IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.08.2024

CORAM

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

W.P.No.8658 of 2004

G.Gopalakrishna Pillai
Proprietor, Divya Export Enterprises
Quilon-1. ... Petitioner

Vs

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

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

3.The Commissioner of Income Tax,
Aayakar Bhavan,
Kaudiar, Trivandrum.

4.The Assistant Commissioner of Income Tax,
Circle 1, Kollam. ... Respondents

PRAYER: Writ 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 No.13/TVM/165/94-IT and quash the impugned order dated 20.11.2003.

For Petitioner	:	Mr.R.Kumar for Mr.T.N.Seetharaman
For Respondents	:	Mr.A.P.Srinivas Senior Standing Counsel

O R D E R

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

Both Mr.R.Kumar, learned counsel, for Mr.T.N.Seetharaman, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel for the respondents would accede to the position that the issue that arises in this matter relating to the assumption of jurisdiction by the Assessing Officer for rectification under Section 154 of an order of the Settlement Commission should be decided adverse to the Department and in favour of the petitioner by virtue of a judgment in the case of *Brij Lal and Others v. Commissioner of Income Tax* [(2010) 328 ITR 477).

2.The operative portion of the judgment reads thus:

> '*III. Whether the Settlement Commission can re-open its concluded proceedings by having recourse to Section 154 of the Act so as to levy interest under section 234B, if it was not done in the original proceedings?*

15. 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 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 234Bfalls 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 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.'*

3. In light of the aforesaid admitted position, the impugned order dated 20.11.2003 is quashed and this writ petition is allowed. No costs.

(A.S.M.,J) (G.A.M.,J)
05.08.2024

Index: Yes/No
Neutral Citation : Yes
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