IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 09.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.27101 of 2009
and
M.P.No.1 of 2009

Smt.Neena Mehta ...Petitioner
rep by power Agent
Mr.Umed C.Mehta

Vs

1. Assistant Commissioner of Income Tax,
   Company Circle, II (4),
   V Floor, New Block, Room No.514,
   121, Nungambakkam High Road,
   Chennai - 600034.

2. The Income Tax Officer (OSD),
   Company Circle-II(4) (i/c),
   Room No.514, New Block,
   121, Nungambakkam High Road,
   Chennai - 600034.

3. Income Tax Settlement Commission,
   Additional Bench, Sathguru Complex,
   640, Anna Salai, Chennai - 600035. ...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 notice dated 14.08.2009 under Section 226(3) of the Income Tax Act, 1961 with reference to PAN:AAACK1447N issued by the Assistant Commissioner of Income Tax, Company Circle II(4), Chennai - 34, the first respondent herein addressed to the petitioner herein and quash the same.

For Petitioner : Mr.V.S.Jayakumar
For Respondents: Mr.J.Narayanasamy, SSC

O R D E R

When Sri.Umed C.Mehta had filed a Settlement Application No. TN/CN7/2009-10/2/IT before the Income Tax Settlement Commission, who is the 3rd 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 3rd respondent, the petitioner has filed this writ petition.

2. In consequence to the rejection of the Settlement Application of Mr.Umed C.Mehta, the petitioner herein has been served with an impugned notice under Section 226(3) of the Income Tax Act, which is under challenge in the present writ petition.

3. 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 Mr.Umed C.Mehta has been dealt with in that proceedings and the application came to be disposed of. In view of the orders 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 Umed C.Mehta requires to be re-visited.

4. Per contra, the learned Standing Counsel for the respondents submitted that the proceedings pertaining to Umed C.Mehta 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.

5. 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 Umed C.Mehta. It is not in dispute that the transactions pertaining to the undisclosed income of Umed C.Mehta 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 Umed C.Mehta, is upheld.

6. 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 Umed C.Mehta 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.

7. It would be relevant to point out herein that when Umed C.Mehta had challenged the order of the Settlement Commission dated 23.10.2009 passed in his Settlement Application No. TN/CN7/2009-10/2/IT, before this Court in W.P.No.23631 of 2009, this Court, by an order dated 09.08.2019, had set aside the order of the 3rd respondent herein dated 23.10.2009 and remanded the matter back for fresh consideration.

8. In view of the above, it would not be appropriate to interfere with the present impugned notice at this stage, but, it would be appropriate to await the decision of the Settlement Commission, after remand, in the case of Umed C.Mehta.

9. Accordingly, the writ petition stands closed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

hvk

To

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

+1cc to Mr.V.S.Jayakumar, Advocate, S.R.No.68678
+1cc to Mr.J.Narayanaswamy, Advocate, S.R.No. 69422

W.P.No.27101 of 2009
and
M.P.No.1 of 2009

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