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W.P.Nos.12348 & 12349 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

W.P.Nos.12348 & 12349 of 2004

W.P.No.12348 of 2004

Alukkas Jewellery
Moghal Building,
Calicut.

.. Petitioner

VS

1.The Income Tax Settlement Commission,
Additional Bench, 488-489, Anna Salai,
Chennai – 600 035.

2.The Union of India,
Rep. By its Chairman,
Central Board of Direct Taxes,
North Block, New Delhi.

3.The Commissioner of Income Tax,
Central Cochin.

4.The Assistant Commissioner of Income Tax,
Central Circle – 2, Ernakulam.

.. Respondents

W.P.No.12349 of 2004

Alukkas Jewellery
Sai Building,
Calicut.

.. Petitioner

VS

1.The Income Tax Settlement Commission,
Additional Bench, 488-489, Anna Salai,
Chennai – 600 035.



W.P.Nos.12348 & 12349 of 2004

2.The Union of India,
Rep. By its Chairman,
Central Board of Direct Taxes,
North Block, New Delhi.

3.The Commissioner of Income Tax,
Central Cochin.

4.The Assistant Commissioner of Income Tax,
Central Circle – 2, Ernakulam.

.. Respondents

Prayer in WP No. 12348 of 2004 : Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the first respondent Income Tax Settlement Commission, Additional Bench, Chennai in its file settlement Application Nos. 16/2/84/95-IT and 16/2/128/95-IT for the assessment years 1988-89 to 1995-96 and quash the impugned order dated 21.03.2003.

Prayer in WP No. 12349 of 2004 : Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the first respondent Income Tax Settlement Commission, Additional Bench, Chennai in its file settlement Application Nos. 16/2/81/95-IT for the assessment years 1993-94 to 1995-96 and quash the impugned order dated 21.03.2003.

For Petitioner : Mr.R.Kumar
for Mr.R.Sivaraman
(in both WPs)

For Respondents : Mr.A.P.Srinivas,
Senior Standing Counsel
(in both WPs)

COMMON ORDER

(Order of the Court was made by Dr. ANITA SUMANTH.,J)

Heard Mr.R.Kumar, learned counsel for Mr.R.Sivaraman,
learned counsel for the petitioners and Mr.A.P.Srinivas, learned
Senior Standing Counsel for the respondents.

2. The impugned order has been passed in terms of Section



W.P.Nos.12348 & 12349 of 2004

245F(1) read with Section 154 of the Income-tax Act, 1961 (in short, 'Act') on 21.03.2003. The Settlement Commission has rectified the component of interest levied under Section 245F(1) vide order dated 10.04.1998 passed under Section 245D(4) of the Act. However, as the Settlement Commission has been vested with the power of rectification only with effect from 01.06.2011 by insertion of sub-section 6B in Section 245D of the Act, the impugned rectification could not have been effected on 21.03.2003 when such a power did not enure to the Settlement Commission. The provision is extracted below for clarity and completeness.

245D. Procedure on receipt of an application under section 245C.

*(6B) The Settlement Commission may, with a view to rectifying any mistake apparent from the record, amend any order passed [***] under sub-section (4)—*

(a) at any time within a period of six months from the end of the month in which the order was passed; or

(b) at any time within the period of six months from the end of the month in which an application for rectification has been made by the Principal Commissioner or the Commissioner or the applicant, as the case may be:

Provided that no application for rectification shall be made by the Principal Commissioner or the Commissioner or the applicant after the expiry of six months from the end of the month in which an order under sub-section (4) is passed by the Settlement Commission: Provided further that an amendment which has the effect of modifying the liability of the applicant shall not be made under this sub-section unless the Settlement Commission has given notice to the applicant and the Principal Commissioner or Commissioner of its intention to do so and has allowed the applicant and the Principal Commissioner or



W.P.Nos.12348 & 12349 of 2004

Commissioner an opportunity of being heard.

3. The above position is fortified by a judgment of the Hon'ble Apex Court in *Brij Lal and others v. Commissioner of Income tax* [(2010) 328 ITR 477(SC)], the operative portion of which reads thus:

Vide referral orders dated 14.12.2004 and 20.1.2005 the following questions have been referred to the Constitution Bench of this Court:

(i) Whether [sections 234A, 234B and 234C](#) of the Income Tax Act, 1961 (for short "the Act") are at all applicable to proceedings of the Settlement Commission under [Chapter XIX-A of the Act](#)?

(ii) Whether the Settlement Commission can reopen its concluded proceedings by having recourse to [section 154](#) of the Act so as to levy interest under [sections 234A, 234B and 234C](#) of the Act, though it was not so done in the original proceedings?

(iii) Whether in the absence of period of limitation prescribed for making the order of the Settlement, the relevant date for determining the quantum of interest could be the date of the said order?

.....

(III) Whether the Settlement Commission can reopen its concluded proceedings by having recourse to [section 154](#) of the Act so as to levy interest under [sections 234A, 234B and 234C](#) of the Act, though it was not so done in the original proceedings?

As stated, proceedings before Settlement Commission are similar to arbitration proceedings. It contemplates assessment by settlement and not by way of regular assessment or assessment under [section 143\(1\)](#) or under [section 143\(3\)](#) or under [section 144](#) of the Act. In that sense, it is a Code by itself. It does not begin with the filing of the return but by filing the application for settlement. As stated above, under the Act, procedure for



WEB COPY



W.P.Nos.12348 & 12349 of 2004

assessment falls in Chapter XIV (in which [section 154](#) falls) which is different from procedure for settlement in Chapter XIX-A in which [sections 245C](#) and [245D](#) fall. Provision for levy of interest for default in payment of advance tax under [section 234B](#) falls in Chapter XVII [Section F] which deals with collection and recovery of tax which as stated above is incidental to the liability to pay advance tax under [section 207](#) (which is also in Chapter XVII) and to the computation of total income in the manner indicated under Chapter XIX-A vide [sections 245C\(1B\)](#) and [245C\(1C\)](#) read with the provisos to [section 245C\(1\)](#) on the additional income tax payable on the undisclosed income. Further, if one examines the provisions of [sections 245C\(1B\)](#) and [245C\(1C\)](#), one finds that various situations are taken into account while computing the additional amount of tax payable, viz., if the applicant has not filed his returns, if he has filed but orders of assessment are not passed or if the proceedings are pending for re-assessment under [section 147](#) (again in Chapter XIV) or by way of appeal or revision in connection with such re-assessment and the applicant has not furnished his return of total income in which case tax has to be calculated on the aggregate of total income as assessed in the earlier proceedings for assessment under [section 143](#) or under [section 144](#) or under [section 147](#) [see [section 245C\(1B\)](#)]. The point to be noted is that in computation of additional income tax payable by the assessee, there is no mention of [section 154](#). On the contrary, under [section 245I](#) the order of the Settlement Commission is made final and conclusive on matters mentioned in the application for settlement except in the two cases of fraud and misrepresentation in which case the matter could be re-opened by way of review or recall. Like ITAT, the Settlement Commission is a quasi-judicial body. Under [section 254\(2\)](#), the ITAT is given the power to rectify but no such power is given to the Settlement Commission. Thus, we hold that Settlement Commission cannot reopen its concluded proceedings by invoking [section 154](#) of the Act. Lastly, one must keep in mind the difference between review/ recall of the order and rectification under [section 154](#). The Schedule of Chapter XIX-A does not contemplate invocation of [section 154](#) otherwise there would be no finality to the assessment by settlement which is different from



WEB COPY



W.P.Nos.12348 & 12349 of 2004

assessment under Chapter XIV where there is an appeal, revision, etc. Settlement of liability and not determination of liability is the object of Chapter XIX-A. Even otherwise, invocation of [section 154](#) on facts of this batch of cases is not justified. In this batch of cases, the situation which prevailed when the Settlement Commission waived or reduced interest chargeable under [sections 234A](#) and [234B](#) was that a debate was on as to whether the Settlement Commission has the power to reduce or waive interest. It is only after [Ghaswala's](#) case that the law got settled that the nature and the character of the interest was compensatory and mandatory and that the Commission had no such power. But even in [Ghaswala](#), the question as to whether such interest under [section 234B](#) should run up to the order under [section 245D\(1\)](#) or up to the date of the order under [section 234D\(4\)](#) was not decided. In fact, that was the reason for the Orders of Reference to the Constitution Bench of this Court vide orders dated 14.12.2004 and 20.1.2005. There is one more reason for this Reference. In the case of [CIT v. Hindustan Bulk Carrier](#) [(2003) 259 ITR 449], a 3- Judge Bench of this Court, by majority, held that where, upon the Order of the Settlement Commission under [section 245D\(4\)](#), there arises a deficit in the payment of advance tax under [section 208](#), the end point or the terminus of the period for which interest has to be paid under [section 234B](#) on the deficit is the date on which the Settlement Commission passes the order under [section 245D\(4\)](#). This decision was delivered on 17.12.2002 after the judgment of this Court in [Ghaswala](#) (supra). On the same day, the same Bench in the case of [Damani Brothers](#) (supra) held that interest charged under [section 234B](#) becomes payable on the income disclosed in the return and the income disclosed before the Settlement Commission; that, such interest is chargeable till the Commission acts in terms of [section 245D\(1\)](#) and that after the Settlement Commission allows the application for settlement to be proceeded with there will be no further charge of interest under [section 234B](#). Thus, even on the question of terminus there was lot of controversy and in the circumstances, we are of the view that invocation of [section 154](#) (held to be inapplicable to Chapter XIX-A proceedings) cannot be justified.

Conclusions :



WEB COPY



W.P.Nos.12348 & 12349 of 2004

(1) *Sections 234A, 234B and 234C are applicable to the proceedings of the Settlement Commission under Chapter XIX-A of the Act to the extent indicated hereinabove.*

(2) *Consequent upon conclusion (1), the terminal point for the levy of interest under section 234B would be up to the date of the order under section 245D(1) and not up to the date of the Order of Settlement under section 245D(4).*

(3) *The Settlement Commission cannot re-open its concluded proceedings by invoking section 154 of the Act so as to levy interest under section 234B, particularly, in view of section 245I.*

4. Hence, these writ petitions are allowed. There shall be no order as to costs.

[A.S.M., J] [G.A.M., J]
08.08.2024

Index:Yes/No
Neutral Citation:Yes
ssm

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