IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.10166 OF 2017

The Pr. Commissioner of Income Tax
(Central) Pune .. Appellant.
v/s.
Pravinkumar V. Prabhu and Anr. .. Respondents.

Mr. Sham Walve, for the Appellant.
Mr. Vishwajeet S. Kapse, for the Respondent No.1.

CORAM: M.S.SANKLECHA &
SANDEEP K. SHINDE, JJ.
DATE : 2nd August, 2018.

P.C:-

This Petition under Article 226 of the Constitution of India challenges the order dated 6.3.2017 passed by the Income Tax Settlement Commission (Commission) under Section 245D-4 of the Income Tax Act, 1961 ('Act'). By the impugned order dated 6.3.2017, the Commission settled the tax dispute of the petitioner for Assessment Years 2008-09 to 2013-14.

2 The grievance of the Petitioner-Revenue as urged by Mr. Walve to the impugned order dated 6.3.2017 of the Commission settling the dispute for Assessment Years 2008-09 to 2013-14 are on account of the following:

(a) Disclosure of additional income at the stage of 245D(4) of the Act evidences the fact that there was failure to make a true and full disclosure in its application for settlement. Thus, making the Settlement bad.This as the application itself does not satisfy the mandatory requirement of Section 245C of the Act;

(b) Expenses shown as labour charges should not have been accepted . This, particularly after the Commission having recorded in the impugned order that it raises suspicion. Thus, the impugned order should not have accepted explanation of the Respondent in respect of the labour charges claimed; and

(c) An amount of Rs.25 Lakhs which were receivable from one Mr. M.N.Navale, the President of Sinhgad Technical Institute Society for contractual services was accepted. This even when there is nothing on record that any services were rendered to Mr. M.N. Navale. Thus, it is alleged that the impugned order is perverse.

3 It is a settled position in law that in absence of appellate remedy provided under the statute, a Writ Court cannot in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India be converted into an Appeal Court as held by the Supreme Court in **Appropriate Authority and Anr. v. Smt. Sudha Patil and Anr. 235 ITR 118.** Therefore where two views are possible, then the Court will not substitute its view to that of the authority. Moreover, it is also settled position in law as held by the Supreme Court in **Jyotendrasinhji v. S.I.Tripathi and Others 1993 Supplementary (3) SCC 389**, that in its extraordinary jurisdiction of the High Court can only interfere with the

orders of the Commission it it is without jurisdiction or is contrary to the provisions of the Act. The Apex Court held that the Court while examining the order of the Settlement Commission is concerned more with the legality of the procedure followed, i.e. decision making process then with the merits of the decisions per-se. Therefore, if the view on facts taken by the Commission is a possible view, then the Court would not interfere with the orders passed by the Commission.

4 Keeping the above parameters in mind, we examine the grievance of the petitioner to the impugned order of the Commission.

5 So far as the first submission regarding disclosure of additional income of Rs.18.75 Lakhs each for the Assessment Years 2012-13 and 2013-14 at the stage of Section 245D(4) of the Act is concerned, we find that the impugned order of the Commission has independently come to a finding that there is full and true disclosure in the application made by the Respondent for settlement to the Commission. It in fact records "*........ accordingly, proceed to settle the undisclosed income on the applicant after accepting the voluntary offer of Rs.18,75,000/- each for the assessment years 2012-13 and 2013-14, respectively, suo motu offer in any way does not dilute the character of full disclosure, and affect the manner of earning the sane.*" This additional offer made by the Respondent was on facts found by the Commission does not in any manner dilute the requirement of full, true and complete disclosure in the application for settlement on part of Respondent No.6. This finding of the Commission has not been shown to be perverse in any manner. In the context of the finding of the Commission merely because the Applicant has offered some

further amount as income voluntarily at the stage of 245D(4) of the Act, would not *ipso-facto* lead to a conclusion that there was failure to fully and truly disclose the income in its application for settlement. This move so when the Commission itself records a finding that the disclosure made in the application for settlement is true and full, notwithstanding the offering of further income by the Respondent.

6 So far the second and third submission viz. with regard to labour charges and receivables from Mr. M.N. Navale. We find from the impugned order of the Commission, that the explanation offered by the Respondent No.6 was accepted on consideration of the submissions made by the parties and the available material on record. The view taken by the Commission on the aforesaid two issues have not been shown to be perverse in any manner. As pointed out above, where the view taken by the Commission is a possible view then interference under Article 226 of the Constitution of India in our extraordinary jurisdiction is not warranted.

7 In the above view, the Petition is dismissed. No order as to costs.

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