IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6479 of 2016

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Deputy Commissioner of Income Tax, Central Circle, Muzaffarpur, through Mr. Vivekanand Mishra, son of Sri T.N. Mishra, Resident of Flat No. 103, Shakuntala Apartment, Punaichak, Patna

... ... Petitioner/s

Versus

1. Union of India through its Secretary Income Tax Settlement Commission, Kolkata having its office at 10C, Middleton Street, Kolkata
2. Dr. Ramajee Choudhary, Resident of Doctors Colony, Vijaya Hata, Siwan- 841226 (Bihar)
3. Smt. Sushila Yadav, Wife of Ramajee Choudhary, Resident of Doctors Colony, Vijaya Hata, Siwan- 841226 (Bihar)

... ... Respondent/s

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Appearance :

For the Petitioner/s : M/s. Archana Sinha @ Archana Shahi
For the Respondent/s : Mr. Ajay Kumar Rastogi, 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)

14 08-01-2019

Heard, Ms. Archana Sinha, learned counsel appearing on behalf of the petitioner-department and Mr. Ajay Kumar Rastogi, learned counsel appearing on behalf of the respondent -assessee Nos. 2 and 3.

The petitioner-department has questioned the order of the Settlement Commission dated 07.05.2014 impugned at Annexure-3 passed in purported exercise of powers vested in them under Section 245D(4) of the Income Tax Act, 1961, whereby the computation of the tax liability in respect of respondent Nos. 2 and 3 has been made by the Settlement Commission detailed in the annexure accompanying the order.

Ms. Archana Sinha, learned counsel appearing for the petitioner-department has questioned the order amongst others also on maintainability of the settlement application as according to department, the assessment for the period 2006-07 to 2012-13 had already been completed and a final order had passed on 03.02.2014. According to learned counsel in such circumstances, the remedy under Chapter XIX(A) of the Income Tax Act was not available to the assessee because it is only in circumstance, where assessment proceedings are pending that such remedy is available and since the final order had already been passed on 03.02.2014, the application could not have been filed on 05.02.2014.

Learned counsel for the petitioner has also attempted to question the exercise undertaken by the Settlement Commission on merits.

Per contra, Mr. Rastogi, learned counsel appearing for the assessee in reference to the order of the Settlement Commission passed under Section 245D(1) of the Act, whereby the settlement application was allowed and a copy of which is annexed to the Annexure-1 to the writ petition, submits that the relevant dates as well as reasons for entertaining the settlement application is much present in the order itself, when the Commission has acknowledged that even though the assessment order was passed on 03.02.2014, its communication was done only on 08.02.2014 as per the receiving made by the applicant and the copy through the speed post reached the assessee thereafter on 10.02.2014. He thus, submits that in either circumstance, the assessment order reached the assessee much after the filing of the application and thus in view of the Board Circular No. 03 of 2008, where the order was yet to be served on the assessee, he had every right to maintain the settlement application, which has been correctly entertained by the Commission.

We have heard learned counsel for the parties on the objection as to the maintainability of the settlement application as well as on the merits of the case and while the reasons assigned by the Settlement Commission on the objection as to the maintainability of the settlement application is sufficient to overrule the objection especially in view of the Board's Circular No. 03 of 2008, which is a point specific on the issue and holds the assessment pending until the order reaches the assessee, insofar as the merits of the order is concerned, we have gone through the exhaustive order passed by the Commission which not only records the objection present in the report of the Commissioner on the merits of the claim but also the defence taken by the assessee on such objections.

We are of the firm opinion that unless an order of the Settlement Commission is found wanting on statutory obligations or reflects perversity, this Court is not required to examine the order or sit on appeal over the opinion so recorded on inter party contest. Since there is nothing on record of the proceeding, which questions the order of the Settlement Commission on either statutory violation or of ignoring the relevant facts present in the report of the Commissioner, we are not persuaded to interfere with the order of the Settlement Commission.

The writ petition is dismissed, accordingly.

(Jyoti Saran, J)

(Arvind Srivastava, J)

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