IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.Nos.16785, 16790 and 16794 of 2020
and
W.M.P.Nos.20799, 20802& 20805 of 2020

The Principal Commissioner of Income Tax,
Central -2, Chennai.
Investigation Wing, Room No.301,
3rd Floor, New No.46, Mahatma Gandhi Road,
Chennai – 600 034. ...Petitioner in all W.Ps.

Vs.

1. The Income Tax Settlement Commission,
Additional Bench,
640, Anna Salai, Nandanam,
Chennai – 600 035.

R-1 in all W.Ps.

2. R.P.P. Infra Projects Ltd.,
S.F.No.454, Raghupathynaicken Palayam,
Poondurai Road, Railway Colony Post,
Erode, T.N.- 638 002.
PAN : AAACR9307E. ...R-2 in W.P.No.16785/2020

3. M/s.RPP Readymix
312, N.G.Palayam, Mullamparappu,
Erode, T.N. 638 115.
PAN : AAMFR0472P. ...R-2 in W.P.No.16790/2020

4. M/s.RPP Blue Metals,
156, N.G.Palayam, Mullamparappu,
Erode, T.N. 638 115.
PAN : AALFR0027M.

...R-2 in W.P.No.16794/2020

Prayer in W.P.No.16785 of 2020

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records from the file of the first respondent in Settlement Application No.TN/CN 52/2017-18/70/IT dated 20.06.2019 and to quash the same.

Prayer in W.P.No.16790 of 2020

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records from the file of the first respondent in Settlement Application No.TN/CN 51/2017-18/86/IT dated 29.07.2019 and to quash the same.

Prayer in W.P.No.16794 of 2020

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records from the file of the first respondent in Settlement Application No.TN/CN 51/2017-18/87/IT dated 29.07.2019 and to quash the same.

Appearance of the counsel in all W.Ps.

For Petitioner	:	Mr.A.N.R.Jayaprathap
For Respondent-1	:	Commission
For R-2 in W.P.No.16785/2020	:	Mr.N.V.Balaji
For R-2 in W.P.No.16790 &16794/2020	:	Mr.A.S.Sriram

COMMON ORDER

The petitioner has filed these Writ Petitions challenging the orders passed by the first respondent, Income Tax Settlement Commission dated 20.06.2019 and 29.07.2019.

2. Since a common issue arise for consideration in all these Writ Petitions, they were heard together and disposed of vide this Common Order. However, Writ Petition No.16785 of of 2020, is taken as a lead case, and it would suffice to note the facts stated thereunder, which are as follows:-

i) The second respondent, assessee-Company is engaged in the business of infrastructure development. A search was conducted on 24.03.2016 in various premises of the second respondent/assessee Company, pursuant to which, a notice under Section 153 A was issued to the second respondent/assessee for AY 2010-11 to 2015-16 and the second respondent-assessee, on receipt of such notice, filed Income Tax Returns, however, for AY 2016-17, assessment proceedings were pending and during the course of such proceedings, the second respondent/assessee filed Applications before first respondent, Income Tax Settlement Commission (hereinafter, referred to as respondent-Commission) and the respondent-Commission vide impugned order accepted the additional income admitted by the second respondent-assessee and granted immunity from prosecution to the petitioner. Against which, the present Writ Petitions are filed by the petitioner and other aggrieved persons, who are petitioners in W.P.Nos.16790 and 16794 of 2020.

3. The learned counsel appearing for the petitioner would submit that the second respondent-assessee approached the first respondent-Commission in terms of Section 245 C of the Income Tax Act, 1961 (for short, 'I.T.Act') and thereafter, the issue was taken on record and the first respondent-Commission called for reply from the second respondent-assessee and the second respondent also submitted their replies and after considering the reply, the respondent-Commission passed orders granting immunity under Section 245 H of I.T.Act. The learned counsel submitted that the main grievance of the petitioner-Department is that on merit, they have furnished all materials with regard to omission and commission on the part of the second respondents-assessees, however, none of the materials furnished by the petitioner were taken note of by the respondent-Commission. However, the learned counsel fairly admitted the fact that there was no procedural lapse in the decision making process of the respondent-Commission, insofar as provisions contained in Section 245 C & D of I.T. Act and the only aspect, on which, the learned counsel raised his objection is with regard to non consideration of reply filed by the petitioner by the respondent-Commission.

4. On the other hand, the learned counsel for the second respondents- assessees would contend that there was no procedural lapse on the part of the respondent-Commission in the decision making process as the respondent-Commission has duly complied with the provisions under law in terms of Section 245 B and C of I.T.Act and thereafter, passed orders under Section 245 B, and as long as there is no violation of the provisions of the Act on the part of the respondent-Commission, Writ Court cannot interfere with the order passed by Commission, since the power conferred under Article 226 of the Constitution to a Writ Court is limited. In support of his contention, the learned counsel placed reliance on a decision rendered by the Hon'ble Supreme Court in the case of **Jyotendrasinhji Vs. S.L.Tripathi,** reported in **(1993) 68 Taxman 59 (SC)** and submitted that unless and until, there is any procedural lapse on the part of the Settlement Commission, there is no scope for review of the decision passed by the Settlement Commission, in view of the law laid down in the aforesaid decision. The learned counsel for respondent-assessees further relied on a recent decision rendered in **Kotak Mahindra Bank Ltd. Vs. Commissioner of Income Tax, Bangalore and another, in Civil Appeal No.9720 of 2014, dated 25.09.2023,** wherein, the Hon'ble Supreme Court has relied on its intra Court's decision rendered **in Jyotendrasinhji's case (cited supra).**

5. I have taken into consideration the submissions made by the learned counsel for the petitioner and the second respondents-assessees and perused the materials placed on record.

6. At the first instance, it would be apposite to refer to the provisions contained in Section 245 C of I.T. Act, which is extracted hereinbelow:-

> “..An assessee may, at any stage of a case relating to him, make an application in such form and in such manner and containing such 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"

7. Thus, as per the above referred provisions, second respondents-assessees approached the respondent-Commission to avail one time immunity benefit, which is available under Section 245 C of I.T. Act; that the second respondent filed applications to settle the issues; that before the Settlement commission, the second respondents-assesseee have duly disclosed all the aspects as enshrined under the Act and the respondent-Commission has also accepted the same and thereafter, directed the petitioner-Income Tax Department to file their reply; that the petitioner-Department also filed their reply and after taking into consideration of the reply only, the first respondent-Settlement Commission passed the impugned orders, which would go to show that there is no violation of any of the procedures prescribed under the Act by the Commission (which fact was even fairly admitted by the learned counsel for the petitioner-Income Tax Department) and similarly, there is no fault in the decision making process of the respondent-Commission, since the respondent-Commission passed order only after taking into consideration of the reply filed by the petitioner.

7.1 Therefore, as rightly pointed out by the learned counsel for the respondents-assessees, unless and until, there is any procedural lapse on the part of the Settlement Commission, the orders passed by Commission cannot be interfered with by the High Court, while sitting under Article 226 of the Constitution since the power granted thereunder is very limited, and the High Court can interfere only with legality of the procedure and not with the validity of the order, in view of the ratio laid down by the Hon'ble Supreme Court in the decision rendered in **Jyotendrasinhji Vs. S.L.Tripathi, (**referred to supra).

7.1 Further, this Court is of the view that benefit available under Section 245 C read with Section 245 K (ii) is a right provided for an assessee to avail onetime immunity benefit during his lifetime under the said provisions, which the second respondents-assessees have legally exercised the same and the benefit of the such right will accrue to the assessee, if the assessee had scrupulously followed all the procedures laid down under the Act and in the present case, the second respondents-assessees have duly followed all the procedures prescribed under the Act and the respondent-Commission also passed orders by duly following the principles laid down under the Act and there is no dispute over the same and hence, this Court do not find any reason to interfere with the orders passed by the respondent-Commission by reconsidering the issue, since the power conferred under Article 226 of the Constitution is limited, as per the law laid down by the Hon'ble Supreme Court in **Jyotendrasinhji Vs. S.L.Tripathi, (**referred to supra), which intra Court's decision was followed in **Kotak Mahindra Bank Ltd. Vs. Commissioner of Income Tax, Bangalore and another, in Civil Appeal No.9720 of 2014, dated 25.09.2023. For better appreciation, the relevant para from the above referred two decisions are extracted herebelow under the caption 'A' and 'B' respectively:-**

'A'

"...the scope of enquiry in the Appeal remains the same, whether it is contrary to any of the provisions of the Act and in this context, it is relevant to note that the principle of natural justice [audi alteram parterri (sic)] has been incorporated in section 245 D itself. The sole overall limitation upon the Commission, thus, appears to be that, it should act in accordance with the provisions of the Act. The scope of enquiry whether by High Court under Article 226 or by this Court under Artcile 136 is also the same" and whether the order of the Commission is contrary to any of the provisions of the Act and if so, apart from the ground of bias, fraud, and malice, which, of course, constitute a separate and independent category has it prejudiced the petitioner/appellant. Reference in this behalf may be had to the decision of this Court in R.B. Shreeram Durga Prasad and Fatechand Nursing Das Vs. Settlement Commission [1989] 176 ITR 169, which too was an appeal against the orders of the Settlement Commission (two Bench Comprised of) observed that in such a case this Court is concerned with the legality of procedure followed and not with the validity of the order.

'B'

"In the present case, as noted above, we find that the appellant placed material and particulars before the Commission as to the manner in which income pertaining to certain activities was derived and has sought to offer such additional income to tax. Based on such disclosures and on noting that the appellant co-operated with the Commission in the process of settlement, the Commission proceeded to grant immunity from prosecution and penalty as contemplated under Section 245H of the Act. The High Court ought not to have sat in appeal as to the sufficiency of the material and particulars placed before the Commission, based on which the Commission proceeded to grant immunity from prosecution and penalty as contemplated under Section 245H of the Act. 10. We are fortified in our view by the judgment of this Court in Jyotendrasinhji vs. S.I. Tripathi, 1993 Supp (3) SCC 389, wherein it was observed that a Court, while exercising powers under Articles 32, 226 or 136 of the Constitution of India, as the case may be, may not interfere with an order of the Commission, passed in exercise of its discretionary powers, except on the ground that the order contravenes provisions of the Act or has caused prejudice to the opposite party. Interference may also be open on the grounds of fraud, bias or malice. 35 Therefore, this Court has carved out a very narrow scope for judicial review of the Commission's orders, passed in the exercise of its discretionary powers. Hence, we hold that sufficiency of the material and particulars placed before the Commission, based on which the Commission proceeded to grant immunity from prosecution and penalty as contemplated under Section 245H of the Act, are beyond the scope of judicial review, except under the circumstances set out in Jyotendrasinhji vs. S.I. Tripathi (supra). 11. We find that the judgment of this Court in Express Newspapers Ltd. (supra), sought to be relied upon by the Respondents, would not come to their aid in the present case. It is to be noted that the said judgment turns on its own facts. In the said case, the income tax authorities had made extensive investigation and inquiry, whereby they had collected voluminous material demonstrating large scale concealment of income on the part of the assessee therein. In that background, this Court observed that the assessee, having merely offered a part of such concealed income before the Commission, the application for settlement ought to have been rejected. 12. While we are mindful of the fact that the provisions of Chapter XIX-A of the Act are not to be employed so as to provide a shelter for tax dodgers to obtain immunity from facing the consequences of tax evasion by simply approaching the Settlement Commission, vide B.N. 36 Bhattacharjee (supra), we are however of the view that in the present case, the Commission rightly exercised its discretion under Section 245H having regard to the bona fide conduct of the assessee of offering additional income for tax, apart from the income disclosed in the return of income. 13. Before parting with the record, we may add that having regard to the legislative intent, frequent interference with the orders or proceedings of the Settlement Commission should be avoided. We have already indicated the limited grounds on which an order or proceeding of the Settlement Commission can be judicially reviewed. The High Court should not scrutinize an order or proceeding of a Settlement Commission as an appellate court. Unsettling reasoned orders of the Settlement Commission may erode the confidence of the bonafide assessees, thereby leading to multiplicity of litigation where settlement is possible. This larger picture has to be borne in mind."

7.2 Reverting back to the present case, it is an undisputed fact that there is no illegality in the procedure followed by the respondent-Commission in passing the impugned orders. Therefore, as long as the legality of the procedure followed by respondent-Commission is not questioned, this Court cannot interfere with the validity of the order passed by the respondent-Commission, since the scope of enquiry under article 226 of the Constitution is limited, by virtue of the law laid down by the Hon'ble Supreme Court in the above referred cases.

8. In the result, all the three Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed. No costs.

17.10.2023

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Index : yes/no
Neutral Citation : yes/no

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Krishnan Ramasamy,J.,

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