IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12320 of 2017

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Principal Commissioner Of Income Tax, Central Patna, through ACIT Central Circle-I, Patna

... ... Petitioner/s

Versus

1. The Union Of India through Income Tax Settlement Commission Kolkata
2. Shri Nishant Krishna, Proprietor M/s Johnson Paints Industries and Messors Sita Cells, 11A Ashoka Palace, Exhibition Road, Patna-1
3. Late Shri Krishna Prasad, Messors Johnson Paint Company, Ashoka Palace, Exhibition Road, Patna- 1.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Ms. Archana Sinha @ Archana Shahi,
Mr. Alok Kumar &
Mr. Sanjeev Kumar, Advocates

For the Respondent/s : Mr. Ajay Kumar Rastogi,
Ms. Smriti Singh,
Mr. Parijat Saurav &
Mr. Aakash Kumar, Advocates

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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 : 05-02-2019

Heard Ms. Archana Sinha, learned counsel appearing for the petitioner-Principal Commissioner of Income Tax, Central Patna and Mr. Ajay Kumar Rastogi, learned counsel appearing for the respondent nos. 2 & 3 i.e. the Assessee before the Department.

The petitioner is aggrieved by the order dated 30.12.2016, passed by the Income Tax Settlement Commission (hereinafter referred to as “the Commission”), in exercise of powers vested under section 245 D(4) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), whereby the settlement application filed by the respondent nos. 2 & 3 has been allowed.

This Court had an occasion to examine the Scheme underlying Section 245 of the Act to bring about a settlement where assessment proceedings are pending in its judgment since reported in 2019 (1) B.L.J. 510. The provision in the Act in constituting the Commission was incorporated under the Act with a view to bring about a settlement in between the claimant-assessee as well as the stand of the department, notwithstanding the lawful recourse otherwise available.

Chapter XIX A of the Act provides for a special procedure for settlement of any dispute and *inter alia* enables any assessee, whose assessment proceeding is pending, a right to invoke the provisions by filing an appropriate application before ‘the Commission’ for settlement under section 245 C and the Commission after satisfying itself as to the validity of such application can allow it in exercise of powers vested under section 245D(1) of the Act and then call upon the Department through the Commissioner to submit its report under Rules 9 of the Income-Tax Settlement Commission (Procedure) Rules, 1997 (hereinafter referred to as “the Rules”) under section 245

D (2B) of the Act. The Scheme of the settlement does not stop here and the Commission on consideration of the report may declare the application of the assessee 'invalid' or may allow it to proceed under section 245D (3) as 'not invalid' and in such case the Commission shall fix the date for hearing under section 245D (4). On the date so fixed, the Commission after giving an opportunity of hearing to the assessee to disclose such income which he failed to disclose while filing the return and an equal opportunity to the Commission to rebut the same because a copy of such application disclosing full particulars of the income including those which the assessee failed to disclose in his returns had already been brought to the notice of the Commissioner to invite his report under Rules 9, pass appropriate orders. The object behind the Scheme of settlement provided under Chapter XIXA is to bring about a settlement in the matter without relegating the parties to the normal chain of statutory procedure of appeal, revision etc.

It is acting under the privilege provided under the Scheme, so present in Chapter XIXA of 'the Act', that an application under section 245C (1) was filed by the respondent nos. 2 & 3, which after being accepted under section 245 D (1) of 'the Act' as valid, that a report was called for under rule 9 of the Rules from the Commissioner and on its receipt and after hearing the parties that the order put to challenge, has been passed.

The ground put up on behalf of the Department by Ms. Archana Sinha to question the order passed by 'the Commission' finds mention at paragraph 15 of the writ petition wherein it is stated that the assessee filed a bulky paper-book a day before the hearing took place without giving copy to the department for inviting their stand thereon and which default was overlooked by the Commissioner & has consequently prejudiced the case of the department in responding to the issues whatsoever raised in the paper book. It is on this sole ground that the order passed by 'the Commission' is being questioned. According to Ms. Sinha, even though this paper-book was filed a day before the hearing took place but nowhere in the impugned order this position has been noted.

Mr. Ajay Kumar Rastogi, learned counsel appearing for the assessee, while opposing the issue raised by the department, submits that even though the plea of filing of a paper-book by the assessee is taken for maintaining the writ petition but the very fact that the order of 'the Commission' places no reliance on the paper-book for recording their opinion, it removes the foundation of the objection taken. Learned counsel has also invited the attention of the Court to the order of the Commission at paragraph 12.1 to submit that even if any such paper-book was filed by the assessee that he surrendered to the wisdom of the Commission coupled with the fact that the order impugned does not in any manner ignore the report of the Commission nor the objection taken therein, the department cannot raise any such grievance.

We have heard learned counsels for the parties and perused the record. No doubt it is a matter of settled procedure that any pleading filed before an authority performing *quasi judicial* functions, is to be served on the other side in advance. The rules framed for regulating discharge by any *quasi judicial* authority do have this mandatory condition and the proceedings before 'the Commission' is no exception.

In case a copy of such pleading is not served on the other side, the *quasi judicial* authority would be well within its jurisdiction to ignore the same and, perhaps, that is why the order of the Commission does not take notice of the bulky paper-book, if any, filed by the assessee, so complained of, by the department to maintain this writ petition by making a specific pleading to such effect at paragraph 15 of the writ petition. That no reference is made by the Commission to the paper-book, if any, filed by the assessee, perhaps, Mr. Rastogi is correct that this cannot give a cause of action to the department to maintain the writ petition. The situation present, goes a step ahead in the present matter because even if the assessees did file any such paper-book, the observations present at paragraph 12.1 is conclusive of the fact that they left the decision at the wisdom of the Commission and reads under :

> *"However, in the spirit of settlement and to buy peace and to avoid protracted litigation, the addition (as per details enclosed) can be made by the hon'ble commission although no such evidence/material exist on record to disbelieve the offer made in the SA and/or to establish the case against the applicant in respect of the addition (as per details enclosed) now being made."*

Apart from what we have observed above, since there is nothing in the pleadings which would demonstrate that the report of the Commissioner filed under Rule 9 of the Rules was ignored by the Commission or the objections raised, have not been considered, simply because the order of 'the Commission' is not to the liking of the department, it would not invite a different opinion by this Court because neither the order passed by 'the Commission' impugned herein has been questioned on merits nor on manner of discharge or on perversity.

The writ petition accordingly stands dismissed.

(Jyoti Saran, J)

(Arvind Srivastava, J)

mcv/-

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