

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.06.2018
DELIVERED ON : 06.08.2018

CORAM :

THE HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE
and
THE HON'BLE MS.JUSTICE P.T.ASHA

W.A.No.496 of 2018

1. The Union of India
rep. by the Chairman
Central Board of Direct Taxes
North Block, New Delhi.
2. The Commissioner of Income Tax
Central I, 109, Nungambakkam High Road
Chennai - 600 034.
3. The Assistant Commissioner of Income Tax
Central Circle - I(3)
121, Nungambakkam High Road
Chennai - 600 034. ... Appellants

Vs.

1. Dr.L.Subramanian
2. The Income Tax Settlement Commission
Additional Bench
488-489, Anna Salai
Chennai - 600 035. ... Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 12.7.2017 passed in W.P.No.6153 of 2004 on the file of this Court.

WP.No. 6153 of 2004 Prayer: Writ petition filed under Article 226 of the constitution of India praying to issue a Writ direction or order in the nature of certiorari to call for the records of the first respondent Income Tax Settlement Commission Additional Bench, Chennai in its file settlement Application Nos.21/V/95-IT/605/86/97-IT for assessment years 1992-93 to 1995-96 and quash the impugned order dated 28.11.2003.

For Appellants : Ms.Hema Muralikrishnan

For Respondents: Mr.R.Kumar
for 1st respondent

JUDGMENT

Ms.INDIRA BANERJEE, CHIEF JUSTICE

This appeal is directed against the order dated 12.7.2017 passed by the learned Single Bench in a writ petition, being W.P.No.6153 of 2004, filed by the first respondent/writ petitioner, herein after referred to as "the assessee".

2. The facts in a nutshell are as under: The assessee filed a settlement application under Section 245C of the Income Tax Act, 1961, hereinafter referred to as "the 1961 Act" on 19.1.1996 for settlement of his case pertaining to assessment years 1992-1993 to 1994-1995. By order dated 28.8.1996 in S.A.No.21/V/88/95-IT, the said application was allowed to be proceeded with under Section 245D(1) of the 1961 Act.

3. Likewise, the assessee filed another settlement application under Section 245C of the 1961 Act on 4.3.1998 for settlement of his case pertaining to assessment years 1995-1996. By order dated 27.5.1998, the said application was allowed to be proceeded with under Section 245D(1) of the 1961 Act.

4. The Settlement Commission passed a combined final order under Section 245D(4) on 25.6.1999, whereby the Settlement Commission reduced the interest chargeable under Section 234B to the extent of 25% for each of the assessment years 1992-1993 and 1993-1994 and the interest chargeable was reduced to the extent of 50% for each of the assessment years 1994-1995 and 1995-1996. The interest was charged up to the date of assessment order/filing of return.

5. Assailing the said order passed by the Settlement Commission waiving/reducing the statutory interest, the Revenue appealed to the Supreme Court. The Supreme Court, vide order dated 12.11.2002 in C.A.Nos.4237-4240 of 2000, referring to its decision in CIT v. Anjum M.H. Ghaswala, reported in (2001) 119 Taxman 352, held that the Settlement Commission does not have the power to reduce or waive the statutory interest, except to the extent of granting relief under two circulars issued by the Central Board of Direct Taxes (CBDT). The appeals were thus allowed and the matter was remanded to the Settlement Commission for the purpose of examining whether the two circulars referred to in the judgment are applicable in the facts of the case and if so, to what extent the assessee will be entitled to relief.

6. On 12.2.2003, while the issue was pending consideration by the Settlement Commission, the Revenue filed a petition under Section 154 of the 1961 Act before the Settlement Commission for correction of its mistake with regard to the terminal date for

levy of interest under Section 234B of the 1961 Act, in the light of the decision of the Supreme Court in CIT v. Hindustan Bulk Carrier, reported in (2003) 126 Taxman 321, where the Supreme Court held that interest under Section 234B is to be payable till the date on which the Settlement Commission passes the order under Section 245D(4) of the 1961 Act.

7. The Settlement Commission, vide order dated 28.11.2003, held that there was no case for waiver of interest leviable under Section 234B of the 1961 Act and that the interest under Section 234B of the 1961 Act would be charged up to the date of the order under Section 245D(4) of the 1961 Act.

8. The assessee filed a writ petition, being W.P.No.6153 of 2004, challenging the said order dated 28.11.2003 passed by the Settlement Commission. By an order dated 12.7.2017, the writ petition has been allowed by the learned Single Bench following its earlier decision in C.V.Mathew v. Income Tax Settlement Commission and others, reported in (2016) 96 CCH 0295. This intra Court appeal is against the said order dated 28.11.2003 passed by the learned Single Bench.

9. Learned Standing Counsel for the Revenue submitted that on the date of passing of the order by the Settlement Commission there was a binding judgment of the Supreme Court in Hindustan Bulk Carrier, supra, holding that interest had to be levied up to the date on which order under Section 234D(4) was passed by the Settlement Commission and, therefore, there was an apparent mistake in the order of the Settlement Commission levying interest up to the date of assessment order.

10. Learned counsel further argued that the Supreme Court had remanded the matter to the Settlement Commission. As such, the proceedings had not concluded, and, therefore, the finding of the learned Single Bench that the Settlement Commission was wrong in reviewing its own order was liable to be set aside. He argued that the decision of the Supreme Court in Brij Lal and others v. CIT, reported in (2010) 328 ITR 477 has not been correctly construed.

11. Learned counsel for the assessee submitted that the Settlement Commission cannot reopen its concluded proceedings by invoking Section 154 of the 1961 Act to levy interest under Section 234B of the 1961 Act. To fortify the said argument, he placed reliance on the decisions in (i) Brij Lal and others v. CIT, supra; and (ii) U.Narayanamma and others v. Government of India, reported in (2013) 352 ITR 598 (AP).

12. Section 154 of the 1961 Act reads as under:
"Section 154. Rectification of mistake.

(1) With a view to rectifying any mistake apparent from the record an income-tax authority referred to in section 116 may,—

(a) amend any order passed by it under the provisions of this Act ;

(b) amend any intimation or deemed intimation under sub-section (1) of section 143;

(c) amend any intimation under sub-section (1) of section 200A;

(d) amend any intimation under sub-section (1) of section 206CB.

(1A) Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section (1), the authority passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.

(2) Subject to the other provisions of this section, the authority concerned—

(a) may make an amendment under sub-section (1) of its own motion, and

(b) shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee or by the deductor or by the collector, and where the authority concerned is the Commissioner (Appeals), by the Assessing Officer also.

(3) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee or the deductor or the collector, shall not be made under this section unless the authority concerned has given notice to the assessee or the deductor or the collector of its intention so to do and has allowed the assessee or the deductor or the collector a reasonable opportunity of being heard.

(4) Where an amendment is made under this section, an order shall be passed in writing by the income-tax authority concerned.

(5) Where any such amendment has the effect of reducing the assessment or otherwise reducing the liability of the assessee or the deductor or the collector, the Assessing Officer shall make any refund which may be due to such assessee or the deductor or the collector.

(6) Where any such amendment has the effect of enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee or the deductor or the collector, the Assessing Officer shall serve on the assessee or the deductor or the collector, as the case may be a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 156 and the provisions of this Act shall apply accordingly.

(7) Save as otherwise provided in section 155 or sub-section (4) of section 186 no amendment under this section shall be made after the expiry of four years from the end of the financial year in which the order sought to be amended was passed.

(8) Without prejudice to the provisions of sub-section (7), where an application for amendment under this section is made by the assessee or by the deductor or by the collector on or after the 1st day of June, 2001 to an income-tax authority referred to in sub-section (1), the authority shall pass an order, within a period of six months from the end of the month in which the application is received by it,—

- (a) making the amendment; or
- (b) refusing to allow the claim.”

13. Section 245F(1) of the 1961 Act confers on the Settlement Commission all powers which are vested in an Income Tax Authority under the 1961 Act. The Settlement Commission, therefore, has power to rectify an order. The powers under Section 154 of the 1961 Act can be exercised by the Settlement Commissioner in addition to those specifically provided under Chapter IXA.

14. There is a difference between rectification of an order and review of an order. Review means reconsideration of the decision, whereas rectifying a mistake apparent from the record means making a correction which does not change the basis of a decision, as held in Lily Thomas v. Union of India, reported in AIR 2000 SC 1650. Review means the act of looking over something again with a view to correct or improve.

15. It is well settled that the power of review is not an inherent power. Such power has to be conferred by statute either expressly or by necessary implication. In this case, there is no power of review. However, the power of rectifying

an apparent mistake under Section 154 of the 1961 Act includes wide power to amend the order, which has the effect of enhancing an assessment or increasing the liability of the assessee.

16. In *M.A.Murthy v. State of Karnataka*, reported in (2003) 264 ITR 1 (SC), the Supreme Court reiterated that the decision of the Supreme Court that enunciated a principle of law is applicable to all cases irrespective of the stage of pendency, because it is assumed that what is enunciated by the Supreme Court is, in fact, law from the inception. The law declared by the Supreme Court has effect not only from the date of the decision, but from the inception of the statutory provision.

17. In *Geo Miller and Co. Ltd. v. Deputy Commissioner of Income Tax*, reported in (2003) 262 ITR 237 (Cal), the Calcutta High Court held that the Explanation added to Rule 1 of Order 47 of the Civil Procedure Code also applies to Section 154 of the 1961 Act.

18. In our considered view, the Settlement Commission rightly found that a later decision of the Supreme Court declaring the correct legal position would render an order passed earlier erroneous.

19. Interest under Section 234B of the 1961 Act is to be charged up to the date of order under Section 245D(4) of the 1961 Act. The order of the Settlement Commission that the respondent assessee would be entitled to waiver of interest leviable under Section 234A of the 1961 Act; that there is no case for waiver of interest leviable under Section 234B of the 1961 Act; and that interest under Section 234B shall be charged up to the date of the order under Section 245D(4) of the 1961 Act, does not warrant interference, more so, in view of the remand by the Supreme Court in Civil Appeal Nos.8705-8706 of 1996.

20. In our considered view, there is no infirmity in the order of the Settlement Commission which calls for interference in proceedings under Article 226 of the Constitution of India.

In the result, the appeal is allowed and the order under appeal is set aside. No costs.

Sd/-

Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

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TO

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+lcc to Mr.Hema Muralikrishnan, Advocate SR.No.53880

W.A.No.496 of 2018

GMR(CO)
GN(20/08/2018)



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