IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.4920 OF 2018

M/s. Sable Associates .. Petitioner.
v/s.
Income Tax Settlement Commission
Additional Bench & Others .. Respondents.

Mr. Jehangir Mistri, Sr. Advocate with Mr. Madhur Agrawal i/b. Mr.A. K. Jasani, for the Petitioner.
Mr. Sham Walve, for the Respondents.

CORAM: M.S.SANKLECHA, &
SANDEEP K. SHINDE,JJ.
DATE : 10th AUGUST, 2018.

P.C:-

This Petition under Article 226 of the Constitution of India, challenges the order dated 6th December, 2017 passed by the Income Ta Settlement Commission (the Commission). The impugned order dated 6th December, 2017 rejected the Petitioner's Application for Settlement made under Chapter XIX-A of the Income Tax Act, 1961 (the Act). The application was made by the Petitioner to settle its dispute for Assessment Years 2009-10 to 2015-16 with the Revenue. This order of rejection was passed at the stage of Section 245-D(4) of the Act, on account of a failure to make a full and true disclosure of its undisclosed income as required under the Act, for the purposes of settlement.

2 The Petitioner is engaged in the business of real estate Development. More particularly, Petitioner is engaged in executing housing projects and also providing facilitation work to obtain permission/ clearance for development of land. It was in the above facts that the Petitioner had made a declaration of its undisclosed income for Settlement of the disputes in the subject Assessment Years.

3 The impugned order dated 6th December, 2017 of the Commission holds that there was failure on the part of the Petitioner to make a full and true disclosure of its undisclosed income on the following heads:-

(a) Claim for deduction for the subject Assessment Years under Section 80-IB (10) of the Act; and

(b) The income declared for the subject Assessment Years in respect of the diaries seized the during course of search.

4 So far as the rejection of the application on account of its claim for deduction under Section 80-IB(10) of the Act is concerned, we find that the basis of the income declared for settlement was after claiming the benefit available under Section 80IB(10)of the Act. In case, this was not found justified by the Commission, then *ipso facto*, it would not lead to a conclusion that there was a failure on the part of the Applicant to fully and truly disclose its income for settlement of the dispute before the Commission. This, more particularly so, when the impugned order holds that further details are required to be called for from the Pune Municipal Corporation to determine whether the claim for deduction under Section 80IB(10) of the Act, is justified or not. Thus, the

rejection of the application for settlement in the above facts on the ground of failure to disclose all facts may not be sustainable and would certainly require further consideration by us. However, before we take a view on this, it may be necessary to deal with the second ground of rejection.

5(i) So far the Applicant's income on account of the facilitation work done for obtaining clearance in connection with the development of land is concerned, it is the case of the Applicant that this income was entirely made up of the details recorded in the seized diaries.

(ii) During the course of the hearing, the Commission called upon the Applicants to give the full details in respect of the additional income earned and expenses incurred on account of the facilitation work done for obtaining clearance in connection with the development of land. However, the Applicants were unable to give any details except stating that these expenses were in connection with the facilitation work done for Joshi Site or for sale of land or were in nature of miscellaneous expenses as indicated in the seized diaries.

(iii) The impugned order records that the Applicants were not coming with clean hands in respect of additional income to conclude as under:-

“(i) The applicant has failed to satisfactorily explain the details and particulars of various receipts of Rs.1,55,36,000/- for A. Y. 2013-14 2014-15 disclosed on the basis of entries in the seized diary. We are not convinced with the explanation of the AR that the applicant does not remember the particulars of the transaction relating to Joshi Site and sale of lands and housing schemes for which the receipts for facilitation work is claimed to have been received by them. Similarly, in respect of expenses claimed at

Rs.84.66 lacs in A. Y. 2013-14, 2014-15 and 2015-16, full particulars and details of the land and site etc. have not been submitted to establish how these expenses were relatable to the receipts or were of admissible nature. Thus, on the parameters of fullness and trueness, the applicant's claim is not maintainable. On the one hand the applicant has taken the stand that such type of receipts were not regular, on the other hand, some adhoc amount of Rs.5 lacs has been offered in each of the year from A.Y. 2009-10 to 2012-13 and for A. Y. 2015-16. The ARs contention that the applicant is not able to remember these transactions does not convince us. The applicant seems to be concealing full information as the same may result in to revelation of many more issues leading to possible enhancement of additional income. As the applicant has earned quite substantial receipts from the transactions relating to Joshi Site, sale of land and for clearance of housing scheme, it is difficult to believe that requisite information is not available with the applicant. This conduct on the part of applicant makes us believe that the applicant does not want to disclose full details and information about these transactions. It is also not clear whether all income based on similar kind of entries found/ recorded on seized material has been offered in SOF.”

6 The Petitioner has moved this Court in its writ jurisdiction. Admittedly, there is no appeal provided under the Act from the orders of the Commission. However, the absence of an appeal, would not convert a Writ Court into an Appeal Court to enable us to substitute our view to that of the Commission. (see Appropriate Authority v/s. Smt. Sudha Patil & Another 235 ITR 118) It is only in cases where the order passed by the Commission is contrary to and/or ignores the statutory provisions, causing prejudice to the Applicant or is bad on account of the flaw in the decision making process that, we interfere with the orders of the Commission. Now, keeping these parameters in mind, we shall examine the Petition.

7 It is the Petitioner's grievance that the impugned order proceeds on the basis that there was failure to make full and true

disclosure of its additional income. This on the ground of failure to substantiate the additional income. This, it is submitted , is beyond the jurisdiction of the Commission and in support, invites attention to Section 245C(1) of the Act. The above Section 245C(1) of the Act, provides that an application for settlement should contain full and true disclosure of his income which has not been disclosed before the Assessing Officer and the manner in which such income is derived. The aforesaid requirement, the Petitioner states, has been complied with, inasmuch as the income has been declared and the manner in which such income is derived i.e. on account of rendering facilitation services. Thus, there is no requirement of substantiating the income by giving particulars of the income. Our attention is drawn to Section 271 AAB of the Act, which requires not only disclosing the manner in which the income is derived but a further requirement of substantiating the same is also there and this requirement is absent in Section 245C(1) of the Act. This disclosing the manner in which income has been earned, would require giving particulars of the manner in which it was earned. Merely stating the source of the income or the head of income, would not mean the manner in which the income is earned is enclosed. The manner i.e. the way in which income was earned, would involve disclosing the particulars, when specifically asked for i.e. the property or person involved in earning the undisclosed income. It cannot be said that this amounts to calling upon the party to substantiate the income. Further, the Petitioner has claimed expenses and seeking particulars of the expenses, cannot be said to be calling upon the Petitioner to substantiate the expenses. In fact, the impugned order records a finding that not giving particulars of the undisclosed income would result in failure to disclose truly and fully the income offered for settlement. This is on the basis of the above facts is a very possible view. Therefore, no interference under Article 226 of the Constitution, is called for on this count in our writ jurisdiction.

8 It was next submitted that at the stage of Section 245D(4) of the Act, the application cannot be rejected on account of failure to disclose fully and truly the undisclosed income in its application. This is particularly, so as on the same facts, the Commission itself had passed an order under Section 245D(2C) of the Act to proceed further. This, it is submitted would amount to Review of an order and should not be allowed. It is true that at the stage of Section 245D(2C) of the Act, the Commission has to be satisfied that the application is valid and it should be proceeded with further. However, this satisfaction reached by the Commission at the stage of 245D(2C) of the Act, would not prohibit the Commission from rejecting the application at the stage of 245D(4) of the Act, if it finds that the application as filed, does not truly and fully discloses the un-declared income. In fact, the requirements of the full and true disclosure being made on the part of the Applicant, is required to be satisfied at all stages till the disposal of the application by the Commission. In fact, the satisfaction of true and full disclosure by the Applicant has to be met at all times and mere allowing of application to be proceeded further under Section 245D(2C) of the Act, will not absolve and/or discharge the burden upon the Applicant to satisfy the request of full and true disclosure even at the stage of Section 245D(4) of the Act, if the need arises as in this case. In the above view, this grievances on part of the Petitioner is not sustainable. Hence, no reason to interfere under Article 226 of the Constitution of India, arises.

9 In view of our view on the issue of full and true disclosure in respect of facilitation charges, no question of entertaining this Petition can arise. This, even if, we are of the view that the issue of deduction under Section 80IB(10) of the Act may require consideration.

10 However, it is made clear that the Assessment Proceedings under the Act, will proceed on its own merits. Nothing stated in the impugned order of the Commission or this order should influence the assessing procedure under the Act.

11 Accordingly, **Writ Petition dismissed**. No order as to costs.

(SANDEEP K. SHINDE,J.) **(M.S.SANKLECHA,J.)**