

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2020

CORAM:

THE HON'BLE MR.JUSTICE N.KIRUBAKARAN
and
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.456 of 2018

The Commissioner of Income Tax-IV
Chennai-600 034

..Appellant/1st respondent

-Vs-

1. M/s.M.A.Jacob & Company
No.16, Evening Bazaar
Chennai-600 003
2. M/s.Flooring & Furnishing Company
No.18, Evening Bazaar
Chennai-600 003
3. M/s.Jacob's Cleaning Products Company
No.17, Evening Bazaar
Chennai-600 003
4. M/s.M.A.Jacob's Furnishing Department
No.22, Evening Bazaar
Chennai-600 003
5. M/s.M.A.Jacob's Carpets & Furnishing Company
No.10 & 11, Damodharan Street
No.38-A, Cathedral Road
Chennai-600 086

..Respondents 1 to 5
Petitioners 1 to 5/assessee

- 6.The Income Tax Settlement Commission
640, Anna Salai, Nandanam
Chenna-600 035

..6th Respondent/2nd respondent
/ITSC.

Prayer: Writ Appeal filed under Clause 15 of Letters Patent,
against the Final order dated 02.08.2017 in W.P.No.6566 of 2004.

W.P.No.6566 of 2004 Prayer: Petition under Article 226 of the
Constitution of India praying for issue of a Writ of Certiorari

to call for the records relating to the order dated 19.02.2004 passed by the 2nd respondent and quash the same.

For Appellant : Ms.Hema Muralikrishnan

For Respondents : Mr.Thomas T.Jacob for R1 to R5.

JUDGMENT

P.VELMURUGAN, J.

This Writ Appeal is filed against the Final order dated 02.08.2017 passed in W.P.No.6566 of 2004. The respondents 1 to 5 herein filed W.P.6566 of 2004 seeking to issue a Writ of Certiorari calling for the records relating to the order dated 19.02.2004 passed by the 2nd respondent/ Income Tax Settlement Commission and quash the same.

2. The learned Single Judge, after hearing the submissions made on both sides, set aside the order passed by the Income Tax Settlement Commission. The 1st respondent therein/Commissioner of Income Tax, aggrieved by the said order of the learned Single Judge, filed the present intra court appeal.

3. The brief facts of the case is that respondents 1 to 5 herein are the Partnership firm dealing in different types of goods like furnishing materials, mattresses, carpets, cleaning materials etc. There was a search under Section 132 of the Income Tax Act (hereinafter called as "IT Act") on 18.03.1993 at the business premises of the firms and at the residences of the partners. In the course of the search, Shri.M.A.Jacob made a declaration u/s.132(4) offering additional income of Rs.75,00,000/- including the investment of Rs.45,00,000/- in the construction of M.A.Jacob Minar and Jacob Mansion, at No.12, Damodaran Street, Off Cathedral Road, Chennai, and on account of the undisclosed excess stock found at the business premises of the applicants at the time of search. Originally, all the five applicants filed applications u/s.245C(1) on 04.07.1994 for the assessment year 1993-94 which covers the previous year relevant to the date of search. The Settlement Commission, disposed of the applications by a consolidated order in S.A.Nos.21/II/33/94-IT, 21/11/35/94-IT, 21/II/34/94-IT, 21-II/32/94-II and 21/II/36/94 on 30.09.1996. The additional income offered by the applicants for the said assessment year was stated to be in relation with unrecorded sales, unconfirmed credit purchases, etc.,

(b) The Settlement Commission, instead of following the method adopted by the Assessing Officer of estimating the

turnover by multiplying the incentives paid to the employees at a particular multiplying factor, they found the investment method preferable as a better index for computation of income. Accordingly, the investment in unrecorded stock, cost of air-conditioners, were taken into consideration and the income so determined was apportioned among the five different firms. In the application for 1993-94, the applicant was M/s.Carpet Centre. In the other application confined to the assessment year 1995-96, the applicant was M/s.M.A.Jacob's Carpets & Furnishing Co. In the case of other firms, the application covers the assessment years 1988-89 to 1992-93. However, in the case of M/s.M.A.Jacob & Company, there were no proceedings pending at the time of filing of the application for the assessment years 1988-89 and 1989-90. In the case of M.A.Jacob's furnishing Department, M/s.Flooring & Furnishing Co., and M/s.M.A.Jacob's Cleaning Products Co., there were no proceedings pending for the assessment year 1988-89. These applicants have pleaded that the assessments for those years in their cases may be reopened u/s.245E, since according to the applicant group, various investments include the introduction of capital in the new firm which has come out of the suppressed income of all the old firms. In this process, the accounting year 1987-88 has also to be considered, since the investments had started during the said year. After careful consideration, the Settlement Commission was of the opinion that for a comprehensive settlement of the cases of the entire group, it is necessary to reopen the above mentioned assessment years and the said firm cases u/s.245E. Accordingly, the Settlement Officer, opened the cases for the assessment years 1988-89 and 1989-90 u/s.245E of the Act.

4. In the said background, 6th respondent/Income Tax Settlement Commission passed the order dated 19.02.2004, rejecting the prayer for waiver of interest levied under Section 234B of the Act and further ordered that the interest u/s.234B shall be charged up to the date of order u/s.245D(4) of the Act.

5. The Settlement Commissioner, while considering the applications filed by both sides ie., the Partnership firm as well as the Commissioner of Income Tax and also the returns filed by the respondents 1 to 5 herein, given directions to the Assessing Officer to re-compute the interest u/s.234B of the I.T.Act in view of the directions given therein and amend the order giving effect to the order of the Settlement Commission u/s.245D(4) of the Income Tax Act. It is pointed out in the Income Tax Settlement Commission (ITSC) order dated 07.01.2000 that in respect of assessment year 1995-96 in the case of M.A.Jacob's Carpets and Furnishing Co., reduced rate of 25% of the interest leviable, however, in all other cases, 50% of interest was levied for each of the assessment years. Interest u/s.234B was charged up to the date of completion of proceedings

u/s.143(1)(a) or up to the date of regular assessment u/s.143(3) or up to the date of return as the case may be for all the assessment years.

6. While analysing the order passed by the ITSC dated 19.02.2004, it is apparent that the appellant/revenue filed two Miscellaneous Petitions, one dated 18.03.2002 on the basis of the subsequent development of law on the issue raising the point that the adhoc waiver granted by the ITSC in its order u/s.245D (4) dated 07.01.2000 suffers from mistake as the waiver granted by the Settlement Commission appears to have been granted without taking into consideration the Circulars issued by the CBDT on the subject and therefore, sought for rectification of the said order of ITSC. The second Miscellaneous Petition was filed on 24.07.2003 requesting for rectification on the basis of the decision of the Hon'ble Supreme Court in the case of CIT Vs. Hindustan Bulk Carriers (2003) 259 ITR 449 (SC) and CIT Vs. Demani Brothers (2003) 259 ITR 475 (SC). It is stated that interest under Section 234B is to be charged for the period beginning from the 1st day of April next following the relevant financial year up to the date of order of ITSC u/s.245D(4).

7. The 6th respondent/Income Tax Settlement Commission, considered all the submissions made by both parties and followed the decisions rendered by the Honourable Apex Court and various High Courts, and passed the order dated 19.02.2004 and held that at the point of time when the order u/s.245D(4) was passed by the ITSC, the judgments of Hon'ble Supreme Court in the case of CIT vs. Anjum M.H.Ghaswala and Others (2001) 119 taxman 352/252 ITR 1 (SC) and CIT Vs. Hindustan Bulk Carriers (2003) 126 taxman 321/259 ITR 449 (SC) were not available; at that time, the ITSC had taken a decision to waive/reduce the interest leviable u/s.234B of the Act, but the ITSC had not taken into consideration the conditions enumerated by Board's communication being order u/s.119(2)(a) of the Act, this action of the ITSC stood mistaken in view of the subsequent decisions of the Supreme Court in the case of CIT vs. Anjum M.H.Ghaswala and Others (2001) 252 ITR 1 (SC). It is pointed out that "the ITSC had also ordered charging of interest up to the date of order u/s.143(1)(a)/143/144 relying on the decision of Gulraj Engineering Co.Ltd., (1995) 215 ITR 1 (AT). The order of the ITSC also becomes erroneous and hence mistaken in view of the subsequent decision of Hon'ble Supreme Court in the case of CIT Vs. Hindustan Bulk Carriers (2003) 259 ITR 449 (SC)."

The Income Tax Settlement Commission/6th respondent, therefore, passed the order as under:-

"ORDER

11.1 In view of the above, it is hereby ordered -

(i) that there is no case for waiver of interest

leviable u/s.234B of the Act.

(ii) that the interest u/s.234B shall be charged up to the date of order u/s.245D(4) of the Act.

11.2. The miscellaneous petitions filed by the Department are allowed.

11.3. 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 and amend the order giving effect to the order of the Settlement Commission u/s.245D(4) of the Income Tax Act."

8. Aggrieved by the said order dated 19.02.2004 passed by ITSC, the respondents/Partnership Firm filed W.P.No.6566 of 2004 before this court on the ground that the 2nd respondent/ITSC has no power to reopen its earlier order passed on 07.01.2000 and sought to set aside the order passed by the ITSC dated 19.02.2004.

9. The learned counsel for the appellant/revenue would submit that on the date of the passing of the first order dated 07.01.2000, the power of the court was not settled regarding grant of the waiver of interest. Subsequently, various petitions were filed before the Supreme court and the same were pending, on the issue in question. In view of the unsettled proposition of law at that relevant point of time, the 6th respondent, passed the order dated 19.02.2004. However, subsequently, law has been settled by the Honourable Supreme Court in the decisions CIT Vs. Hindustan Bulk Carriers (2003) 259 ITR 449 (SC) and CIT Vs. Demani Brothers (2003) 259 ITR 475 (SC). In such circumstances, the Commissioner of Income Tax-IV, filed two Miscellaneous Petitions before the 6th respondent/ITSC, seeking rectification. While considering the subsequent development of law as held by the Honourable Supreme Court in the above referred to decisions, the Authority has changed the view that there is no case for waiver of interest leviable u/s.234B of the Act and that interest u/s.234B shall be charged up to the date of order u/s.245D(4) of the Act.

10. The learned counsel for the appellant/revenue has also placed reliance on the decision reported in CDJ 2010 SC 968 [Brij Lal & others Vs. Commissioner of Income Tax, Jalandhar]. She would further submit that the learned Single Judge failed to consider the subsequent development of law on the issue in question in the case of Brij Lal & others Vs. Commissioner of Income Tax, Jalandhar [CDJ 2010 SC 968], but followed the earlier order passed by this court reported in [2016] 73 taxmann.com 367 (Madras) [R.Vijayalakshmi Vs. Income Tax Settlement Commission], order dated 26.07.2016, wherein, this court, allowed the writ petition in favour of the assessee and set aside the order passed by the Settlement Commission. Even

after the said decision of the learned Single Judge, the First Bench of this Court, in respect of the same issue, passed the order dated 06.08.2018 in W.A.No.496 of 2018 [Union of India Vs. Dr.L.Subramanian] and answered the questions of law raised in favour of the appellant/Revenue Department and allowed the Writ Appeal. The First Bench of this Court, held as follows:-

"19. Interest under Section 234B of the 1961 Act is to be charged up to the date of order under Section 245D (4) of the 1961 Act. The order of the Settlement Commission that the respondent assessee would be entitled to waiver of interest leviable under Section 234A of the 1961 Act; that there is no case for waiver of interest leviable under Section 234B of the 1961 Act; and that interest under Section 234B shall be charged up to the date of the order under Section 245D(4) of the 1961 Act, does not warrant interference, more so, in view of the remand by the Supreme Court in Civil Appeal Nos.8705-8706 of 1996."

11. The learned counsel for the appellant/Revenue further submits that the Honourable Supreme Court, by its decision dated March 5, 2019 in the case of Kakadia Builders (P). Ltd., Vs. Income Tax Officer Ward 1(3) reported in [2019] 103 taxmann.com 53 (SC), remanded the matter to the Settlement Commission to decide the issue relating to waiver of interest payable by the assessee, afresh keeping in view the law laid down by this court in Ghaswala (supra) and Brij lal (supra) after affording an opportunity to the parties concerned. The learned counsel thus submits that even after the decision of the learned Single Judge of this court as well as the First Bench of this Court on the same issue and further in the light of the recent decision of the Honourable Supreme Court reported in (2019) 103 taxmann.com 53 (SC), wherein, the issues raised therein, had been held in favour of the Revenue, the order passed by the learned Single Judge, dated 02.08.2017, challenged in this Writ Appeal, warrants interference and prayed for allowing the appeal.

12. The learned counsel for the assessee/respondents 1 to 5 would submit that the Constitution Bench of Honourable Supreme Court reported in Brij Lal & Others Vs. Commissioner of Income Tax, Jalandhar [CDJ 2010 SC 968], for the referred questions viz., (i) Whether Sections 234A, 234B and 234C of the Income Tax Act, 1961 are all applicable to proceedings of the Settlement Commissioner under Chapter XIX-A of the Act, (ii) Whether in the absence of period of limitation prescribed for making the order of the Settlement, the relevant date for determining the quantum of interest could be the date of the said order? and (iii) Whether in the absence of period of limitation prescribed for making the order of the Settlement, the relevant date for determining the quantum of interest could be the date of the

said order?, has held as follows:-

" 16. (1) Sections 234A, 234B and 234C are applicable to the proceedings of the Settlement Commission under Chapter XIX-A of the Act to the extent indicated hereinabove.

(2) Consequent upon conclusion (1), the terminal point for the levy of interest under section 234B would be up to the date of the order under section 245D(1) and not up to the date of the Order of Settlement under section 245D(4).

(3) The Settlement Commission cannot re-open its concluded proceedings by invoking section 154 of the Act so as to levy interest under section 234B, particularly, in view of section 245I."

The learned Single Judge, while considering the challenge to the order of the Settlement Commissioner dated 19.02.2004, referred to similar order passed by this Court in the case of R.Vijayalakshmi Vs. Income Tax Settlement Commissioner, in W.P.Nos.5553 to 5558 of 2008, dated 26.07.2016 holding that, in the instant case, the Revenue while rectification/recalling of the order passed by the Commission, referred to a decision of the Hon'ble Supreme Court in the case of Hindustan Bul Carriers and Damani Bros, with respect to the terminal date for charging of interest under Section 234B. Thus, in the decision referred to by the learned Single Judge viz., in the case of R.Vijayalakshmi Vs. ITSC, applying the decisions of the Honourable Supreme Court in the case of Brij Lal & Others Vs. Commissioner of Income Tax, Jalandhar [2010] 328 ITR 477/198 Taxman 566 and also the decision of the Division Bench of the Andhra Pradesh High Court in the case of U.Narayanamma Vs. Government of India [2013] 352 ITR 598/216 Taxman 201, rightly set aside the order of the Settlement Commission, holding that subsequent development of law cannot be a ground to exercise review jurisdiction and that cannot be taken into consideration as an error apparent on the face of the record. It is further held that the Settlement Commission/6th respondent cannot re-open the earlier order passed by the Settlement Commissioner(IT) and quashed the computation of terminal date for charging the interest under Section 234B. The learned counsel submits that the order passed by the learned Single Judge is well founded and followed the sound proposition of law and the same does not warrant interference.

13. Heard the learned counsel on either side and perused the entire materials.

14. It is not in dispute that the respondents 1 to 5 herein/assessee filed settlement applications under Section 245E of the I.T.Act, 1961 on 25.06.1997 for settlement of its cases relating to the assessment years 1988-1989 to 1992-93 and

1995-96 and allowed to proceed by the Settlement Commissioner. The Settlement Commissioner passed the Combined final order dated 07.01.2000, directing the Assessing Officer to compute the tax and interest payable on the basis of the total income as worked out in the Annexure to the order for the assessment years under consideration. It is given that the total additional income of all the applicants would work out to Rs.39,45,943/- and Rs.9,30,000/- additional income offered in the case of M/s.M.A.Jacob's Carpet & Furnishing Co., is accepted and therefore, the same is not added. The order reads that in the case of all the old firms, interest u/s.139(8) is waived for the assessment year 1988-89 since the assessment was reopened u/s.245E; in the case of all the old firms, the interest is waived since the assessments were reopened u/s.245E, and for that reason, interest u/s.234B in the case of M.A.Jacob & Co., is waived. The Settlement Commission further stated that in the case of M.A.Jacob Furnishing Co. the only assessment year involved is 1995-96 and the return has been filed within the due date.

15. In this case, it is not as if, the respondents 1 to 5/assessee have filed the returns showing their income voluntarily in the first instance itself. There was a search under Section 132 of the IT Act on 18.03.1993 on the business premises of the firms and at the instance of the partners, Shri.M.A.Jacob made a declaration u/s.132(4) offering additional income of Rs.75,00,000/- including the investment of Rs.45,00,000/- in the construction of M.A.Jacob Minar and Jacob Mansion at No.12, Damodaran Street, Off Cathedral Road, Chennai. Earlier, the respondents 1 to 5 also filed settlement application on 04.07.1994 for the assessment year 1993-94 which covers the previous year relevant to the date of search. The settlement commission has disposed of the applications by a consolidated order in S.A.NOs.21/II/33/94-IT, 21/11/35-94-IT, 21/IT/34/94-IT, 21/II/32/94-II and 21/II/36/94-II dated 30.09.1996. The additional income offered by the applicants for the said assessment year related to unrecorded sales, unconfirmed credit purchases etc.

16. Subsequently respondents 1 to 5/assessee filed five applications dated 25.06.1997 in 21/I/14/97-IT, 21/I/10/97-IT, 21/I/11/97-IT, 21/I/12/97-IT and 21/I/13/97-IT for the assessment years 1988-89 to 1992-93 and 1995-96. The Settlement Commission, after evaluating records, passed the order on 07.01.2000, granting waiver of interest. It is stated that reduction of 25% of the interest is leviable for the assessment year 1995-96 in the case of M.A.Jacob's Carpets and Furnishing Co; in all other cases, restricted the levy of interest to 50% for each of the assessment years. Further it is stated that interest u/s.234B will be charged up to the date of completion

of proceedings u/s.143(1)(a) or up to the date of regular assessment u/s.143(3) or up to the date of return as the case may be for all the assessment years under consideration.

17. Thereafter, the appellant/revenue filed two Miscellaneous petitions dated 18.03.2002 and 24.07.2003 stating that the Settlement Commissioner has no power to reduce or waive interest statutorily payable u/s.234A, 234B and 234C, but only to the extent of granting relief under Circulars of CBDT on the subject issued u/s.119 of the Income Tax Act. The Department also stated that adhoc waiver granted by the ITSC in its order u/s.245D(4) dated 07.01.2000 suffers from mistake as to the waiver, which appears to have been granted without taking into consideration the Circulars issued by the CBDT on the subject and thus sought for rectification and referred to decisions of Hon'ble Supreme Court in the case of CIT Vs. Hindustan Bulk Carriers (2003) 259 ITR 449 (SC) and CIT Vs. Demani Brothers (2003) 259 ITR 475 (SC).

18. Subsequent to the order passed by the Settlement Commission on 07.01.2000, considering the Miscellaneous Petitions filed by the Department, the ITSC/Settlement Commission (IT & WT) Additional Bench, reversed the order of waiver of interest and held that the interest u/s.234B shall be charged up to the date of order u/s.245D(4) of the Act. Further, directed the Assessing Officer to re-compute the interest u/s.234B of the IT Act in view of the directions stated in the order and amend the order giving effect to the order of the Settlement Commission u/s.245D(4) of the Income Tax Act.

19. Challenging the said order of Settlement Commission dated 19.02.2004, the assessee filed W.P.No.6566 of 2004 before this court. The learned Single Judge, following the decision reported in [2016] 73 taxmann.com 367 (Madras) [R.Vijayalakshmi Vs. Income Tax Settlement Commission] wherein, the decision of the Constitution Bench of the Honourable Supreme Court reported in CDJ 2010 SC 968 [Brij Lal & Others Vs. Commissioner of Income Tax, Jalandhar], was followed, allowed the writ petition and set aside the impugned order dated 19.02.2004 passed by the 6th respondent/ITSC.

20. On a careful perusal of the entire records and also considering the points raised by both counsel, at the risk of repetition, it is to be stated that, the respondents 1 to 5/assessee have not offered the income returns at the first instance but only after search u/s.132 of the I.T.Act, they offered additional income. Subsequently the assessee filed Settlement Applications on 25.06.1997. Though the 6th respondent herein/ITSC passed the order on the said applications granting waiver of interest on 07.01.2000, according to the learned

counsel for the appellant/revenue, law was not settled at that relevant period. But subsequently, after passing the order on 07.01.2000, the issue has been decided by the Honourable Supreme Court and this Court and those decisions are stated as infra:-

(1) CIT Vs. Vijaya Productions (P) Ltd., (2000) 245 ITR 236 (Mad)

(2) Wilson Industries V. CIT (2003) 259 ITR 318 (Mad).

Therefore, in view of the subsequent decisions, the Department filed the Miscellaneous Petitions before the 6th respondent/ITSC to consider the decisions held by the Honourable Supreme Court and subsequent development of law and sought to reconsider their decision already taken in the order passed on 07.01.2000 on the application filed by the respondents 1 to 5/assessee dated 25.06.1997. The 6th respondent/ITSC also considered the decisions cited by the Department, which were decided subsequent to the order passed on 07.01.2000 and rectified the order rejecting the waiver of interest and the interest u/s.234B shall be charged up to the date of order u/s.245D(4) of the Act.

21. According to the learned counsel for the appellant/revenue, by its earlier order dated 07.01.2000, the 6th respondent/ITSC disposed of all the settlement applications made by the respondents 1 to 5/assessee. But the law on the issue was not settled at that point of time and the issues were taken before the Honourable Supreme Court. Therefore, the 6th respondent/ITSC could not pass the subsequent order on the same issue, as the issue in that regard was pending before the Supreme Court. After the order dated 07.01.2000, the issue has been decided in some cases. Therefore, the appellant herein pointed out that based on those decisions, the Department filed Miscellaneous Applications praying rectification. She further stated that the 6th respondent's order passed on 07.01.2000, was based on the unsettled legal position. Since subsequently, legal proposition on the issue has been settled in the above said decisions, they filed the Miscellaneous Petitions before the 6th respondent, who after considering all the relevant factual matrix of the case and the legal proposition, rectified the order passed on 07.01.2000, by its subsequent order dated 19.02.2004.

22. It has to be noted that the learned Single Judge has followed the decisions of the Honourable Supreme Court reported in CDJ 2010 SC 968 [Brij Lal & others Vs. CIT, Jalandhar] and also earlier decisions of this court viz., [2016] 73 taxmann.com 367 (Madras) [R.Vijayalakshmi Vs. Income Tax Settlement Commission], and set aside the order passed by the 6th respondent/ITSC by his order dated 02.08.2017. But Subsequently, the First Division Bench of this Court had an occasion to deal with the same issue in question in the case of Union of

India and others Vs. Dr.L.Subramanian [W.A.No.496 of 2018] dated 06.08.2018, and held at paragraph 19 as under:-

"19. Interest under Section 234B of the 1961 Act is to be charged up to the date of order under Section 245D(4) of the 1961 Act. The order of the Settlement Commission that the respondent assessee would be entitled to waiver of interest leviable under Section 234A of the 1961 Act; that there is no case for waiver of interest leviable under Section 234B of the 1961 Act; and that interest under Section 234B shall be charged up to the date of the order under Section 245D(4) of the 1961 Act, does not warrant interference, more so, in view of the remand by the Supreme Court in Civil Appeal Nos.8705-8706 of 1996. "

23. That being the position, relating to the issue in question, the Honourable Supreme Court, by decision dated March 5, 2019 reported in [2019] 103 taxmann.com 53(SC) in the case of Kakadia Builders (P) Ltd., Vs. Income Tax Officer Ward 1(3), while appreciating the facts of the case laid before it, examined the questions rendered in the subject in Brij lal (supra) and has clearly observed that the issue with regard to the powers of the Settlement Commission was not settled by any decision of this Court and the decisions in CIT Vs. Anjum M.H.Ghaswala [(2001)119 Taxman 352/252 ITR 1 and Brij Lal Vs. CIT [2010] Taxman 566/328 ITR 477 (SC) were rendered after the Settlement Commission passed the order in the said case and therefore, the Settlement Commission had no occasion to examine the issue in question in the context of decision rendered by this Court in the above two decisions. The conclusion of the Supreme Court, in the said decision, in paragraph 26, is as under:-

" 26. In the light of what we have held above, we consider it apposite to set aside the impugned order and the order dated 11.08.2000 passed by Settlement Commission to the extent it decided the issue in relation to waiver of interest and remand the case to the Settlement Commission to decide the issue relating to waiver of interest payable by the assessee (appellants herein) afresh keeping in view the law laid down by this Court in Ghaswala (supra) and Brij lal (supra) after affording an opportunity to the parties concerned."

24. In our considered view, in the case on hand, the 6th respondent /Settlement Commission passed the order on 07.01.2000 on the settlement applications filed by respondents 1 to 5/assessee, at which point of time, law was not settled on the issue in question. Therefore, the situation in the case on hand is similar to that of the decision reported in [2019] 103 taxmann.com 53(SC) [(Kakadia Builders (P.) Ltd., Vs Income Tax

Officer Ward 1(3)]. Since on the date of the order passed by the Settlement Commission i.e., on 07.01.2000, law was not settled regarding the power of the Settlement Commission in relation to waiver of interest and the interest up to what date, and therefore, it cannot be said that there are divergent views of the courts on the issue. We consider that the decision reported in [2019] 102 taxmann.com 53 (SC) is squarely applicable to the facts of this case.

25. The order passed on the Settlement Applications filed by the assessee is dated 07.01.2000. The second order of ITSC was passed on 19.02.2004. After those orders passed by ITSC on the issue in question, concerning the assessee, in the year 2010, the Honourable Supreme Court had an occasion to deal with the said issue in the case of Brij Lal & Others Vs. CIT, Jalandhar [CDJ 2010 SC 968]. Another Constitution Bench also dealt with the issue and rendered its decision on 18.10.2011 in the case of CIT Vs. Anjum M.H.Ghaswala [2001] 119 Taxmann 352/252 ITR 1 . In the said decisions, the Honourable Supreme Court held that the Settlement Commission cannot re-open its concluded proceedings by invoking Section 154 of the Act so as to levy interest under Section 234B in view of Section 245I. The terminal point for the levy of interest under Section 234B would be up to the date of the order under section 245 D (1) and not up to the date of the Order of Settlement under Section 245D(4). Sections 234A, 234B and 234C are applicable to the proceedings of the Settlement Commission under Chapter XIX-A of the Act to a certain extent.

26. Therefore, even after the above said decision of the Constitution Bench of the Honourable Supreme Court in the case of Brij Lal & Other VS CIT, Jalandhar, the Supreme Court, in the case of Kakadia Builders (P.) Ltd., Vs Income Tax Officer Ward 1 (3) ([2019] 102 taxmann.com 53 (SC)), by decision dated March 5, 2019, had an occasion to deal with the issue which is similar to the case on hand, wherein, the Supreme Court held that the Settlement Commission's order was already held bad in law on the ground that it was passed under Section 154 of the Act, the same was neither in existence for any purpose nor it could be relied upon by the High Court much less for making it a part of their order for issuing a writ. In such circumstances, following the said decision, the subsequent order passed by the Settlement Commissioner rectifying its order insofar as it pertained to waiver of interest, based on the subsequent legal position on the issue, was remanded back to the Settlement Commission.

27. Therefore, following the decision rendered by the Honourable Supreme Court in Kakadia Builders (P.) Ltd., Vs. Income Tax Officer Ward 1(3) [[2019] 103 taxmann.com 53 (SC)], the Writ Appeal is liable to be allowed. The Writ Appeal is

accordingly allowed. The order of learned Single Judge dated 02.08.2017 passed in W.P.No.6566 of 2004 is set aside. The matter is remitted back to the 6th respondent/ITSC, to decide the issue relating to waiver of interest payable by the assessee, afresh keeping in view the law laid down by the Honourable Supreme Court in CIT Vs. Anjum M.H.Ghaswala (supra) and Brij Lal Vs. CIT (supra) after affording an opportunity to the parties concerned. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner of Income Tax-IV
Chennai-600 034.

2. The Income Tax Settlement Commission
640, Anna Salai, Nandanam
Chenna-600 035.

+1cc to Hema Muralikrishnan, Advocate, Sr.No.30213

W.A.No.456 of 2018

mg (co)
rr ii (01/10/2020)