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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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W.P.(C) 5134/2015

CHAIN ROOP BHANSALI

..... Petitioner

Through: Mr. Ved Jain, Mr. Pranjal Srivastava and
Ms. Rano Jain, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Dr. (Mr.) G.L. Bhatia, Government Pleader
for the Union of India.
Mr. Raghvendra Singh, Junior Standing
Counsel & Mr. Ashok Manchanda, Senior
Standing Counsel for the Revenue.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE CHANDER SHEKHAR

ORDER

17.05.2017

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Dr. S. Muralidhar, J.:

1. The prayer in this writ petition is for a writ of certiorari to quash the proceedings of recovery of demand raised on the basis of an Assessment Order dated 28th March, 1995 for Assessment Years (AYs) 1986-87 to 1989-90 and 1992-93.

2. The facts in brief are that on 2nd January, 1995, the Petitioner (Assessee) filed an application before the Income Tax Settlement Commission ('ITSC') under Section 245 C (1) of the Income Tax Act, 1961 ('Act') for AYs 1985-86 to 1993-94. A copy of the settlement application has been enclosed with

the petition. It reveals that the Assessee was a practicing Chartered Accountant, who was also engaged in money lending business including providing accommodation loans. A search was conducted on his premises by the Directorate of Revenue Intelligence on 22nd July, 1986, which resulted in seizure of multiple documents as well as books of accounts. Certain *benami* accounts were also found.

3. Pursuant to the aforementioned application a report was filed by the Commissioner of Income Tax ('CIT') under Section 245D(1) of the Act before the ITSC. It is stated that the Department Representative ('DR') at the hearing of the ITSC supported the report of the CIT and asked for allowing the settlement application to put an end to the protracted litigation.

4. However, it appears that in the meanwhile on 28th March, 1995, the Assessing Officer ('AO') proceeded to pass assessment orders for each of the AYs 1986-87 to 1992-93. This was the second round with the earlier assessment orders having been set aside by the Commissioner of Income Tax (Appeals) ['CIT(A)']. By the assessment orders dated 28th March 1995, fresh demands were created. Interestingly, the assessment orders acknowledged that the Assessee informed the AO of the pendency of his application before the ITSC. The AO however noted that since the case in question "barred by limitation, the undersigned had little option except to complete this assessment *ex parte* on merits to the best of my ability and judgement."

5. The ITSC allowed the Assessee's applications to be proceeded with by passing an order under Section 245D (1) on 28th November, 1995.

Thereafter the Petitioner deposited the tax in respect of the income disclosed by him before the ITSC. Thereby the Petitioner discharged his tax liability for AYs 1986-87 to 1993-94.

6. For reasons that are not clear, the Petitioner's application was pending before the ITSC. An amendment was made to the Act by the Finance Act, 2007 whereby sub-section 4A was inserted in Section 245D of the Act. A distinction was drawn by the said provision between those applications filed before the ITSC prior to 1st June, 2007 and those that had been filed thereafter. Under Section 245HA(1)(iv) of the Act if a final order under Section 245D(4) was not passed by the ITSC within the period prescribed under Section 245D(4A) of the Act then the settlement application would abate. The date by which the ITSC was to pass the final order in respect of an application that was filed prior to 1st June, 2007 was 31st March, 2008. Section 245HA deals with abatement of proceedings before the ITSC.

7. Since in the present case, a final order was not passed by the ITSC prior to 31st March, 2008, the proceedings before the ITSC abated under Section 245 HA (1) (iv) of the Act. In fact, the ITSC passed a specific order on 13th May 2008, noting that the proceedings before it had abated.

8. Section 245HA(2) of the Act states that when such proceedings before the ITSC abates the AO before whom proceedings “at the time of making the application was pending” should dispose of the case in accordance with the provisions of the Act “as if no application under Section 245C had been made.” The AO while doing so is entitled to use all the material and other information produced by the Assessee before the ITSC. This is provided for

in Section 245 HA (3) of the Act.

9. In the present case it is not in dispute that on the date when the Petitioner filed an application before the ITSC, i.e., 2nd January 1995, the assessment proceedings before the AO pertaining to the above AYs were pending. In terms of Section 245 HA (2) of the Act, the AO was required to take up and complete the assessment proceedings “as if no application under Section 245C has been made.” The last date for completion of this assessment was 13th May, 2009.

10. The Petitioner points out that after the abatement of his application before the ITSC, the AO took up the assessment proceedings only for AY 1993-94 and passed an order under Section 143(3) read with Section 245HA(2) of the Act on 20th March, 2009. However, no fresh assessment order for AYs 1986-87 to 1992-93 was passed. However, the AO raised a recovery of demand for AYs 1986-87 to 1989-90 and AY 1992-93 on the basis of the assessment order dated 28th March, 1995. The Petitioner then filed miscellaneous application dated 18th February, 2014 before the ITSC assailing the above demand. However, the ITSC dismissed the said application by its order dated 19th January, 2015 holding that it had become *functus officio* and could not deal with the application. Thereafter the present petition was filed challenging the said assessment order dated 28th March 1995 and the consequential demand.

11. The contention of Mr. Ved Jain, learned counsel appearing for the Petitioner, is that with the mandate of Section 245HA(2) of the Act being clear, there was no question of the assessment order dated 28th March, 1995

passed by the AO during the pendency of the Petitioner's application before the ITSC being still operative or any demand being raised in terms thereof after the abatement of the application before the ITSC.

12. Mr. Raghvendra Singh, learned counsel appearing for the Revenue, submitted that once the application before the ITSC was allowed to be proceeded with under Section 245D, the ITSC had all the powers of the AO. However, till such date, i.e., 28th November 1995, the power of the AO over the assessment was neither taken away nor disturbed. Therefore, the AO had validly passed the assessment orders dated 28th March, 1995. According to Mr. Singh, the abatement of the Petitioner's applications before the ITSC on a subsequent date would not affect the finality of the assessment orders dated 28th March, 1995. He relied on the decision in *Commissioner of Income Tax v. Damani Brothers (2003) 259 ITR 475 (SC)* and *Brij Lal v. CIT (2010) 328 ITR 477 (SC)* which clarified that the income tax authorities were free to proceed in the prescribed manner till the ITSC decides to proceed with the petition. He also relied on the decision in *Union of India v. Star Television News Limited & Ors. (2015) 373 ITR 528 (SC)* and *Shankar Lahiri v. CIT (1995) 78 Taxman 364 (Cal)*. He further submitted that Section 245 HA (2) being a machinery provision as opposed to a charging section must not be subjected to strict literal interpretation.

13. In order to appreciate the above submissions, it is necessary to set out Section 245 HA (1) (iv) as well sub-sections (2) & (3) of Section 245HA, which read as under:

“245 HA. Abatement of proceeding before Settlement Commission.
(1) Where—

- (i) an application made under section 245C on or after the 1st day of June, 2007 has been rejected under sub-section (1) of section 245D; or
- (ii) an application made under section 245C has not been allowed to be proceeded with under sub-section (2A) or further proceeded with under sub-section (2D) of section 245D ; or
- (iii) an application made under section 245C has been declared as invalid under sub-section (2C) of section 245D ; or
- (iv) in respect of any other application made under section 245C , an order under sub-section (4) of section 245D has not been passed within the time or period specified under sub-section (4A) of section 245D,

the proceedings before the Settlement Commission shall abate on the specified date.

Explanation.—For the purposes of this sub-section, "specified date" means—

- (a) in respect of an application referred to in clause (i), the day on which the application was rejected;
- (b) in respect of an application referred to in clause (ii), the 31st day of July, 2007;
- (c) in respect of an application referred to in clause (iii), the last day of the month in which the application was declared invalid;
- (d) in respect of an application referred to in clause (iv), on the date on which the time or period specified in sub-section (4A) of section 245D expires.

(2) Where a proceeding before the Settlement Commission abates, the Assessing Officer, or, as the case may be, any other income-tax authority before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance with

the provisions of this Act as if no application under section 245C had been made.

(3) For the purposes of sub-section (2), the Assessing Officer, or, as the case may be, other income-tax authority, shall be entitled to use all the material and other information produced by the assessee before the Settlement Commission or the results of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it, as if such material, information, inquiry and evidence had been produced before the Assessing Officer or other income-tax authority or held or recorded by him in the course of the proceedings before him.”

14. A careful reading of the above provision makes the legislative intent clear. The applications made under Section 245C of the Act before the ITSC prior to 1st June 2007 and in respect of which no final order has been passed under Section 245D(4) of the Act by 31st March, 2008 “shall abate on the specified date.” This specified date in terms of Explanation (d) is 31st March, 2008.

15. Under Section 245 HA (2) of the Act once the application before the ITSC has abated, the proceedings that were pending on the date of making of the application revive. Section 245HA(2) of the Act states that the authority before whom the proceedings were pending at the time of making of the application - and this could be the AO or the CIT(A) or the ITAT - “shall dispose of the case.” This means that the said authority has to proceed to dispose of those pending proceedings by treating them as still pending. This is also plain from the mandate that the said authority has to proceed “as if no application under Section 245C has been made.” This is notwithstanding that such proceedings may have, after filing of the

application, and before an order of the ITSC under Section 245D (1) of the Act, been disposed of.

16. The idea of reviving the proceedings that were pending on the date of the filing of the application before the ITSC is also to enable the authority concerned to use the material and information produced before the ITSC or the information that has emerged as a result of the inquiry held or the evidence recorded by the ITSC in the course of the proceedings before it. This is plain from Section 245 HA (3) of the Act, which has been extracted hereinbefore. That advantage that the income tax authorities may have is that material was not available prior to the proceedings before the ITSC can be used in framing the fresh assessments. The Court concurs with the proposition enunciated in ***Capital Cables (India) P Ltd. v. ITSC (2004) 139 Taxman 332 (Del)*** that Chapter XIX A of the Act is a complete code for settlement and that the relevant sub-section has to be interpreted in harmony with other provisions. Section 245 HA (2) cannot be read in isolation but along with Section 245 HA (3). Incidentally, none of the decisions cited at the bar appear to have interpreted these very provisions.

17. It was urged by Mr. Raghvendra Singh that Section 245 HA (2) would apply only where no order at all has been passed by the authority before whom certain proceedings had been pending on the date of the filing of the application before the ITSC. According to him, if the as in the present case, the AO had passed an assessment order prior to the order of the ITSC deciding to proceed with the application before it, then assessment such order must be given its full effect since it stood unaffected by anything that

happened thereafter and in particular the abatement of the application before the ITSC. He contends that the expression 'shall dispose of the case' does not have to be literally interpreted as connoting a future activity but "would include a past completed activity".

18. The Court is unable to agree with the above submission. It is not possible to read into Section 245 HA (2) of the Act something which is not there. Section 245 HA (2) makes no distinction between instances where an order has already been passed by the authority before whom the proceedings were pending on the date of the making of the application before the ITSC and a situation where no such order has been passed. It does not state, that the revival of the proceedings by assuming that no application had been filed under Section 245C of the Act as a result of the abatement of such application, would take place only where no order had already been passed by the income tax authorities before whom such proceedings were pending. The expression 'shall be disposed of' in Section 245 HA (2), when viewed in the context of the entire provision together with Section 245 HA (3), cannot but be interpreted to mean a futuristic action. The option available to the AO or other authority to look into materials, by reviving the proceedings that were pending, that were not earlier available but emerged during the proceedings before the ITSC cannot be foreclosed.

19. The net result is that notwithstanding that the AO in the present case may have passed assessment orders on 28th March 1995, in relation to the aforementioned AYs in respect of which a demand notice has been served on the Petitioner, the proceedings before the AO should be held to have

revived on the date of the abatement of the Petitioner's application before the ITSC, i.e., 31st March, 2008. As rightly pointed out by the Petitioner the AO is bound thereafter to pass fresh orders disposing of the assessment proceedings in accordance with the law.

20. For the reasons best known to the AO, such order was passed only in respect of one AY, i.e. 1993-94 and for the other AYs a demand notice was served by treating the assessment orders dated 28th March, 1995 as still being valid. That was plainly a mistake and was impermissible in terms of Section 245 HA (2) of the Act.

21. For the aforementioned reasons, the Court has no hesitation in setting aside the assessment orders dated 28th March 1995 passed in respect of the AYs 1986-87; 1989-90 & 1992-93 and the proceedings for recovery of demand raised on the basis of such assessment orders.

22. The writ petition is allowed in the above terms but in the circumstances with no order as to costs.

S. MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 17, 2017

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