IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.20141 of 2018
and
W.M.P.Nos.23611 & 23622 of 2018

P.Udaya Shankar ..Petitioner

Vs.

1. Income Tax Settlement Commission,
   Additional Bench, Chennai,
   Ministry of Finance,
   Department of Revenue,
   640, Anna Salai, Nandanam,
   Chennai - 600 035.

2. Assistant Commissioner of Income Tax,
   Central Circle 3(2), Chennai,
   New No.46, Mahatma Gandhi Road,
   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 1st respondent contained in its impugned order bearing No.No.TN/CN/51/2016-17/97-IT dated 27.06.2018 and to quash the same as arbitrary, unjust and illegal, and to consequently, direct the 1st respondent to reconsider the application filed by the petitioner bearing No.TN/CN/51/2016-17/97-IT and pass a fresh order under Section 245D(4) of the Income Tax Act, 1961 after affording the petitioner a sufficient opportunity of being heard, in accordance with law.

For Petitioner : Mr.R.Sivaraman

For Respondents: Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

The order passed by the Settlement Commission dated 27.06.2018 is sought to be quashed in the present writ petition. A direction is sought for to reconsider the application and to pass a fresh order under Section 245(D)(4) of the Income Tax Act after affording opportunity to the petitioner.

2. The learned counsel appearing on behalf of the writ petitioner mainly contended that an application was filed under Section 245(C) of the Income Tax Act before the Settlement Commission to resolve the disputes with the Department. The petitioner claims that he made true and full disclosure in respect of his income and place the facts before the Settlement Commission. However, the Settlement Commission misunderstood the facts and circumstances, more specifically, with reference to the loan transaction between the petitioner and Mr.J.Srinivasan and rejected the application on the said ground. The Settlement Commission erroneously made a finding that the petitioner has admitted the loan advance to Mr.J.Srinivasan and contribution made in the chit business with the said Mr.J.Srinivasan on three different dates and having made an offer of additional income in respect of such amounts at the time of the search action. The petitioner has chosen to retract from all the above statements. Such a finding is not correct, in view of the fact that in respect of the amount received, Mr.J.Srinivasan paid tax in his regular assessment and those facts were not considered by the Settlement Commission and the learned counsel for the petitioner is of an opinion that there cannot be any double taxation in respect of the same amount.

3. Relying on Section 245(C) of the Income Tax Act, the learned counsel for the petitioner contended that the petitioner had approached the Commission with clean hands and by stating all the facts and circumstances. However, by way of misinterpretation, the facts were unnecessary twisted and the application itself was rejected. It is a one time opportunity provided to the assessee and therefore, the matter is to be remanded back to the Settlement Commission for fresh adjudication, enabling the petitioner to explain the facts and circumstances and further, to clarify the wrong understanding of facts by the Settlement Commission.

4. The learned Senior Standing counsel appearing on behalf of the respondents/Department disputed the said contentions by stating that it is a pre-condition for an assessee filing an application under Section 245(C) must come with full and true disclosure and with clean hands. Once it is established that true and full disclosure are not made and the facts are controverted, then the application itself is to be rejected in limini, in view of the pre-requisite condition contemplated under Section 245(C) of the Income Tax Act. In the present case, the Settlement Commission categorically made a finding that there is no cogent reason given for retracting the statements made on three different occasions except for a vague assertion that the petitioner wish to help Mr.J.Srinivasan and that he was unaware of the financial implications of the statements made

during the course of search and immediately thereafter. Further, it is observed that the facts make it different for the Commission to accept the contention advanced by the petitioner that the statements were made, helped Mr.J.Srinivasan. Thus, the condition that the petitioner has made full and true disclosure of the particulars of income and all the material facts cannot be said to be fulfilled. Thus, the Commission formed an opinion that the Commission is unable to lay down any terms of settlement as required in Sub Section (6) of Section 245D. Accordingly, the Commission was constrained to send the case back to the Department for determining the taxable income of the petitioner for the years under consideration.

5. Relying on the categorical findings of the Settlement Commission, the learned Senior Standing counsel appearing on behalf of the respondents cited the judgment of the High Court of Madras in the case of S.V.Shankar Vs. Settlement Commission, reported in [2007] 292 ITR 633 (Madras). The High Court made the following observations:

> "6. It may be noted that the jurisdiction of this court under article 226 of the Constitution of India is not that of the appellate court. The provision for settlement under Chapter XIX-A is in the nature of a statutory arbitration to which a person may submit himself voluntarily. Hence, the power to review that may be exercised under article 226 of the Constitution of India could only be in cases where there are mistakes apparent on the face of the record, but may not be exercised on the ground that the decision is erroneous on merits. The decisions of the Supreme Court reported in [1993] 201 ITR 611) (Jyotendrasinhji v. S.I. Tripathi) and [1997] 223 ITR 840(Kuldeep Industrial Corporation v. ITO) clearly lays down the parameters of the scope of the enquiry by the High Court under article 226 or by the Supreme Court under article 136 of the Constitution of India. In the circumstances, where the Commission has, on the basis of materials on record, come to a decision, it would not be open to the High Court to substitute its view on the materials disclosed in preference to that of the Settlement Commission. In [1993] 204 ITR 616 (Shriyans Prasad Jain v. ITO), the apex court held that the court could not go into the questions of fact recorded by the Commission.
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> Considering the limited jurisdiction and the fact that after due appreciation of the facts, the Settlement Commission had arrived at its finding, we do not find any merit to accept the plea of the petitioner herein.

Consequently, the writ petition stands dismissed. There will be no order as to costs."

6. In the case of Abdul rahim Vs. Income Tax Settlement Commission, Chennai, reported in [2018] 96 taxmann.com 571 (Madras), the High Court made the following observations:

> "16. It is to be noted at this juncture that the Settlement Commission is vested with power to reject the Settlement Application at three stages, as provided under Section 245D of the said Act. Rejection at the threshold is contemplated under Section 245D(1). Rejection after notice to the Revenue and on perusing the report filed by the Revenue could be made under Section 245D(2). While rejection under Section 245D(1) is a dismissal at the admission stage, rejection under Section 245D(2) is after notice to the revenue and on being satisfied with non disclosure of true and full undisclosed income. The third stage of rejection is contemplated under Section 245D(4), after directing the Revenue to furnish records and thereafter to conduct an investigation or enquiry. In all these stages, the satisfaction of the Commission with regard to true and full disclosure of income must continue to exist so as to carry over the proceedings from one stage to another and finally, to pass an order determining the terms of settlement as provided under Section 245D (6). In other words, true and full disclosure is the life line, satisfaction of the same should remain to live in the mind of the Commission till the final order is passed. On the other hand, if the Commission finds, at any stage of the proceedings under Section 245D that the applicant has not come before the Commission with clean hands and by disclosing true and full income, it is empowered to reject the application, thereby driving the applicant to face the regular assessment proceedings. The applicant cannot, as a matter of right, seek the Commission to carry over the application from one stage to another, notwithstanding the fact as to whether true and full disclosure of income was made or not. In other words, the applicant who approaches the Commission, bypassing the regular assessment proceedings, must provide material facts without any suppression and establish that the disclosure of income in the application is true and full in its strict sense. Otherwise, the applicant cannot find fault with the Commission in showing him the door to face the regular assessment proceedings. The term "true and full disclosure" does not mean that whatever the

> amount shown by the applicant, which according to him is undisclosed income, is in fact, the true and full disclosure. It may be the disclosure of undisclosed income in the view of the applicant. But whether such disclosure is "true and full", in its strict sense, is a question that should fetch an answer in favour of the petitioner/applicant at all stages even after hearing the revenue. In other words, such disclosure should not give room for deduction of concealed fact with regard to any other income either after getting a report from the Revenue or conducting an investigation or enquiry at the instance of the Commission.”

7. Relying on the above judgments, the learned Senior Standing counsel is of an opinion that the writ petition is not entertainable as the findings of the Settlement Commission are unambiguous regarding the true and full disclosure of income by the writ petitioner. When the pre-requisite condition for filing an application under Section 245(C) of the Income Tax Act has not been satisfied, then there is no reason to entertain the writ petition under Article 226 of the Constitution of India.

8. Section 245(C) of the Income Tax Act contemplates 'Application for Settlement of cases'. Sub clause 1 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.”

9. Section 245(D) contemplates 'Procedure on receipt of an application under section 245C'. Therefore, to entertain an application for settlement, these preliminary factors are to be considered by the Settlement Commission. Once on facts, Settlement Commission made a finding that the petitioner has not approached the Commission with full and true disclosure, then there is no reason to proceed further to settle the disputes between the parties.

10. In the present case, the findings of the Settlement Commission are unambiguous and specific facts and circumstances were also relied on by the Settlement Commission to arrive a decision regarding true and full disclosure by the petitioner. Such a finding of fact need not be interfered with by the High Court under Article 226 of the Constitution of India, unless

such facts are found to be error apparent. When there was an adjudication of facts and the Settlement Commission arrived a finding that factually the petitioner has not established that he filed an application under Section 245(C) with true and full disclosure, then the High Court is expected to exercise restraint in entertaining a writ proceedings under Article 226 of the Constitution of India.

11. In the present case, the petitioner could not able to establish that he approached the Settlement Commission with clean hands and the element of true and full disclosure as contemplated under Section 245(C) had not been established before the Settlement Commission and therefore, there is no perversity or infirmity as such in respect of the findings arrived.

12. It is brought to the notice of this Court that the Settlement Commission has already been abolished with effect from 01.02.2021. This being the factum established, the writ petition fails and accordingly, stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

Kak
To
1. Income Tax Settlement Commission,
   Additional Bench, Chennai,
   Ministry of Finance,
   Department of Revenue,
   640, Anna Salai, Nandanam,
   Chennai - 600 035.

2. Assistant Commissioner of Income Tax,
   Central Circle 3(2), Chennai,
   New No.46, Mahatma Gandhi Road,
   Chennai - 600 034.

+1 CC to Mr.R. Sivaraman, Advocate sr 23334
+1 CC to Mr.A.P. Srinivas, Advocate sr 23300.

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PCH(CO)
SP(18/05/2021)