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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.12109 of 2012

ORCHID PHARMA LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR
MR. MANISH DHANUKA,
"ORCHID TOWERS",
NO.313, VALLUVARKOTTAM HIGH ROAD,
NUNGAMBAKKAM, CHENNAI-600 034.
(CAUSE TITLE AMENDED VIDE ORDER DT.03.08.2021
MADE IN WMP.15925/2021 IN WP.12109/2012)

...Petitioner

Vs.

- 1.The Income Tax Settlement Commission,
Additional Bench,
640, Anna Salai,
Chennai - 600 035.
- 2.The Commissioner of Income Tax - III,
121, Nungambakkam High Road,
Nungambakkam,
Chennai - 600034.
- 3.The Assessing Officer,
121, Nungambakkam High Road
Nungambakkam
Chennai - 600 034.
- 4.Transfer Pricing Officer,
121, Nungambakkam High Road,
Nungambakkam,
Chennai - 600 034

...Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the first respondent in Settlement Application No. TN/CN 3/2010-11/4/IT and quash the order dated 28.03.2012 in so far as it relates to the issue of transfer pricing alone on sales to Distribution Partners adjudicated in para 2.2.1.3 to 2.2.4.1 as illegal and without jurisdiction and consequently direct the first respondent herein



to treat Petitioner Company as not as "Associate enterprise" of the Distribution Partners as per Section 92A of the Act.

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For Petitioner : Mr.N.V. Balaji
For Respondents : R1 - Settlement Commission
M/s.Hemamurali Krishnan
Senior Standing Counsel
[For Income Tax]
[For R2 to R4]

O R D E R

The order dated 28.3.2012 passed by the Income Tax Settlement Commission is sought to be quashed in the present writ petition.

2. The petitioner is a Public Limited Company listed in National Stock Exchange and Bombay Stock Exchange. The company is engaged in the business of manufacture and Trading of Pharmaceutical bulk drugs and formulations. The petitioner is assessed before the third respondent. The petitioner company had manufacturing facilities of Bulk drugs at Alathur and Aurangabad and Formulation Units at Alathur and Irrungattukottai. The petitioner company states that up to the Assessment Year 2003-2004, all the units of the company enjoyed 100% EOU status and their income was exempted from tax. The petitioner company states that on 17.3.2010, the Income Tax Department conducted a survey under Section 133 (A) of the Act on the company. Consequently, the petitioner on 31.03.2010, had filed its revised return of income for the Assessment Year 2004-05 to 2009-10 were valid by virtue of provision under Section 139 (5) of the Act.

3. After filing of the revised return, the petitioner company moved the Income Tax Settlement Commission, to settle the disputes. Accordingly, an application under Section 245(C) of the Act was filed before the first Respondent on 16.09.2010 for the Assessment Year 2006-07 to 2010-2011 and had offered income as detailed in the application.

4. The first Respondent by order dated 20.9.2010 under Section 245D(1), allowed the Settlement application to be proceed with. The application was found to be valid and allowed to be proceeded with by the first respondent under Section 245D (2C) dated 01.11.2010. Under the provisions of the Act, reports were called for from the competent authority as well as from the Transfer Praising Officer. The petitioner states that in respect



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of the Transfer Pricing issues, the petitioner company make substantial export to various countries across the globe. The global market for Pharmaceuticals can broadly be classified as Regulated and less-regulated markets. The regulated markets comprises USA, UK, Europe, Japan, while all other countries could be clubbed together as the less-regulated markets. The petitioner company had entered into agreements. In order to verify the Arms Length Price of these transactions with the DPs (Distribution Partners), the first respondent had made reference to the fourth respondent through the second respondent. The petitioner has stated that they have furnished all the details fully and truly in the application submitted before the Settlement Commission and the Settlement Commission, in respect of the Transfer Pricing alone, on sales to Distribution Partners adjudicated in paras 2.2.1.3 to 2.2.4.1 dealt the issues improperly and the findings made in the above paragraphs are illegal and without jurisdiction. In fact, the petitioner company is to be treated as "Associated Enterprises" of the Distribution Partners as per Section 92(A) of the Act. Thus, the present writ petition is filed and restricted to the extent of Transfer Pricing alone on sales to Distribution Partners.

5. The learned counsel for the petitioner contended that the Present Writ Petition No.12109 of 2012 challenges the order of the Income Tax Settlement Commission (hereinafter referred to as the "ITSC") dated 28.03.2012 with respect to the Transfer Pricing issue alone. Subsequently, vide order u/s 245D(3) the 2nd Respondent was directed to make further enquiry in respect of 27 issues including the transfer pricing issue. Pursuant to such directions the 2nd Respondent had directed the 4th Respondent to submit his report with regard to international transactions. The 4th Respondent after examining the agreements/contracts and the petitioner's submissions, held as follows:

a) That the Petitioner Company and three of its Distribution Partners ("DPs") namely Apotex Corp, Par Pharmaceuticals, Northstar Healthcare Ltd. are to be treated as "Deemed Associated Enterprises" ['AE'] falling u/s 92A (2) (i).

b) The Profit Split Method (PSM) is Most Appropriate Method (MAM) and the Comparable Uncontrolled Price Method (CUP) adopted by the petitioner is not is not he MAM.

c) The activities of the Company can be divided into 3 categories (namely Development, Manufacture and Marketing) and since the petitioner undertakes both development and manufacture of the products and also shares some of the marketing responsibilities the profit sharing ratio is fixed at 70:30 (70 to the petitioner and 30 to the Dps) following the PSM as



against 50:50 agreed between the Petitioner and the DPs.

6. The first Respondent erred in rejecting the preliminary objection of the Petitioner that the Fourth Respondent has passed an order under Section 92CA determining the Arm's Length Price ['ALP'] while only the First Respondent is empowered to determine the income to be settled in respect of the application before it. Since, the Fourth Respondent passed the order, the First Respondent ought to have been rejected it and not to have treated the order as a report. In the impugned order the First Respondent held that:

Even if an enterprise is not covered by Section 92A(1) it can still be deemed to be an associated enterprises if any one of the conditions specified in Section 92A(2) is satisfied.

7. The Petitioner made a submission that the aforesaid conclusion is contrary to the provisions of the Act. Evidently on plain reading of the Act, for the application of Section 92A (2), it is essential that 92A(1) applies to the Petitioner's case at first instance, and that sub-section 2 cannot be applied independently. The legal fiction falling under various clauses under sub-Section (2) are only for the purpose of sub-Section (1) and not to replace or operate independent of sub-Section (1). Reliance is placed on the decision of the Hon'ble Karnataka High Court in the case of PCIT Vs. Page Industries Ltd in ITA 285 of 2017, which affirmed the order of the Bangalore Tribunal, holding that in order to constitute relationship of an AE, parameters laid down in both sub-Sections 1 and 2 of Section 92A should be fulfilled. The petitioner further relies on Mother India Refrigeration Industries Pvt. Ltd. 155 ITR 711 (SC), wherein it was held that "legal fictions are created only for some definite purpose and these must be limited to that purpose and should not be extended beyond the legitimate field".

8. Even assuming that sub-Sections 1 and 2 of Section 90A are independent of each other, the First Respondent failed to note that in view of narrow meaning of "Associated Enterprise" as per the Double Taxation Avoidance Agreement ['DTAA'] between India and United States of America [which does not contain anything similar Section 90A(2)], the petitioner and its DPs are not AEs warranting determination of ALP. The petitioner submitted that in view of Section 90(2) of the Act, the provisions of the Act shall apply to the extent they are more beneficial to the assessee, in respect of assessee whom DTAA applies. When the meaning assigned under the Act is broader, the same cannot be applied on the Petitioner, since the same is not more beneficial than the meaning given under the DTAA. The petitioner further submitted that the First Respondent grossly erred in law in holding that the Petitioners and its DPs are AEs under Section 92A (2) (i) for two more reasons. The said clause



would apply only in cases where the entire goods manufactured by one enterprise is sold to another enterprise and not where the good manufactured are sold to different parties. This submissions is made on the proposition that the Article "the" at the beginning of this clause denotes the same articles produced by the First Enterprise and therefore, the clause contemplated 100% of sale of goods manufactured to constitute AE Relationship between two enterprises. Even otherwise, the other condition of the price and other conditions relating to supply being influenced by the other enterprise is absent in the Petitioner's case. Admittedly the prices which the DPs sell in the market are based on free market forces and consequently it cannot be said that the prices in respect of sale by the Petitioner to its DP is influenced by the DPs. The First Respondent without any material arbitrarily concluded that the DPs have influenced over the price and hence are AEs of the Petitioner as per clause 92A (2) (i).

9. The First Respondent also grossly erred in holding that DPs have equal representation on the management committee/executive committees and that the DPs influence the prices and other conditions in relation to sale of goods by the Petitioner. The First Respondent misdirected itself in concluding the presence of the DPs on the management/executive committees results in the participation in the management/control of the Petitioner. On the contrary, their presence is on account of expertise in local knowledge and technical skills to ensure optimized production and deciding product mix in respect of products distributed and not result in management/control/capital at the enterprise level of the Petitioner. Under such circumstances, the First Respondent had only applied 92A (2) (i) and concluded that the Petitioner and DPs are AEs.

10. The First Respondent had based its decision without considering the material evidences before it, which would clearly suggest that the DPs are not in a position to influence that the DPs being in free market, the prices are dependent on end customers. Further, the price charged is determined taking into consideration the cost of manufacture incurred by the Petitioner and cost of selling incurred by the DPs. The First Respondent failed to note the evidences like the price is determined in agreement with DP-implying that both parties are involved in determination of price, the CFO's sworn statement that selling price is determined by the DP based on market condition. The First Respondent also did not take into consideration the statement of the CFO that the DP provides for a floor and cap of the market price. Considering the petitioner and DPs as AEs without considering the material evidences before



it shows that the order of the First Respondent is arbitrary and preserved.

11. The petitioner has rightly chosen CUP as MAM. In transfer pricing it is well settled proposition that pricing methods are more appropriate than profit methods in determining the Arm's length price. When identical product is sold by the Petitioner to persons other than DPs, the ALP is rightly justified by the Petitioner based on such independent third party transactions. Rule 10B provides for determination based on CUP and also adjustment for differences if any between international transactions and CUP or between enterprises entering into such transactions which could materially affect prices in the open market. In the Petitioner's case, the difference is arising out of geographical difference and at best may warrant a adjustment and not rejection of CUP as MAM. Similarly, under the same rule PSM should be applied mainly to the international transactions involving transfer of unique intangible or multiple international transactions which are so interrelated that they cannot be evaluated separately. In the Petitioner's case it is only a transaction of sale of its goods to DPs and therefore, PSM would have no application. In absolute disregard of Rule 10B, the First Respondent concluded PSM as MAM and accordingly to that extent the order is arbitrary and preserve.

12. The First Respondent determined the profit sharing ratio between at fixed at 70:30 (70 to the petitioner and 30 to the Dps), considering that the Petitioner undertook development and manufacturing and that the marketing responsibilities were undertaken by the DPs. In effect, the First Respondent apparently gave equal weightage to the purported three functions carried out by the parties. It is well settled and required under the law that the transfer pricing is to be determined considering the functions assets and risks ['FAR']. The Petitioner's transfer pricing study considering all these were rejected and arbitrary equal weightage was considered only in respect of functions. Further, the First Respondent also did not take into account that the First stage invoice raised by the Petitioner includes manufacturing cost and agreed profit in respect of Indian functions, namely R&D and Manufacturing is taken into consideration duly in the First stage of pricing. The petitioner has rightly proposed that the Second stage invoice whereby the profit margin after deducting the first stage invoice price and marketing cost incurred by the DP is to be shared equally between the Petitioner and DPs and accordingly even assuming purported PSM has to be applied, only 50% of the profits is attributable to the Petitioner. The First Respondent in absolute disregard of the material in the form of Transfer



pricing study and the law regarding the profit-sharing ratio at 70:30 between Petitioner and DPs.

13(a). In support of the above contentions, the learned counsel relied upon the judgment in the case of N.Krishnan Vs. Settlement Commission, reported in (1989) 180 ITR 585 (Karnataka), wherein the following observations are made:

"14. Even so, as regards the first question is concerned, it should be remembered that the power of judicial review of administrative action including those of Courts and Tribunals conferred on the High Courts under Articles 226 and 227, constitutes one of the basic structures of the Constitution. Therefore, irrespective of the nature of an administrative Tribunal or the width of its power or a provision in the relevant provision of law that its decision is final and conclusive, the High Court's power of judicial review remains unaffected, though the scope of judicial review might vary. That power can be curtailed or varied only by a constitutional provision. (See: H.V. Kamath v. Ahmed Ishaque) [AIR 1955 SC 233.] Moreover with reference to the Settlement Commission itself the question as to whether its decisions are appealable to the Supreme Court under Article 136 has been the subject matter of consideration by the Supreme Court in I.T. Commissioner v. B.N. Bhattacharjee [(1980) 3 SCC 54 : AIR 1979 SC 1724.] on a preliminary objection. The Supreme Court held thus:

"47. The preliminary objection raised by Shri A.K. Sen need not detain us because we are satisfied that the amplitude of Article 136 is wide enough to bring within its jurisdiction orders passed by the Settlement Commission. Any Judgment, decree, determination, sentence or order in any case or matter passed or made by any Court or Tribunal, comes within the correctional cognisance and review power of Article 136. The short question, then, is whether the Settlement Commission cannot come within the category of "Tribunals". To clinch the issue, Section 245L declares all proceedings before the Settlement Commission to be judicial proceedings. We have hardly any doubt that it is a Tribunal. Its powers are considerable; its determination affects the rights of parties; its obligations are quasi-



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judicial; the orders it makes at every stage have tremendous impact on the rights and liabilities of parties.

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In short, Settlement Commissions are Tribunals. The preliminary point fails."

Thus the Settlement Commission is held to be a Tribunal. That being the position, the petitioner is entitled to seek judicial review of the order of the Settlement Commission in a petition under Articles 226 and 227 of the Constitution of India. For these reasons, we answer the first question in the affirmative."

(b) In the case of Swadeshi Industries Vs. Income Tax Settlement Commission, reported in (1993) 199 ITR 293 (Gujarat), the Court held that the writ petition would be entertainable and in the case of Jyotendrasinhji Vs. S.I.Tripathi, reported in (1993) 201 ITR 611 (SC), the Apex Court held that High Court under Article 226 or the Hon'ble Supreme Court of India under Article 32 or 136 can interfere with the order of Settlement Commission, if the order of Settlement Commission is contrary to the provisions of the Act and such contravention has prejudiced the assessee. Therefore, as per the above judgment, the writ petition is maintainable.

(c) In the case of Commissioner of Income Tax Vs. Anjum M.H.Ghaswala, reported in (2001) 252 ITR 1 (SC), the Constitution Bench of the Hon'ble Supreme Court of India held as follows:

"30. It is no doubt true that the terminology "settlement" has a very wide dictionary meaning and in the absence of a statutory definition generally the word "settlement" in sub-section (4) of Section 245-D would give the Commission sufficient power to arrive at a settlement which it deems fit, but when the statute qualifies such expression like "settlement" with mandatory words like "in accordance with the provisions of this Act" the width of the term "settlement" becomes subject to the mandate found in that section, which would mean that while a Commission has sufficient elbow room in assessing the income of the applicant under Section 245-D(4) it cannot make any order with a term of the settlement which would be in conflict with the mandatory provisions of the section, like in the quantum and payment of tax and/or interest. In this view of the matter, we are of the opinion that assuming that there is any room for interpretation of the provisions of Part F of Chapter



XVII and Chapter XIX-A, we would hold that it would not in any manner empower the Commission to either waive or reduce interest which is statutorily payable under the provisions of Part F of Chapter XVII."

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(d) In the case of Union of India Vs. Ind-Swift Laboratories Limited, reported in (2010) 20 STR 479 (SC), the Apex Court held as follows:

"22. An order passed by the Settlement Commission could be interfered with only if the said order is found to be contrary to any provisions of the Act. So far as the findings of fact recorded by the Commission or question of facts are concerned, the same is not open for examination either by the High Court or by the Supreme Court. In the present case the order of the Settlement Commission clearly indicates that the said order, particularly, with regard to the imposition of simple interest @ 10% per annum was passed in accordance with the provisions of Rule 14 but the High Court wrongly interpreted the said Rule and thereby arrived at an erroneous finding."

(e) In the case of Agarshans Vs. Income-tax Settlement Commission, reported in (2012) 18 taxmann.com 19 (Madras), the Hon'ble High Court of Madras made the following observations:

"9. Secondly, on the self-same issue, the petitioner had already moved the Settlement Commission for rectification, which was rejected under order dated 12.4.2002 which was not in any manner challenged. Thus I do not find any legal justification in accepting the case of the assessee, which is more in the nature of rectification of an order dated 12.4.2002 dismissing the rectification petition filed on 27.2.1998. Thus with the catena of decisions are to the effect that the jurisdiction of this Court under Article 226 of the Constitution of India as against the order of the Settlement Commission is not that of an appellate forum, this Court does not sit as an appeal to get into the process to take an ultimate decision. Unless the reasoning is abusive or contrary to the provisions of law, which is prejudicial to the interest of the assessee, this Court does not assume any jurisdiction to interfere with the order of the Settlement Commission. Admittedly, the petitioner had had no grievance as against the order originally passed by the Settlement Commission and there was no Writ Petition filed thereon. Subsequent thereto, there was a Miscellaneous Petition, which was dismissed by the



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Settlement Commission. Even as against that, there was no Writ Petition or any proceedings taken, to challenge that order. Only when the second petition was taken up and an order had been passed, the present Writ Petition has been filed. Learned senior counsel appearing for the petitioner could not specifically point out to the provision under which such a petition is maintainable in law. In the absence of any specific provision even to maintain the first Miscellaneous Application, I do not find any ground to grant the relief sought for by the petitioner. In the circumstances, the Writ Petition stands dismissed. No costs."

14. Relying on the above judgments, the learned counsel for the petitioner reiterated that the writ petition is entertainable and in respect of the Transfer Pricing, the Commission has committed an error as detailed in the affidavit and therefore, the writ petition is to be considered.

15. The learned Senior Standing counsel appearing on behalf of the respondents disputed the contentions raised on behalf of the petitioner by stating that the writ petition itself is not maintainable.

16. The Settlement Commission is a forum for self surrender and seeking relief and not a forum for challenging the legality of assessment order or orders passed in any other proceedings. In the case of N.Krishnan Vs. Settlement Commission (Cited supra), it is held that having regard to the objective underlying the constitution of the Settlement Commission and the nature of functions entrusted to it and the powers of the Commission, the conclusions, both on questions of fact and law, reached by the Commission cannot be nullified except under very limited circumstances. The judicial review power of the High Court cannot be equated to the judicial review of administrative action or the findings of a quasi-judicial Tribunal. It is much more limited and an interference can only be made if there is a fault in the decision making process and not in the decision itself.

17. The learned Senior Standing counsel made a submission that the writ petition is filed, challenging the part of the order of the Income Tax Settlement Commission. The order of Settlement Commission is deemed to be conclusive in respect of the assessment years for which it is passed as per Section 245-I of the Act. The decision of a Settlement Commission could be interfered with only:

(i) if grave procedural defect such as violation of the mandatory procedural requirements of the provisions in Chapter



XIX-A and/or violation of rules of natural justice is made out.

(ii) if it is found that there is no nexus between the reasons given and the decision taken by the Settlement Commission;

(iii) High Court cannot interfere either with an error of fact or error of law, alleged to have been committed by the Settlement Commission.

18. The Settlement Commission has passed a detailed order on 27 issues. The petitioner herein is challenging the order of the Settlement Commission in respect of one issue only, which means that the petitioner is dissecting the order of the Settlement Commission. The petitioner cannot selectively accept the portion of the order passed by the Settlement Commission and dispute corrections of the other portions of the order, which in the opinion of the petitioner is not favourable. The petitioner cannot be permitted to dissect the Settlement Commission's order with a view to accept what is favourable to them and reject what is not. Therefore, the writ petition is to be rejected as not maintainable.

19(a). In support of the said contentions, the learned Senior Standing counsel relied on the judgment in the case of N.Krishnan Vs. Settlement Commission, reported in (1989) 180 ITR 585 (Karnataka), wherein the Hon'ble Division Bench held as follows:

"15. With reference to the second question arising for our consideration, as we have pointed out earlier, the provision for constitution of the Settlement Commission was not in existence earlier. This legislative step was taken on the recommendation of the Wanchoo Committee. As observed by us earlier, the Settlement Commission was to be constituted for settling the complicated claims of chronic tax evaders as an extraordinary measure, for giving an opportunity to such persons to make true confession and to have the matters settled once for all, and earn peace of mind. It is a Forum for self surrender and seeking relief and not a Forum for challenging the legality of assessment order or orders passed in any other proceedings. This is not only evident from the provision of the Act which prevents the application made, from being withdrawn as also the provision which makes the decision of the Settlement Commission final and conclusive both on question of law and fact. The power conferred on the Settlement Commission is so wide that it can take any view on any questions of law, which it considers appropriate, having regard to the facts and circumstances of a case, which would be applicable only to that case and



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it has also the power to give immunity against prosecution or imposition of penalty. It is in this background we should find out the answer to the second question, namely, the scope for interference against a decision of Settlement Commission in a petition under Article 226 of the Constitution of India. The provision for settlement would show that it is in the nature of statutory arbitration, to which a person may submit himself voluntarily. Therefore, it appears to us that the scope is much more restricted than the power of the Court to interfere with an arbitration award. Regarding the jurisdiction of the Civil Court to deal with an arbitration award, the Supreme Court in the case of Coimbatore District Podu Thozillar Samgam v. Bala Subramania Foundry [(1987) 3 SCC 723 : AIR 1987 SC 2045.] has stated thus:

"The Court was also entrusted with the power to modify or correct the award on the ground of imperfect form or clerical errors, or decision on questions not referred, which were severable from those referred. The Court had also power to remit, the award when it had left some matters referred undetermined or when the award was indefinite, where the objection to the legality of the award was apparent on the face of the award. The Court might also set aside the award on the ground of corruption or misconduct of the arbitrator, or that a party had been guilty of fraudulent concealment or wilful deception. But the Court could not interfere with the award if otherwise proper on the ground that the decision appeared to it to be erroneous. The award of the arbitrator was ordinarily final and conclusive, unless a contrary intention was disclosed by the agreement. The award was the decision of a domestic Tribunal chosen by the parties, and the Civil Courts which were entrusted with the power to facilitate arbitration and to effectuate the awards, could not exercise appellate powers over the decision. Wrong or right the decision was binding, if it be reached fairly after giving adequate opportunity to the parties to place their grievances in the manner provided by the arbitration agreement. This Court reiterated in the said decision that it was now firmly established that an award was bad on the ground of error of law on the face of it, when in the award itself or in a document actually incorporated in it, there was found some legal proposition which was the basis of the award and which was erroneous."



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In our opinion, many of the grounds on which arbitration award could be set aside, would not be available in view of the nature and jurisdiction of the Settlement Commission. We are of the view that a decision of Settlement Commission could be interfered with only.

(i) if grave procedural defect such as violation of the mandatory procedural requirements of the provisions in the Chapter XIX-A and/or violation of Rules of natural justice is made out;

(ii) if it is found that there is no nexus between the reasons given and the decision taken by the Settlement Commission.

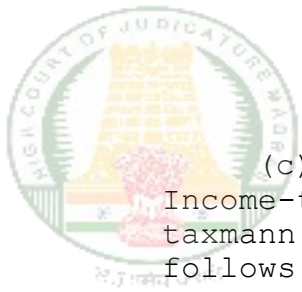
(iii) this Court cannot interfere either with an error of fact or error of law, alleged to have been committed by the Settlement Commission.

We answer the second question accordingly."

(b) In the case of Patel Desai & Co., Vs. Assistant Commissioner of Income Tax, reported in [2000] 110 TAXMAN 531 (AP), the Andhra Pradesh High Court held as follows:

"3. The Learned standing counsel for the Income-tax Department has contended that the view taken by the Commission in regard to the admissibility of development expenditure cannot be the subject-matter of challenge under [article 226](#) of the Constitution and is not amenable to judicial review under [article 226](#).

4. In our view, the said contention is well founded and ought to be accepted. It is not open to us, in exercise of the jurisdiction under [article 226](#), to decide whether the conclusion recorded by the Commission on a question of fact and even on a question of law, is correct or not. Having regard to the objective underlying the constitution of the Settlement Commission and the nature of functions entrusted to it and the powers of the Commission, we are of the considered view that the conclusions, both on questions of fact and law, reached by the Commission cannot be nullified except under very limited circumstances. The judicial review power of the High Court cannot be equated to the judicial review of administrative action or the findings of a quasi-judicial Tribunal. It is much more limited, as indicated hereinafter. All legal errors do not come under the pale of scrutiny by the High Court in exercise of jurisdiction under [article 226](#) or 227. In coming to this conclusion, we are not without precedential support."



(c) In the case of Supreme Agro Foods (P) Limited Vs. Income-tax Settlement Commission, reported in [2013] 35 taxmann.com 588 (Punjab & Haryana), the High Court held as follows:

"Since, the material was available before the Commission and such material has been taken into consideration for returning a finding which is relevant for determining undisclosed income of the petitioner. We do not find such order warrants interference in exercise of the writ jurisdiction of this Court as a part of the process of judicial review."

(d) The Hon'ble High Court of Madras in the case of M/s.Fitness One Group India Limited, Vs. Customs, Central Excise and Service Tax Settlement Commission, reported in 2016 SCC OnLine Mad 9950, held as follows:

"6. First and foremost what is to be borne in mind is that the petitioner cannot selectively accept the portion of the order passed by the Settlement Commission and dispute correctness of the other portions of the order which in the opinion of the petitioner is not fully favourable."

20. In view of the legal precedents by various High Courts, the writ petition is to be rejected.

21. Considering the arguments as advanced by the respective learned counsels appeared for the parties to the lis on hand, this Court has to consider the spirit of the Settlement between the assessee and Income Tax Department under the provisions of the Income Tax Act.

22. Admittedly, the Settlement order impugned is challenged partly with reference to the limited issue. Question arises, whether such course can be adopted when the Settlement Commission adjudicated the issues and granted relief on several other issues except one issue, which is under challenge by the way of writ petition.

23. The learned counsel appearing for the second respondent made a submission that the Settlement Commission is empowered to adjudicate the complete facts and circumstances with reference to the various provisions of the Income Tax Act and even, empowered to make an assessment under the provisions of the Income Tax Act. The contention as a whole need not be taken into consideration in view of the fact that the Settlement Commission has got powers to deal with facts and circumstances with reference to the provisions of the Income Tax Act. However, the Settlement Commission cannot make an independent assessment,

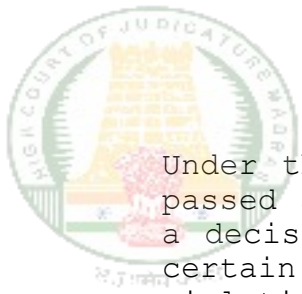


which is the power of the Assessing Officer under the Act. The Settlement Commission cannot usurp the powers of the Assessing Officer. If such a power is allowed to be exercised, then the very settlement provisions under Section 245C would be defeated and the purpose and object also would be defeated. Thus, the scope of Section 245C and the procedures contemplated under Section 245D are to be scrupulously followed by the Settlement Commission, while dealing with an application filed under Section 245C. The interpretation of these provisions cannot be expanded so as to confer any additional power to the Settlement Commission, which is otherwise to be exercised by the other Competent Authorities of the Income Tax Department. In other words, what is not contemplated under Section 245C and 245D cannot be conferred on the Settlement Commission by the Courts nor the Settlement Commission is competent to usurp the powers. Undoubtedly, the Settlement Commission has to consider the mixed question of law and facts. But, while considering the same, the Commission is not competent to exercise the powers and the procedures contemplated beyond the scope of the provisions of the Act. Thus, the powers of the Settlement Commission to deal with facts, circumstances in consonance with the provisions of the Act are permitted. However, the Settlement Commission cannot make an assessment or exercise the powers conferred on the other Authorities under the provisions of the Act.

24. As far as the original power of the Assessing Officer under Section 153(A) of the Act is concerned, the Division Bench of this Court in the case of CANARA JEWELLERS vs. SETTLEMENT COMMISSION reported in [2009] 184 Taxman 491 (Madras) held that "the Settlement Commission is empowered to have all the powers, which are vested in an income-tax Authority under the Act, in addition to the power conferred under Chapter XIX-A, but such power can be exercised for the purpose of procedure of settlement of application under Section 245C and not for reassessment of tax of a particular year which is vested with the Assessing Authority".

25. The very concept of settlement is depending on the mutual consensus and in the absence of element of mutual consensus between the parties, the settlement by the Settlement Commission cannot be unilateral and in such an event, Settlement Commission is usurping the powers of the Assessing Officer under other provisions of the Act. In other words, every authority under the Income Tax Act, 1961 is expected to exercise the powers as contemplated.

26. In the present case, the application submitted by the petitioner has been took up for adjudication and the issues were adjudicated. Undoubtedly, the parties to the Settlement were co-operated and the Settlement Commission arrived a conclusion.



Under the provisions of the Act, once the Settlement Commission passed an order, the same became final. As rightly pointed out, a decision of Settlement Commission could be interfered only on certain circumstances, if grave procedural defect such as violation of the mandatory procedural requirements are not followed and if there is no nexus or reasons given at the decision taken by the Settlement Commission.

27. In the present case, the Settlement Commission has passed a detailed order on 27 issues and the petitioner herein is challenging the order of the Settlement Commission in respect of one issue only. Thus, the petitioner has dissected the order and in respect of 27 issues, accepted the findings and regarding one issue, it filed the writ petition. Therefore, this Court of the considered opinion that the petitioner cannot selectively accept the majority portion of the order passed by the Settlement Commission and dissect one issue, which was not considered to the expectation of the petitioner. Under these circumstances, the petitioner cannot adjudicate in respect of the said issue and the issue was left open for further adjudication by the competent authority. If the entire order passed by the Settlement Commission is under challenge, then it is different. However, in the present case, the petitioner has challenged one issue, which was not decided in favour of the petitioner. This being the factum, this Court cannot consider the said issue on merits in the present writ petition. The Settlement Commission in entirety adjudicated all the 28 issues and 27 issues are decided to the satisfaction of the petitioner and regarding one issue, this Court cannot modify the Settlement Commission's order or quash the said issue alone. It is to be construed for all purposes that the said issue has not been settled by the Settlement Commission and the competent authority of the Income Tax Department is bound to proceed further in respect of the issue, which was not settled before the Settlement Commission.

28. This being the factum established, the petitioner has not established any acceptable ground for the purpose of considering the relief as such sought for the in the present writ petition. Thus, the writ petition stands dismissed. No costs.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

Nst/Kak



To

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

2.The Commissioner of Income Tax - III,
121, Nungambakkam High Road,
Nungambakkam,
Chennai - 600 034.

3.The Assessing Officer,
121, Nungambakkam High Road,
Nungambakkam,
Chennai - 600 034.

4.Transfer Pricing Officer,
121, Nungambakkam High Road,
Nungambakkam,
Chennai - 600 034.

+1cc to M/s.Hema Muralikrishnan, Advocate Sr No.43746

W.P.No.12109 of 2012

JP (CO)
PR (13/09/2021)