IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.28758 of 2004

Sultan Pillai & Sons
Marakkada Road, Trivandrum
rep.by its Managing Director
M.S.Shabeer Ahammed ... Petitioner

Vs.

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
Central Circle, Cochin.

4.The Assistant Commissioner of Income Tax
Central Circle, Trivandrum.

5.The Assistant Commissioner of Income Tax
Circle 1(2), Trivandrum. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the first respondent herein in Settlement Application No.13/TVM/72-93-IT and 13/TVM/73/95-II dated 24.03.2004.

For Petitioner : Mr.N.Prasad

For Respondent : Mrs.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

(Order of the Court was made by DR.VINEET KOTHARI,J.)

The Assessee M/s.Sultan Pillai & Sons has filed this writ petition aggrieved by the order dated 24.03.2004, by which the learned Income Tax Settlement Commission, in exercise of their powers under Section 245F(1) read with Section 154 of the Income Tax Act, passed the following order.

" 12.1. In view of the above, it is hereby ordered-
(i) that waiver granted u/s 234A is sustained.
(ii) that there is no case for waiver of interest under
Section 234B of the Act for any of the assessment
years involved.
(iii) that the interest u/s.234B shall be charged upto
the date of order under Section 245D(4) of the Act.
12.2. The miscellaneous petitions filed by the Department are allowed.
12.3. This also disposes of the remand of the Hon'ble Supreme Court.
12.5. The Assessing Officer is authorised to re-compute the interest u/s.234B of the I.T.Act., in view of the directions given above."

2. Learned counsel for the petitioner / Assessee Mr.N.Prasad submitted that the order passed by the Settlement Commission, impugned in the present writ petition, deserves to be interfered with in view of the law laid down by the Hon'ble Supreme Court in the case of "CIT -Vs- M.H.Ghaswala (2002) 1 SCC Page 633" and "Brij Lal -Vs- CIT (2011) 1 S.C.C.Page 1" . He has also relied upon a recent decision of the Hon'ble Supreme Court in the case of "Kakadia Builders (P) Ltd., -Vs- CIT" rendered on 05.03.2019 reported in (2019) 4 S.C.C.Page 453.

3. On the other hand, Mrs.Hema Muralikrishnan, learned Senior Standing Counsel appearing for the Revenue submitted that, the impugned order of the learned Settlement Commission was passed upon a remand order passed by the Hon'ble Supreme Court as noted in Para 12.3 in the case of the Assessee himself and therefore, the same has been passed in pursuance of and in compliance of the remand order of the Hon'ble Supreme Court in accordance with the position of law then.

4. Having heard the learned counsel for the parties, we are satisfied that the present impugned order of the Settlement

Commission does not require any interference by this Court at this stage. If the Assessee intends to make any submission on the basis of any subsequent Supreme Court decision, which according to the Assessee is applicable to the facts of the present case, he is at liberty to move the Settlement Commission itself. Since apparently the impugned order has been passed in pursuance of the remand order of the Hon'ble Supreme Court itself, if there is any subsequent development or law or change of position of law at the hands of the Hon'ble Supreme Court, it is open to the Assessee to move the Settlement Commission itself for applying the correct position of law.

5. Therefore, with the aforesaid liberty given to the petitioner, we are not inclined to interfere with the impugned order at this stage. The Writ Petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KST
To

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

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Circle 1(2), Trivandrum.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.19423
+1cc to M/s Hema Muralikrishnan, Advocate, S.R.No.19195

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adl/30.05.2020