ORDER SHEET

APO 142 of 2018
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

COMMISSIONER OF INCOME TAX, KOLKATA XX
Versus
INCOME TAX SETTLEMENT COMMISSION AND SARMILA GHOSH

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

Date : 21st September, 2023.

Mr. Vipul Kundalia, Adv.
Mr. Amit Sharma, Adv.
Mr. Anurag Roy, Adv.
Ms. Oindrila Ghosal, Adv.
...for the Appellant
Mr. Sanjay Bhaumik, Adv.
Mr. Saumya Kejriwal, Adv.
Mr. G.S. Gupta, Adv.
...for the respondent

The Court : The appeal is directed against the order dated September 2, 2014 passed in WP 496 of 2014. By the impugned order, learned Single Judge referred to a decision of a coordinate Bench of the learned Single Judge in another matter and dismissed the writ petition in view of the position of law laid down by the Single Judge in the other matter.

In the facts of the present case, a writ petition was filed at the behest of the department challenging the order of the Settlement Commission dated August 14, 2013. By the order dated August 14, 2013, the Settlement Commission entertained a request for initiation of Settlement Commission for the assessment years 2011-12, 2012-13 and 2013-14.

The writ petitioner/appellant challenged the order dated August 14, 2013 of the Settlement Commission limited to the years 2012-13 and 2013-14.

Learned advocate appearing for the appellant submits that, the assessee did not file return for the assessment year 2012-13 and 2013-14. Therefore, the assessee does not come within the purview of Section 139(1) of the Income Tax Act, 1961. No notice under Section 142(1) was issued to the assessee for such assessment year. Therefore, there is no scope of assessment of the assessee for the two relevant assessment years as contemplated under Section 143. Consequently, Section 153 of the Act of 1961 was not attracted since there can be no time limit for assessment as the provision for assessment was not applicable. Since no assessment or proceeding for assessment was pending, explanation to (iv) to clause (b) of Section 245A was not attracted. Consequently, since no proceeding for assessment was pending, Section 245C was not attracted. Therefore, the

Settlement Commission could not assume jurisdiction in respect of those assessment years.

Learned Single Judge referred to a decision of another learned Single Judge dated August 1, 2011 rendered in WP 341 of 2011. Learned Judge held that His Lordship was bound by the decision of the coordinate Bench.

In WP 341 of 2011, it was held that if the time period to make an assessment did not expire on the date on which the settlement commission was made, the commission may entertain and proceed with the same irrespective of whether the income tax return was filed or not.

We are informed, that during the pendency of the appeal, the Settlement Commission passed final order of settlement in respect of the two assessment years. The assessee accepted the final order passed by the Settlement Commission and paid tax in accordance therewith. The department did not assail the final order of settlement. The final order of settlement is dated December 19, 2014.

A period of nine years elapsed since the final order was passed by the Settlement Commission without the same being assailed by the parties thereto.

In such circumstances, we are not minded to interfere with the appeal. Points of law raised are kept open.

APO 142 of 2018 is disposed of without any order as to costs.

(DEBANGSU BASAK, J.)

(MD. SHABBAR RASHIDI, J.)

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