

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2018

CORAM

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.5333 of 2018 &

W.M.P. Nos.6553 & 6554 of 2018

Dr. Prathap Chandra Reddy ...Petitioner

v.

- 1 Income Tax Settlement Commission
Additional Bench, Chennai
Ministry of Finance
Department of Revenue
640, Anna Salai, Nandanam
Chennai- 600 035.
- 2 Assistant Commissioner of Income Tax
Central circle 3(1), Chennai
New No. 46 Mahatma Gandhi Road
Chennai- 600 034.Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent contained in the order bearing TN/CN 51/2017-18/37-IT, dated 16.02.2018 and to consequently quash the order dated 21.12.2017 as arbitrary unjust and illegal and to consequently direct the 1st respondent to permit the petitioner to file a fresh application u/s. 245C of the Income Tax Act 1961.

For Petitioner : Mr.P.S.Raman, Senior Counsel
Assisted by Mr.R.Sivaraman

For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

Heard Mr.P.S.Raman, learned Senior Counsel, assisted by Mr.R.Sivaraman, learned counsel appearing for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the Revenue.

2. The petitioner has filed this writ petition challenging the order dated 16.02.2018 of the 1st respondent, viz., Income Tax Settlement Commission, Additional Bench, Chennai (hereinafter referred to as 'Settlement Commission') and consequently quash the order dated 21.12.2107 as arbitrary, unjust and illegal and direct the Settlement Commission to permit the petitioner to file a fresh application under Section 245C of the Income Tax Act 1961 (hereinafter referred to as "the Act").

3. The issue in the instant case lies in a very narrow campus. The petitioner filed an application under Section 245C of the Act before the Settlement Commission on 13.12.2017 requesting the Commission to settle the following issues:-

1.1 To decide the undisclosed income of the applicant for the assessment years 2010-11 to 2016-17 resulting from the incriminating materials seized at the time of the search initiated on 05.01.2016 at the premises of Apollo Hospitals Enterprises Ltd., wherein the applicant is holding the office as Chairman and at the residential premises of the applicant at No.19, Bishop Gardens, Raja Annamalaipuram, Chennai - 600 028.

1.2 To decide the waiver of various penalties leviable under the Income Tax Act, 1961.

1.3 To decide the grant of immunity from penalty and prosecution under the Income Tax Act, 1961.

4. The petitioner in the said application has stated the nature and circumstances of the case and enclosed the requisite details including the details of additional tax liability on additional income.

5.1 It may not be necessary for this court to go into the mathematical details as set out in the application for settlement. What is called upon to be decided by this court is whether the settlement commission could have rejected the application filed by the petitioner and not allowing it to be proceeded treating it as invalid under section 245(D) 2(C) of the Act. On the application being entertained, the Settlement Commission passed an order dated 21.12.2017 under section 245D

(1) of the Act after taking note of the details furnished in the application for settlement as well as the paper book filed along with it, found that all the requirements laid down under section 245(C) (1) have been fulfilled by the petitioner.

5.2 It was further pointed out that on the basis of the materials placed before the Settlement Commission, they were of the view that prima facie there is no material in the possession of the Settlement Commission, which warrants the conclusion that true and full disclosure has not been made by the petitioner or he has not disclosed the manner of earning such income. Accordingly, the Settlement Commission held that the application is fit to be allowed to be proceeded with further. An order to the said effect was passed without prejudice to the finding that may be given at a later stage of the proceedings. Pursuant to the said order, the Principal Commissioner of Income Tax, Central -1 (i/c), Chennai, submitted a report under section 245D(2B) of the Act. The petitioner was given an opportunity to offer his comments on the report dated 05.02.2018, which the petitioner had filed on 12.02.2018.

5.3 The case was listed for hearing before the Commission on 16.02.2018 three days before the hearing on 13.02.2018, the Principal Commissioner of Income Tax, Central -1 (i/c), Chennai (hereinafter referred to as 'PCIT'), submitted a supplementary report under section 245D(1). In the said report, the PCIT had stated that a refund of Rs.98,18,350/-, vide cheque dated 25.10.2016, has already been issued to the petitioner for the assessment year 2016-17 by the CPC, Bengaluru after processing the original return filed by the petitioner and thus, there exists no refund due for the assessment year 2016-17, which can be adjusted against the additional tax liability. The report states that the petitioner has offered additional income of Rs.1,83,68,000/- before the Settlement Commission for the assessment year 2016-17, which resulted in additional tax liability of Rs.63,56,798/-, however, the petitioner has not paid any tax on the additional income offered for the assessment year 2016-17. Hence, it was reported that the petitioner has not paid the tax in full for the additional income offered before the Settlement Commission, therefore, cannot be said to have fulfilled the condition and requested the Commission to declare the application as invalid.

5.4 On receipt of the supplementary report dated 13.12.2017, the petitioner submitted a representation before the Settlement Commission stating that PCIT has reported that the petitioner has received refund for the assessment year 2016-17, vide cheque dated 25.10.2016 for a sum of Rs.98,18,350/- and the petitioner has verified the form 26AS

along with Bank Account and accepts the receipt of the said refund. It was further submitted that the petitioner had claimed the above refund for adjustment in respect of the additional tax liability arising in the application filed before the Commission and the said sum was claimed inadvertently and stated that it is an unintentional one and he may kindly be pardoned. The Settlement Commission, after taking into consideration the supplementary report filed by the PCIT, passed the impugned order dated 16.02.2018 treating the application as invalid under section 245D(2C) of the Act. The reason being that there is short fall in payment of tax and interest for the assessment years 2015-16 and 2016-17, due to issue of refund prior to the date of making application, which was not considered in the settlement application and that the petitioner has made a false claim on refund and hence, the application is not maintainable and liable for rejection.

6. What is important to note is that when the petitioner had filed the application for settlement, there were enclosures along with the application. One such enclosure being Enclosure B : Part C: Col: 4:5:6:7 to Form 34B. So far as the balance tax payable for the assessment year 2015-16 is concerned, it is set out in column No.9 of the Enclosure B an amount of Rs.1,17,07,922/- has been shown. According to the petitioner, while computing this amount, the petitioner took note of the refund claim of Rs.98,18,350/- and reflected the balance amount and this is according to the petitioner is a genuine mistake as the Form 26AS for the financial year 2015-16 corresponding to the assessment year 2016-17 in Part D which deals with details of paid refund states "No transaction present". Thus, the plea of the petitioner that it is an unintentional, inadvertent mistake and that being technical, should not have been taken as a ground to reject the application as invalid. The petitioner stated that his erstwhile Chartered Accountants failed to inform the petitioner with regard to the depositing of the amount in one of their Bank Accounts towards refund of tax for the assessment year 2016-17 and keeping in mind the circumstances of the proceedings, the petitioner was under the bona fide belief that the refund due to them would not be processed in such an expeditious manner, i.e., within a span of two months from the date of filing of returns for the assessment year 2016-17 on 05.08.2016 and that too, in a case where search action was taken under section 132 of the Act.

7. What is interesting to note is that, these figures were clearly reflected in the application filed before the Settlement Commission and the application having been allowed to be proceeded with the Settlement Commission, pursuant to its order dated 21.12.2017, PCIT had full materials before it to examine the correctness of the claim made by the petitioner in

their application, while requesting the Settlement Commission to settle their due, yet this issue was not pointed out in the report of the PCIT dated 05.02.2018.

8. On a reading of the report dated 05.02.2018 filed under section 245D(2B) of the Act by the PCIT, it is clear that a thorough study has been made and correctness and adequacy of additional taxes and interest paid by the petitioner has been verified and wherever PCIT found that the tax and interest calculation were found to be correct it has been so stated and wherever the department had their reservation for stating that there is no true and full disclosure, the same has been explicitly mentioned. Thus, the fact that the refund of Rs.98,18,350/- was granted to the petitioner vide cheque dated 25.10.2016, pursuant to the proceedings of the CPC, Bengaluru was not within the knowledge of the PCIT. The petitioner also pleads ignorance and stated that his previous Chartered Accountants did not inform him. The fact that the refund was already been granted by cheque dated 25.10.2016 came to the notice of the PCIT much later and placed before the Settlement Commission by way of supplementary report dated 13.02.2018. The petitioner pleaded inadvertence, stated that the error is unintentional and sought for pardon before the Settlement Commission.

9. The respondents in their counter affidavit, which has been heavily relied on by the learned Senior Standing Counsel appearing for the Revenue, have stated that when the PCIT found that the petitioner had misrepresented facts relating to the payment of taxes due on the income admitted, more particularly, the fact that the refund of Rs.98,18,350/- was already credited to the petitioner's account.

10. The facts as stated in the counter affidavit disclose that the PCIT was not aware of the fact that the refund was already granted when he had submitted his report dated 05.02.2018. In other words, the 2nd respondent-Department does not dispute the fact that the grant of refund was brought on record before the Settlement Commission only vide Supplementary Report dated 13.02.2018, three days prior to the hearing of the application.

11. It has to be seen as to how the Settlement Commission has dealt with such cases. In the case of M/s. Hatsun Agro Products Limited, who filed an application before the Settlement Commission for the assessment year 2008-09 to 2014-15, more or less a similar issue arose before the Tribunal with regard to the claim of the assessee for adjustment of refund towards additional tax on the income disclosed before the Commission. In that case, the Settlement Commission gave an opportunity to

the assessee to pay the sum, since the refund is only a notional figure till it is crystalised/issued.

12. Chapter XIX A was inserted by the Taxation Laws (Amendment) Act, 1976 with effect from 01.04.1976. The chapter introducing such Act was to provide an avenue for settlement i.e., expeditious settlement of cases and to avoid long term litigation. The powers of Settlement Commission have been spelt out in the said chapter which shows that the commission has wide powers while processing application for settlement of the cases. In fact, section 245E of the Act, confers power to the said Commission to reopen the completed proceedings. Further, section 245F(1) confers powers vested in Income tax Authority under the Act on the Settlement Commission. Thus, the purpose of insertion of Chapter XIX A of the Act should be borne in mind while an application is presented before the Commission for settlement. At this juncture, it would be apt to refer to the recommendations made by the Wanchoo Committee for establishing a settlement machinery under the Act. It was pointed out that the door for compromise with an errant taxpayer, should not, for ever, remain closed, as in the administration of fiscal laws, whose primary objective is to raise revenue, there has to be room for compromise and settlement. A rigid attitude would not only inhibit a one-time tax-evader or an unintending defaulter from making clean breast of his affairs, but would also unnecessarily strain the investigational resources of the Department in cases of doubtful benefit to revenue, while needlessly proliferating litigation and holding up collections. Therefore, it was suggested that there should be a provision in the law for a settlement with the taxpayer at any stage of the proceedings.

13. Further, it was pointed out that each individual case can be considered on its merits and full disclosures not only of the income but of the modus operandi of its build up can be insisted on, thus sealing off chances of continued evasion through similar practices. Full power is conferred on the Settlement Commission to call for a report from any of the income-tax authorities and to pass orders allowing the application filed by an assessee fully or partly or to reject the application, but the application could not be proceeded with by the Settlement Commission if it forms the opinion that there has been concealment of particulars of income or perpetration of fraud by the applicant.

14. Considering the facts and circumstances of the case and more particularly, that the Income Tax Department themselves were not aware of the fact that the refund has been processed and granted on 25.10.2016, when they filed report dated 05.02.2018 and was brought on record only by way of

supplementary report dated 13.02.2017, it was inadvertently omitted by the petitioner and the petitioner having pleaded ignorance and inadvertence and sought for pardon, the Settlement Commission could not have treated the petitioner's case as one of making a false claim of refund. In fact, in paragraph 9 of the affidavit filed in support of the writ petition, the petitioner has stated that his former Chartered Accountants did not inform him about the same, was under the bona fide belief that the refund due to him would not be processed in such an expeditious manner, that too, within a short span of two months from the date of filing of returns for the assessment year 2016-17.

14. The learned Senior Standing Counsel for the Revenue strenuously contended that it is a clear case of failure to give full and true disclosure.

15. I am unable to accept the said stand for the reason that the application before the Settlement Commission contained all details and thus the Department which has to peruse the same and file a report as required under section 245D(2C) of the Act. The explanation offered by the Revenue stating that the petitioner has not specifically claimed the refund of Rs.98,18,350/- is not acceptable, since the application has to be scrutinised as a whole and all details have to be verified for its correctness, more particularly, the details in Enclosure B of the application. Thus, I find that the application ought not to have been rejected on such technical ground, bearing in mind the object and purpose for which Chapter IIXA was inserted in the Income Tax Act.

16. In Vascon Engineers Ltd., vs. Income-tax Settlement Commission and Others, reported in (2015) 376 ITR 360, writ petition was filed before the High Court of Bombay challenging an order passed by the Settlement Commission under Section 245D (2C) of the Act dismissing the application on the ground that the application for settlement as filed is not valid for failure to pay taxes on the additional declared income as contended by the Commissioner of Income-tax. The Court while examining as to whether the decision making process of the Commission was just and proper pointed out that a rejection of the application on dubious / suspicious ground made out in the report should not be allowed by the Commission without some enquiry to satisfy itself about the stand of the Commissioner. The circumstances surrounding the Commissioner's report viz., of equal amount of interest demand to refund granted by the intimation, not annexing the intimation to the report and the intimation itself being served upon the petitioner therein after over one year and it is purported issue and after the Commissioner's report also raised questions about its authenticity. Thus, it was pointed

out, an unjustified rejection without proper enquiry into the stand of the Revenue would cause prejudice to the assessee as all the information made available during the settlement proceedings would be capable of use by the Assessing Officer to the prejudice of the applicant in regular assessment proceedings. Therefore, non-enquiry into issues, which were suspicious, by the Commission, before rejecting the application for settlement evidence a flaw in the decision making process.

17. In the case on hand, a Supplementary Report was filed by the PCIT on 13.02.2018, to which the petitioner submitted his response pleading inadvertence and that he was under the bona fide belief that the refund claimed is yet to be processed given the short span of time after filing of his return of income.

18. On a reading of the impugned order dated 16.02.2018, I find that the Settlement Commission did not conduct an enquiry to satisfy itself that the stand taken by the PCIT by way of a supplementary report could be a valid ground to come to a conclusion that the assessee had made a false claim on the refund due. The Settlement Commission did not endeavor to go into the aspect as to why this information was not placed by the PCIT while filing the report dated 05.02.2018 under Section 245D (2B) of the Act. Thus, to hold that the assessee had misrepresented facts without an enquiry into the matter more so, in the light of the stand taken by the assessee pleading inadvertence and bona fide mistake, I have no hesitation to hold that there is a flaw in the decision making process. Therefore, this Court is well justified in exercising its jurisdiction under Article 226 of the Constitution of India, which confers power of judicial review on this Court over orders passed by Courts and Tribunals. The Settlement Commission having been held to be a Tribunal, the petitioner is entitled to seek judicial review of the order of the Settlement Commission in a petition under Article 226 of the Constitution of India. It is to be borne in mind that the Settlement Commission was constituted for settling complicated claims of tax evaders as an extraordinary measure for giving an opportunity to such persons to make a confession and have the matters settled once for all and purchase peace. Thus, the Settlement Commission is a forum before which the assessee surrenders himself and it is not a forum for challenging the legality of assessment order or other orders passed in any proceedings under the Act. The Scheme of the Act clearly shows that the power conferred on the Settlement Commission is wide, as it has the power to give immunity against prosecution or imposition of penalty.

19. For the above reasons, this court is of the view that the petitioner should be permitted to proceed further and for

which purpose the petitioner should be given an opportunity to pay the tax.

20. In the result, the the writ petition is allowed, the impugned order is set side and the matter is remanded to the 1st respondent- Income Tax Settlement Commission, Additional Bench, Chennai for fresh consideration. The 1st respondent is directed to afford an opportunity to the petitioner to make good the short fall in payment of tax and interest for the relevant assessment years within a period of two weeks from the date of receipt of a copy of this order and thereafter the Settlement Commission proceed with the application on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Rj

To

- 1 Income Tax Settlement Commission
Additional Bench, Chennai
Ministry of Finance
Department of Revenue
640, Anna Salai, Nandanam
Chennai- 600 035.
- 2 Assistant Commissioner of Income Tax
Central circle 3(1), Chennai
New No. 46 Mahatma Gandhi Road
Chennai- 600 034.

+1cc to Mr.R.SIVARAMAN, Advocate, S.R.No.38848
+1cc to Mr.A.P.SRINIVAS, Advocate, S.R.No.38448

W.P.No.5333 of 2018 &
W.M.P. Nos.6553 & 6554 of 2018

TR(05/07/2018)