IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 09.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.23631 of 2009
and
M.P.Nos.1 of 2009 & 1 of 2010

Sri. Umed C.Mehta ...Petitioner

Vs

1. Income Tax Settlement Commission,
   Additional Bench,
   Sathguru Complex,
   640, Anna Salai,
   Chennai - 600035.

2. Commissioner of Income Tax-VII,
   121, M.G.Road, Nungambakkam,
   Chennai - 600034. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records pertaining to the Settlement Application No.TN/CN7/2009-10/2/IT on the file of the Income Tax Settlement Commission, Additional Bench, Chennai - 600035, the first respondent herein and quash the order passed therein dated 23.10.2009.

For Petitioner : Mr.V.S.Jayakumar

For Respondents: Mr.J.Narayanasamy, SSC

O R D E R

When the petitioner had filed a Settlement Application No. TN/CN7/2009-10/2/IT before the Income Tax Settlement Commission, who is the 1st respondent herein, he had stated that the undisclosed income admitted in the Settlement Application was a commission earned from accommodation transaction with Mr.Parasmal Jain of M/s.Kawarlal Group. This explanation was disbelieved and the Settlement Application came to be rejected on 23.10.2009. As against the rejection order of the 1st respondent, the petitioner has filed this writ petition.

2. Though the petitioner has raised several grounds in the writ petition, the learned counsel would submit that the aforesaid Mr.Parasmal Jain, during the pendency of the writ petition, had filed a Settlement Application before the Income Tax Settlement Commission in Settlement Application No.TN/CN51/2014-15/24-30/IT, wherein the very same income admitted by Umed C.Mehta has been dealt with in that proceedings and the application came to be disposed of. In view of the order passed by the Settlement Commission in the case of Parasmal Jain, the respondents cannot tax the petitioner herein on the same transaction, which would result in double taxation. Hence, he would submit that the order of the Settlement Commission passed in the case of the petitioner herein requires to be re-visited.

3. Per contra, the learned Standing Counsel for the respondents submitted that the proceedings pertaining to the petitioner herein before the Settlement Commission are in the nature of admonition and discretionary proceedings and therefore the findings that the income offered in one case, cannot be automatically applied and deducted in other cases, even though the transactions are one and the same and that the parties approaching the Commission should independently satisfy the Commission on all other criteria mandated under the provisions of the Income Tax Act. Hence, the learned Standing Counsel would object to the petitioner counsel's request for remand

4. The order of the Settlement Commission, in the case of Parasmal Jain, was pursuant to the orders of the Settlement Commission in the case of the petitioner herein. It is not in dispute that the transactions pertaining to the undisclosed income of the petitioner herein is also the subject matter of the Settlement Application in the case of Parasmal Jain. If that being so, there is a possibility that such a subsequent consideration by the Settlement Commission could be deemed as double taxation, in case the order dated 23.10.2009 passed by the Settlement Commission in the case of the petitioner herein, is upheld.

5. It is also stated that the order passed in the case of Parasmal Jain by the Settlement Commission has become final. While that being so, if the objections of the learned Standing Counsel for the respondents is to be accepted, the possibility of double taxation for one transaction may occur. As such, this Court is of the view that the issue in the case of the petitioner herein could be reconsidered, in the light of the subsequent development through the orders passed by the Settlement Commission in the case of Parasmal Jain. Consequently, I deem it proper to refrain from addressing any other grounds raised by the petitioner, challenging the impugned

proceedings in this writ petition and that any further decision could await, after final orders are passed by the Settlement Commission on remand.

6. In the light of the above discussions, the impugned order dated 23.10.2009 is set aside and the matter is remanded back to the Income Tax Settlement Commission for fresh consideration. The petitioner is granted liberty to file a rejoinder to his original application, along with any other supporting documents before the 1st respondent-Commission, within a period of 15 days from the date of receipt of a copy of this order. On receipt of such a rejoinder, if any, the Income Tax Settlement Commission shall consider the same in accordance with law and pass fresh orders, without reference to its earlier proceedings dated 23.10.2009, as expeditiously as possible.

7. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

hvk

To

1. Income Tax Settlement Commission,
   Additional Bench,
   Sathguru Complex,
   640, Anna Salai,
   Chennai - 600035.

2. Commissioner of Income Tax-VII,
   121, M.G.Road, Nungambakkam,
   Chennai - 600034.

+1cc to Mr.V.S.Jayakumar, Advocate, S.R.No. 68655
+1cc to Mr.J.Narayanaswamy, Advocate, S.R.No. 69442

W.P.No.23631 of 2009
and
M.P.Nos.1 of 2009 & 1 of 2010

GJ II(CO)
GN(10/10/2019)