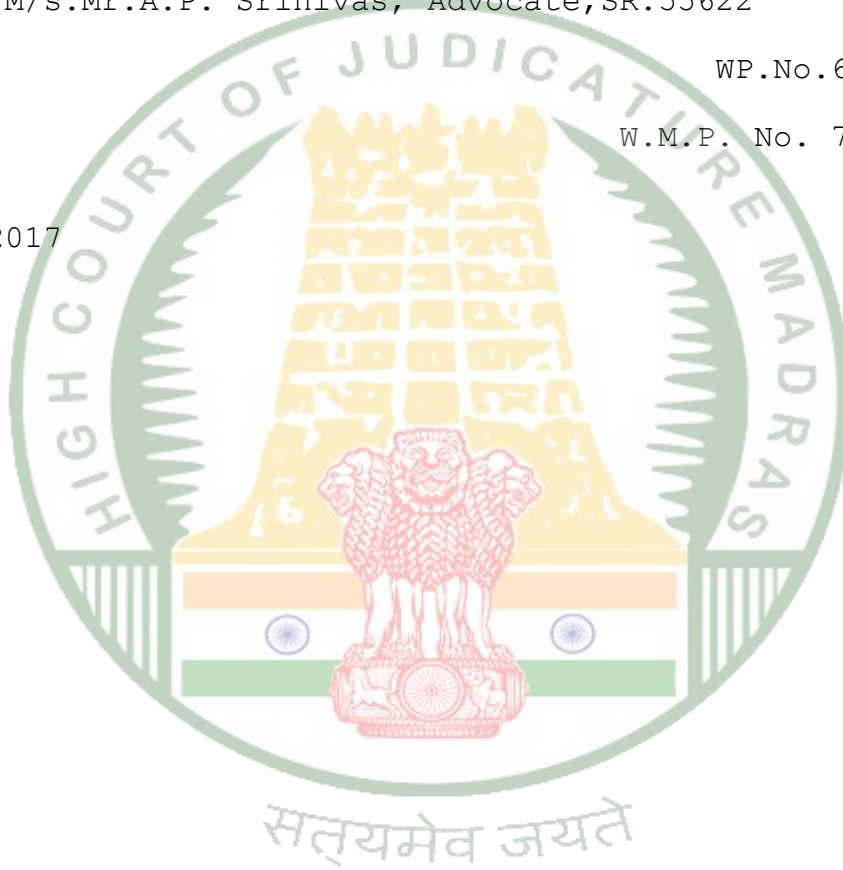
1. Commissioner of Income Tax - IV
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+ 1 cc to M/s.Ramesh Kumar, Advocate, SR.55789

+ 1 cc to M/s.Mr.A.P. Srinivas, Advocate, SR.55622

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