

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.569 OF 2020**

Principal Commissioner of Income Tax
(Central) 4, Mumbai

....Petitioner

V/s.
Goldsukh Developers Pvt Ltd. & Anr

...Respondents

Mr. Suresh Kumar for Petitioner.

Mr. Jas Sanghavi a/w Mr. Ansh Agal i/b PDS Legal for Respondent No.1.

**CORAM : K.R. SHRIRAM &
FIRDOSH. P. POONIWALLA, JJ
DATED : 10th JULY 2023**

P.C. :

1 Petitioner is aggrieved by an order dated 15th January 2019 passed by respondent no.2, Income Tax Settlement Commission (Commission), rejecting petitioner's application for rectification under Section 245D(6B) of the Income Tax Act 1961 (the Act).

2 Respondent no.1 had filed an application before the Commission and the application of respondent no.1 came to be disposed by an order dated 20th September 2016. For the purpose of this petition, we need not go into the events that happened prior to respondent no.1 filing its application before the Commission. By its order dated 20th September 2016 (the said order) the Commission had allowed the application of respondent no.1 under Section 245D(4) of the Act. The said order was challenged by the Revenue by way of Writ Petition being Writ Petition No.1004 of 2017 (the

said writ petition). The challenge in the petition was on the ground that there was failure on the part of respondent no.1 to make full and true disclosure of income. Respondent no.1 raised preliminary objection on the ground that the said order was passed by consent of both petitioner and respondent no.1. In the said order, it was recorded as under:

“Accordingly, it was decided to accept the voluntary offer by the applicant to peg the additional income on account of on money at Rs. 27 crores (including the on money amounting to Rs.9,51,92,517/- offered in the SOF) + Rs. 10 lakhs offered as income from sale of scrap and miscellaneous receipts (offered in the 27,10,00,000/- out SOF) of aggregating which income to of Rs.25,69,781/- has already been offered in the return of income for AY 2014-15 filed before the AO. Hence, the aggregate income is computed at Rs.26,84,30,219/- (27,10,00,000/- - 25,69,781/-). There was no objection from the Department as well as the applicant on this estimation. This suo motu offer in no way detracts from the character of full and true disclosure. Both the sides have agreed to this addition, and the applicant, vide its letter dated 07.09.2016 filed on 08.09.2016 has accepted the same and have provided the bifurcation assessment year wise. This settles all the issues in the applicant's case, and the case is settled accordingly.”

It was petitioner's case in the said writ petition that the settlement recorded by the Commission on the consent of the parties is to be ignored because that did not reflect the correct position. It was the case of Revenue that it had consistently opposed the application of respondent no.1 for settlement in view of the alleged failure to make full and true disclosure of income. This stand of Revenue was rejected by the court by relying upon judgment of the Apex Court in ***State of Maharashtra Vs. Ramdas Shrinivas Nayak and Anr.***¹, paragraph 4 of the said judgment reads as under:

*“4. We find that the Supreme Court in **State of Maharashtra Versus. Ramdas Shrinivas Nayak and another**, reported in (1982) 2 Supreme Court Cases 463 , the Apex Court had observed in para-4 as under :-*

1. (1982) 2 Supreme Court Cases 463

“4. When we drew the attention of the learned Attorney General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public Policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation". [(1) Per Lord Atkinson in Somasundaran v. Subramanian, A.I.R 1926 P.C. 136] . We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. (2) (Per Lord Buckmaster in Madhusudan v. Chanderwati, A.I.R. 1917 P.C. 30) . That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an appellate Court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.”

5 This court rejected the petition holding that it was not open to the Revenue to challenge the correctness of the fact recorded in the said order by the Commission particularly when it was not even remotely the case of Revenue that the consent was given / made on a wrong appreciation of law. The court of course held that remedy for Revenue would be to move the Commission to correct what according to Revenue was an incorrect recording of consent in the impugned order. Following this, petitioner filed

an application under Section 245D(6B) to the Commission to rectify. By the impugned order dated 15th January 2019, the Commission dismissed the application of petitioner. The Commission came to the conclusion that even if it excluded the time spent pursuing the writ petition from 10th February 2017 to 21st June 2018, still the rectification application had been filed beyond the six months period stipulated in Section 245D(6B) and was thus barred by limitation. We find no error in finding of the Commission. Paragraph 6 of the impugned order reads as under:

“6. We have heard both the sides and have perused the material on record. We would deal first with the maintainability of the rectification application moved by the Pr CIT. We find that the Order u/s 245D(4) in the instant case was passed on 20.09.2016 and the time available for filing rectification application was upto 31.03.2017. We also find that the Department filed Writ Petition before the Hon'ble Bombay High Court on 10.02.2017 and the Hon'ble High Court dismissed the Writ Petition vide order dated 21.06.2018. We have gone through the decision of the Hon'ble Supreme Court in the case of M.P. Steel Corporation (supra) wherein it was held in the context of limitation period available for filing appeal under the Customs & Central Excise Act, that the period spent on pursuing an alternate remedy may be excluded from the limitation period for preferring an appeal. Even though the decision is under a different statute and in the matter of an appeal, we are in agreement with the Pr.CIT that the principles laid down by the Apex Court, apply to the facts of the instant case. Accordingly, we hold that after excluding the period for pursuing Writ Petition from 10.02.2017 to 21.06.2018, the time available with the Department to file rectification application u/s 245D(6B) was upto 21.07.2018 {i.e. from 01.10.2016 to 09.02.2017. (4 months and 9 days) and from 22.06.2018 to 21.07.2018 (51 days)}. However, the rectification application has been filed on 22.11.2018 which is clearly beyond the stipulated period of six months allowed under the provisions of section 245D(6B) and is, thus, barred by limitation. We therefore, reject the application in limine.”

6 Though it was not argued before us and we would keep it open to decide in a proper case, we have our own reservations as to whether the grievance raised by petitioner before the Commission and in the said Writ

Petition that the consent as recorded was not given would qualify to be a “mistake apparent from the record” which is the only thing the Commission may rectify.

7 Petition dismissed.

(FIRDOSH P POONIWALLA, J.)

(K.R. SHRIRAM, J.)