

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.10532 of 2017

Principal Commissioner of Income Tax,
Central-2,
No.108, Nungambakkam High Road,
Chennai-34.

... Petitioner

vs.

1.M/s.Rasi Seeds (P) Ltd.
No.174, Sathyamoorthy Road,
Ram Nagar, Coimbatore-641 009.

2.Income Tax Settlement Commission,
Additional Bench,
No.640, Anna Salai, Nandanam,
Chennai-600 035.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, to call for the records on the file of the second respondent in TN/CN.53/2013-14/46/IT dated 14.09.2015 and quash the same as illegal and without jurisdiction.

For petitioner :Mr.A.P.Srinivasan
Senior Standing Counsel

For Respondent :Mr.R.Sivaraman for R1
No-appearance for R2

O R D E R

The order passed by the Income Tax Settlement Commission Additional Bench in proceeding dated 14.09.2015 is sought to be quashed in the present writ petition.

2. The petitioner is the Principal Commissioner of Income Tax, Central-2, Chennai.

3. The facts in nutshell as narrated in the affidavit filed in support of the writ petition are that the petitioner/Income Tax Department conducted search and seizure operation under

Section 132(4) of the Income Tax Act on 10.01.2013 at the registered office premises of the 1st respondent and residential premises of the Directors of the first respondent. During the search, huge amount of tax evasion by the first respondent Company was found. Survey u/s 133A was also conducted in the group concerns of the 1st respondent and sworn statements were recorded from Mr.S.Senthilnathan-Finance Director, Mr.Rajendran.

4. After search, Notice u/s 153A dated 23.09.2013 was issued to the 1st respondent for filing Return of Income for Assessment Year 2007-08 to 2012-13 and on 28.02.2014, the 1st respondent filed ROI. Thereafter, the 1st respondent filed Application u/s 245C for Settlement before the 2nd respondent on 27.03.2014.

5. The petitioner states that the first respondent has not made true and full disclosure of their income in the application as mandated under Section 245C(1) of the Act. This was clearly brought out in different reports including Rule 9 Report submitted before the 2nd respondent from time to time in the course of proceedings. Further, the second respondent has not considered the admission made by the Directors of the 1st respondent in their sworn statement made under Section 132(4), though the same was specifically brought out in the Rule 9 Report. However, the second respondent by the impugned order dated 14.09.2015 had directed the 1st respondent to disclose further additional income to the tune of Rs.7.70 crores under different heads including further disallowance under Section 14A for Rs.57.20 lakhs and granted immunity from prosecution and penalty.

6. The petitioner states that the impugned order restricting the disallowance of expenses u/s.14A is incorrect and erroneous because the disallowance made in the original assessment order for 2008-09 and 2009-10 were not based on the average value of entire investment in the exempt/tax free income during the year as provided under Rule 8-D(2)(iii) and admittedly there is no separate income attributable to the term loans availed for the purpose of godown, plant etc., unlike the term loans availed for wind mill which fetches income or receipt directly attributable to the total income from the wind mill. Hence the expenditure incurred on payment of interest directly attributable to a particular income or receipt alone is eligible for deduction in terms of Rule 8D(2)(ii), which impliedly excludes payment of interest NOT directly attributable to any particular income or receipt. Moreover, the immunity from prosecution and penalty u/s 245H is available only to the person who has made full and true disclosure but as stated earlier the 1st respondent failed to disclose fully and truly. Accordingly, the petitioner prayed for quashing of the impugned order dated 14.09.2015.

7. The first respondent disputed the contention raised by the petitioner by stating that the writ petition itself is not maintainable. It is an abuse of process of law. Regarding the orders passed by the Settlement Commission under Section 245D of the Income Tax Act, the scope of writ petition under Article 226 of the Constitution of India is limited and the High Court can interfere only in exceptional circumstances. High Court cannot substitute its views in the place of the second respondent/Settlement Commission particularly on the question of true and full disclosure and complexities of the case. It is contended that the interference can only be made if there is fault in the decision making process and not with the decision itself. Thus, the High Court cannot interfere with the conclusion arrived by the Settlement Commission save any procedural irregularity cited by the petitioner. It is contended that the petitioner is not an aggrieved person by the decision making process or the procedural irregularity of the second respondent in coming to a conclusion and arriving at the terms of settlement as under Section 245D(4) of the Act. The second respondent has considered all the submissions, records and evidences and passed a detailed order, after providing appropriate reasons. Therefore, the writ petition is liable to be dismissed.

8. The first respondent contended that the sole grievance of the petitioner stems out of factual matters which have been duly considered by the second respondent after a thorough enquiry and a detailed 'speaking order' has been passed by the second respondent in this regard. Therefore, the factual disputes now raised by the petitioner deserve no merit adjudication. The second respondent had gone into all the disclosures, evidences and the confidential report submitted by the second respondent as well as the objections filed by the petitioner/Department under Rule 6, Rule 9 and the Joint Verification Report along with replies thereto furnished by this respondent. Therefore, there is no necessity for re-appreciation of the settled disputes which would not fall under the scope of Article 226 of the Constitution of India. In support of the said contention, the first respondent relied on the following decisions:

a.R.B.Shreeram Durga Prasad v.Settlement Commission and Anr. 1989 1SCC 628

b.Jyotendrasinhji v. S.L.Tripathi & Ors. 1993(3) SCC 38

c.Shriyans Prasad Jain v. Income Tax Officers and Ors. 1993 Supp.4 SCC 727.

d.Union of India and Others v. Ind-Swift Laboratories 2011(4) SCC 635.

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

f.R.Chitra v.ITSC-WP.No.34786 of 2015 [Hon'ble High Court of Madras]

g.CIT v. M/s.Adhiparasakthi Chritable, Medical, Educational and Cultural Trust-W.P.No.34040 & 34041 of 2014 ['Hon'ble High Court of Madras]

9. The first respondent, regarding the disallowance of Section 14A, contented that the disallowance under Section 14A of the Act cannot form part of proceedings as under Section 153A of the Act, in the absence of any incriminating material found during the search. In this regard, the decision of the Hon'ble High Court of Bombay in the case of Commissioner of Income Tax-20 vs. Deepak Kumar Agarwal [2017] 86 taxmann.com 3(Bombay) is relied, wherein it is held that an assessment under Section 153A of the Act can be made only on basis of incriminating material found in search u/s 132 of the Act and only income related to incriminating documents found during search can be considered in assessment. In the present case, no incriminating material was found with respect to disallowance under Section 14A of the Act. The petitioner has further elaborated the factual details with reference to disallowance. At the outset, it is contended that the orders passed by the second respondent/Settlement Commission is a consider and speaking order and all the facts and circumstances raised between the parties have been adjudicated elaborately in connection with the documents and evidences. Therefore, the writ petition is to be dismissed.

10. The learned counsel for the respondents reiterated that the writ petition is to be dismissed on the ground of delay and latches. The case involves multiple question of fact and the impugned order of the second respondent is challenged, despite the fact that it is a reasoned 'speaking order' which is not subject to the judicial review. The disallowance under Section 14A affirmed by the second respondent is based on a settled proposition of law wherein interest expenditures directly attributable to any particular income shall be excluded from the calculation under Rule 8D(2)(ii).

11. The learned counsel for the petitioner solicited the attention of this Court with reference to the findings made in the impugned order dated 14.09.2015.

12. It is contended that the respondent filed single application to settle the disputes for the assessment years 2007-08 to 2012-13 (i.e) for seven years. Undoubtedly, an assessee is at liberty to file single application for multiple assessment years for settling the disputes under Section 245C of the Income Tax Act. However, it is pointed out that the additional incomes offered before the Income Tax Settlement Commission, Additional Bench for the assessment years 2007-08 and 2013-14 are nil.

Drawing inference, the learned Senior Standing Counsel appearing for the petitioner contended that when the additional incomes offered are nil with reference to two assessment years, question of assessment would not arise at all. Thus, the very single application filed for seven assessment years is perverse and untenable.

13. It is not in dispute that for entertaining an application for settlement under Section 245C of the Income Tax Act, the assessee must disclose true and full income enabling the Commission to settle the issues. If any non-disclosure is identified during the course of proceedings, that itself is sufficient to reject the application in limine. The Commission is not empowered to proceed further as in the event of identifying non-disclosure of income, since the Assessing Officer is the Authority to proceed with reassessment. The learned Senior Standing Counsel appearing for the petitioner relied on paragraph No.3.1.2 of the impugned order regarding the contentions of the CIT(DR), wherein it is categorically stated that "the Commissioner, in her report, has questioned the trueness of disclosure made by the appellant before the Hon'ble Income Tax Settlement Commission". Various facts and circumstances were narrated elaborately to establish that the assessee filed the application under Section 245C of the Act without disclosing the true and full income and requested for rejection of the application.

14. In order to establish that the pre-condition for entertaining the application under Section 245C was not fulfilled by the first respondent, the learned Senior Standing Counsel appearing for the petitioner referred the findings made by the second respondent/Settlement Commission in the impugned order, wherein paragraph No.9.1 deals with Bogus Purchases which reads as under:

9.1.Bogus Purchases

9.1.1. This relates to a list of grower farmers who are real but whose names and identities have been used by the Company to book bogus purchases/cultivation expenses. In the search action u/s 132 of the I.T Act 1961 conducted in the case of the applicant on 10.01.2013, certain excel sheets were found in the computer terminal used by Shri.Saravanan, Assistant Manager (IT) which contained details of grower farmers. These excel sheets were printed and were seized as loose sheets vide Ann./RS/ASD/LS/S-1, pages 12-31, 37-45 and 46-58 dated 10.01.2013. The amounts found in the excel sheets (bogus purchases) work out as under:

S.No.	Particulars of seized materials	Period to which it relates	Amount (Rs.)
1	ANN/RS/ASD/LS/S-1 pages 12-31 dated 10/01/2013	FY 2012-13	7,41,15,020
2	ANN/RS/ASD/LS/S-1 pages 37-35 dated 10/01/2013	FY 2011-12	4,62,17,090
3	ANN/RS/ASD/LS/S-1 pages 46-58 dated 10/01/2013	FY 2010-11	3,59,23,080

15. The petitioner relied on paragraph Nos.9.1.18 and 9.3.3 of the impugned order which reads as under:

9.1.18. The applicant has submitted the following details on the list of 1590 codes given by the Department in their letter dated 31.08.2015:

Total number of codes given by the Department	1590
Less: Duplicate codes	81
Codes having no transactions	158
Farmer codes having transaction	239

	1351

The total purchases in regard to the codes identified for the period from F.Y 2006-07 to 2012-13 amounted to Rs.30,45,25,023/- which the Department would like to treat as bogus purchases. Two major flaws have been pointed out by the applicant. The first is the bogus farmers codes given by the applicant at the time of filing the application are continuous in nature i.e., one code appearing after another in a chronological manner. It was pointed out by the applicant that the above farmer codes of 1351 are not continuous in nature and therefore are distinguishable from the bogus farmer codes submitted by the applicant at the time of filing of the application. The second flaw that has been pointed out by the applicant is that the bogus farmers codes in their case do not appear in all the years. There may be thus according to the applicant, farmer having a particular code no may be only once in a span of years from 2007-08 to 2013-14. When this yardstick is applied we find that the 657 codes are appearing in all the years and therefore they are different from the bogus farmers list of which has

been submitted by the applicant before the Commission. The arguments of the applicant of the balance codes amounting to 694 having a value of 5.16 crores appear to be weak as we note that they have transactions only in one year out of seven years before us. Accordingly, we pointed to the AR that a portion of purchases from farmers having these 694 codes remained doubtful. The AR submitted that the applicant in a spirit of settlement offers additional income of Rs.6 crores @ one crore for each year from AYs 2007-08 to 2013-14.

9.3.3. Subsequently, at our instance, the applicant filed another letter dated 31.08.2015 furnishing details of the actual amount incurred and claimed by the applicant and also offering additional income being excess claim u/s 35(2AB) and actual amount allowed by DSIR in which the amount which is required to be disallowed and added to income Asst year wise is as under:

AY	Capital Expenditure			Revenue Expenditure		
	Actual amount incurred by the & claimed	Amount allowed by the Authority	Excess claim	Actual amount incurred by the & claimed	Amount allowed by the Authority	Excess claim
2012-13	161.11	155.19	11.84	1485.55	1449.62	35.93
2013-14	263.38	263.38	Nil	1843.71	1777.8	65.89

16. Relying on the said findings, the learned Senior Standing Counsel appearing for the petitioner contended that there are many facts and circumstances which would reveal that the petitioner has not disclosed true and full income as contemplated under Section 245C of the Act for the purpose of entertaining the application for settlement. The second respondent/Settlement Commission also consciously aware of the fact that the additional incomes were brought to the notice of the Commission during the process of proceedings. The finding at paragraph No.9.1.18 reveals that "the applicant in a spirit of settlement offers additional income of Rs.6 crores @ one crore for each year from AYs 2007-08 to 2013-14". The said findings in the impugned order would clarify that the first respondent offered additional income of Rs.6 crores. Thus, it is unambiguous that the application under Section 245C was filed without disclosing true and full disclosure of income. When the additional income of Rs.6 crores is offered during the progress of proceedings before the Settlement Commission, then an inference is to be drawn that the first respondent has not

approached the settlement commission with clean hands and suppressed the income and not filed the application with full and true disclosure of income.

17. The conduct of the first respondent is established through the findings made in the impugned order in paragraph No.9.3.3, wherein the first respondent filed another letter dated 31.08.2015 furnishing details of the actual amount incurred and claimed by the applicant and also offering additional income being excess claim u/s 35(2AB) and actual amount allowed by DSIR in which the amount which is required to be disallowed and added to income. Accordingly, the amount to be added for AY 2012-13 will be $11.84 + 35.93 = 47.77$ lakhs and for assessment year 2013-14, it will be 65.89 lakhs.

18. The above facts elaborated would be sufficient to arrive a conclusion that the first respondent filed an application under Section 245C of the Act without disclosing true and full income for the purpose of settling the disputes. Thus, this Court has no hesitation in arriving a conclusion that the first respondent has not approached the second respondent with clean hands and not filed an application with true and full disclosure of the income for the purpose of settling the issues.

19. In this regard, the Hon'ble Supreme Court of India in the case of Ajmera Housing Corporation vs. Commissioner of Income Tax reported in [2010] 193 Taxman 193 (SC) held as follows:

22. It is clear that disclosure of "full and true" particulars of undisclosed income and "the manner" in which such income had been derived are the pre-requisites for a valid application under Section 245C(1) of the Act. Additionally, the amount of Income-Tax payable on such undisclosed income is to be computed and mentioned in the application. It needs little emphasis that section 245C (1) of the Act mandates "full and true" disclosure of the particulars of undisclosed income and "the manner" in which such income was derived and, therefore, unless the Settlement Commission records its satisfaction on this aspect, it will not have the jurisdiction to pass any order on the matter covered by the application".

20. In the case of Canara Jewellers vs. Settlement Commission reported in [2009] 184 Taxman 491 (Madras), the Division Bench of this Court held as follows:

8. The provision of Section 245C of the Income Tax Act, 1961 fell for consideration before the Supreme Court and High Courts from time to time. In C.I.T. vs. Express Newspapers Ltd., (1994) 206 I.T.R. 443 (SC),

the Supreme Court held that in an application under Section 245C of the Act, for settlement of applicant's income-tax case, there should be disclosure of income not earlier disclosed before the Assessing Officer. If the Assessing Officer or the income-tax authority has already discovered it and either has gathered the material to establish the particulars of such income or fraud fully or is at a stage of investigation/enquiries, then the disclosure cannot be said to be voluntary or in good faith and the assessee cannot be allowed to take advantage of the comparatively easy course of settlement. The scope of Section 245C of the Income Tax Act, 1961 was also noticed by this Court in *Ace Investments Ltd. vs. Settlement Commission*, (2003) 264 I.T.R. 571 (Mad), wherein a learned single Judge of this Court held that full and true disclosure of income by the assessee is a condition precedent for settlement of cases and for grant of immunity from penalty and prosecution. Sections 245C and 245H of the Income Tax Act, 1961 contemplate full and true disclosure by the applicant of income and the manner in which such income has been derived. When once it is held that an application filed for settlement of cases is not maintainable on the ground that the applicant has not made full and true disclosure of the income, proceeding with such application and deciding the issue would be outside the power of the Settlement Commission, as the application itself is not in conformity with Section 245C(1) of the Act. A similar view was expressed by a Division Bench of this Court in *Dr. C.M.K. Reddy vs. Settlement Commission*, (2008) 306 I.T.R. 403 (Mad).

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

21. This Court in W.P.No.16552 of 2004 delivered a judgment in the case of *Commissioner of Income Tax vs. Income Tax Settlement Commission* dated 09.04.2021 and the relevant paragraphs are extracted hereunder:

17. Thus, let us consider the scope as well as the powers of the Settlement Commission to entertain an application under Section 245(C) of the Income Tax Act. When the Section in unambiguous terms contemplates that the application in such form and in such manner as may be prescribed containing a "full and true disclosure" alone is entertainable, then it becomes a pre-requisite condition for entertaining an application under Section 245(C). The phraseology 'full and true disclosure of his income' is contemplated in Section 245(C)(1) itself. Thus, it is for the assessee to establish at the first instance that the application contains full and true disclosure of the income. Once the said factum is established, then alone the question of settlement would arise and not otherwise.

29. The very concept of settlement is depending on the mutual consensus and in the absence of element of mutual consensus between the parties, the settlement by the Settlement Commission cannot be unilateral and in such an event, Settlement Commission is usurping the powers of the Assessing Officer under other provisions of the Act. In other words, every authority under the Income Tax Act, 1961 is expected to exercise the powers as contemplated.

34. The very factum that there are additional disclosures of income during the pendency of the Settlement Commission, which were not made available at the time of application by the assessee under Section 254C of the Act there is a sufficient cause to reject the application under Section 245C of the Act. The very spirit of the provision is that the application must contain full and true disclosure of income. Once it is established that the application does not contain full disclosure of income and additions are made during the pendency of the application, it is sufficient to arrive a conclusion that the application made by the assessee is not in consonance with the provisions of Section 245C of the Act and therefore, the same is liable to be rejected in limine. Contrarily, in the present case, the Settlement Commission travelled beyond the scope of Section 245C of the Act and adjudicated the additional income disclosed and further gone to the extent of settling the issues based on the additional income, which were not disclosed at the time of filing of an application under Section 245C of the Act.

22. In view of the fact that the petitioner could able to establish that the first respondent has not approached the second respondent/Settlement Commission with true and full disclosure of his income and during the course of proceedings, offered additional income and the findings of the Settlement Commission would also confirm the same, the said offerings of the additional income would be sufficient for the purpose of arriving a conclusion that the first respondent filed an application under Section 245C of the Act without disclosing true and full income. Thus, the second respondent/Settlement Commission ought to have rejected the application, at the stage when it noticed that the first respondent has not disclosed true and full facts which was not done. Thus, the Settlement Commission has committed an error apparent and allowed the application filed by the first respondent which is in violation of the provisions of the Act. Thus, the order impugned passed by the second respondent in proceedings dated 14.09.2015 is quashed and the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssb
To

The Income Tax Settlement Commission,
Additional Bench,
No.640, Anna Salai, Nandanam,
Chennai-600 035.

+1cc to Mr.R.Sivaraman, Advocate Sr.26606
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