IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 24.02.2021
PRONOUNCED ON : 03.03.2021
CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.31351& 31352 of 2015
and M.P.Nos.1 & 1 of 2015

Principal Commissioner of Income Tax,
Central-2,
No.46, Mahathma Gandhi Road,
Chennai 600 034. .. Petitioner in both W.Ps.

vs

S.Chandralekha ..1st Respondent in W.P.No.31351 of 2015
K.Velusamy-Majoir HUF ..1st Respondent in W.P.No.31352 of 2015

2.Income Tax Settlement Commission,
Additional Bench,
640, Anna Salai, Nandanam,
Chennai 600 035. ..2nd Respondent in both W.Ps.

Prayer in W.P.No.31351 of 2015 : Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, calling for the records on the 2nd respondent in TN/CN 52/13-14/18/IT dated 2.03.2015 and quash the same, insofar as it includes the advance amount which is deemed divided under Section 2(22)(e) from the total income of the 1st respondent and the direction to levy interest under Section 234A and 234B runs contrary to the provisions of the Income Tax Act, 1961 and the law laid down by the Hon'ble Apex Court in Brij Lal and Others vs CIT 328 ITR 477.

Prayer in W.P.No.31352 of 2015 : Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, calling for the records on the 2nd respondent in TN/CN 52/13-14/17/IT dated 2.03.2015 and quash the same, insofar as the direction to levy interest under Section 234A and 234B runs contrary to the provisions of the Income Tax Act, 1961 and the law laid down by the Hon'ble Apex Court in Brij Lal and Others vs CIT 328 ITR 477.

For Petitioner : Mr A.P.Srinivas, (in both W.Ps.)
Senior Standing Counsel

For R1 : Mr.S.Sridhar (In both W.Ps.)

C O M M O N   O R D E R

Both these writ petitions have been filed by the Principal Commissioner of Income Tax against the impugned orders dated 2.3.2015 passed by the second respondent, Income Tax Settlement Commission, Chennai settling the case of the first respondent in the respective writ petitions under section 245D(4) of the Income Tax Act, 1961.

2. By the impugned orders, the second respondent has come to a conclusion that the 1st respondent in their respective writ petitions have made adequate disclosures for settling the case and therefore has granted a waiver to the first respondent in the respective writ petitions, from payment of penalty and immunity from the prosecution in terms of section 245H of the Income Tax Act, 1961.

3. By the impugned orders, the 2nd respondent, Income Tax Settlement Commission, has settled the case by determining the income of the first respondent in the respective writ petitions as follows:-

i) Dr.Chandralekha, the 1st respondent in W.P.No.31351 of 2015

Ass.Year	Income Returned	Addl.Income offered in the Settlement Application	Further income required to be disclosed	Total income determined by the ITSC
2006-07	22,72,917	3,26,925	15,30,426	41,30,268
2007-08	42,77,279	91,33,667	16,90,085	1,51,01,031
2008-09	1,78,00,263	2,97,14,051	20000	4,75,34,314
2009-10	1,65,23,840	1,20,36,985	1,20,000	2,86,80,825
2010-11	1,57,21,167	1,07,66,760	1,35,910	2,66,23,837
2011-12	2,24,65,316	67,01,640	(-)6,21,400	2,85,45,756
2012-13	12,78,91,040	0	19,65,867	12,98,56,907
Total	20,69,51,822	6,86,80,228	60,83,688	28,04,72,938

Additional Amount offered for Tax : (Rs.28,04,72,938 - Rs.20,69,51,822/- = Rs.7,35,21,116/-)

ii) Dr.K.Veluswamy, the 1st respondent viz in W.P.No.31352 of 2015

Ass.Year	Income Returned	Addl.Income offered in the Settlement Application	Further income required to be disclosed	Total income determined by the ITSC
2006-07	6,61,518	2,15,152	2,18,140	10,94,810
2007-08	10,38,902	16,23,930	11,18,633	37,81,465
2008-09	38,70,135	16,50,706	75000	55,95,841
2009-10	51,09,769	47,87,774	--	98,97,543
2010-11	56,59,054	13,14,236	2,53,945	72,27,235
2011-12	29,62,368	42,85,350	41,00,000	1,13,47,718
2012-13	21,81,707		1,05,00,000	1,26,81,707
Total	2,14,83,453	1,38,77,148	1,62,65,718	5,16,26,319

Additional Amount of Income offered for tax : Rs.5,16,26,319 - 2,14,83,453

= Rs.3,01,42,866/-)

4. Thus, a sum of Rs.10,36,63,982/- [Rs.7,35,21,116 + Rs.3,01,42,866) was determined as the consolidated additional income of both the 1st respondent in the respective writ petitions.

5. By the impugned orders, the 2nd respondent Income Tax Settlement Commission has also directed the respective applicants (1st respondent) to pay interest with the following observation:-

Charging of Interest:

> Prayer for waiver of interest is not accepted and the same will be charged as per law. While calculating the interest, the Assessing Officer will keep in view the decision of the Hon'ble Supreme Court in Civil Appeal No.516-527 of 2004 dated 21.10.2010 in the case of Brij Lal and Others vs. CIT (2010) 328 ITR 477(SC). In view of Sec.234A read with Sec.245C, interest under Section 234A is to be charged for delays in filing of original return under Section 139/153A/153C as the case may be on the total income determined under Section 245D(4) of the Act. Interest under Section 234B is to be charged from the 1st day of the assessment year till the date of order passed by the Settlement Commission under Section 245D91). Further, as has been decided by the Hon'ble High Court of Calcutta reversing the decision of the Special Bench in the case of M/s.G.M.Foods& Another in W.P.No.44

of 2015, interest under Section 234 B has also to be charged on the income as disclosed in the application under Section 245 C of the Act.

(Note:Both para 10.3 and 11.3 of the respective Impugned orders read as extracted above)

6. The impugned order settling the case of the 1st respondent in the respective writ petitions of the 2nd respondent, Income Tax Settlement Commission has been challenged primarily on the ground that the 2nd respondent Income Tax Settlement Commission erred in settling the cases for the Assessment year 2012-13, even though, the 1st respondent in the respective writ petitions did not offer any additional income for settling the case for the Assessment year 2012-13.

7. It is therefore submitted that the 2nd respondent Income Tax Settlement Commission ought not to have settled the case inasmuch as no additional income was offered by them for the Assessment year 2012-13.

8. That apart, it is submitted that in the impugned orders, the 2nd respondent Income Tax Settlement Commission erred in directing the payment of interest contrary to the decision of the Hon'ble Supreme Court in Brij Lal and Others vs. CIT (2010) 328 ITR 477(SC).

9. It is therefore submitted that Dr.S.Chandralekha, 1st respondent in W.P.No.31351 of 2015 who had received loan from M/s.Palani Medical Centre Private Limited, of which, she was a Director and since the amount was paid to her from the said company in which her shareholder and director, the amount received by her, was to be considered as a deemed dividend within the meaning of Section 2(22) (e) of the Income Tax Act,1961 and therefore was liable to tax in her hands and no income was offered.

10. I have also heard the learned Senior Standing counsel for the petitioner and the learned counsel for the 1st respondent in the respective writ petitions based on the submissions of the learned counsel for the respondent. No counter has been filed for the respective contesting respondents. As there are no disputed questions of facts, I am giving a final disposal to these writ petitions and the documents. I have perused the affidavit filed in support of the respective writ petitions.

11. The first respondent in W.P.No.31351 of 2015, Dr.S.Chandralekha, a Gynecologist was running a hospital under the name and style of M/s.Iswarya Fertility Centre at Palani, Coimbatore and Chennai when the applications were filed before the 2nd respondent Income Tax Settlement Commission.

12. The 1st respondent in W.P.No.31352, Dr.K.Velusamy, a Cardiologist was running a hospital in the name of K.V.Hospital, Chennai when the applications were filed before the 2nd respondent Income Tax Settlement Commission.

13. According to the petitioner, a search was conducted by the Income Tax Department on 28.11.2011 and 24.11.2011 at the residence, clinics and hospitals of the respective 1st respondent in the respective writ petitions which revealed that they had suppressed a substantial income of Rs.19,12,72,956/- while filing returns.

14. During the search, the Income Tax Department recovered a sum of Rs.12.30 crores in cash apart from various incriminating documents from them. Out of the aforesaid amount, they have offered to pay tax on Rs.10,49,06,782/- [7,47,65,916 +3,01,42,866] before the 2nd respondent, Income Tax Settlement Commission.

15. The 1st respondent in the respective writ petitions were issued earlier with two separate notices dated 20.11.2012 under Section 153 A of the Act for the Assessment Years 2006-07 to 2011-12.

16. These notices also called upon them to furnish the return of income for these Assessment Years. A separate notice dated 20.11.2012 was also issued to the respective applicants for the Assessment Years 2012-13 under Section 142(1) of the Act.

17. It is under these circumstances, the 1st respondent in the respective writ petitions filed the applications for settling their dispute before the 2nd respondent, Income Tax Settlement Commission on 25.09.2013.

18. That a part, it has been stated that the applicant Mrs.Chandralekha (1st respondent in W.P.No.31351 of 2015) had received a sum of Rs.39,90, lakhs on various dates from the Company.

19. It is submitted that the 2nd respondent, Income Tax Settlement Commission wrongly accepted the claim of Dr.Chandralekha for the aforesaid amount was utilized by her in the hospital ran under her proprietary name by interlacing funds and was purely on the commercial basis and the same has also deemed dividend within the meaning of Section 2(22)(e) of the Act as per the decision of this Court in Commissioner of Income Tax vs. F.Praveen (2008) 220 CTR 639 (Mad).

20. It is submitted that the 2nd respondent, Income Tax Settlement Commission committed a mistake in relying on the said decision of the case.

21. On the other hand, it is submitted that the issue ought to have examined from the purview of the following decisions of the Hon'ble Supreme Court :

i) Brij Lal vs. CIT (2010) 328 ITR 477(SC)

ii) Miss P.Sarada vs. Commissioner of Inome Tax, (1998) 96 Taxman 11 (SC)

iii) Commissioner of Income Tax vs. P.K.Abubucker, (2004) 135 Taxman 77 (Madras)

iv) Commissioner of Income Tax vs. F.Praveen, (2008) 220 CTR 639 (Madras)

22. Learned Counsel for the 1st respondent in the respective writ petitions defends the impugned orders and submits that the impugned orders of the 2nd respondent Income Tax Settlement Commission was well reasoned and requires no interference. He submits that the impugned order of the 2nd respondent were final and conclusive under Section 245 D (1) of the Income Tax Act 1961 and therefore cannot be interfered.

23. Under Section 245 of the Income Tax Act, 1961 an assessee can approach the Income Tax settlement commission at any stage for settling the case by filing application in the prescribed manner containing full and true disclosure of the income which was not disclosed before the Assessing Officer, the manner in which such income has been arrived, the additional amount of income tax payable on such income and such particular as may be prescribed. Such application shall be disposed in the manner provided in the Act.

24. The expression "case" means any proceeding for assessment under the Act, of any person in respect of any assessment year which may be pending before an Assessing Officer on the date on which an application under sub- section (1) of section 245 C is made.

25. Thus, a composite application can be filed for settling the case by an assessee as is event from a reading of Section 245 of the Income Tax Act,1961 read with the definition of the word "case in Section 245C of the Act. Sine qua-non for filing such application is true and full disclosure of the income which was not disclosed before the assessing officer. Additional income offered for settling the case should exceed Rs.50 lakhs in case of an assessee where proceedings for assessment or re-assessment have been initiated under Section 153 A (1)(b), Section 153B(1)(b) or Section 153C of the Income Tax Act, 1961. In this case, notices were issued to the petitioner under Section 153A of the Income Tax Act, 1961.

26. A reading of Section 153A (1)(b) of the Income Tax Act, 1961 makes it clear that the assessment in the case of search or requisition is to be made from the total income of six years immediately preceding the assessment year relevant for the previous year in which such searches conducted or requisition is made.

27. Thus, for the preceding six assessment years prior to November 2011 are 2006-07,2007-08,2008-09, 2009-10, 2010-11 and 2011-12. In this case, the application filed by the first respondent in the respective writ petitions were partly covered for the period under the block assessment period under Section 153A and thereafter for the assessment year 2012-13 for which notice under Section 142(1) was issued to them on 20.11.2012.

28. The application filed by the 1st respondent in the respective writ petitions for the period covered by notices issued under Section 153 A of the Income Tax Act, 1961 were in order. The 1st respondent in the respective writ petitions satisfied the statutory requirement of the sub- clause (i) to the first proviso to section 245C of the Income Tax Act, 1961 inasmuch as the additional amount of income disclosed for settling the case exceeded Rs.50 lakhs. Thus, there is no merit in the challenge to the impugned orders to that extent.

29. However, no additional income was disclosed for the assessment year 2012-13 (period outside the notice issued under section 153 A for block assessment) by the first respondent in the respective writ petitions. As per the aforesaid provision, the 1st respondent in the respective writ petitions should have disclosed additional income above Ten Lakh. Therefore objection of the petitioner is valid. Therefore, they have not satisfied the statutory requirement under sub- clause (ii) to the first proviso to Section 245C.

30. I therefore,accept the argument advanced on behalf of the petitioner by the learned Senior Standing counsel for the petitioner Income Tax Department in so far as the assessment year 2012-13 is concerned. To that extent the impugned order of the 2nd respondent Income Tax Settlement Commission settling the case of the 1st respondent in the respective writ petitions are liable to be set aside.

31. As far as the other objection to the deemed dividend is concerned, I am of the view there is no scope for interference under Article 226 of the Constitution of India. Though, this Court exercise vide power Article 226 of the Constitution of India. its jurisdiction is narrow.

32. The court is really not concerned with the ultimate decision of the 2nd respondent, Income Tax Settlement Commission, but only with the decision-making process. The Court can

interfere only where there is perversity and arbitrariness in the order impugned before it.

33. Question the regarding true and full disclosure of income for the purpose of settling the case before the 2nd respondent Income Tax Settlement Commission is a question of fact. The Income Tax Settlement is the final fact find authority. Therefore, to that extent, the impugned order settling the cases of the 1st respondent in the respective writ petition covering the period covered by section 153A of the Income Tax Act, 1961, there is no merit in the writ petition.

34. The petitioner has also not demonstrated any extraordinary circumstances, which warrants interference on the issues arising of the facts determined by the second respondent Income Tax Settlement Commission.

35. The other issue remaining point for consideration in these Writ Petitions is whether the Settlement Commission can direct payment of interest contrary to the decision of the Hon'ble Supreme Court in Brij Lal Vs Commissioner of Income Tax (2011) 1 SCC 1 ;[2010] 328 ITR 477. Answer is no. In para 33 and 34 the Court held as under:-

> 33. Under Sections 245-C(1-B) and (1-C) the additional amount of income tax payable on the undisclosed income shall be on the total income as calculated under Section 245-C(1-B). On computation of total income under Sections 245-C (1-B) and (1-C) is made, interest follows such computation. It is important to note that interest follows computation of total income. Once such computation takes place under Section 245-C(1-B) then Section 234-B(2) applies. The said sub-section deals with the situation where before determination of the total income under Section 143(1) or Section 143(3) tax is paid under Section 140-A or otherwise interest shall be calculated in accordance with Section 234-B(1) up to the date on which tax is so paid. In that sense an application under Section 245-C(1) is a return. Section 245-C (1) deals with computation of total income.
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> 34. There is one more way of looking at the Act. Chapter XIX-A refers to the procedure of settlement [see Section 245-D(1)]. As stated above, Section 245-D(1) provides for expeditious recovery of tax by way of pre-assessment collection. Interest on default in payment of advance tax comes under Sections 234-A, 234-B, 234-C, which fall in Chapter XVII which deals with collection and recovery of tax. It is important to

note that interest follows computation of additional payment of income tax under Sections 245-C(1-B) and (1-C). This is how Sections 234-A, 234-B and 234-C get engrafted into Chapter XIX-A at the stage of Section 245-D(1).

35. As stated, till the Settlement Commission decides to admit the case under Section 245-D(1) the proceedings under the normal provisions remain open. But, once the Commission admits the case after being satisfied that the disclosure is full and true then the proceedings commence with the Settlement Commission. In the meantime, the applicant has to pay the additional amount of tax with interest without which the application for settlement would not be maintainable. Thus, interest under Section 234-B would be payable up to the stage of Section 245-D(1). Our view is supported by the amendment made by the Finance Act of 2007 w.e.f. 1-6-2007 in which interest is required to be paid for maintainability of the application for settlement.

36. Dealing with a somewhat similar circumstances, in para 36 the Court posed the following question to itself which reads as under:-

" 36. The question is — what happens in cases where 90% of the assessed tax is paid but on the basis of the Commission's order under Section 245-D(4) the advance tax paid turns out to be less than 90% of the assessed tax as defined in the Explanation to Section 234-B(1)?".

37. The Court answered the position as follow:-

37. As held hereinabove, under Section 245-C(1) read with Section 245-C(1-B)(ii) and Section 245-C(1-C)(b), the additional amount of income tax payable is to be calculated on the aggregate of total income returned and the income disclosed in the settlement application as if such aggregate is the total income. Thus, the scheme of the said sections is based on computation of total income and in that sense we have stated that such application for settlement is akin to a return of income. The said provision deals with "total income". Thus, as stated above, Sections 234-A, B and C are applicable up to the stage of Section 245-D(1) order passed by the Settlement

Commission. However, Parliament has not extended the provisions and the liability to pay interest beyond the date of application for settlement. This is the position even after the Finance Act of 2007.

38. In para 49 the Court ultimately concluded as follows:-

(*1*) Sections 234-A, 234-B and 234-C 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 un as the case may be der Section 234-B 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 245-D(4).

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

39. Thus, there two distinct stages under Chapter XIX-A and that the legislature has not contemplated the levy of interest between the order under Section 245-D(1) stage and Section 245-D(4) stage. Interest under Section 234-B will be chargeable till the order of the Settlement Commission under Section 245-D(1) i.e. admission of the case.

40. In the impugned order, the 2nd respondent Income Tax Settlement Commission has directed the interest under Section 234A to be charged for the delay in filing of the original return under section 139/153 A/153C.

41. The impugned order to the extent it is contrary to the decision of the Honourable Supreme Court in the above case in Brij Lal Vs Commissioner of Income Tax (2011) 1 SCC 1 ;[2010] 328 ITR 477 is liable to be there for modified.

42. The officers under the jurisdiction of the 1st respondent are therefore directed to give effect to the order of the second respondent Income Tax Settlement Commission in terms of the order of the Hon'ble Supreme Court in Brij Lal Vs Commissioner of Income Tax (2011) 1 SCC 1.

43. In fine, these writ petitions are partly allowed to the extent:-

i. The impugned orders passed by the 2nd respondent Income Tax Settlement Commission in the respective Writ Petitions to the extent it settles the case of the 1st Respondent in the respective Writ Petitions for the Assessment Year 2012-13 are set aside.

ii. The jurisdictional officer, Income Tax Officer or Assistant Commissioner of Income, as the case shall therefore finalize the assessment for the Assessment Year 2012-13 within a period of 3 months from the date of receipt of a copy of this order. Orders to be passed shall be in accordance with law and in compliance with the procedural law as it prevailed during the period in dispute.

iii. The impugned orders passed by the 2nd respondent, Income Tax Settlement Commission in the respective Writ Petitions are set aside to the extent it directs payment of interest contrary to the decision of the Honourable Supreme Court in Brij Lal Vs Commissioner of Income Tax (2011) 1 SCC 1.

iv. The officers of the Income Tax Department shall finalise the interest strictly in accordance with the decision of the Hon'ble Supreme Court in Brij Lal Vs Commissioner of Income Tax (2011) 1 SCC 1. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Income Tax Settlement Commission
Additional Bench, 640, Anna Salai, Nandanam, Chennai -35.
2.The Assistant Commissioner of Income Tax,
Company Circle - III (3),Aayakar Bhavan - New Block, 4th Floor,
121, Mahatma Gandhi Road,Chennai 600 034.

+2cc to Mr.S.Sridhar, Advocate Sr.Nos.13497 and 13498
+2cc to Mr.A.P.Srinivas, Advocate Sr.Nos.13327 and 13329

akm /29.04.21/ 11P-7C/

Common Order in
W.P.Nos.31351& 31352 of 2015
and M.P.Nos.1 & 1 of 2015
03.03.2021