IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2021

CORAM :

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.No.2473 of 2021
and
C.M.P.No.15987 of 2021

G.Rajam Chetty & Sons
Presented by its Partner
G.Udayakumar
28B, West Raja Street,
Kancheepuram - 631 501. ... Appellant

Vs.

1.Commissioner of Income Tax
Central-VII,
No.121, Uthamar Gandhi Salai,
Chennai - 600 034.

2.Income Tax Settlement Commission,
(Now substituted by Interim Board for Settlement by the Finance Act, 2021)
Additional Bench, Chennai
640, Anna Salai, Nandanam,
Chennai - 600 035. ... Respondents

Prayer :Writ Appeal filed under Clause 15 of the Letter Patent, against the order dated 11.08.2021 made in W.P.No.3297 of 2014.

Prayer in W.P.No.3297 of 2014:-

Writ Petition filed under Article 226 of the constition of India to issue a Writ of Certiorarified calling for the records on the file of the first respondent in TN/CN.8/2012-13/4/IT dated 26.7.2013 and quash the same so far as the same is against revenue as illegal and beyond jurisdiction and authority of the first respondent.

For Appellant : Ms.Vandana Vyas
for Mr.R.Sivaraman

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

J U D G M E N T

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

This Writ Appeal filed by the 2nd respondent in W.P.No.3297 of 2014 is directed against the order, dated 11.08.2021, made in the writ petition filed by the 1st respondent herein, namely, Commissioner of Income-Tax, Central-VII, Chennai.

2.The said writ petition was filed by the 1st respondent/Department, challenging the order passed by the Income Tax Settlement Commission ("the Commission" for brevity), dated 26.07.2013. The writ petition has been allowed and aggrieved by the same, the 2nd respondent, whom we shall refer to as the assessee, is before us by way of this Writ Appeal.

3.We have heard Ms.Vandha Vyas, learned counsel appearing for Mr.R.Sivaraman, learned counsel for the appellant and Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the respondents/Revenue.

4.Before we proceed to examine the correctness of the order impugned in this appeal, we need to look at the scope of interference by a Writ Court against the order passed by the Settlement Commission. It is settled legal position that, a Writ Court, while considering the correctness of an order passed by the Settlement Commission, is concerned with the decision making process and not the decision itself. Bearing this cardinal principle in mind, we proceed to examine the merits of the case.

5.We may wish to add a caveat that the writ petition which had been filed in the year 2014 had challenged the order passed by the Settlement Commission nearly after six months, after the order of the Settlement Commission had been given effect to and the appellant/assessee had been extended the benefit of the order of the Commission, in and by which, the income of the assessee was settled, he was granted waiver of the interest and penalty under the provisions of the Income Tax Act, 1961 ("the Act" for brevity), granted immunity from penalty and prosecution. The delay of more than six months in filing the writ petition should be considered to be fatal and it would be sufficient to dismiss the writ petition filed by the Revenue. However, the learned Writ Court had allowed the writ petition filed by the Revenue on the ground that the issue pointed out by the Revenue cannot be clarified by the Commission, as it has become functus officio.

6.The writ petition was filed primarily on the ground that the Settlement Commission has recorded as if the Department Representative ("CIT(DR)" for brevity) has given a concession, which was never given. The Revenue is aggrieved by the observations made by the Commission in Para No.5.2, which reads as follows :.

> "5.2. ... We had asked the Department to carry out a verification in respect of the above. As regards item (b) above the learned CIT(DR) reported that a verification was carried out and it has been found that the entries in respect of customers gold had actually been wrongly made. He fairly accepted that the contention of the Applicant in this respect is acceptable."

7.On a reading of the above paragraph, one gets an impression that there is a concession extended by the Department, when the case was being discussed by the Commission. However, on a cumulative reading of the other paragraphs namely, the stand taken by the Department before the Commission with regard to unaccounted excess stock as recorded in Para No.3.1.6 of the order of the Commission, the rejoinder submitted by the assessee as recorded by the Commission in Para Nos.4.2 and 4.8, coupled with the directions issued by the Commission to the Commissioner of Income Tax-VIII, Chennai, to verify the data from the impounded Computer Server of the appellant/assessee, it is clear that the CIT(DR), who appeared before the Commission has not extended any concession nor conceded to any issue which was being discussed before the Commission.

8.As pointed out, on a cumulative reading of the order, it is clear that, one of the disputes which was subject matter of the settlement proceedings, was unaccounted excess stock. The Department, through its representative, had stated that, no evidence has been produced to justify the increase in the book stock and to be noted that the assessee had agreed with the figures of the book stock at the time of the survey, in response to one of the questions posed to him, the sworn submission was recorded. Further, the CIT(DR) submitted that the assessee has also increased the customer Gold admitted at the time of survey, even though no evidence has been produced in respect of the same. Similarly, no evidence was produced for increasing the weight of the customer Gold. However, in the settlement application, the assessee has increased the net weight of the stone to over 20% of the Gold jewellery. The assessee contended that there are discrepancies in the computation of excess stock, which was detected only after the survey and was immediately brought to the attention of the Assessing Officer, vide letter dated 08.09.2010. The assessee stated that the excess stock computed in the course of the survey was incorrect, as it is a common practice adopted by the assessee to accept old Gold ornaments from customers for remaking and this has been wrongly entered in the books as if to be the assessee's own Gold and the assessee sought to explain the difference in stock on those grounds. Further, the assessee contended that some of the purchases made in AY 2011-12 had remained to be entered in the computer and payment for all these purchases have been effected prior to the date of survey, but the corresponding bills were not available with them and credit was not taken for such purchases and the stock on this account was to an extent of 3,103.37 grams. Further, it was pointed out that all necessary evidence and details in respect of the above submissions have been enclosed in the assessee's letter dated 08.09.2010. The assessee offered the excess stock at 22209.399 grams of Gold.

9.It appears that, on account of the stand taken by the Revenue as well as the assessee, the Commission directed verification of the data from the impounded Computer Server. This exercise was done and the Commissioner of Income Tax-VIII, Chennai, by letter dated 11.07.2013, verified the Computer Server in the presence of the partner of the assessee, the six seals which were placed on the Computer Server were found intact and it was opened and the print-out of relevant documents were taken, the Cadmium Software in the Computer Server was operated and the print-out of the customer orders and smith issue vouchers that were submitted by the assessee to the Settlement Commission were taken. Apart from stating so, which was in fact the scope of the directions issued by the Commission for verification of the Computer Server, the Commissioner added two more paragraphs to his communication dated 11.07.2013, which were, in fact, the stand taken by the Revenue before the Assessing Officer, stating that the delivery challans did not contain the signature of the customers and in the absence of receipts issued by the assessee to different customers from whom they have claimed to have received the old Gold, the authenticity of the receipt of Gold from the customers is not fully verifiable. In fact, the last two paragraphs in the communication dated 11.07.2013 was precisely the stand taken by the Revenue before the Commission, which was taken note of, and the Commission, with a view to examine as to whether there has been full and true disclosure, had directed verification of the Computer Server.

10.Therefore, the findings rendered by the Commission in Para No.5.2, as we have quoted above, is not a concession extended by the CIT(DR), it is in fact, accepting the verification report which was submitted. Therefore, the Department, on a wrong premise that the Settlement Commission has recorded as if a concession was given, had approached the Writ Court, which, in our view, was unnecessary, as the Commission has not recorded any concession, but taken up the matter, considered the case of the assessee as well as the

Department, and settled the case based upon the increased offer made by the assessee.

11.Thus, we find that there is no procedural error committed by the Commission, warranting interference by the Writ Court. We make it clear that the quoted paragraph in Para No.5.2 of the order of the Commission is not to be construed as a concession given by the CIT(DR), but a finding rendered by the Commission with regard to the verification of the data from the impounded Computer Server. Thus, when there is no procedural irregularity, we would not be justified in interfering with the order of the Settlement Commission, which has attained finality and given effect to. That apart, in a writ proceedings, we are not expected to re-appreciate the facts. As we are fully convinced that there is no procedural error committed by the Commission, the order of the Commission does not call for any interference.

12.For all the above reasons, this Writ Appeal is allowed and the order passed in the writ petition is set aside and consequently, the writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mkn

To

1.The Commissioner of Income Tax
Central-VII, No.121, Uthamar Gandhi Salai,
Chennai - 600 034.

2.The Income Tax Settlement Commission,
(Now substituted by Interim Board for Settlement by the Finance Act, 2021)
Additional Bench, Chennai
640, Anna Salai, Nandanam,
Chennai - 600 035.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.50405

W.A.No.2473 of 2021

AD(CO)
CT/18/10/2021