IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30-04-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP Nos.25845 to 25847 of 2014
and
MP Nos.1, 2 and 2 of 2014

Commissioner of Income Tax,
Central-II,
No.46, Mahathma Gandhi Road,
Chennai-600 034.
.. Petitioner in all WPs

vs.

M/s.Akash Fertility Centre and Hospital,
No.10, Jawaharlal Nehru Salai,
100 Feet Road,
Vadapalani,
Chennai-600 026. . R-1 in WP 25845/2014

Dr.T.Kamaraj . R-1 in WP 25846/2014

Dr.K.S.Jeyarani .. R-1 in WP 25847/2014

Income Tax Settlement Commission,
Represented by Secretary,
Additional Bench,
640, Anna Salai,
Nandanam,
Chennai-600 035. .. R-2 in all WPs

WP No.25845 of 2014 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records on the file of the second respondent in Settlement Application No.TN/CN/52/2013-14/8/IT, dated 23.01.2014 and quash the same as illegal and restore the jurisdiction of the Assessing Officer in respect of the assessments for assessment years 2006-2007 to 2012-2013 of the first respondent.

WP No.25846 of 2014 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records on the file of the second respondent in Settlement Application No.TN/CN/52/2013-14/7/IT, dated 23.01.2014 and quash the same as illegal and restore the jurisdiction of the Assessing Officer in respect of the assessments for assessment years 2006-2007 to 2012-2013 of the first respondent.

WP No.25847 of 2014 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records on the file of the second respondent in Settlement Application No.TN/CN/52/2013-14/5/IT, dated 23.01.2014 and quash the same as illegal and restore the jurisdiction of the Assessing Officer in respect of the assessments for assessment years 2006-2007 to 2012-2013 of the first respondent.

For Petitioner in all WPs : Mr.A.P.Srinivas, Senior Standing Counsel for Income Tax.

For R-1 in all WPs : Ms.Vandana Vyas for Mr.R.Sivaraman

For R-2 in all WPs : No Appearance

COMMON ORDER

The Commissioner of Income Tax, Central-II, Chennai is the petitioner, who filed these writ petitions to quash the orders passed by the second respondent-Settlement Commission in proceedings dated 23.01.2014.

2. The contention of the writ petitioner is that there is no true and full disclosure of income by the first respondent at the time of filing applications under Section 245C of the Income Tax Act, 1961 before the second respondent-Settlement Commission for settlement.

3. Section 245C provides filing an application for settlement of cases by the assessees. Sub-clause (1) contemplates 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.

4. Any application filed under Section 245C is to be considered by the Settlement Commission and the procedures contemplated under Section 245D is to be followed for the disposal of the application filed under Section 245C.

5. Various stages are contemplated and the prime consideration would be that the applications must be filed by the assessees with full and true disclosure of their income, which has not been disclosed before the Assessing Officer.

6. Thus, the provision makes it very clear that the application for settlement under Section 245C must contain the full and true disclosure of income, including the income, which were not disclosed by the assessees before the Assessing Officer. Thus, the provision contemplates that an assessee approaching the Settlement Commission under Section 245C must come out with clean hands and disclose the full and true income.

7. This being the precondition for entertaining an application under Section 245C of the Income Tax Act, the learned Senior Standing Counsel reiterated that in the absence of the requirements in the application, the application cannot be entertained by the Settlement Commission for further adjudication.

8. It is contended that even during the adjudication, at any stage, if the Income Tax Department is able to establish that the assessees have not approached the second respondent-Settlement Commission with true and full disclosure of income or the Settlement Commission has got some materials to identify that the assessees have not disclosed the true and full income, then the applications are to be rejected immediately and it cannot be proceeded with any further.

9. The learned Senior Standing Counsel for the petitioner solicited the attention of this Court with reference to the discrepancies found regarding the disclosure of income by the first respondent-assessees.

10. There are suppression of Ward collection and suppression of IVF/IUI income, unaccounted income received from consulting Doctors and there are several such discrepancies and non-disclosure of income, which were established before the Settlement Commission by the petitioner-Department.

11. The learned Senior Standing Counsel solicited the attention of this Court with reference to the contentions of the Department made by the CIT(DR) before the Settlement Commission, which reveals that many particulars and details are furnished by the petitioner-Department.

12. The grievance of the petitioner is that the none of these particulars and details with reference to the documents are adjudicated by the Settlement Commission and the Settlement Commission passed a cryptic order without considering any of the contentions raised by the petitioner to establish that the first respondent-assessees have not approached the second respondent-Settlement Commission with full and true disclosure of income.

13. The learned Senior Standing Counsel made a submission that the details and particulars with reference to the contentions of the petitioner had not been adjudicated by the Settlement Commission. Contrarily, the issues are settled without adjudicating such issues and therefore, the writ petitions are to be allowed.

14. The learned counsel, appearing on behalf of the first respondent, strenuously contended that the writ petitions are not maintainable.

15. No writ can be entertained against an order of Settlement Commission. The Settlement Commission adjudicated all the disputed issues and accordingly settled the matter and therefore, the petitioner cannot reopen the said concluded settlement by filing a writ petition under Article 226 of the Constitution of India.

16. The learned counsel appearing on behalf of the first respondent is of an opinion that the elaborate adjudication made by the Settlement Commission would reveal that the petitioner had submitted the application with full and true disclosure of income and there is no infirmity, as such.

17. It is further contended that the petitioner is not an aggrieved person in respect of the decision taken by the Settlement Commission. The Settlement Order was passed with reference to Section 245D(4) of the Act and such an order cannot be challenged by way of a writ petition.

18. In this regard, the learned counsel for the first respondent relied on the judgments in the following cases:-

(1) R.B.Shreeram Durga Prasad vs. Settlement Commission and Another [1989 (1) SCC 628]

(2) Jyotendrasinhji vs. S.L.Tripathi and Others [1993 (3) SCC 38]

(3) Shriyans Prasad Jain vs. Income Tax Officer and Others [1993 Supp. 4 SCC 727]

(4) Union of India and Others vs. Ind-Swift Laboratories [2011 (4) SCC 635]

(5) Commissioner of Income-Tax (C)-III vs. Gopal Gupta [(2014) 46 Taxmann.com 312 (Delhi)]

(6) CIT vs. M/s.Adhiparasakthi Charitable, Medical, Educational and Cultural Trust - WP No.34040 and 34041 of 2014 [Hon'ble High Court of Madras].

19. The first respondent, even in their counter, has elaborately stated that the explanations were given with reference to the objections raised by the petitioner-Department before the Settlement Commission. Thus, the writ petitions are to be dismissed.

20. This Court is of the considered opinion that raising an allegation of non-disclosure of certain full and true income or objecting the same by an assessee by submitting explanations are one aspect of the matter. However, High Court cannot entertain a writ petition, so as to adjudicate the disputed facts and circumstances to be done with reference to the documents and evidences filed by the respective parties.

21. However, the requirements of the provision of Section 245C of the Income Tax Act, is of paramount importance. The very purpose and object of Section 245C is to ensure that a person, who is submitting an application before the Settlement Commission must out come with clean hands and the application must contain full and true disclosure of income.

22. The learned counsel for the first respondent raised a preliminary objection regarding the maintainability of the writ petitions. However, the maintainability of the writ petitions is replied by the learned Senior Standing Counsel by stating that the proposition mooted out with regard to the maintainability is incorrect. The writ petitions are entertained

on many occasions by various High Courts and by the Hon'ble Supreme Court of India.

23. What is required is that whether the Settlement Commission has passed an order in consonance with the ingredients contemplated under Section 245C of the Act or not. Thus, the High Court is empowered to adjudicate those issues, in order to form an opinion, whether the writ petitions are entertainable or not. It is not as if the writ petitions are not maintainable at all. The writ petitions are maintainable subject to the conditions that if the terms and conditions stipulated for filing an application under Section 245C of the Income Tax Act, are complied with. Thus, the very contention raised is to be rejected and the judgments cited are relatable to the facts of those cases.

24. No writ petition can be dismissed as not maintainable. The maintainability of the writ petition is to be considered with reference to the mixed question of law and fact, not merely on the ground that the Settlement Commission under the Income Tax Act, passed an order of settlement. Thus, the grounds raised for challenging the order passed by the Settlement Commission plays a pivotal role regarding the maintainability of the writ petitions.

25. The learned Senior Standing Counsel cited the judgment of this Court in the case of ACE Investments Limited vs. Settlement Commission reported in [2003] 264 ITR 571 (MAD). This Court, relying on the judgment of the Hon'ble Supreme Court of India, made an observation that "in so far as the power of this Court to exercise its jurisdiction under article 226 of the Constitution of India, the law is well settled that the judicial review of this Court is not concerned with the decision, but only with regard to the decision making process. The above position of law was reiterated by the apex court in the judgment in R.B.Shreeram Durga Prasad and Fatechand Nursing Das's case [1989] 176 ITR 169 and this proposition of law is also not disputed. Equally, the judicial review of this Court to interfere with the order of the settlement Commission is not barred, if the order of the Settlement Commission is in contravention to any of the provisions of the Act. The law on this question is settled by the Apex court in the judgment in Jyotendrasinhji's case {[1993] 201 ITR 611}. This proposition of law is also not disputed. Equally the power of this Court to interfere in the order of the Settlement Commission unless there is patent illegality as held by this Court in C.A.Abraham's case {[2002] 255 ITR 540} is also not disputed."

26. With reference to the powers of the Assessing Officer under Section 153A of the Income Tax Act, the learned Senior Standing Counsel referred the judgment in the case of CANARA JEWELLERS vs. SETTLEMENT COMMISSION {[2009] 184 Taxman 491 (Madras)}. This Court held as follows:

> "11. So far as Section 245F is concerned, though the Settlement Commission is empowered to have all the powers which are vested in an income-tax Authority under the Act, in addition to the power conferred under Chapter XIX-A, but such power can be exercised for the purpose of procedure of settlement of application under Section 245C and not for reasssessment of tax of a particular year which is vested with the Assessing Authority".

27. Relying on the above judgments, the learned Senior Standing Counsel contended that the writ petitions are maintainable and therefore, the issues are to be adjudicated regarding the manner in which the decision was taken by the second respondent-Settlement Commission and the decision making process adopted with reference to Section 245C of the Income Tax Act.

28. This Court is of the considered opinion that Section 245(C) of the Income Tax Act 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".

29. A reading of the section portrays that it is a special provision contemplated enabling the assessee to settle the disputes in a peaceful manner with the Department, if they have come out with full and true disclosure of income. Such special provisions are enacted with an intention to provide an opportunity to the assessee to settle the issues, in order to rectify certain omissions, commission, mistakes etc., by the Assessee. In view of the complex nature of business by the Entrepreneurs, it is possible for such omission, commission, mistakes etc., intentionally or unintentionally, while filing income tax returns and furnishing other particulars. Thus, the legislative intention of Section 245C is to provide an opportunity to the Assessee to settle the issues, if they found

some discrepancy or commissions, omissions in respect of the disclosures made before the Assessing Officer at the first instance. Since such enabling provisions are made with good intention and to provide an opportunity to the assessee to correct the mistakes, it is to be done in the manner prescribed. Section 245C unambiguously stipulates that the application filed under Section 245C is to be disposed of in the manner provided in the very section itself. Therefore, it is an exclusive provision under the Act, wherein the procedures are also contemplated and certain terms and conditions are also stipulated for the purpose of settling the disputes.

30. Law presumes that every assessee discloses his full and true income at all times. Law mandates that an assessee must file his returns and show the income in a true and correct manner. While the law expects that an assessee to be truthful and correct in his particulars, the additional provisions for settlement of the disputes are provided enabling the assessee to settle the disputes in the event of any correction, omission, commission or mistakes etc. Thus, an application for settlement of cases cannot be construed as an absolute right. But, it is a right of an assessee to approach the Settlement Commission with full and true disclosure of his income. The right of the assessee is well enumerated in many other provisions of the Income Tax Act. The assessment made by the Assessing Officer at the first instance would be the factor for all purposes and the settlement of the disputes is an additional provision, enabling the assessee to correct certain mistakes, if at all occurred or on account of various other factors. Thus, the scope of Section 245C of the Income Tax Act cannot be compared with the regular assessments to be made in accordance with the procedures contemplated under the Act nor Section 245C can be tagged along with the regular provisions for the purpose of settling the disputes between the assessee and the Department.

31. In a common parlance, the settlement of disputes are possible, only if there is a consensus between the parties to the disputes. The dictionary meaning of "settlement" would show that the settlement can be made, if the difference between the parties are narrowed down. Undoubtedly, the second respondent-Settlement Commission has got certain powers to settle the issues. However, such power of settlement is absolutely guided by the provision itself. That is the reason why the proviso clauses are provided under Section 245C. The proviso clause stipulates that no application shall be made unless certain terms and conditions are fulfilled. But Section 245C(1) provides that it is a pre-condition to entertain an application that the assessee must disclose full and true facts and the evidence. Thus, Sub-clause (1) to Section 245C is the pre-requisite condition for entertaining the application under

Section 245C.

32. A question arises who will be the deciding Authority for the full and true disclosure as contemplated under Section 245C. When an application is made by the assessee for settlement, then an assessee will contend that the particulars provided in the application are the full and true disclosure. However, if the Department raises an objection regarding such full and true disclosure made by the assessee, then the second respondent-Settlement Commission is empowered to go into the facts and circumstances and find out the correctness or truthfulness of the disclosure made by the assessee. Therefore, it is always the mixed question of fact and law and in order to ascertain the entertainability of the writ petition, the High Court is bound to look into the facts as well as the laws. In the absence of examining both the facts and laws, it may not be possible to form an opinion, whether the application filed under Section 245C of the Income Tax Act is entertainable or not?

33. In these cases, the second respondent-Settlement Commission formed an opinion that the issues can be settled. However, there is no clear finding that the application filed by the first respondent contains full and true disclosure of income. If a clear finding is formulated and found in the order of the second respondent-Settlement Commission, then the High Court can restrict its scope to deal with the facts. However, in the absence of any such clear finding that the application filed by the first respondent contains full and true disclosure of the income, then it is always arguable by the Department that such disclosure is not in full form and the materials are not considered by the second respondent-Settlement Commission.

34. With reference to the order passed by the second respondent-Settlement Commission, it would be relevant to consider paragraphs 7.1.2 and 7.1.3 in the findings, which read as under:-

> "7.1.2 We find that the applicants have not kept proper books of account in all the three cases before us. The Department has taken the cash found at the time of search for two days and multiplied it by the number of days the doctors worked to arrive at the suppressed income. The applicants explained that the treatments were mainly provided as packages for the various treatment given. In these treatment the patient has to visit the doctor till she conceives and consult them often to

> sustain the pregnancy. Every sitting cannot result in payment of fees. This delicate procedure and issue was also heard and settled by us in the case of Dr.Kamala Selvaraj a pioneer in this field.
>
> 7.1.3 In the absence of proper books of accounts the 'net asset method' was found the only way to proceed further.”

35. The learned Senior Standing Counsel relied on the very finding that “we find that the applicants have not kept proper books of account in all the three cases before us”.

36. The very finding of the Settlement Commission that the applicants have not kept proper books of account in all the three cases would be sufficient to arrive a conclusion that an application under Section 245C has not been filed with full and true disclosure of income.

37. When the second respondent-Settlement Commission itself not able to form an opinion that the assessees have not kept proper books of accounts and the Department has taken the cash found at the time of search for two days and multiplied it by the number of days the Doctors worked to arrive at the suppressed income, then the second respondent-Settlement Commission ought to have considered these factors for the purpose of entertaining an application under Section 245C of the Income Tax Act.

38. The learned counsel for the first respondent-assessees made a submission that the first respondent-assessees themselves have admitted that they have not maintained proper books of accounts.

39. This being the case, the Department must be provided with an opportunity to go for a regular assessment. In the absence of any maintenance of proper books of accounts, admittedly, by the assessees, then it may not be possible even for the assessees to provide true and full disclosure of income.

40. At the outset, wherever there is a possibility of escapement or non-disclosure of certain income in a true and full manner, then the very purpose and object of the provision is to provide powers to the Assessing Officer to cull out the entire truth and proceed with regular assessment.

41. If at all, the first respondent-assessees say that they themselves have admitted that they have not maintained any books of accounts, then it is to be construed that the regular assessment must be done in such cases. There is no possibility of providing true and full disclosure of income by the assessees. In either of the circumstances, when the Department could able to establish that the assessee has not come out with true and full disclosure of income by the assessees themselves admitted that they have not maintained any books of accounts, then in both the cases, there is no possibility of disclosure of full and true income and therefore, in such cases, the regular assessment alone would be a proper method and settlement cannot be made.

42. Thus, the very contention raised on behalf of the first respondent that the first respondent-assessees themselves admitted the fact that they have not maintained any books of accounts is of no avail for the purpose of settling the issues and in such circumstances, all evidences collected by the petitioner-Department also to be enquired into by the Assessing Officer through a regular assessment.

43. Perusal of the order passed by the second respondent-Settlement Commission, as rightly pointed out by the learned Senior Standing Counsel, the contentions of the Department made by the CIT(DR) in detail in respect of the income were not completely enquired into nor considered by the second respondent-Settlement Commission.

44. Contrarily, the second respondent-Settlement Commission made a finding that the applicants have not kept proper books of accounts in all the three cases and settled the issues. Such a settlement is improper and not in consonance with the provisions of the Act.

45. When the prerequisite condition contemplated in the provision stipulates that the person approaching the second respondent-Settlement Commission should come out with true and full disclosure of income and the Department could able to establish that there are many discrepancies in the matter of such disclosure made by the first respondent-assessees, then, there is no other reason whatsoever to settle the issues under the provisions of the Act and the mater must be placed before the Assessing Officer for assessment.

46. This being the factum established, the petitioner-Department could able to prove that the orders impugned passed by the second respondent-Settlement Commission are not in consonance with the provisions of the Act. Thus, the impugned orders passed in Settlement Application Nos.TN/CN/52/2013-14/8/IT, TN/CN/52/2013-14/7/IT and TN/CN/52/2013-14/5/IT dated 23.01.2014, 23.01.2014 and 23.01.2014 respectively are quashed.

47. Accordingly, WP Nos.25845 to 25847 of 2014 stand allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Svn

To

1.Commissioner of Income Tax,
Central-II,
No.46, Mahathma Gandhi Road,
Chennai-600 034.

2.The Secretary,
Income Tax Settlement Commission,
Additional Bench,
640, Anna Salai,
Nandanam,
Chennai-600 035.

+1cc to Mr.A.P.Srinivas,, Advocate SR.No. 26681
+1cc to Mr.R.Sivaraman , Advocate SR.No. 26609

WP Nos.25845 to 25847 of 2014

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A.SK(08.07.2021)