**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.1281 of 2017**

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Deputy Commissioner of Income Tax

... ... Petitioner/s

Versus

1. The Union Of India and Anr.
2. M/s Pramod Confectionary and Food Products, Vishwanath Sahay Lane, Tekari Road, Gaya.

... ... Respondent/s

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**Appearance :**

For the Petitioner/s : Smt. Archana Sinha @ Archana Shahi, Adv.
: Mr. Alok Kumar, Advocate
: Mr. Sanjeev Kumar, Advocate

For the Respondent/s : Mr. Ajay Kumar Rastogi, Advocate
: Mr. Parijat Saurav, Advocate

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**
**and**
**HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA**

ORAL ORDER

**(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)**

7 29-01-2019 Heard Ms. Archana Sinha, learned counsel appearing for the petitioner-department and Mr. Ajay Kumar Rastogi, learned counsel appearing for the respondent-assessee.

1. The petitioner-department is aggrieved by the order dated 28.07.2016 passed by the Income Tax Settlement Commission in exercise of powers vested under Section 245D(4) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') whereby the Commission has passed settlement orders on the settlement application and computed the total income of the respondent-assessee

which is explained in the annexure attached to the order impugned before this Court.

2. The limited ground on which the order of the Settlement Commission is sought to be challenged by the department is that though the assessee was directed by the Commission to rework his profit for the period 01.04.2013 to 04.11.2013 and which was accordingly submitted by the assessee on 15.07.2016 but the Commission did not give sufficient time to the department to examine the re-worked report submitted by the assessee for the purpose of rebuttal rather the matter was posted on the very next date i.e. 16.07.2016 and whereafter the order was reserved. According to Ms. Sinha, learned counsel appearing for the petitioner-department, the denial of opportunity to the petitioner-department to rebut the reworked assessment of profit for the period in question has prejudiced their stand and the hurriedness with which the order was passed calls for interference and the matter may be remitted back to the Commission for fresh consideration and disposal.

3. Per contra, it is the argument of Mr. Rastogi that even if the assessee had submitted the reworked quantum of income before the Settlement Commission, the assessee in

order to buy peace had accepted whatsoever be the decision of the Commission thereon, on the basis of the claim set forth by the petitioner in the application as rebutted by the Commissioner by filing his report under Rule 9 of the Rules framed under the Act.

4. We have heard learned counsel for the parties and we have perused the records. As we have observed, the limited ground raised by the department for consideration of the grievance is, the denial of opportunity to them to rebut the reworked statement of income by the assessee which was submitted on 15.07.2016. The issue thus, which falls for our consideration is whether, this denial of opportunity to the department to examine the reworked statement of income by the assessee, has prejudiced the petitioner-department in any manner. For that purpose, we take note of the relevant extract of the order preceding the computation of income by the Settlement Commission, which is reproduced hereinbelow:

> *"However, the applicant in order to buy peace and to avoid protracted litigation and in the spirit of settlement, gracefully accepts, the following additions which have been proposed to be made by the Hon'ble Commission."*

5. The Settlement Commission at paragraph-9 has mentioned that since the figures given by the petitioner towards marriage expenses, household expenses as well as foreign tour did not appear convincing rather there were materials to record different opinion, an opportunity was given to the assessee to rework his income and submit his report which was done on 15.07.2016. The order passed by the Settlement Commission, the extract of which, we have reproduced above, reflects that even though the report was submitted by the respondent-assessee but instead he surrendered to the wisdom of the Commission and it is on such concession given by the respondent -assessee that the computation was done by the Settlement Commission on the basis of the claim set forth by the assessee and rebutted by the Commissioner in his reply filed under Rule 9.

6. In the undisputed circumstances noted above, we fail to appreciate as to how this computation of income would give a cause of action for the department to maintain this writ petition especially where the writ petition does not pin point any infirmity in such computation save and except, the issue of denial of opportunity for rebutting the reworked income statement by the petitioner which in our opinion

records confirm, was not the basis of the final order passed by the Settlement Commission under Section 245D(4) of 'the Act'.

7. In such view of the matter, we are not persuaded to grant indulgence because the grounds raised lacks merit to call for interference with the order impugned before this Court. The writ petition is accordingly disposed of .

**(Jyoti Saran, J)**

**( Arvind Srivastava, J)**

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