

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 478 of 2017

Smt. Shantidevi Agrawal W/o Shri Ram Kumar Agrawal, Aged About 78 Years
Pyarelal Agrawal Marg Ramasagar Para, Raipur 492001 Chhattisgarh.,
Chhattisgarh

---- Appellant

Versus

1. Union Of India Through Secretary, Central Board Of Direct Taxes, Ministry Of Finance, Department Of Revenue, North Block New Delhi., Delhi
2. The Income Tax Settlement Commission, Through Secretary, Additional Bench, 10 C , Middleton Road Second Floor, Kolkata, 700071, W. B., District : Kolkata, West Bengal
3. The Chief Commissioner Of Income Tax, Central Revenue Building, Civil Lines, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
4. The Commissioner Of Income Tax, Central Revenue Building, Civil Lines, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
5. The Deputy Commissioner Of Income Tax, Circle- 21, Civil Lines, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
6. Shri Manish Pilliwar, Architect And Engineer, Govt. Approved Registered Valuer, 25 South Avenue Choubey Colony, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

For Appellant	:	Shri Neelabh Dubey, Advocate
For Respondents	:	Smt. Naushina Afrin Ali, Advocate

Division Bench : Hon'ble Mr. Justice Manindra Mohan Shrivastava
Hon'ble Mrs. Justice Rajani Dubey

Judgment On Board

19/07/2018

Per Manindra Mohan Shrivastava, J.

1. This writ appeal is directed against the order dated 22.9.2017 passed by learned Single Judge whereby the writ petition filed by the

appellant/petitioner has been dismissed.

2. The relevant factual matrix obtaining on records and reflected from the order of learned Single Judge are that the respondent-Department conducted a search in the residential premises of the appellant. While the proceedings under Section 132 of the Income Tax Act (for short "*the Act*") were pending, the assessee preferred an application before the Settlement Commission seeking settlement of her case under Section 245-A of the Act. While proceeding to decide the case of settlement, the Settlement Commission obtained report of a registered Valuer in respect of property of the appellant. An addition of Rs.97,34,210/- was made as undisclosed income spent in renovation of the house property. Addition was primarily based on the valuation report of the registered Valuer. The appellant, however, was not satisfied with the said addition and particularly the valuation report of the registered Valuer. A writ petition, therefore, was filed by the appellant wherein the order of the Settlement Commission was challenged on the ground that the Commission acted illegally and in violation of the provisions of the Act in seeking to obtain valuation report from registered Valuer instead of following the procedure prescribed under Section 142-A of the Act in the matter of obtaining valuation. The contention that power of the Settlement Commission to obtain evidence is circumscribed and regulated by the other provision of the Act and in the present case, under Section 142-A of the Act, did not find favour. Learned Single Judge held that Chapter XIX-A of the act is a complete code in itself so far as settlement of cases are concerned and on that analogy, it was held that it was not obligatory on the part of the Settlement Commission to obtain valuation report from the Valuation Officer referred to in Section 142-A of the Act.
3. Learned counsel for the appellant argues that even though Chapter XIX-A deals with the powers and procedure relating to settlement of cases by Settlement Commission, while making an assessment under the settlement scheme, operation of other provisions of the Act are not intended to be excluded but on the contrary, the Commission is obliged under the Law to follow the same procedure for collection of evidence, information as is

prescribed and applicable in the matter of carrying out regular assessment under the Act. He would submit that the power of the Commission to obtain the evidence as provided under Section 245-D (4) is circumscribed and regulated by Section 142-A of the Act which provides specifically for the procedure required to be adopted when the valuation report is to be obtained. He would submit that such an interpretation is necessary in order to make the machinery workable and to regulate exercise of power by the Commission, otherwise, the power to obtain evidence from any source, as the Commission chooses, would be unbridled and uncanalized which the Legislature never intended to confer. In support of his submissions, learned counsel for the appellant placed heavy reliance on the decision of the Supreme Court in the case of **Commissioner of Income Tax Vs. Hindustan Bulk Carriers** (2003) 3 SCC 57 as also the decision in the case of **Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala & Ors.** (2002) 1 SCC 633.

4. On the other hand, learned counsel for the respondent- Revenue would submit that there is no legal requirement as such that if the Commission decides to obtain valuation report, it has to necessarily obtain the report only from Valuation Officer as referred to in Section 142-A of the Act. It is contended that the nature, scheme and the object of settlement proceedings under Chapter XIX-A are different and distinct from the regular assessment carried by the Assessing Officer in the course of assessment of income of an assessee. The procedure as has been prescribed in the special provision relating to settlement nowhere obliges the Commission to necessarily obtain report of valuation only from the Valuation Officer or for that matter to follow the procedure prescribed under Section 142-A of the Act for such purpose. Learned counsel for the Revenue further argues that the statutory scheme of the Act relating to settlement scheme was examined and distinguished from the scheme of regular assessment by the Constitution Bench judgment of the Supreme Court in the case of **Brij Lal and Ors. Vs. Commissioner of Income Tax Jalandhar** (2011) 1 SCC 1. According to learned counsel for the respondent, the provision under Section 142-A of the Act are applicable only in the matter of regular

assessment and not in settlement proceedings and nothing inhibits the Commission from obtaining valuation report from the registered Valuer. It is further submitted that the provision under Section 142-A of the Act could not be imported into and inserted in the special procedure prescribed for settlement under Chapter XIX-A of the Act. What may be required to be followed as a mandatory procedure in the matter of regular assessment is not specifically applied in settlement proceedings. Once the Settlement Commission follows the procedure prescribed in terms of provision contained in Chapter XIX-A of the Act, no exception can be taken to the said decision. Reliance has also been placed on the decision of the Supreme Court in the case of **Jyotendrasinhji Vs. S.I. Tripathi and Ors.** 1993 Supp (3) SCC 389 and decision of the Bombay as well as Delhi High Court in the cases of **Major Metals Ltd. Vs. Union of India and Ors.** (Writ Petition No.397 of 2011 decided on 22nd February 2012 as also in the case of **Commissioner of Income Tax(C)-III Vs. SH. Gopal Gupta** (WPC No.1208 of 2013, decided on 16.5.2014).

5. We have heard learned counsel for the parties and given our anxious consideration to their respective submissions.
6. The solitary issue arising for consideration of this Court is whether in settlement proceedings, the Commission having decided to obtain the valuation report of the property of the assessee, is obliged to follow the procedure as prescribed under Section 142-A of the Act and further whether the Commission is circumscribed in obtaining valuation report from the Valuation Officer alone, as referred to in that provision.
7. Though there are several decisions dealing with the ambit and scope as also legislative intent of the scheme of settlement under the Act, we need not deal with all those decisions in view of authoritative pronouncement by the Constitution Bench of the Supreme Court in the case of **Brij Lal** (supra) wherein the scheme of settlement was examined in juxtaposition to the scheme of regular assessment under the Act. Their Lordships in the Supreme Court held that Chapter XIX-A is a self-contained code and that there is a distinction between the assessment carried out under the

scheme of regular assessment and that under the scheme of settlement. It was observed as under:

“25. Our detailed analysis shows that though Chapter XIX- A is a self-contained Code, the procedure to be followed by the Settlement Commission under sections 245-C and 245-D in the matter of computation of undisclosed income; in the matter of computation of additional income tax payable on such income with interest thereon; the filing of settlement application indicating the amount of income returned in the return of income and the additional income tax payable on the undisclosed income to be aggregated as total income shows that Chapter XIX-A indicates aggregation of incomes so as to constitute total income which indicates that the special procedure under Chapter XIX-A has an inbuilt mechanism of computing total income which is nothing but assessment (computation of total income).

x x x

31. With the filing of the settlement application and after such application is allowed to be proceeded with under section 245-D(1), intimation under section 143(1), regular assessment under sections 143(3)/144 and re-assessment under section 147 lose their existence as under sections 245-C(1A) and (1B) it is only the income disclosed in the return of income before the A.O. alone which survives for consideration by the Settlement Commission for settling the amount of income which is not disclosed in the return.”

The distinction and applicability of the provision of the various provision of

the Act in the matter of settlement proceedings was pronounced as below:-

“39. Moreover, as stated above, under the Act, there is a difference between assessment in law [regular assessment or assessment under section 143(1)] and assessment by settlement under Chapter XIX-A. The order under section 245D(4) is not an order of regular assessment. It is neither an order under section 143(1) or 143(3) or 144. Under sections 139 to 158, the process of assessment involves the filing of the return under section 139 or under section 142; inquiry by the A.O. under sections 142 and 143 and making of the order of assessment by the A.O. under section 143(3) or under section 144 and issuing of notice of demand under section 156 on the basis of the assessment order. The making of the order of assessment is an integral part of the process of assessment. No such steps are required to be followed in the case of proceedings under Chapter XIX-A. The said Chapter contemplates the taxability determined with respect to undisclosed income only by the process of settlement/ arbitration. Thus, the nature of the orders under sections 143(1), 143(3) and 144 is different from the orders of the Settlement Commission under section 245D(4).”

8. What, therefore, follows from the aforesaid enunciation of law is that the order under Section 245-D(4) is not an order of regular assessment. It is neither an order under Section 143 (1) or under Section 143 (3) or 144 of the Act. What is important is that the Supreme Court has also observed that the steps as are required to be followed in the matter of regular assessment are not required to be followed in the case of proceedings under Chapter XIX-A.
9. Learned counsel for the appellant placed heavy reliance on the earlier decision of the Supreme Court in the case of **Hindustan Bulk Carriers** (supra), which according to him, lays down the position of law that even in

the matter of settlement proceedings, the Settlement Commission is required to act in accordance with the provision of the Act and not de hors the provision of the Act in view of observations made by their Lordships in para -38 of the said report, which reads as under:

“38. The Settlement Commission has no power to waive tax or interest because as laid down in sub-section (4) of Section 245 D, it has to pass orders on the matter of determining the quantum of income and tax in accordance with the other relevant provisions of the Act applicable to the relevant assessment year or years. There is no power with the Settlement Commission to settle the 'case' de hors the provisions of IT Act applicable to regular assessment because the provisions contained in scheme of settlement under Chapter XIX A as examined above, do not envisage and allow the Commission to settle a 'case' based on disclosure of income before it in any other manner. As has been found from the *Statement of Objects and Reasons* for introducing Chapter XIX A, which can be taken aid of for construing various provisions of the Act, the forum of Settlement Commission is constituted for 'early recovery of tax and to unearth black money'. The only impetus given to the assessee to avail the forum is to allow him to make a request to the Settlement Commission to grant immunity from prosecution and penalty in exercise of its powers under Section 245 H. In all other respects, on the question of tax and interest, the Settlement Commission has to settle a 'case' in accordance with the other provisions of the Act as are applicable to regular assessment proceedings. The Act does not make distinction or differentiation in treatment between the assessees who honestly disclose income

and are willing to pay the tax and the other assesseees who do not fully or partly disclose the income to avoid payment of tax in due time and approach the Commission for disclosure of their earlier concealed income. Such distinction or differentiation between the above mentioned two classes of assesseees is not permitted by the provisions contained in Chapter XIX A, it being neither legally valid nor just. The Chapter XIX A providing settlement of cases is not intended to benefit the assesseees who had not earlier honestly disclosed their income and paid the tax in due time. The settlement procedure aims to bring such assesseees at par with the assesseees who had honestly disclosed their income and paid the tax. The provisions of Chapter XIX A, therefore, have to be read harmoniously with other provisions of the Act and thus applied to give full effect to other relevant provisions of the IT Act which confer all powers of income-tax authority under the Act on the Settlement Commission for assessing the income and determining the tax."

10. As we see from the opening words of the said observations, the Supreme Court was dealing with an issue as to whether Settlement Commission had a power to waive tax or interest. In this context, it was held that the Settlement Commission has no power to waive tax or interest because as laid down in sub-Section (4) of Section 245-D, it has to pass orders on the matter of determining the quantum of income and tax in accordance with the other relevant provisions of the Act applicable to the relevant assessment year or years. It was in this context that it was held that such waiver would be de hors the provision of law. Therefore, in this context, it was held that there is no power with the Settlement Commission to settle the "case" de hors the provision of the Act applicable to regular assessment because the provision contained in scheme of settlement under Chapter XIX-A do not envisage and allow the Commission to settle a

“case” based on disclosure of income before it in any other manner. Those observations have to be read in the context of what has actually been decided in that case. To say that for the purpose of obtaining valuation report, procedure as contained in Section 142-A of the Act will be required to be complied with, would amount to bringing into application the provision of Section 142-A which we may not be able to hold in view of what has been categorically held by the Supreme Court in para-39 of its Constitution Bench decision in the case of **Brij Lal** (supra). The submissions made by learned counsel for the appellant run counter to the declaration of law in para-39 of the Constitution Bench judgment in the case of **Brij Lal**.

Though other decisions are also cited before us, but we need not consider it necessary to refer to those judgments to reach to the conclusion which we have been able to reach on the basis of the judgment of the Supreme Court rendered in the case of **Brij Lal** (supra)

11. In the result, we find no good ground to interfere with the view taken by the learned Single Judge in the matter.

12. The writ appeal is, therefore, dismissed.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge

Sd/-
(**Rajani Dubey**)
Judge