

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.19364 of 2008

and

M.P.No.1 of 2008

Commissioner of Income Tax,
Chennai-III,
121, M.G.Road,
Nungambakkam,
Chennai - 600 034.

..Petitioner

vs

1.The Income Tax Settlement Commission,
Additional Bench,
488-489 Anna Salai,
Chennai - 35.

2.M/s.Sri Krishna Tiles and
Potteries (Madras) Pvt Ltd.,
Flat No.A-1, Kumaravijayam,
No.99, Royapettah High Road,
Mylapore, Chennai - 600 004.

..Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
call for the records of the 1st respondent in Settlement
Application No.TN/CN3/07-08/10/IT filed by the 2nd respondent and
quash the order dated 14.03.2008.

For Petitioner : Mr.A.P.Srinivas

For Respondents : R1 - Settlement Commission
R2 - Mr.AR.L.Sundaresan
Senior counsel
For Mr.R.Sivaraman

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O R D E R

The Income Tax Settlement Commission dated 14.03.2008 is
under challenge in the present writ petition.

2. The petitioner is Commissioner of Income Tax, questioned
the validity of the application filed by the 2nd
respondent/assessee under Section 245(C) of the Income Tax Act
and the consequential order passed by the Settlement Commission.

3. The facts in nutshell needs to be considered are that the 2nd respondent / M/s.Sri Krishna Tiles and Potteries (Madras) Private Limited, filed return of income for the Assessment Year 2006-07. On 03.04.2007, even before issuing notice, commencing the assessment proceedings, the 2nd respondent filed an application before the Settlement Commission on 30.05.2008 under Section 245(C) of the Income Tax Act.

4. The 2nd respondent was the owner of 34.04 acres of immovable property situated at Anna Nagar, Chennai, out of which 2 acres were sold on 11.09.2002 and 32.04 acres were sold on 02.03.2006. The 2nd respondent was assessed to tax by an Assessing Officer working under the petitioner both under the Income Tax Act and Wealth Tax Act. The 2nd respondent sold 2 acres of its property in the financial year 2002-2003 and the balance 32.04 acres of property in the financial year 2005-06 for a total consideration of Rs.4.68 crores and Rs.206.34 crores respectively. The assessee claimed several inadmissible and unconnected expenses as deduction from the sale price, and also took the base value of the land as on 1981 at an unrealistically high figure to reduce the amount of capital gains.

5. On account of vast contradictions noticed by the Income Tax Department, the Revenue asked before the Settlement Commission that it had no jurisdiction to take up the application filed by the 2nd respondent for Settlement as there was no case pending as on the date of filing the application for the Assessment Year 2006-07 since no assessment proceedings had commenced by issuance of notice. In contradiction with the submissions made by the Assessing Officer, the Settlement Commission treated that the applicants settlement application and passed an order. It is contended that Clause (iv) in explanation to Section 245A(b) has been inserted with effect from 01.06.2007, it would convey the meaning of "proceedings for assessment" for the earlier also and can be deemed to be considered retrospective "in nature".

6. In this context, the learned Senior Standing counsel appearing on behalf of the petitioner Department mainly contended that the assessee wanted the amendment in Section 245 (C), which is workable for the assessee, because the assessee filed the application before the Settlement Commission on 30.05.2007, one day before the amendment on 01.06.2007. The assessee approached the Settlement Commission, but only with a guilty mind that the assessee company preempted the initiation of proceedings before the Income Tax authorities as could be

unraveled from certain facts. The report filed by the petitioner / Department reveals all those facts. It is contended that no application for Settlement was pending as per Section 245(A)b of the Act. Thus, the Application filed by the assessee itself is not maintainable.

7. The learned Senior standing counsel contended that in the eventuality of no pendency of case during the relevant assessment year, the application under Section 245(C) of the Act is not maintainable before the Settlement Commission. Such applications may be entertained by the Settlement Commission only after the amendment, which came into effect on 01.06.2007.

8. In the present case, after filing of the application under Section 245(C) of the Act, the assessee made a revised offer and the details of the revised offer are also brought to the notice of this Commission for the purpose of rejecting the application filed by the assessee. It is contended that the revised offer was filed on two occasions in vide letters dated 10.03.2008 and on 14.03.2008 and the statement of facts discloses the following informations, which reads as under:

Sl. No.	Details	A.Y. 2006-07 Rs.	A.Y. 2003-04 Rs.
1.	Income Disclosed before the Assessing Officer	515,308,939	298,126
2.	Income Tax in respect of Col (1)	103,201,178	91,071
	Surcharge 10% / 5%	10,320,118	4,554
	Education Cess 2%	2,270,426	—
	Total Tax	115,791,722	95,625
3.	Additional Income offered before ITSC	81,236,718	1,010,221
	Further Offer as per Note No.3,4,5,6	26,855,105	254,502
4.	Total I.T. Assessable	823,400,762	1,563,149
5.	Tax in respect of Income in Col.(4)	140,126,269	392,370
6.	Additional Tax payable by the applicant (Col.5 – Col.2)	24,334,547	296,745

9. Relying on the said statement of facts filed through their letter dated 10.03.2008 and on 14.03.2008, which were submitted during the proceedings before the Settlement Commission and after filing of the application under Section 245 (C) on 30.05.2007, it is to be construed that the application

initially filed was not in consonance with the requirements as contemplated under Section 245(C) of the Act as there was no true and full disclosure of income. Thus, the application itself is not entertainable by the Settlement Commission and the Settlement Commission erroneously continued the proceedings and passed an order, which is untenable.

10. With reference to the pre-amendment position and after amendment, the Hon'ble Supreme Court of India considered the same in the case of Commissioner of Income Tax Vs. Express Newspaper Limited, reported in [1994] 72 Taxman 438 (SC) is relied upon and paragraph 10 is extracted hereunder:

"6. Chapter XIX-A providing for settlement of cases was introduced in the Income Tax Act, 1961 pursuant to the recommendations of the Direct Tax Inquiry Committee headed by Justice Wanchoo. It is necessary to notice a few provisions relevant herein. Section 245-A defines certain expressions occurring in the chapter. Clause (b) defines the expression "case" in the following words-

"(b) 'case' means any proceeding under this Act for the assessment or reassessment of any person in respect of any year or years, or by way of appeal or revision in connection with such assessment or reassessment, which may be pending before an income tax authority on the date on which an application under sub-section (1) of Section 245-C is made:

Provided that where any appeal or application for revision has been preferred after the expiry of the period specified for the filing of such appeal or application for revision under this Act and which has not been admitted, such appeal or revision shall not be deemed to be a proceeding pending within the meaning of this clause;"

10. Section 245-D prescribes the procedure to be followed by the Commission on receipt of an application under Section 245-C. Sub-section (1) is relevant for our purpose. As originally enacted, the sub-section read as follows:

"245D. Procedure of receipt as an application under Section 245-C--(1) On receipt of an application under Section 245-C, the Settlement Commission shall call for a report from the Commissioner and on the basis of the materials contained in such report and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, the

Settlement Commission may, by order, allow the application to be proceeded with or reject the application:

Provided that an application shall not be rejected under this sub-section unless an opportunity has been given to the applicant of being heard:

Provided further that an application shall not be proceeded with under this sub-section if the Commissioner objects to the application being proceeded with on the ground that concealment of particulars of income on the part of the applicant or perpetration of fraud by him for evading any tax or other sum chargeable or imposable under the Indian Income Tax Act, 1922 (XI of 1922) or under this Act has been established or is likely to be established by any income tax authority in relation to the case."

11. In the context of the maintainability of the writ petition filed by the Commissioner of Income Tax, challenging the order passed by the Settlement Commission, the petitioners relied on the judgment of the Hon'ble Supreme Court of India in the case of Ajmera Housing Corporation Vs. Commissioner of Income Tax, reported in [2010 193 Taxman 193 (SC)] and the entertainability of the writ petition and the manner in which the application is to be admitted by the Settlement Commission and the sanctity behind the pre-requisite condition of full and true disclosure of income by the assessee are elaborately discussed in the above judgment and the relevant paragraphs extracted hereunder would throw a light on the issues.

"8. Dissatisfied with the order passed by the Settlement Commission, the Commissioner challenged it by preferring a writ petition in the High Court of Bombay. Holding that the Settlement Commission had not given any finding as to whether there was full and true disclosure of the income by the assessee, by a strongly worded order, dated 28-7-2000, the High Court allowed the writ petition and set aside the order.

14. Next, it was urged by the learned Senior Counsel for the assessee that the High Court erred in entertaining the writ petition filed by the Commissioner under Article 226 of the Constitution against the order passed by the Settlement Commission because: (i) in terms of Section 245-D(1) of the Act, the order made by the Settlement Commission under sub-section (4) of the said section is conclusive as to the matters stated therein and no matter covered by such

order can be reopened in any proceedings under the Act or under any other law for the time being in force; and (ii) in the absence of any illegality in the procedure followed by the Settlement Commission, the power of judicial review could not be exercised by the High Court to interfere with the findings of fact recorded by the Settlement Commission. To buttress his proposition that judicial review is concerned only with the decision-making process and not with the final decision, learned counsel referred us to the decisions of this Court in Jyotendrasinhji v. S.I. Tripathi [1993 Supp (3) SCC 389], R.B. Shreeram Durga Prasad v. Settlement Commission (IT & WT) [(1989) 1 SCC 628 : 1989 SCC (Tax) 124] and Shriyans Prasad Jain v. ITO [1993 Supp (4) SCC 727].

16. Shri Raval, on the other hand, supporting the impugned judgment, submitted that the scheme of Chapter XIX-A does not envisage revision of the application filed by the assessee under Section 245-C(1) of the Act and, therefore, the Settlement Commission committed serious procedural irregularity in permitting the assessee to file revised annexure, declaring higher undisclosed income. Additionally, the learned counsel argued that acceptance of such annexure, after the conclusion of hearing on 12-9-1994, behind the back of the departmental representative and after the Settlement Commission had reserved its order under Section 245-D(1), was improper and clearly in breach of principles of natural justice and, therefore, the order passed by the Settlement Commission on 17-11-1994, deciding to proceed with the application deserves to be set aside.

22. It is clear that disclosure of "full and true" particulars of undisclosed income and "the manner" in which such income had been derived are the prerequisites for a valid application under Section 245-C(1) of the Act. Additionally, the amount of income tax payable on such undisclosed income is to be computed and mentioned in the application. It needs little emphasis that Section 245-C(1) of the Act mandates "full and true" disclosure of the particulars of undisclosed income and "the manner" in which such income was derived and, therefore, unless the Settlement Commission records its satisfaction on this aspect, it will not have the jurisdiction to pass any order on the matter covered by the application.

27. It is trite law that a taxing statute is to be construed strictly. In a taxing Act one has to look merely at what is said in the relevant provision. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. There is no room for any intendment. There is no equity about a tax. (See *Cape Brandy Syndicate v. IRC* [(1921) 1 KB 64] and *Federation of A.P. Chambers of Commerce & Industry v. State of A.P.* [(2000) 6 SCC 550]) In interpreting a taxing statute, the court must look squarely at the words of the statute and interpret them. Considerations of hardship, injustice and equity are entirely out of place in interpreting a taxing statute.

28. As aforesaid, in the scheme of Chapter XIX-A, there is no stipulation for revision of an application filed under Section 245-C(1) of the Act and thus the natural corollary is that determination of income by the Settlement Commission has necessarily to be with reference to the income disclosed in the application filed under the said section in the prescribed form.

31. We are convinced that, in the instant case, the disclosure of Rs. 11.41 crores as additional undisclosed income in the revised annexure, filed on 19-9-1994 alone was sufficient to establish that the application made by the assessee on 30-9-1993 under Section 245-C(1) of the Act could not be entertained as it did not contain a "true and full" disclosure of their undisclosed income and "the manner" in which such income had been derived. However, we say nothing more on this aspect of the matter as the Commissioner, for reasons best known to him, has chosen not to challenge this part of the impugned order."

12. Relying on the above judgments, the learned Senior Standing counsel made a submission that there was no true and full disclosure of income by the assessee in respect of the application filed under Section 245(C) of the Act and the assessee themselves filed statement of facts belatedly during the pendency of the proceedings before the Settlement Commission on 10.03.2008 and on 14.03.2008, which would reveal that the original application was filed without disclosing the true and full disclosure of income and therefore, the Settlement Commission ought to have rejected the application, soon after such statement of fact is filed during the pendency of the proceedings.

13 . This Court is of the considered opinion that Section 245(C) of the Income Tax Act enumerates that "An assessee may, at any stage of a case relating to him, make an application in such form and in such manner as may be prescribed, and containing a full and true disclosure of his income which has not been disclosed before the Assessing Officer, the manner in which such income has been derived, the additional amount of income- tax payable on such income and such other particulars as may be prescribed, to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided".

14. A reading of the section portrays that it is a special provision contemplated enabling the assessee to settle the disputes in a peaceful manner with the Department, if they have come out with full and true disclosure of income. Such special provisions are enacted with an intention to provide an opportunity to the assessee to settle the issues, in order to rectify certain omissions, commission, mistakes etc., by the Assessee at the time of original assessment intentionally or unintentionally or otherwise. In view of the complex nature of business by the Entrepreneurs, it is possible for such omission, commission, mistakes etc., while filing income tax returns and furnishing other particulars. Thus, the legislative intention of Section 245C is to provide an opportunity to the Assessee to settle the issues, if they found some discrepancy or commissions, omissions in respect of the disclosures made before the Assessing Officer at the first instance. Since such enabling provisions are made with good intention and to provide an opportunity to the assessee to correct the mistakes, it is to be done in the manner prescribed. Section 245(C) unambiguously stipulates that the application filed under Section 245(C) is to be disposed of in the manner provided in the very section itself. Therefore, it is an exclusive provision under the Act, wherein the procedures are also contemplated and certain terms and conditions are also stipulated for the purpose of settling the disputes.

15. Law presumes that every assessee discloses his true and full income at all times. Law mandates that an assessee must file his returns and show the income in a true and correct manner. While the law expects that an assessee to be truthful and correct in his particulars, the additional provisions for settlement of the disputes are provided enabling the assessee to settle the disputes in the event of any correction, omission, commission or mistakes etc. Thus, an application for settlement of cases cannot be construed as an absolute right. But, it is a right of an assessee to approach the Settlement Commission with

full and true disclosure of his income. The right of the assessee is well enumerated in many other provisions of the Income Tax Act. The assessment made by the Assessing Officer at the first instance would be the factor for all purposes and the settlement of the disputes is an additional provision, enabling the assessee to correct certain mistakes, if at all occurred or on account of various other factors. Thus, the scope of Section 245C of the Income Tax Act cannot be compared with the regular assessments to be made in accordance with the procedures contemplated under the Act nor Section 245(C) can be tagged along with the regular provisions for the purpose of settling the disputes between the assessee and the Department.

16. In a common parlance, the settlement of disputes are possible, only if there is a consensus between the parties to the disputes. The dictionary meaning of "settlement" would show that the settlement can be made, if the difference between the parties are narrowed down. Undoubtedly, the Settlement Commission has got certain powers to settle the issues. However, such power of settlement is absolutely guided by the provision itself. That is the reason why the proviso clauses are provided under Section 245(C). The proviso clause stipulates that no application shall be made unless certain terms and conditions are fulfilled. But Section 245(C)(1) provides that it is a pre-condition to entertain an application that the assessee must disclose full and true facts and the evidence. Thus, Sub-clause (1) to Section 245(C) is the preliminary requirement for entertaining the application under Section 245C.

17. A question arises, who will be the deciding Authority for the full and true disclosure as contemplated under Section 245C. When an application is made by the assessee for settlement, then an assessee will contend that the particulars provided in the application are the full and true disclosure. However, if the Department raises an objection regarding such full and true disclosure made by the assessee, then the Settlement Commission is empowered to go into the facts and circumstances and find out the correctness or truthfulness of the disclosure made by the assessee. Therefore, it is always a mixed question of fact and law and in order to ascertain the entertainability of the writ petition, the High Court is bound to look into the facts as well as the laws. In the absence of examining both the facts and laws, it may not be possible to form an opinion, whether the application filed under Section 245 (C) of the Income Tax Act is entertainable or not?

18. Thus, let us consider the scope as well as the powers of the Settlement Commission to entertain an application under Section 245(C) of the Income Tax Act. When the Section in unambiguous terms contemplates that the application in such form and in such manner as may be prescribed containing a "full and true disclosure" alone is entertainable, then it becomes a pre-requisite condition for entertaining an application under Section 245(C). The phraseology 'full and true disclosure of his income' is contemplated in Section 245(C)(1) itself. Thus, it is for the assessee to establish at the first instance that the application contains full and true disclosure of the income. Once the said factum is established, then alone the question of settlement would arise and not otherwise.

19. 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".

20. Thus, the power of the Assessing Officer conferred under Section 153(A) cannot be usurped by the Settlement Commission, which would defeat the very scheme of the Act nor the original powers vested on the Assessing Officer cannot be neutralized. In other words, in the event of permitting the Settlement Commission to exercise the original power of assessment, then the power of assessment of the Assessing Officer is not only diluted, but the very provision will be frustrated. Thus, such a power is neither contemplated nor intended. As per the Division Bench judgment, the original assessment power vested with the Assessing Officer cannot be exercised by the Settlement Commission.

21. This Court is of the considered opinion that the provision for settlement is an enabling provision to settle the dispute between the parties. Therefore, law expects that the parties, who are approaching the Settlement Commission by way of application, must disclose full and true income in the event of any difference or confrontation in this regard such an application for settlement cannot be entertained. Contrarily, the Assessing Officer must be permitted to make regular assessment of income under Section 153A of the Act. When there are discrepancies and doubt arises with regard to the true and full disclosure of income, then the natural course of action

would be that the Assessing Officer must be permitted to make a regular assessment under Section 153A of the Act and settlement cannot be arrived under doubtful circumstances. In such circumstances, settlements are impermissible and cannot be construed as settlement at all.

22. 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.

23. The question of exercise of excessive powers or jurisdiction would arise, if the authority made an attempt to travel beyond the scope of the provision under which, such powers are conferred to a particular authority. In the instant case, the power of the Settlement Commission is well enumerated under Section 245C and 245D of the Act. The manner in which settlement is to be arrived is also contemplated under the Act. Certain pre-conditions are also stipulated. Thus, the Settlement Commission cannot enter into the venture of assessment, which is the power of an Assessing Officer under Section 153A of the Act. Therefore, this Court is of an opinion that in the absence of any true and full disclosure, the Settlement Commission cannot go beyond the scope of Section 245C of the Act and adjudicate the additional income found by the Department during seizure, which is admittedly not disclosed in the application filed at the first instance by the assessee.

24. In view of the fact that the respondent/assessee in the present case filed statement of facts in vide two letters dated 10.03.2008 and 14.03.2008, offering additional income and the Settlement Commission also proceeded and settled the issues, it is to be inferred that the assessee at the first instance, had not disclosed true and full income and therefore, the subsequent additional statements cannot be relied upon in order to satisfy the requirements of the provisions under Section 245(C). The principles involved in Section 245(C) of the Income tax is that the person approaching the Settlement Commission should file an application with clean hands and surrender the full and true disclosure of income. Only in the eventuality of proving the genuinity, then alone the Settlement Commission is empowered to settle the disputes and not otherwise. Thus, the prime consideration and pre-condition for entertaining an application

is true and full disclosure of income and subsequent adding, deletion or insertion would dis-entitle the Settlement Commission from entertaining an application. In such an event, the genuinity of the assessee became questionable and the matter is to be sent back for assessment before the jurisdictional Assessing Officer. This being the scope of the provision under Section 245(C) for entertaining an application for settlement. In the present case, the Settlement Commission exceeded its jurisdiction by settling the issues, even after filing of the additional statement of facts by the assessee on two occasions, providing further disclosure of income.

25. Under these circumstances, the petitioner could able to establish that the Settlement has caused prejudice to the interest of the Revenue and therefore, regular assessment is to be made to cull out the truth and proceed with the matter in the manner known to law.

26. Accordingly, the impugned order dated 14.03.2008 in proceedings in Settlement Application No.TN/CN3/07-08/10/IT is quashed and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Kak

To
The Income Tax Settlement Commission,
Additional Bench,
488-489 Anna Salai,
Chennai - 35.

+1CC to Mr.R.Sivaraman Sr.No.26608
+1CC to Mr.A.P.Srinivas Sr.No.26680

LN (CO)
A.SK (12.07.2021)

W.P.No.19364 of 2008