

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.03.2020
DELIVERED ON : 26.05.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.33412 of 2006

M/s.Mulberry Silks Limited
(formerly M/s.Shakashambana Silks
Exports (P) Ltd.)
'Mulberry House'
No.2, 'O' Shaughnessy Road
Langford Garden
Bangalore-560 025
rep.by its Director
Mr.R.K.Bothra

.... Petitioner

Vs

1.Settlement Commission (IT & WT)
Additional Bench
Ministry of Finance
Department of Revenue
646, Anna Salai,
Chennai-600 035.

2.The Commissioner of Income Tax
Bangalore-III, Bangalore.

3.The Deputy Commissioner of Income Tax
Company Circle-4 (I) (Inv), IV Floor
Kendriya Sadan, Koramangala,
Bangalore.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records in No.561/ KNK/1/29/2001-IT dated 30.03.2005 on the file of the first respondent, quash the same to the extent of which it has declined to compute and allow the relief under Section 80-HHC of the Income Tax Act and direct the said respondent to compute and allow the said relief.

For Petitioner : Mrs.Mallika Srinivasan

For Respondents: Mrs.Pushya Sitaraman
Standing Counsel for Income-tax Dept.
for R2 and R3

ORDER

The petitioner is a company registered under the Companies Act on 21.10.1982 under the name and style of M/s.Shakashambana Silk Exports (P) Limited and subsequently the name has been changed to M/s.Mulberry Silks Limited. It is stated in the affidavit filed in support of this writ petition that the petitioner is engaged in the business of import and local purchase of yarn and export and local sales of yarn and fabrics produced on local power looms. The promoters of the company acquired controlling interest in another company known as M/s.H.C.Pharma (P) Ltd., which name was subsequently changed to M/s.Mulberry Silk International (P) Ltd. ('MSIL' in short) in 1994, with the intention of setting up an independent sophisticated fabric weaving unit. In January 1999, there was a consequential search in the premises of the petitioner and in the course of search, it was noticed that there was stock deficit of imported yarn to the extent of Rs.2,22,41,057/-. It is stated by the petitioner that he had invested a sum of Rs.4,84,88,500/- in MSIL as on 31.03.1997. The original share capital of the company was invested by the Directors and the members of the family. Pursuant to the search, the assessing authority had initiated assessment proceedings under Chapter XIV-B of the Income Tax Act. Thereafter, the petitioner filed returns for the block period 01.04.1988 to 31.03.1998 and 01.04.1998 to 25.01.1999, on 02.08.1999. The petitioner also filed an application for settlement before the Settlement Commission on 16.06.2001, for the assessment years 1995-96 and 1996-97. In respect of assessment year 1995-96, the petitioner disclosed an income of Rs.12,11,980/- and in respect of assessment year, the petitioner disclosed an income of Rs.1,33,08,280/- before the Settlement Commission. A revised statement of facts was filed before the Settlement Commission on 15.03.2002. Pursuant to the revised offer, the petitioner declared an income of Rs.43,52,900/- for the assessment year 1995-96 and Rs.1,90,69,056/- for the assessment year 1996-97. On 15.03.2002, the Settlement Commission accepted the settlement application filed by the petitioner. On 30.03.2005, the Settlement Commission passed a final order in the settlement application holding that the undisclosed income offered by the petitioner in the block assessment did not affect in any way the export profits of the petitioner and consequently, there is no need for re-computing the deduction under Section 80HHC.

2.Challenging the proceedings dated 30.03.2005 of the Settlement Commission, by which the petitioner's request for re-computing the deduction under Section 80HHC has been declined, the present writ petition has been filed.

3.The learned counsel for the petitioner has submitted that

the Settlement Commission, having determined the total income from business including the income from the unaccounted sale of imported yarn which formed part of the petitioner's business, ought to have determined the relief under Section 80HHC of the Income-tax Act in accordance with the statutory provisions. The Settlement Commission is a Body created under the Income-tax Act and hence it is bound by the provisions of the Act. No valid reason has been given by the Settlement Commission in support of its refusal to do so. Even though the Settlement Commission has unequivocally determined the total income from business and has also found that the income so determined represented income from business, but it has erroneously held that the determination of such income did not affect the export profits and hence the relief under Section 80HHC is not required to be computed. The learned counsel for the petitioner, finally stating that the impugned order has resulted in additional tax liability in excess of the tax lawfully due under the provisions of the Act, prayed for allowing the prayer as sought for in this writ petition.

4.A counter affidavit has been filed on behalf of the respondents 2 and 3, in which it is stated that the Settlement Commission has passed the impugned order only after considering the peculiar facts and circumstances involved in the petitioner's case, for which detailed reasons have been given in the impugned order

5.Reiterating the averments made in the counter affidavit filed on behalf of the respondents 2 and 3, the learned standing counsel for the respondents 2 and 3 / Department, has submitted that the Settlement Commission has dealt with the matter in a proper perspective and has given a finding that the explanation offered by the petitioner at the time of search on the two crucial issues, viz.huge stock deficit found and the ownership of shares in MSIL, was materially different from the one offered much later, just prior to the completion of the block assessments. The learned counsel has also submitted that the petitioner has no satisfactory explanation for the contradictory stands taken at various stages and before the various authorities. Stating so, the learned standing counsel prayed for dismissing the writ petition.

6.On the other hand, the learned Standing Counsel for the respondents 2 and 3, has submitted that the significant cause of action of the present case, arises in the State of Karnataka and hence this Court should not entertain this writ petition.

7.Heard the learned counsel on either side and perused the papers.

8.The learned counsel for the petitioner has contended that no valid reason has been given by the Settlement Commission to come to the conclusion that the relief under Section 80HHC is not required to be computed. But, in the impugned order, the Settlement Commission has held that the entire income offered by the petitioner in the block assessment admittedly represented profits derived from sale of imported goods in the local market and admittedly such sale took place purely on cash and carry basis without the imported goods reaching the petitioner's factory / godown and no records were maintained by the petitioner in respect of such sales. The Settlement Commission has also held that the proceedings by the DRI officials in this case began as early as in May 1996 and the income tax search was only in January 1999 and that if the factual position had emerged clearly in the course of the investigations by the DRI, it would have been natural for the petitioner herein to own up the same before the income tax authorities at the time of search. The Settlement Commission has further held that no satisfactory explanation has been given by the petitioner in this connection, for the contradictory stands taken at various stages and before the various authorities. Only in these circumstances, the Settlement Commission went on to state that it would not be possible to them to give a clear finding that the entire investment in shares in MSIL has been made by the petitioner. It has also been held that even otherwise, the Commission would be exceeding its jurisdiction if any directions are issued in respect of the cases which are not before it.

9.But, this Court is not inclined to go into the merits of the case since the petitioner herein and the assessing authorities are at Bangalore and merely because the order under challenge had been passed by the Chennai Bench of the Settlement Commission, the cause of action cannot be said to arise within the territorial jurisdiction of this Court, when the events leading to the filing of the proceedings before the Chennai Bench of the Settlement Commission and the parties to such proceedings are outside the territorial jurisdiction of this Court and hence it would not be appropriate to entertain this writ petition by this Court.

10.In this connection, it would be appropriate to refer to the order passed by this Court in W.P.No.31537 of 2016 dated 22.11.2017, wherein, while considering the contention of the learned counsel for the petitioner therein that since the Settlement Commission had not decided the matter on merits, one more opportunity may be given to the petitioner therein to go before the Settlement Commission, this Court has analysed the issue and held that even though there was no specific reason given by the Settlement Commission to show that there was no true and full disclosure of the petitioner's duty liability

therein, it was true that the authorised representative engaged by the petitioner therein, did not extend full cooperation and further there has been change of the authorised representative and therefore, that there was every justification on the part of the Settlement Commission for having refused to entertain the application.

11. In the case of *Kusum Ingots & Alloys Ltd. v. Union of India*, reported in (2004) 168 ELT 3 (SC), one of the questions considered by the Hon'ble Supreme Court was regarding Forum Conveniens and it was pointed out that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merits and in appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of Forum Conveniens.

12. At this juncture, it would be appropriate to refer to the decision of the High Court of Delhi, in the case of *R.T. Industries v. Income-tax Settlement Commission*, reported in [2018] 98 taxmann.com 236 (Delhi). Paragraph-45 of the said judgment, reads as under:

"45. Lastly, we would like to deal with the objection with regard to territorial jurisdiction. A five-Judges Bench of this Court in *Sterling Agro Industries Ltd. v. Union of India* [W.P.(C)No.6570 of 2010, dated 1-8-2011] has drawn a distinction between cause of action jurisdiction and doctrine of forum conveniens. It has been observed that if a miniscule part of the cause of action has accrued within the jurisdiction of the Court, a writ petition would be maintainable before the said High Court. However, the expression "cause of action" must be understood in the light of the decision of the Supreme Court in *Alchemist Ltd. v. State Bank of Sikkim* [2007] 1 SCC 335, which means material essential or integral part of the cause of action. Therefore, even if a small part of cause of action had arisen within the jurisdiction of a court, the writ petition before the said court would be maintainable. In the context of the present case, we need not dilate further on the said issue for what is impugned and challenged before us is the order of the Settlement Commission under Section 245D (1), which is an order passed without having the views of the Revenue. Principal Bench of the Settlement Commission located and functions from Delhi. The order was passed in Delhi. In the context of the present writ petition, we would record that notice in this writ petition was issued by a Division Bench of this Court on 19th May

2017. In these circumstances, it would not be appropriate to invoke doctrine of forum conveniens."

13.It would also be appropriate to refer to one another decision of the High Court of Delhi, in the case of West Coast Ingots (P) Ltd. v. Commissioner of C.Ex., New Dehi, reported in 2007 (209) E.L.T. 343 (Del.), wherein the petitions filed against the orders passed by the Settlement Commission, New Delhi were rejected, holding that the significant part of cause of action cannot be said to arise within the territorial jurisdiction of High Court at Delhi, merely because the order under challenge had been passed by a Tribunal located within its territorial jurisdiction, when the events leading to the filing of the proceedings before such Tribunal and the parties to such proceedings are outside the territorial jurisdiction of the Court. This stand has been taken since both the parties therein were located at Goa.

14.Taking note of the principles enunciated in the above decisions and taking note of the fact that the petitioner herein and the assessing authorities are at Bangalore, as already observed above, it would not be appropriate for this Court to entertain this writ petition and accordingly the writ petition is dismissed, however, leaving it open to the petitioner to approach the High Court of Karnataka, for appropriate relief. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

KM

To

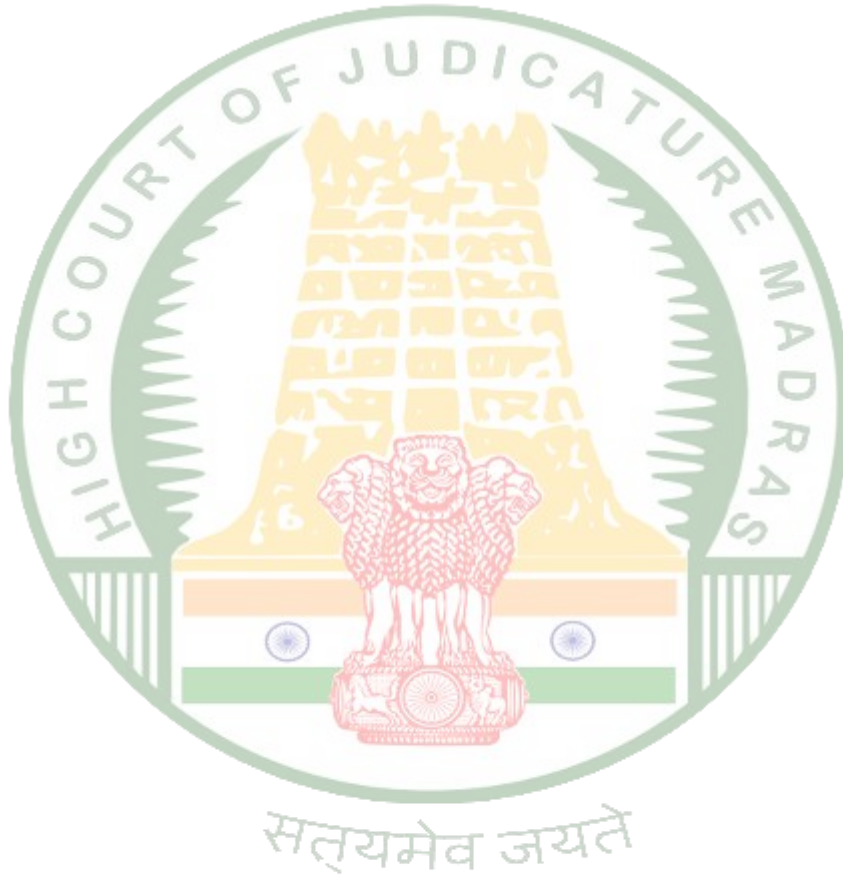
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PPA (CO)
GN (29/06/2020)



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