IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :16.09.2019

Coram:

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition Nos.39092 and 39093 of 2005

M/s.Vimala Traders
Kokalai,
Trichur, Kerala

.. Petitioner in W.P.No.39092 of 2005

M/s.Modern Arecanut Co.,
Kokalai,
Trichur, Kerala

.. Petitioner in W.P.No.39093 of 2005

/versus/

1. The Income Tax Settlement Commission,
   Additional Bench, 488-489, Anna Salai,
   Chennai - 600 035.

2. The Union of India represented by
   The Chairman,
   Central Board of Direct Taxes,
   North Block, New Delhi.

3. The Commissioner of Income Tax, Cochin
   Income Tax Office, Kochi.

4. The Income Tax Officer,
   Ward 2(2), Trichur.

.. Respondents in both W.Ps

Prayer in W.P.No.39092 of 2005:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records for the records of the first respondent Income Tax Settlement Commission, Additional Bench, Chennai in its file Settlement Application Nos.13/CHN/51/94-IT and 13/CHN/168/94-IT for assessment years 1991-92 to 1994-95 quash the impugned order dated 19.03.2004 insofar as the petitioner is concerned.

Prayer in W.P.No.39093 of 2005:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records for the records of the first respondent Income Tax Settlement Commission, Additional Bench, Chennai in its file Settlement Application Nos.13/CHN/49/94-IT and 13/CHN/167/94-IT and 13/CHN/167A/94-IT for assessment years 1986-87 to 1994-95 quash the impugned order dated 19.03.2004.

For Petitioner in both W.Ps :Mr.R.Kumar
For Respondents in both W.Ps :Mrs.Hema Muralikrishnan and Mr.ANR.Jaya Pratap Standing Counsel

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C O M M O N O R D E R

The petitioner in these Writ Petitions has challenged an order of the Income Tax Settlement Commission (ITSC) dated 19.03.2004 on the ground that it does not have the power to invoke Section 154 of the Income Tax Act, 1961 (in short 'Act') dealing with rectification of mistakes. Thus, according to the petitioner, the impugned order is bereft of jurisdiction.

2. The trajectory of the matter is that as against the order of the Settlement Commission dated 28.12.1995 passed under section 245D(4) of the Act, the Revenue had filed a petition for Special Leave before the Supreme Court. The Bench, in Civil Appeal Nos.3593 and 3594 of 2000 dated 12.11.2002 in Vimala Traders and M/s.Modern Arecanut Co. passed the following order:

> 'In all these appeals the revenue has questioned the authority of Settlement Commission to either waive the statutory interest or reduce the same. This Court in the case of Commissioner of Income Tax, Mumbai vs. Anjum M.H.Ghaswala & Ors. reported in 2002(1) SCC 633 has held that the Settlement Commission in exercise of its powers under Sections 245(D)(4)(6) does not have the power to reduce or waive the interest statutory payable under Section 234A, 234B and 234C except the extent of granting relief under CBDT circulars.
> However, the learned counsel for the revenue points out that there are two circulars issued by the Board under Section 119 of the Income Tax Act, 1961, one dated 2nd May, 1994 F.No.212/49592-IT (A-11) and other dated 23rd May, 1996 F.No.400/232/95-IT(B), the benefit of which some of the respondents herein may

be entitled to.

In view of the above submission on behalf of the revenue, we allow these appeals and set aside the impugned order and remand the matter back to the Settlement Commission for the limited period purpose of examining whether the two circulars referred to hereinabove are applicable to the facts of these appeals, if so to what relief the respondents will be entitled to.'

3. The matter was thus remanded to the Settlement Commission by the Supreme Court on 12.11.2002. While the petition for Special Leave was pending before the Supreme Court, two Miscellaneous Applications were filed before the Settlement Commission on the aspect of leviability of interest and the impugned order of the Settlement Commission dated 19.3.2004 has been passed in response thereto. The order is challenged solely on the ground that the Settlement Commission does not have an inherent power to assume jurisdiction in terms of Section 154 of the Act.

4. The question of assumption of jurisdiction by the Settlement Commission in terms of Section 154 of the Act has been considered by a Division Bench of the Supreme Court in the case of Brij Lal and others V. Commissioner of Income Tax ((2010) 328 ITR 477) and the Bench states as follows:

III. Whether the Settlement Commission can re-open its concluded proceedings by having recourse to Section 154 of the Act so as to levy interest under section 234B, if it was not done in the original proceedings?

15. As stated, proceedings before Settlement Commission are similar to arbitration proceedings. It contemplates assessment by settlement and not by way of regular assessment or assessment under section 143(1) or under section 143(3) or under section 144 of the Act. In that sense, it is a Code by itself. It does not begin with the filing of the return but by filing the application for settlement. As stated above, under the Act, procedure for assessment falls in Chapter XIV (in which section 154 falls) which is different from procedure for settlement in Chapter XIX-A in which sections 245C and 245D fall. Provision for levy of interest for default in payment of advance tax under section 234Bfalls in Chapter XVII [Section F] which deals with collection and recovery of tax which as stated above is incidental to the

liability to pay advance tax under section 207 (which is also in Chapter XVII) and to the computation of total income in the manner indicated under Chapter XIX-A vide sections 245C (1B) and 245C(1C) read with the provisos to section 245C(1) on the additional income tax payable on the undisclosed income. Further, if one examines the provisions of sections 245C(1B) and 245C(1C), one finds that various situations are taken into account while computing the additional amount of tax payable, viz., if the applicant has not filed his returns, if he has filed but orders of assessment are not passed or if the proceedings are pending for re-assessment under section 147 (again in Chapter XIV) or by way of appeal or revision in connection with such re-assessment and the applicant has not furnished his return of total income in which case tax has to be calculated on the aggregate of total income as assessed in the earlier proceedings for assessment under section 143 or under section 144 or under section 147 [see section 245C(1B)]. The point to be noted is that in computation of additional income tax payable by the assessee, there is no mention of section 154. On the contrary, under section 245I the order of the Settlement Commission is made final and conclusive on matters mentioned in the application for settlement except in the two cases of fraud and misrepresentation in which case the matter could be re- opened by way of review or recall. Like ITAT, the Settlement Commission is a quasi-judicial body. Under section 254(2), the ITAT is given the power to rectify but no such power is given to the Settlement Commission. Thus, we hold that Settlement Commission cannot reopen its concluded proceedings by invoking section 154 of the Act. Lastly, one must keep in mind the difference between review/ recall of the order and rectification under section 154. The Schedule of Chapter XIX-A does not contemplate invocation of section 154 otherwise there would be no finality to the assessment by settlement which is different from assessment under Chapter XIV where there is an appeal, revision, etc. Settlement of liability and not determination of liability is the object of Chapter XIX-A. Even otherwise, invocation of section 154 on facts of this batch of cases is not justified. In this batch of cases, the situation which prevailed when the Settlement Commission waived or reduced interest chargeable under sections 234A and 234B was that a debate was on as to whether the Settlement Commission has the power to reduce or waive interest. It is only after Ghaswala's case that the law got settled that the nature and the character of the interest was compensatory and mandatory and that the Commission had no such power. But even in Ghaswala, the question as to whether such interest under section 234B should run up to the order under section 245D (1) or up to the date of the order under section 234D(4) was not decided. In fact, that was the reason for the Orders of Reference to the Constitution Bench of this Court vide orders dated 14.12.2004 and 20.1.2005. There is one more reason for this Reference. In the case of CIT v. Hindustan Bulk Carrier [(2003) 259 ITR 449], a 3-Judge Bench of this Court, by majority, held that where, upon the Order of the Settlement Commission under section 245D(4), there arises a deficit in the payment of advance tax under section 208, the end point or the terminus of the period for which interest has to be paid under section 234B on the deficit is the date on which the Settlement Commission passes the order under section 245D(4). This decision was delivered on 17.12.2002 after the judgment of this Court in Ghaswala (supra). On the same day, the same Bench in the case of Damani Brothers (supra) held that interest charged under section 234B becomes payable on the income disclosed in the return and the income disclosed before the Settlement Commission; that, such interest is chargeable till the Commission acts in terms of section 245D(1) and that after the Settlement Commission allows the application for settlement to be proceeded with there will be no further charge of interest under section 234B. Thus, even on the question of terminus there was lot of controversy and in the circumstances, we are of the view that invocation of section 154 (held to be inapplicable to Chapter XIX-A proceedings) cannot be justified.

5. In the light of the categoric pronouncement of the Supreme Court in Brij Lal (supra), the question of applicability

of section 154 to proceedings before the Settlement Commission except if it had been resorted to in the original proceedings, stands settled against the Revenue.

6. These Writ Petitions are allowed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1. The Income Tax Settlement Commission,
Additional Bench, 488-489, Anna Salai,
Chennai - 600 035.

2. The Chairman, Union of India
Central Board of Direct Taxes,
North Block, New Delhi.

3. The Commissioner of Income Tax, Cochin
Income Tax Office, Kochi.

4. The Income Tax Officer,
Ward 2(2), Trichur.

+1cc to Mrs.Hema Muralikrishnan, Advocate sr.79451
+1cc to Mr.T.N.Seetharaman, Advocate sr.79188

Writ Petition Nos.39092 and 39093 of 2005

nr 22/11/2019