

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P. Nos. 27561 to 27563 of 2007

and

W.M.P.No.1 of 2007

N.Chellakutty (HUF) ...Petitioner in W.P. No.27561/2007

N.Chellakutty (Individual) ...Petitioner in W.P. No.27562/2007

Vignesh Real Estate,
C/o Sri N.Chellakutty
C.R.Complex,
27, Avinashi Road,
Coimbatore-641 014.Petitioner in W.P.
No.27563/2007

Vs.

1.The Income Tax Settlement Commission,
Additional Bench,
488-489, Anna Salai,
Chennai-600035.

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

3.The Commissioner of Income Tax, Cochin,
Income Tax Office,
Race Course, Coimbatore-641 018.

4.Income Tax Officer,
Ward III (2),
Income Tax Office,
Race Course,
Coimbatore-641 018.

... Respondents in all WPs

Prayers in WP.No.27561/2007: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the of the 1st respondent Income Tax Settlement Commission, Additional Bench, Chennai Application No.641/CBE/77/2001-IT for assessment years 1990-91 to 2000-01, quash the impugned order u/s 245D(4) dated 13.04.2007 in so far

as it relates to levy and payment of interest u/s 234A and 234B.

Prayer in WP.No.27562/2007: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the of the 1st respondent Income Tax Settlement Commission, Additional Bench, Chennai Application No.641/CBE/77/2001-IT for assessment years 1990-91 to 2000-01, quash the impugned order u/s 245D(4) dated 13.04.2007 in so far as it relates to levy and payment of interest u/s 234A and 234B.

Prayer in WP.No.27563/2007: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the of the 1st respondent Income Tax Settlement Commission, Additional Bench, Chennai Application No.641/CBE/77/2001-IT for assessment years 1990-91 to 2000-01, quash the impugned order u/s 245D(4) dated 13.04.2007 in so far as it relates to levy and payment of interest u/s 234A and 234B.

For Petitioners
[In all W.Ps] : Mr.R.Kumar
For Respondents
[In all W.Ps] : Mr.A.P.Srinivas
Senior Standing Counsel

C O M M O N O R D E R

Heard Mr.R.Kumar, the learned counsel appearing for the petitioner and Mr.A.P.Srinivas, learned Senior Standing counsel appearing for the respondents in these writ petitions.

2. The petitioner has challenged the common order passed by the Settlement Commission [IT & WT], Additional Bench, Chennai, in respect of the three applications filed by the petitioners. The Assessment years to which the petitioners filed applications for settlement are 1990-91 to 2000-01, 1994-95, 1996-97 and 1992-93 to 1994-95.

3. The Challenge to the impugned proceedings is not on the merits of the findings recorded by the Commissioner, but only with regard to the levy of interest under Sections 234 (A) and 234 (B) of the Income Tax Act, 1961 [hereinafter called as "the Act"]. One other issue is with regard to the interest payable under Section 220 (2) of the Act.

4. During the course of proceedings before the Commission, the learned counsel appearing for the assessee submitted that levy of interest under Sections 234 (A), 234(B) and 234(C) of

the Act may be kept in abeyance since the legal issue relating to the chargeability of interest has been referred for consideration of the Constitution Bench of the Honourable Supreme Court in the case of Brij Lal and Others Vs. CIT [reported in [2010] 328 ITR 477 (SC)].

5. The Assessee consented before the Commissioner that subject to the decision of the Constitution Bench of the Honourable Supreme Court, the assessee would have no objection for the order being revised by the Commission.

6. However, the Commission did not accept the said submission on the ground that it would go by law which was holding the field as on the relevant date viz., in the case of CIT Vs. Anjum M.H. Ghaswala reported in [2001] 252 ITR 1 (SC) and proceeded to levy interest under Sections 234 (A), 234(B) and 234(C).

7. At this juncture, the assessee has prayed for waiver of interest chargeable under Section 220 (2) of the Act. However, the Commission observed that it is open to the assessee to approach the Commission after discharging the liabilities.

8. The issue which was referred to the Constitution Bench in the case of Brij Lal and Others Vs. CIT has been answered in the decision reported in 2010 [328] ITR 477 (SC).

It was held by the Honourable Supreme Court :-

"In the case of proceedings before the Settlement Commission, till the Commission decides to admit the case under Section 245D(1), the proceedings under the normal provisions remain open. But once the Commission admits the case, after being satisfied that the disclosure is full and true, the proceedings commence with the Settlement Commission. In the meantime, the applicant has to pay the additional amount of tax with interest without which the application for settlement would not be maintainable. Thus, interest under Section 234B would be payable up to the stage of Section 245D (1). Parliament has not extended the provisions and the liability to pay interest beyond the date of application for settlement. There is no provision either under Chapter XIX-A or even under Section 140A (dealing with self-assessment) to charge interest beyond the date of the application for settlement after it is admitted by the Commission under Section 245D(1). There are two distinct stages under Chapter XIX-A, and the Legislature

had not contemplated levy of interest between the order under the Section 245D(1) stage and the Section 245D(4) stage".

9. In the light of the above decision of the Constitution Bench of the Hon'ble Supreme Court, interest under Section 234 (B) can be charged only upto to the stage under Section 245 (D) (1) of the Act. However, in the impugned order, the Commission has charged interest upto the stage of 245 (D) (4).

10. Therefore, to that extent, the impugned order has to be interfered with. So far as the interest under Section 234 (A) is concerned, the learned counsel appearing for the petitioner would submit that the assessee does not dispute their liability but would contend that there is some computation error committed by the Commission. However, for such a matter, the case cannot be sent back to the said Commission as the Commission has no power to review its order. Nevertheless, the assessing officer of the petitioner is well within his jurisdiction to examine the correctness of the stand taken by the assessee, as regards the error in computation.

11. With regard to the interest under Section 220 (2) of the Act, the learned counsel appearing for the petitioner would submit that the petitioner will workout their remedies under the Act.

12. In the light of the above, the writ petitions are partly allowed with the following directions:

(i) The interest charged under Section 234(B) of the Act upto the stage of 245 (D) (4) of the Act is set aside and the assessing officer of the petitioner is directed to recompute the interest upto the stage of 245(D) (1) of the Act and on such re-computation, the assessee / petitioner shall pay interest.

(ii) With regard to the alleged contention that there is a computation error with regard to the interest chargeable under Section 234(A), the petitioners are granted liberty to file appropriate application before the Assessing Officer who shall consider the same and examine the correctness of the stand and if there is any computation error, the same may be rectified.

(iii) With regard to the interest payable under Section 220 (2) of the Act, the petitioners are granted liberty to workout their remedies under the provisions of the Act.

13. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

sk/maya

To

- 1.The Income Tax Settlement Commission,
Additional Bench,
488-489, Anna Salai,
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Central Board of Direct Taxes,
North Block, New Delhi.
- 3.The Commissioner of Income Tax, Cochin,
Income Tax Office,
Race Course, Coimbatore-641 018.
- 4.Income Tax Officer,
Ward III (2),
Income Tax Office,
Race Course,
Coimbatore-641 018.

+2 Ccs to Mr.T.N. Seetharaman, advocate sr 72135 & 72136.

+1 Cc to Mr.A.P. Srinivas, Advocate sr 72292.

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KGK(CO)
SP(16/11/2017)