IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2021

CORAM:
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.16829 of 2004
and
W.M.P.Nos.19919 to 19921 of 2004

M.R.Engineering ... Petitioner

Vs.

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

2.The Union of India,
Represented by the Chairman,
Central Board of Direct Taxes,
North Block, New Delhi.

3.The Commissioner of Income Tax VII,
Chennai - 600 034.

4.The Assistant Commissioner Income Tax,
Business Range VI,
Chennai - 600 034. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records of the first respondent Income Tax Settlement Commission Additional Bench, Chennai in its File Settlement Application No.21/V/182/93-IT dated 05.02.2004 quash the same.

For Petitioner : Mr.J.Balachander,
Mr.A.Gnana Esther Dorothy and
M/s.S.Indumathi
For Respondents: Mr.Prabhu Mukunth Arunkumar for
Mrs.Hema Murali Krishnan
Senior Standing Counsel

O R D E R

In this Writ Petition, the petitioner has challenged the impugned order dated 05.02.2004 passed by the first respondent/Settlement Commission under Section 245F(1) read with section 154 of the Income Tax Act, 1961.

2.The petitioner had approached the first respondent settlement commission on 24.03.1994 for settlement of its case for the Assessment Years 1984-1985 to 1991-1992(except 1988-1989). Earlier, the first respondent/ Settlement Commission by an order dated 27.02.1998 ordered as follows:

> 7.Considering the co-operation extended by the applicant in the completion of the present proceeding, immunity is granted from prosecution under the I.T.Act and under the relevant provisions of the I.P.C and also from the imposition of any penalty under the I.T.Act, with reference to the matters covered by the present settlement. However, the immunity so granted shall be withdrawn, if it is subsequently found that the conditions mentioned in Sub-section (1A) and/ or Sub-section (2) of Section 245H are satisfied.

3.The said order of the first respondent/Settlement Commission was sought to be rectified at the instance of the respondent and therefore an application was filed under Section 154 of the Income Tax Act. The said application for rectification was considered by the first respondent/Settlement Commission and disposed by the impugned order dated 05.02.2014. The operative portion of the impugned order of the first respondent/Settlement Commission reads as under:

> In view of the above, it is hereby ordered.
>
> (i)that waiver u/s234A is permissible only with reference to A.Y.1989-90. Waiver granted u/s 234A for other assessment years is to be withdrawn.
>
> (ii)that there is no case for waiver of interest leviable u/s.234B of the Act.
>
> (iii)that the interest u/s.234B shall be charged up to the date of order u/s.245D(4) of the Act.
>
> The miscellaneous petitions filed by the Department are allowed.

4.Challenging the impugned order, the learned counsel for the petitioner submits that the issue is no longer res integra and is squarely covered by the decision of the Hon'ble Supreme Court in the case of CIT Vs Brijilal [2010] 320 ITR 477 (SCC). Earlier, the Hon'ble Supreme Court in its decision in CIT Vs. Anjum Ghaswala [2001] 252 ITR 1 (SC) held as follows:-

> we hold that the Commission in exercise of its power under Section 245D(4) and (6) does not have the power to reduce or waive interest statutorily payable under Sections 234A, 234B and 234C except to the extent of granting relief under the circulars issued by the Board under Section 119 of the Act.

5.He submits that an identical issues came up for consideration before the Hon'ble Supreme Court in CIT Vs Hindustan Bulk Carriers [2003] (259) ITR 449 (SC) and in CIT Vs Damani Brothers [2003] (259) ITR 475 (SC). Both were rendered on 17.12.2002. In CIT Vs Hindustan Bulk Carriers [2003] (259) ITR 449 (SC) ITR 475 (SC) it was held that

> The starting point of charging interest would be the due date of payment of advance tax or tax assessed and demanded as applicable to regular assessment proceedings and the end point the date of the order of the Settlement Commission.

However, in CIT Vs Damani Brothers [2003] (259) ITR 475 (SC) it was held as follows:

> ''To put it differently, the interests charged in terms of Sections 234A, 234B and 234C become payable on the income already disclosed in the returns filed, together with the income disclosed before the Commission. The concerned interest as aforesaid shall be on the consolidated amount of income, i.e., both disclosed and undisclosed. As indicated above, such interests shall be charged till the commission acts in terms of Section 245D. Thereafter, the prescription relating to charging of interests etc. becomes operative, after the Commission allows the application for settlement to be proceeded with.

One of the issue which is relevant for the present case and was considered by the Hon'ble Supreme Court in CIT Vs Brijilal [2010] 320 ITR 477 (SCC) and was answered as follows:

> III.Whether the Settlement Commission can reopen its concluded proceedings by having recourse to Section 154 of the Act so as to levy interest under Section 234B, it it was not done in the original proceedings?

The Settlement Commission cannot reopen its concluded proceedings by invoking section 154 of the Act so as to levey interest under Section 234B, particularly, in view of Section 245-I.

6.The learend counsel for the petitioner further submits that to get over the above decision of the Hon'ble Supreme Court, the parliament also amended section 245D of the Income Tax Act by inserting sub-clause (6B) vide Finance Act, 2011 with effect from 01.06.2011 to clothe the Settlement Commission with perverse of rectification within a period of six months from the date of its order.

7.The learned counsel for the petitioner further submits that when the first order dated 27.02.1998 was passed by the clarification that has governed the field was in terms of the decision of the larger Bench of the Settlement Commission in the case of IN Re: Gulraj Engineering case [1995] 215 ITR AT (1) wherein the larger Bench of Settlement Commission also concluded that it had powers to grant waiver of interest of under sections 234A, 234B and 234C.

8.The learend counsel for the petitioner also relied upon the decision of this Court rendered in the case of R.Vijayalakshmi Vs Income Tax Settlement Commission in its order dated 26.07.2016 in W.P.Nos.5553 to 5558 of 2008 [2016] 73 taxmann.com 367 (Mad) wherein the decision of the Supreme Court in Brijlal case was referred and the 2011 amendment.

9.Defending the impugned order passed by the first respondent/ Settlement Commission, the learned counsel for the Income Tax department Mr.Prabhu Muknth Arunkumar submits that the writ petition was without any merits and therefore the writ petiton was liable to be dismissed. He said that the first respondent/Settlement Commission had correctly exercised the jurisdiction under Section 154 of the Income Tax Act and thereby rectified certain errors on the face of the record by the order dated 27.02.1998.

10.The learned counsel for the respondent relied on the decision of the Divison Bench of this Court in the case of Commissioner of Income Tax Vs. M.A.Jacob & Company reported in (2020) 119 taxmann.com 232 vide in its order dated 15.09.2020 in W.A.No.456 of 2018.

11.The learned Cousnel for the respondent submits that the decision of the Hon'ble Division Bench of this court considered the decision of the Hon'ble Supreme Court in the case of Kakadia Builders (P) Ltd Vs. Income Tax Officer Ward 1(3) [2019] 103 taxmann.com 53 (SC).

12.He further noticed in either the petitioner nor the respondent in the present case have challenged the Original Order passed on 27.02.1998 by the first respondent/Settlement Commission and therefore the impugned order passed by the first respondent/Settlement Commission on 05.02.2004 under section 254f(1) of the Income Tax Act read with section 154 of the Act, cannot be challenged.

13.I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents.

14.The impugned order passed by the first respondent Settlement Commission on 05.02.2004 under Section 245F(1) read with Section 154 of the Income Tax Act, 1961 seeking to correct the alleged error apparently on the fact of record in the exercise of power conferred under Section 154 of the Income Tax Act, 1961 is clearly barred in terms of the decision renderred by the Hon'ble Supreme Court in Commissioner of Income Tax Vs.Anjum M.H.Ghaswala and Others, (2001) 252 ITR 1 (SC) and CIT Vs Brijilal [2010] 320 ITR 477 (SCC).

15.As per the first decision, the first respondent/Settlement Commission had no power to reduce or waive the interest statutorily payable under Sections 234A, 234B and 234C of the Income Tax Act, 1961 except to the extent of granting relief under the circulars issued by the Board under Section 119 of the Income Tax Act, 1961.

16.The Hon'ble Supreme Court in its Full Bench in Brij Lal and Others Vs. Commissioner of Income Tax, (2010) 328 ITR 477 (SC) has however answered the issued by holding that the Settlement Commission cannot reopen its concluded proceedings by invoking Section 154 of the Act so as to levy interest under Section 234B, particularly, in view of the Section 245-I of the Income Tax Act, 1961.

17.In view of the above, the present writ petition has to be allowed and is hereby allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

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488-489, Anna Salai, Chennai - 600 035.

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The Union of India,
Central Board of Direct Taxes,
North Block, New Delhi.

3.The Commissioner of Income Tax VII,
Chennai - 600 034.

4.The Assistant Commissioner Income Tax,
Business Range VI,Chennai - 600 034.

+1 CC to Mrs.Hema Murali Krishnan,Advocate
Senior Standing Counsel SR No.7236

W.P.No.16829 of 2004
and
W.M.P.Nos.19919 to 19921 of 2004

PMK(CO)
RG.20.04.2021