IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9134 of 2017

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Principal Commissioner of Income Tax, Bhagalpur Son of Sri Sunder Singh, Office of Assistant Commissioner of Income Tax Circle-1 1, 3rd Floor, R.N. Plaza, R B S S Sahay Road, Bhagalpur.

... ... Petitioner/s

Versus

1. Union of India and Anr.
2. M/s City Developers Bansikunj, Dr. R.P. Road, Bhagalpur- 812002.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 1365 of 2018

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Principal Commissioner of Income Tax, Bhagalpur

... ... Petitioner/s

Versus

The Union of India and Anr.

... ... Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 9134 of 2017)

For the Petitioner/s : Mr. Archana Sinha @ Archana Shahi, Adv.

For the Respondent/s : Mr. S.D Sanjay, Addl. Soc. Gen.

(In Civil Writ Jurisdiction Case No. 1365 of 2018)

For the Petitioner/s : Mr.Archana Sinha @ Archana Shahi, Adv.

For the Respondent/s : Mr. S. D Sanjay, Addl. Soc. Gen.

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

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 20-02-2019

Heard Mr. Archana Sinha, learned counsel for the Income Tax Department who is the petitioner before this Court through the Principal Commissioner, Income Tax Department and Mr. D.V. Pathy, learned counsel for the respondent No.2 and Mr. Anshuman Singh, learned counsel for the Central Government Counsel.

The Income Tax Department through the Principal Commissioner of Income Tax, Bhagalpur prays for issuance of a writ in the nature of certiorari for quashing the order dated 04.01.2017 whereby the Income Tax Settlement Commission (hereinafter referred to as the 'Commission') constituted under Section 245B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') has opined that the respondent No.2 having fulfilled the conditions laid down under Section 245C(1) for moving an application for settlement with nothing adverse to hold the application invalid, has been pleased to allow the application to be proceeded with while declaring it not invalid under Section 245D(2C) of 'the Act'. It is not in dispute that not only the application so filed by the petitioner seeking a settlement for assessment years 2014-15 and 2015-16 has been proceeded with by the 'Commission' but even final orders have been passed dated 25.05.2017 and allowed in exercise of powers vested under Section 245D(4) of 'the Act' and which has been questioned by the Department by filing the second writ petition arising from C.W.J.C. No. 1365 of 2018. The said writ petition has been listed analogous with the present writ petition following our order passed on 05.02.2019 but the records transpired that the said writ petition has been admitted by this Court vide order passed on 09.02.2018 and when notice was issued to the respondent No.2 which Mr. Pathy appearing on their behalf informs, has yet to be received.

Ms. Sinha learned counsel appearing for the Income Tax Department undertakes to serve a copy of the writ petition arising from C.W.J.C. No.1365 of 2018 on the respondent No.2 through Mr. Pathy by tomorrow.

Since C.W.J.C. No. 1365 of 2018 has already been admitted, even if the order impugned therein is relatable to the issue raised in the present writ petition, it cannot be heard analogous with C.W.J.C. No.9134 of 2017 which is yet at admission stage and thus we delist C.W.J.C. No.1365 of 2018 and direct for its listing under the heading 'For Hearing' as a first case subject to part heard at 2.15 P.M. on Friday next i.e 22.2.2019.

Reverting to the issue in hand, the petitioner department is aggrieved by the processing of the application and the order so passed by the Commission in not holding the application invalid for the reasons that even when the respondent No.2 was facing prosecution for the assessment year in question, it never disclosed this aspect of the matter before the 'Commission'.

Mr. Pathy learned counsel for the opposite party No.2 informs that it is on a similar objection raised that the

'Commission' did not proceed with the application until the prosecution ended in exoneration of the respondent No.2. Even otherwise we fail to appreciate as to how such an objection can obstruct the exercise of the Commission under Section 245(2C) of 'the Act' because such exercise is founded on the provisions underlying Section 245C(2) which enables an assessee to move the 'Commission' at any stage during the pendency of assessment proceedings in case he is of the opinion that he has not given full and true disclosure of his income before the Assessing Officer. In other words, where an assessment proceedings are pending and the assessee is satisfied that he has not given a full and true disclosure of income before the Assessing Officer he can move the 'Commission' by filing an application under Section 245C(1) of 'the Act' disclosing his full and true income including the one which has not been disclosed before the Assessing authority as well the manner in which such income has been derived together with the additional amount of tax payable thereon. To that extent, Ms. Sinha is absolutely correct and unless these pre-requisites are satisfied, the Settlement Commission would not proceed with the application.

The situation in the present contest is different. While the

Settlement Commission kept the proceedings in abeyance due to pendency of the prosecution case, in our opinion even otherwise, the statutory provisions underlying Section 245C does not preclude the 'Commission' from proceeding despite such prosecution because the 3 pre-requisites which requires to be satisfied for invoking the remedy, does not require the assessee to disclose whether or not he is facing prosecution for the period in question.

For the reasons discussed, we find absolutely no error in the jurisdiction exercised by the Settlement Commission in not declaring the application of the respondent 'not invalid' to interfere therewith and that the final orders have already been passed by the 'Commission' we dispose of the writ petition.

Re: C.W.J.C. No.1365 of 2018

In view of the position explained above, list this matter 'For Hearing' on 22.02.2019 at 2.15 P.M.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Bibhash

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	28.02.2019
Transmission Date	NA