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In the High Court of Judicature at Madras

Dated : 06.9.2021

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The Honourable Mr. Justice T.S. SIVAGNANAM

and

The Honourable Mr. Justice SATHI KUMAR SUKUMARA KURUP

Writ Appeal Nos. 2208 & 2209 of 2021

& CMP. Nos. 13978 & 13981 of 2021

M/s. K. Velusamy-Major HUF

...Appellant in
WA. 2208/2021

Smt. S. Chandralekha

...Appellant in
WA. 2209/2021

Vs

1. The Principal Commissioner of
Income Tax, Central-2,
Income Tax Department,
No. 46, MG Road, Chennai-34.

2. The Income Tax Settlement
Commission, Additional Bench,
replaced by the Interim Board,
Income Tax Department,
640, Anna Salai, Chennai-35.

...Respondents
in both WAs

APPEALS under Clause 15 of the Letters Patent against
the common order dated 03.3.2021 in W.P. Nos. 31352 and 31351 of
2015.

PRAYERS IN W.P. NOS. 31352 and 31351 OF 2015: To issue a writ of
Certiorari, calling for the records on the 2nd respondent in
TN/CN 52/13-14/17/IT and 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).

For Appellants : Mr. A. S. Sriraman

For Respondent-1: Mr. A. P. Srinivas, SSC



COMMON JUDGMENT
(Judgment was delivered by T.S.SIVAGNANAM,J)

We have heard Mr.A.S.Sriraman, learned counsel appearing for the appellants and Mr.A.P.Srinivas, learned Senior Standing Counsel accepting notice for the first respondent - Revenue. In the light of the judgment, this Court wishes to render in these appeals, notice to the second respondent is dispensed with and the writ appeals are taken up for final disposal.

2. These writ appeals have been filed by the assesseees challenging the common order dated 03.3.2021 passed in W.P.Nos. 31351 and 31352 of 2015.

3. The said writ petitions were filed by the first respondent herein namely the Revenue.

4. The challenge in the said writ petitions was to the orders passed by the second respondent herein namely the Income Tax Settlement Commission (for short, the ITSC) dated 02.3.2015 settling the case of the assesseees for the assessment years 2006-07 to 2012-13.

5. From the averments set out in the affidavits filed in support of the said writ petitions, we are able to see that the challenge by the Revenue to the orders passed by the ITSC was primarily on two grounds.

6. Firstly, with regard the issue relating to deemed dividend under Section 2(22)(e) of the Income Tax Act, 1961, the Revenue contended that the ITSC erred in accepting the contention of the assessee for not including the advance amount received as liable to be taxed as deemed dividend under Section 2(22)(e) of the Act and that the decision relied upon by the ITSC could not be applied to the facts and circumstances of the case.

7. The second issue was with regard to levy of interest under Section 234A of the Act. The Revenue contended that though the Assessing Officer was directed to keep in mind the decision of the Hon'ble Supreme Court in the case of Brij Lal Vs. CIT [reported in (2010) 328 ITR 477], yet he directed to charge interest under Section 234A of the Act only for the delay in filing original returns under Section 139/153A/153C, as the case may be, which was against the clear cut observations made by the Hon'ble Supreme Court. With these grounds, the Revenue was before the learned Single Judge.

8. The learned Single Judge upheld the view of the ITSC and no relief was granted to the Revenue. With regard to the aspect



relating to charging of interest, the learned Single Judge directed the Assessing Officer to recompute the interest in terms of the orders passed by the Hon'ble Supreme Court in the case of Brij Lal. Thus, the Revenue partly succeeded in the said writ petitions wherein the learned Single Judge set aside the orders settling the case of the appellants herein in respect of the assessment year 2012-13.

9. In our considered view, a truncated challenge to the orders of the ITSC either at the instance of the assesseees or at the instance of the Revenue cannot be maintained. As has been held in several decisions consistently, the Court, while examining the correctness of the orders passed by the ITSC, will examine the decision making process and not the decision itself.

10. Admittedly, in the instant case, the assesseees, at the time of filing applications for settlement under Section 245C of the Act, did not offer any additional income for the assessment year 2012-13. The Revenue filed a report under Rule 9 of the Income Tax Settlement Commission (Procedure) Rules contending that the assesseees might be directed to produce the books of accounts and other documents pertaining to the year 2012-13 before the Assessing Officer. The assesseees submitted their books of accounts along with profit and loss account, balance sheet, etc.

11. The tax audit report dated 28.9.2012 was also furnished. Pursuant to the said submission, the Revenue filed further report to the assesseees' reply to the report under Rule 9 of the said Rules. In the said report, there was an elaborate discussion with regard to the matter concerning the assessment year 2012-13 and the report also stated as to what were all the additions, which were suggested by the Revenue. On those submissions, the assesseees were heard by the ITSC and ultimately, the cases were settled. In such circumstances, it will be too late for the Revenue to now contend that the ITSC could not have settled the cases in respect of the assessment year 2012-13 and especially when this was never the ground raised by the Revenue either in the report filed under Rule 9 of the said Rules or in the subsequent report filed to the reply given by the assesseees.

12. That apart, on a reading of Section 245C(1) Proviso (i), it can be seen that no such application shall be made unless in a case where proceedings for assessment or reassessment for any of the assessment years referred to in Clause (b) of Sub-Section (1) of Section 153A or Clause (b) of Sub-Section (1) of Section 153B in case of a person referred to in Section 153A or Section 153C have been initiated, the additional amount of income-tax payable on the income disclosed in the application exceeds fifty lakh rupees.

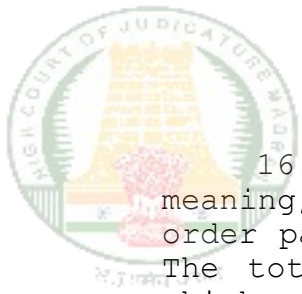


13. Admittedly, the jurisdiction to assess income of the assessee for six years would arise as a block assessment only in the event of search and therefore, the ITSC rightly took into consideration the year of search namely 2012-13. As pointed out earlier, these are all issues, which are on the merits of the matter and more particularly with regard to the maintainability of the application before the ITSC, which was considered by the ITSC at two stages and it was never the case of the Revenue that the year of search should be excluded. That apart, we find that the ITSC directed the Assessing Officer to follow the decision of the Hon'ble Supreme Court in the case of Brij Lal and the Assessing Officer followed it and had given effect to the orders passed by the ITSC in the year 2015.

14. The learned Senior Standing Counsel appearing for the Revenue would contend that in paragraph 11.3, the ITSC dealt with charging of interest and observed as follows :

"Prayer for waiver of interest is not accepted and the same may 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 Nos.516 to 527 of 2004 dated 21.10.2010 in the case of Brij Lal & Others Vs. CIT [328 ITR 477]. In view of Section 234A read with Section 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 245D(1). 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 and another in W.P. No.44 of 2015, interest under Section 234B has also to be charged on the income as disclosed in the application under Section 245C of the Act."

15. It is submitted by the learned Senior Standing Counsel appearing for the Revenue that the ITSC mentioned that the interest under Section 234B of the Act has to be charged on the income as disclosed in the applications under Section 245C of the Act. The Revenue is, thus, of the view that the Tribunal wrongly mentioned that the interest would be chargeable on the income disclosed.



16. Though the word 'disclosed' gives a slightly distorted meaning, a clear picture emerges if we see paragraph 11.2 of the order passed by the ITSC, which deals with settlement of income. The total income arrived at by the ITSC is Rs.28,04,72,938/-, which alone shall be considered as the income disclosed for the purposes of an application under Section 245C of the Act. The Revenue need not have any apprehension over the income, which was initially disclosed at the time of filing the application under Section 245C of the Act because the said income, which was offered at the first instance was not accepted by the Revenue and a report under Rule 9 of the said Rules was filed and based on that, the Revenue suggested four additions and thereafter, the case was proceeded and the matter was settled.

17. Therefore, in our considered view, there may not be any necessity to remand the matter for a fresh consideration and the interest under Section 234B of the Act has to be charged on the income settled by the ITSC and in terms of the decision of the Hon'ble Supreme Court in the case of Brij Lal, the interest would be chargeable upto the date of order under Section 245D(1) of the Act and not upto the date of the order of the ITSC under Section 245D(4).

18. With the above clarification, the writ appeals are allowed and the common order passed in the writ petitions is set aside. No costs. Consequently, the connected CMPs are closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

RS

To

1.The Principal Commissioner of Income Tax,
Central-2, Income Tax Department,
No.46, MG Road, Chennai-34.

2.The Income Tax Settlement Commission,
Additional Bench, replaced by the Interim Board,
Income Tax Department, 640, Anna Salai,
Chennai-35.

+1cc to Mr.S.Sridhar, Advocate, S.R.No.44847

+2cc to Mr.A.P.Srinivas, Advocate, S.R.No.44819

WA.Nos.2208 & 2209 of 2021 &
CMP.Nos.13978 & 13981 of 2021

AJS (CO)
GN(20/09/2021)