

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2018

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

Writ Petition No.666 of 2018
and
WMP Nos.836 to 838 of 2018

Orders reserved on 11.01.2018	Orders pronounced on 19.01.2018
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Anbuchezhian, S/o.Neelamegam. Petitioner

Vs.

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 2(2), Chennai,
New No.46, Mahatma Gandhi Road,
Chennai-600 034.

... Respondents

Petition filed Under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the first respondent contained in its impugned order bearing No.TN/CN 52/2017-18/57-IT dated 05.01.2018 and to quash the same as arbitrary, unjust and illegal, and to consequently direct the first respondent to reconsider the application filed by the petitioner bearing No.TN/CN 52/2017-18/57-IT and pass a fresh order under Section 245D(1) of the Income Tax Act, 1961 after affording the petitioner a sufficient opportunity of being heard, in accordance with law.

For Petitioner : Mr.R.V.Eshwar, Senior Counsel
for Mr.R.Sivaraman

For Respondents : Mr.A.P.Srinivas,
Senior Standing Counsel
assisted by Mr.A.N.R.Jayapradhap,
Junior Standing Counsel

O R D E R

The petitioner has filed this writ petition challenging the order passed by the Income Tax Settlement Commission (hereinafter referred to as "the Settlement Commission"), Additional Bench, Chennai, dated 05.01.2018, passed under Section 245D(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). By the impugned order, the petitioner's application for settlement of his case was rejected on the ground that he failed to make full and true disclosure and also the manner of earning such income, which are the requisite conditions laid down in Section 245C(1) of the Act. As the petitioner has not satisfied the conditions laid down in the said provision, the application filed by the petitioner dated 26.12.2017, for the assessment years 2010-11 to 2016-17 was not allowed to be admitted under Section 245D(1) of the Act. The application dated 26.12.2017, was the second application filed by the petitioner for settlement of his case. The first application was made on 28.07.2017, which was rejected by order dated 10.08.2017, under Section 245D(1) of the Act. The following facts would be necessary for considering as to what relief the petitioner is entitled to in this writ petition.

2.The petitioner is an individual carrying on business of distribution of films produced by third parties primarily in the area of Madurai - Ramnad Districts and occasionally in other districts and he is an assessee on the file of the second respondent, the Assistant Commissioner of Income Tax, Central Circle 2(2), Chennai.

3.According to the petitioner, his line of business was to ensure the smooth running of his film distribution business, for which purpose, he had opened multiple Bank accounts in various Banks in the names of different persons/entities to ensure

timely realizations and also for the sake of his convenience. The advances made by the petitioner to the film Producers and others in connection with the distribution business are routed through Bank accounts by way of RTGS/Cheques and also from cash withdrawals. In case of distribution basis, the movies are released for and on behalf of the Producers generally in Madurai - Ramnad area and for having done this the petitioner charges a share of profit of the film out of the net share of the Producer, normally in the range of 2% to 10%. That apart, films are also released on minimum guarantee basis, where an initial sum is paid to the Producer by the distributor irrespective of how the film performs.

4.The petitioner would state that out of the monies earned in his business, certain portion of it was used towards purchase of immovable properties, investments, jewellery, loans and advances and the balance is retained as cash or Bank balance. The collections from the theatres in connection with distribution business are partly in cash and partly through Bank. Further, the payments made to Producers/Sub-distributors are also partly in cash and partly through Bank, as the nature of trade is such. A search proceeding under Section 132 of the Act was conducted in the offices and residential premises of the petitioner in Chennai and Madurai on 30.09.2015 and 01.10.2015, during which, materials were seized/impounded as well as cash amounting to Rs.67,00,000/- from the residential premises of the petitioner. Pursuant to the search, notices under Section 153A of the Act dated 28.11.2016, were issued for the assessment years 2010-11 to 2015-16. The petitioner, over and above the income returned for the relevant assessment years amounting to Rs.5,91,56,880/- had admitted undisclosed income of Rs.25,10,95,304/- under Section 132(4) of the Act.

5.The petitioner would state that for the assessment year 2016-17, he filed original return under Section 139(1) of the Act on 15.12.2016, declaring the total income of Rs.4,00,00,000/-. Thereafter, the petitioner preferred an application before the Settlement Commission on 28.07.2017, to settle the issues. The said application was rejected by order dated 10.08.2017, apart from other reason that the petitioner had reduced the quantum of transactions as per the seized material from Rs.357 Crores to Rs.175 Crores. Pursuant thereto, the petitioner preferred the second settlement application dated 26.12.2017, before the Settlement Commission to settle three issues for the block assessment period 2010-11 to 2016-17. The three issues being, (a) undisclosed income of the petitioner for the relevant assessment years arising out of the materials seized/impounded in the search proceedings and also to determine

the consequential tax and interest thereon payable under the Act; (b) the petitioner be granted immunity from all the penalties and prosecution under the Act; (c) the petitioner be granted capitalization of undisclosed income offered before the Settlement Commission.

6.The petitioner would further state that he had paid an additional tax of Rs.13,31,02,037/- for the relevant assessment years, which were covered in the settlement application. So far as the major portion of the undisclosed income is concerned, which were retrieved by the Department through diary notings, loose sheets at the premises of the petitioner provided page wise explanation with counter party confirmations from the parties to whom monies were advanced for the purpose of production/distribution of films. This second application was rejected vide order dated 05.01.2018, by the Settlement Commission. This order is impugned in this writ petition.

7.Mr.R.V.Eshwar, learned Senior Counsel for Mr.R.Sivaram, learned counsel for the petitioner prefaced his submissions by stating that the petitioner has filed voluminous documents before the Settlement Commission in the form of paper book in 12 volumes and the Settlement Commission did not consider the reconciliation provided by the petitioner and the explanation offered and rejected the application without proper consideration. The Settlement Commission without forming a reasoned opinion had applied the provisions of Section 292C of the Act to the application for settlement. The Settlement Commission ought to have considered the submissions made by the petitioner with respect to the absolute admissibility of the contents of the diary notings seized from the search action.

8.The petitioner contended that the entire diary notings were only tentative documents that ought not to have been fully relied on by the Department, more particularly, when the petitioner had made extensive submissions, explanations and evidences with respect to the undisclosed income. The Settlement Commission ought to have appreciated the page wise explanation of seized materials and detailed explanations of seized annexures along with confirmations received from the counter parties. The Settlement Commission erred in observing that the diary notings did not match with the amount offered by the petitioner despite the authorized representative explaining the modus operandi of the petitioner that the Settlement Commission ought to have formed a prima facie opinion on the aspect of full and true disclosure of the particulars of income after going through the contents, submissions and additional paper books preferred by the petitioner. The Settlement

Commission did not provide reasonable opportunity to the petitioner to clearly substantiate their claims and arbitrarily passed the impugned order.

9.The learned Senior Counsel has drawn the attention of this Court to the order passed by the Settlement Commission dated 10.08.2017, by which, the first application for settlement was rejected and pointed out that the Settlement Commission had held that the petitioner reduced the quantum of transactions as 'not transactions' and while submitting the second application dated 26.12.2017, the petitioner had offered Rs.3,46,86,58,764/-, which was not taken into consideration by the Settlement Commission. The petitioner had given full explanation of the quantum of transactions by producing necessary documents in assessee's paper book IV for Rs.386 Crores, which aspect was not appreciated by the Settlement Commission.

10.It is further submitted that the assessee may be justified in requesting the Settlement Commission to examine the voluminous record, but there is sufficient machinery available with the Settlement Commission, apart from the power of the Commission to call for a report in terms of Rule 9 or to exercise its powers under Section 245D(3) of the Act and call for a report from the Principal Commissioner of Income Tax, which procedure was not adopted. Thus, the Settlement Commission ought to have considered that the grounds on which the first application was rejected were made good by the petitioner in the second application, which aspect was not appreciated by the Settlement Commission. Therefore, the learned Senior Counsel would submit that the matter may be remanded for fresh consideration before the Settlement Commission giving an opportunity to the assessee to explain the voluminous documents placed before it and also to direct the Settlement Commission to cause enquiry into those documents by exercising power under Rule 9 or under Section 245D(3) of the Act or with the machinery available with the Settlement Commission.

11.Mr.A.P.Srinivas, learned Senior Standing Counsel assisted by Mr.A.N.R.Jayaprathap, learned Junior Standing Counsel appearing for the Revenue submitted that by the impugned order, the second application for settlement has been rejected by the Settlement Commission and the issues pointed out by the Settlement Commission are all factual and this Court exercising jurisdiction under Article 226 of the Constitution would not make a fact finding exercise to ascertain the correctness of the submissions of the assessee and the assessee should be relegated

to adopt normal course of assessment under the provisions of the Act.

12. Heard the learned counsels for the parties and carefully perused the materials placed on record.

13. The submissions of the learned Senior Counsel for the petitioner convinced this Court to remand the matter to the Settlement Commission for fresh consideration. This submission is largely based on the materials placed before the Settlement Commission along with the second application, which are voluminous and require thorough verification. It is not in dispute that the second application is maintainable before the Settlement Commission. Nevertheless it has to be seen as to whether the order passed by the Settlement Commission is so arbitrary or unreasonable suffering from errors apparent on the face of the order or that no reasonable person could comprehend the reasons assigned by the Settlement Commission for rejection of the application. It is no doubt true that the object of introduction of Section 245 into the provisions of the Income Tax Act is to bring about an early resolution of tax disputes, by which the assessee gets immunity from penalty and prosecution. However, the provision contain strict parameters, which guide the Settlement Commission as to how to go about when an application for settlement is made. The first and foremost condition for an assessee to fulfill before the Settlement Commission is to satisfy the Commission that his disclosure was full and true. If this basic ingredient is not satisfied, the Commission can reject the application at the very threshold, as has been done by the impugned order at the stage of Section 245D (1) of the Act. Thus, the impugned order has to be tested on the anvil of the parameters pointed out above and this Court cannot convert itself as an appellate authority over the findings recorded by the Settlement Commission. Undoubtedly, this Court is exercising jurisdiction under Article 226 of the Constitution of India cannot convert itself into that of an appellate authority over and above the order passed by the Settlement Commission to consider the correctness of the same by re-appreciating the documents placed before the Commission. Thus, we would have to look into the impugned order and the reasons assigned therein.

14. Admittedly, the petitioner does not allege that the impugned order suffers from errors apparent on the face of the record. The endeavour of the assessee is to show to the Court that proper appreciation of the documents filed by the assessee was not done by the Settlement Commission, especially when the

petitioner had made good whatever was pointed out by the Settlement Commission while rejecting the first application. Thus, I proceed to examine as to whether the reasons assigned by the Settlement Commission are just and proper and as to whether they call for interference.

15.The petitioner's case before the Settlement Commission was that he could not maintain proper Bank accounts, as he was focusing his time on his business and the returns of income for various years were filed only on estimate basis. The petitioner claimed that the seized materials are only notes containing the details of enquiry relating to distribution advances made with producers, theatre owners etc., and not actual transactions and sought to sustain this submission by relying on paper book IV. Further, the petitioner admitted that he had opened multiple Bank accounts in various Banks in the names of different persons/entities and the advances were made through Bank account by way of RTGS, cheques and cash withdrawals.

16.The Settlement Commission considered the aspect as regards full and true disclosure of income and summarized the manner of earning additional income as propounded by the petitioner in paragraph 5.2 of the impugned order. The Settlement Commission has recorded that it considered the application filed by the petitioner, the paper books filed, the submissions of the authorized representative of the petitioner and the available records and recorded the submissions made on facts. After considering the same, the Settlement Commission pointed out that the authorized representative of the petitioner was not able to cogently explain any of the entries relating to the applicant's claim on 'not done' transaction. Therefore, opined that trueness and fullness of the disclosure is lacking in the application. The Settlement Commission took into consideration the written submissions filed by the authorized representative of the petitioner during the course of hearing said to contain the co-relation statement of diary notings with actual transaction and list of 'not done' transaction as claimed by the petitioner. The Settlement Commission pointed out that the authorized representative was unable to clarify the notings in diary and the quantum of transaction in paper book IV.

17.The Settlement Commission appears to have pointed out certain deficiencies with regard to full and true disclosure of the petitioner's income and the manner of earning the same, including further disclosure of additional income of Rs.5 Crores. It is recorded by the Settlement Commission that when these deficiencies were pointed out, the authorized

representative relied on paper book IV and paper book V. However, on perusal of the same, the Settlement Commission found that the entries appearing in the seized documents (paper book V) did not match with the explanations appearing in paper book IV and certain entries were pointed out such as the entries appearing in the name of Gnanavel, being part of the seized material placed in paper book V. To the specific query made to the authorized representative to explain 'not done' transaction, it was observed that he was not able to explain and match the transactions with the entries appearing in the paper books submitted by the assessee.

18. Further, the Settlement Commission observed that the explanation of the manner of earning the further additional disclosure of Rs.5 Crores made in the second application did not form part of the SOF nor the authorized representative of the petitioner was able to explain about the nature of details of the disclosure.

19. Further, it appears that the Settlement Commission pointed out these deficiencies to the authorized representative during the course of hearing, who was unable to give any clarification and therefore, came to the conclusion that there has been no full and true disclosure. On the above grounds, the application has been rejected. Thus, the case on hand is not one where the Settlement Commission brushed aside the documents filed by the petitioner. In fact an exercise has been done by the Settlement Commission to examine the stand taken by the assessee, giving liberty to the assessee to explain from the documents filed in the paper book. It needs to be pointed out that vital aspects, which were queried by the Commission, the authorized representative of the petitioner was unable to explain or clarify or match the transactions. An argument was put forth that the Settlement Commission ought to have utilized the machinery available with it to cause clarification or to call for a report under Rule 9 or to call for a report under Section 245D(3) of the Act.

20. Be noted that the application is at the stage of admission and the petitioner should satisfy the Settlement Commission that there has been full and true disclosure. At that stage of the matter, the Settlement Commission cannot be expected to or cannot be compelled to utilize the machinery available with it or to invoke Rule 9 or Section 245C of the Act. It is for the Settlement Commission to regulate its business. The manner in which the Settlement Commission proceeded cannot be stated to be either arbitrary or

unreasonable. The Court cannot dictate the procedure that the Settlement Commission has to follow at the stage of Section 245D (1) of the Act unless there is a palpable error or violation of any procedures under the Act. In other words, broad parameters required to satisfy a prima facie case before a Court of law is what is required at the stage of Section 245D(1) of the Act. The degree of proof for a prima facie case is on higher pedestal before a judicial forum. It is no doubt true that Section 245 was inserted into the provisions of the Income Tax Act for an early resolution of complicated tax disputes, where the assessee gets relief, more particularly from penalty and prosecution. However, to be entitled for such a remedy, the conduct of the assessee is primordial. In my considered view, the conduct of the assessee as pointed out by the Tribunal definitely leads to the irresistible conclusion that there has been no full or true disclosure.

Thus, for the above reasons, this writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Income Tax Settlement Commission,
Additional Bench, Chennai,
Ministry of Finance,
Department of Revenue,
640, Anna Salai, Nandanam,
Chennai-600 035.

2.The Assistant Commissioner of Income Tax,
Central Circle 2(2), Chennai,
New No.46, Mahatma Gandhi Road,
Chennai-600 034.

+1 cc to Mr.A.P.Srinivas Advocate sr 4680

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aa01/02/2018