IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2018

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
and
THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

W.A.No.2535 of 2010
and M.P Nos.1 of 2010 & 1 of 2012

G.Jayaraman
Alwarthirunagar Annexe,
Madras-87. ... Appellant/Petitioner

Vs.

1.The Settlement Commission
(Additional Bench),
Ministry of Finance,
Department of Revenue,
488 and 489, Anna Salai,
Chennai-35.

2.The Assistant Commissioner,
Central Circle I (3)
Chennai-34. ... Respondents/Respondents

Writ Appeal is preferred under Clause 15 of the Letters Patent against the order dated 04.08.2010 made in W.P.No.11882 of 1998.

PRAYER IN WP.11882/1998

Writ petitioner filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari calling for the records in proceedings S.A.No.21/111/79/94-IT dated 22.04.1998 on the file of the first respondent and quash same.

For Appellant : Mr.M.P.Senthilkumar for
Mr.N.Muthukumar

For Respondents : Mrs.Hema Muralikrishnan
Standing Counsel (T)

JUDGMENT

(Judgment of the Court was made by M.M.SUNDRESH,J.)

The appellant has approached the Settlement Commission seeking certain relief. By the impugned order, the Settlement Commission while holding that the appellant has not disclosed the true and full disclosure nonetheless made a re-assessment. The re-assessment made was put into challenge before the learned single Judge. The learned single Judge, after having found that the Settlement Commission does not have the power to undertake an exercise of reassessment, which would only lie with the Assessing Authority, incidentally while allowing the writ petition, set aside the order of the Settlement Commission with liberty to the Assessing Authority to proceed further.

2. The learned counsel appearing for the appellant would submit that the learned single Judge ought not to have set aside the order of the Settlement Commission in a writ petition filed by the appellant. What is challenged is the order passed under Section 143(3) of the Income Tax Act,1961. Once this order is found to be bad procedurally, the order ought to have been challenged before the Settlement Commission at the stage of 245 (1) of the Income Tax Act, 1961. Thus, the order requires interference.

3. The learned counsel appearing for the Revenue would submit that a factual finding has been given on appreciation of the materials by the Settlement Commission that there was no true and full disclosure. Once such a finding is given, the jurisdiction of the Settlement Commission goes away. Inasmuch as the learned single Judge has also confirmed the said finding on a factual basis, no interference is required.

4. We do not find any error in the order passed by the learned single Judge. As rightly submitted by the learned Standing Counsel appearing for the Revenue, there is a factual finding that the appellant has not made a true and full disclosure. When once that position is not assailed, the consequence would follow. Resultantly, as per the settled position of law, the Settlement Commission does not have power to do the reassessment. That is what the learned single Judge exactly did. Incidentally, liberty was given to the Assessing Authority to proceed further. The appellant cannot be said to be the person aggrieved. In such view of the matter, we do not

find any error in the order passed by the learned single Judge. Accordingly, the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To
1.The Settlement Commission
(Additional Bench),
Ministry of Finance,
Department of Revenue,
488 and 489, Anna Salai,
Chennai-35.

2.The Assistant Commissioner,
Central Circle I (3)
Chennai-34.

+1cc to Mr.N.MUTHUKUMAR, Advocate, S.R.No.37337

W.A.No.2535 of 2010

SKV(CO)
TR(27/06/2018)