IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.25595 of 2019

Principal Commissioner of Income Tax Central Patna through Mr Subrato Goswami, Assistant Commissioner of Income Tax Central Circle- 3 Patna, aged about 50 years, male, son of Ajay Kumar Goswami, resident of C.R. Building, Patna.

... ... Petitioner/s

Versus

1. The Union of India through its Secretary Income Tax Settlement Commission, Kolkata having its office at 10C Middleton Street, Kolkata.
2. Dr.Md. Muntazir, Hospital Road, Siwan- 841226 (Bihar).
3. Mrs. Raihana Khatoon Hospital Road, Siwan- 841226 (Bihar).
4. Sufia Memorial Hospital Pvt. Ltd., Hospital Road, Siwan- 841226 (Bihar).
5. Cactus Pharmaceuticals Pvt. Ltd., Hospital Road, Siwan- 841226 (Bihar).

... ... Respondent/s

Appearance :

For the Petitioner/s : Mrs.Archana Sinha @ Archana Shahi, Advocate

For the Respondent/s : Mr. Ajay Kumar Rastogi, Sr. Advocate
Mrs. Kalpana Rastogi, Ad,
Ms. Smriti Singh, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-02-2024

The writ petition by the Principal Commissioner of Income Tax challenged the order dated 20.03.2019 of the Settlement Commission passed in the case of the respondent Nos. 2 to 5. The challenge is also on the ground that the Income Tax Settlement Commission (hereinafter referred to as the 'Commission') had not considered the Rule 9 report and did not permit the filing of further enquiry report before passing the final order under Section 245D(4) of the Income Tax Act (hereinafter referred to as the ‘Act’). The Department is also aggrieved with sufficient opportunity for hearing having not been afforded.

2. Before us, the learned Senior Standing Counsel, on the last occasion, contended that there was no order under Section 245D(2B) of the Act, wherein the Commission was under an obligation to call for a report within 30 days. We directed the Department to file an affidavit as to whether such an order was received or not. A supplementary affidavit has been filed on 25.01.2024 wherein, it is clearly stated that a report was called for under Section 245D(2B) of the Act by communication dated 27.11.2017, produced therein, which was replied to on 27.12.2017 and received in the office of the Commission on 12.01.2018.

3. The learned Senior Standing Counsel argued that in approaching the Commission, the assessee has to fulfill three ingredients; being (i) full and true disclosure, (ii) the manner in which such income was derived and (iii) additional amount of income tax payable on such income and such other particulars as may be prescribed. None of the ingredients are satisfied by the assessee and the report on that count has not been

considered, is the specific contention taken.

4. The leaned Senior Counsel appearing for the assessee, on the other hand, would counter the arguments with specific reference to the findings of the Commission in the impugned order. The learned Senior Counsel would also caution us that the writ petition only seeks a judicial review which does not permit this Court to look into the decision itself, but, only enables an examination of the procedure; which has been scrupulously followed by the Commission.

5. Section 245D delineates a procedure by which the Commission has to deal with an application under Section 245(C). Within seven days from the date of receipt of the application, a notice has to be issued to the assessee to show cause as to why the application should be proceeded with and after hearing the applicant, the Commission is empowered to either reject the application by order in-writing or allow it to be proceeded with. The proviso deals with an application not considered within the aforesaid period, being enabled to be further proceeded with. Sub-section(2) of Section 245D requires a copy of the order under sub-section(1) to be sent to the applicant and to the Commission. Sub-section(2A) deals with the situation prior to the amendment by the Finance Act, 2007.

Sub-section (2B) requires the Commission to call for a report from the Commissioner, with respect to applications allowed to be proceeded with. It also mandates that such report shall be placed before the Commission, within a period of 30 days from receipt of the notice. Section 245D(2C) provides that within 15 days of receipt of a report, the Commission could declare the application to be invalid, after hearing the applicant. The second proviso also requires that if no report has been furnished within the aforesaid period, the Commission shall proceed further even in the absence of the report of the Commissioner.

6. With the above provisions in the background, we look at the order passed. It is specifically stated that the order under Section 245D(1) was passed on 24.11.2017 directing the application to be proceeded with. A report was called for from the Principal Commissioner of Income Tax under Section 245D(2B), which was received after the due date. Hence, Section 245D(2C) requires the application to be proceeded with in the absence of the report, which, as admitted in the supplementary counter affidavit, reached the Commission after the expiry of 30 days. Section 245D(3)(ii), however, requires an application referred to in sub-section (2D), allowed to be further proceeded with under that sub-section, to be proceeded with

after calling for report from the Commissioner. The Rule 9 report with respect to the applicant was submitted by the office of the Commissioner, which has been dealt with by the Commission.

7. The Commission specifically extracted the objections raised in the Rule 9 report with respect to the respondent Nos. 2 and 3, who were individuals and respondent Nos. 4 and 5, Private Limited Companies; whose Directors were the respondent Nos. 2 and 3. It is also seen that the request for adjournment made on the ground of the officer being deputed for election duty, was considered and rejected. The Commission has specifically noticed that the report of the Assessing Officer was due on 28.02.2019, while the General Elections were announced only on 10.03.2019. The Department’s request to take up the case after the General Election was also found to be not permissible since the elections would be over only on 23.05.2019 and the applications were getting time barred as on 31.05.2019. The Department was also represented before the Commission.

8. We find absolutely no reason to interfere with the same on the ground of absence of reasonable opportunity of hearing having not been afforded, especially since the

Department was represented and heard as also the existence of the Rule 9 report before the Commission.

9. As we noticed, after extracting various objections raised, the same was considered by the Commission.

10. Insofar as the valuation of a building, the valuation submitted by the Valuation Cell of the Department assessed it at 6.21% above the value shown in the books of account; which was a negligible difference not permissible of additions. The contention with respect to the gifts received from the father and brother not being genuine, was negatived finding the presence of the brother, who deposed in accordance with the submission of the applicant. The gifts were also channeled through banks and the donors were close relatives of the donee, who were working abroad and had maintained NRI accounts through which the transactions were occasioned.

11. The next issue was with respect to the payments as disclosed from an agreement of sale, which were also found to be in tune with the payments received by the respondent Nos. 2 and 3. The other issues were stated to be issues in which no adverse inference could be drawn against the applicants.

12. It is reiterated that we find absolutely no reason to interfere with the order passed, especially since the procedure

under Section 245D was scrupulously followed by the Commission. We reject the writ petition leaving the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

Rajiv Roy, J: I agree.

(Rajiv Roy, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	25.01.2024
Uploading Date	06.02.2024
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