IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2025

CORAM

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

W.A.No.2443 of 2021

Dr.Kamala Selvaraj .. Appellant

-vs-

1. The Income Tax Settlement Commission,
   Additional Bench, No.640, Anna Salai,
   Chennai 600 035.

2. Commissioner of Income Tax,
   Central-II, No.46, Mahathma Gandhi
   Salai, Nungambakkam, Chennai. .. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 11.06.2021 passed in W.P.No.34638 of 2013 on the file of this Court.

For Appellant : Mr.R.Sivaraman

For Respondents : Mr.A.P.Srinivas
Central Govt. Standing Counsel

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JUDGMENT

(Judgment of the Court was delivered by the Hon'ble Chief Justice)

Appellant/assessee is aggrieved by an order and judgment pronounced on 11.06.2021 by a learned Single Judge of this Court, by which the petition filed by the Revenue under Article 226 of the Constitution of India to quash and set aside a settlement order passed by the Income Tax Settlement Commission (ITSC) on 05.08.2013 was allowed.

2. Assessee is an individual and a Doctor by profession. She is the sole proprietor of G.G.Hospitals, a super speciality hospital dealing with all aspects of infertility and Assisted Reproductive Technology, Obstetrics, Gynaecology, Cardiology, Paediatrics, etc. A search was conducted under Section 132 of Income Tax Act, 1961 (in short 'the Act') on 24.11.2011 in the residential premises, business premises and in the bank where assessee had locker facility. The search revealed suppression of substantial professional fee receipts, which did not form part of books of

accounts/professional income for Assessments Years from 2006-07 to 2011-12. Search also revealed substantial investments in jewellery, some of which were purchased without bills and not accounted for. The total value of gold and diamond jewellery found was Rs.14,74,99,880/-, of which jewellery valued at Rs.7,27,78,150/- was seized. Cash of Rs.1.80 crores was also seized.

3. Assessee, thereafter, filed a Settlement Application on 19.02.2011 before the ITSC for AY 2006-07 to AY 2012-13, which was allowed to be proceeded with vide order dated 27.02.2013 under Section 245D(1) of the Act. By an order dated 31.03.2013, the ITSC held the application not to be invalid under Section 245D(2C) of the Act. Subsequently, after hearing the parties and calling for submissions from the Revenue, the Settlement Application was disposed and an order dated 05.08.2013 under Section 245D(4) of the Act was passed. It is this order which was challenged by the Revenue in the writ petition and it is this order that came to be set aside by the learned Single Judge.

4. Sri.Sivaraman appearing for appellant/assessee made the

following submissions:

a) In view of the judgment of the Hon'ble High Court of Judicature at Bombay in ***Commissioner of Income-tax, Central-II vs. Income-tax Settlement Commission***[1], which was authored by one of us (Chief Justice), the Revenue could not have even challenged the order of the Settlement Commission;

b) Unless there was allegation of fraud or bias or malice in the application against the members of ITSC, the Revenue cannot challenge and admittedly, there is no such allegation in the application;

c) Even if the judgment of the Bombay High Court was not available when the impugned order was passed, nevertheless, the law is very clear inasmuch as the Apex Court in ***Assistant Commissioner of Income-tax vs. Saurashtra Kutch Stock Exchange Ltd.,***[2] has held that a judicial decision acts retrospectively. Law has always been the same and if the subsequent decision alters the earlier one, the later decision does not make a new law, but only discovers the correct principles of law, which has to be applied retrospectively.

d) A Court can interfere under Article 226 of the Constitution of India with an order passed by the ITSC under Section 245D(4) of

1 ***(2024) 161 taxmann.com 495 (Bombay)***

2 ***(2008) 305 ITR 227 (SC)***

the Act only when there is a fault in the decision-making process and not with the decision itself. He relied upon the judgment of the Apex Court in ***Jyotendrasinhji vs. S.L.Tripathi,***[3] in support.

e) The appellant filed an application under Section 245C of the Act in TN/CN 52/2012-13/10/IT on 19.02.2011 for the Assessment Years 2006-07 to 2012-13 and the assessments were pending before the Assessing Officer under Section 153A/139(1) of the Act. The Settlement Commissioner vide order dated 27.02.2013 allowed the application to be proceeded with under Section 245D(1) of the Act. In terms of Section 245D(2B) of the Act, the Settlement Commissioner called for a report from the Department and the Department duly furnished the report in No.2715/Cen.II/ 2012-13 dated 27.03.2013. In terms of first proviso to Section 245D(2C) of the Act, the Commission informed the department that the application under Section 245C(1) filed by the above named assessee is not invalid vide order dated 31.03.2013 and allowed the application to proceed further. The Department furnished the Rule 9 report in No.2715/CIT(Central-2)/ Settlement Commission/2012-13 dated 15.05.2013 before the 1st respondent in terms of Rule 9 Sub-rule (1) of Income Tax Settlement Commercial (Procedure) Rules 1997. In terms of Rule 9 Sub-rule (3), appellant was furnished with a copy of Rule 9 report of the Department and appellant/assessee filed their detailed comments in respect of Rule 9 report of department vide

3 ***(1993) 201 ITR 611 (SC)***

submissions dated 19.06.2013 to which Department filed their rejoinder dated 28.06.2013. The Department preferred verification on certain aspects through their letter in F.No.996/ TN/CIT(DR)/2012-13 and appellant duly filed their detailed comments and replies to the verification report vide their reply dated 30.07.2013. The Commission in terms of Section 245D(4) of the Act heard appellant/assessee and CIT (DR) of the Department finally on 31.07.2013. The Commission, in terms of Section 245D(4) of the Act, vide order dated 05.08.2013, provided the terms of settlement in terms of Section 245D(6) of the Act.

f) The fact that the Settlement Commission was satisfied with true and full disclosure is evident by the fact that they did not hold the application as invalid under Section 245D(2C) of the Act. The Commissioner of Income-tax cannot sit in appeal or judgment over the findings of the ITSC.

g) Section 245B(3) of the Act provides, the Chairman, Vice-Chairman and other members of the Settlement Commission shall be appointed by the Central Government from amongst persons of integrity and outstanding ability, having special knowledge of, and, experience in, problems relating to direct taxes and business accounts. Therefore, the members of the ITSC have been appointed because of the integrity and outstanding ability and for the special knowledge and experience in problems relating to direct taxes and business accounts. A Commissioner of Income-tax cannot question the finding of the ITSC, more so, when bias or fraud or malice is not alleged.

5. Per contra, Sri.Srinivas made submissions to hold that the finding of the learned Single Judge was correct, though he was candid to say that there are no allegations of malice, fraud or bias against the members of the Commission. He made the following submissions:

a) In its order of the ITSC, the Commission has not considered the admission made by assessee in her disclosure statement made under Section 132(4) of the Act, though the same was specifically brought out in Rule 9 report.

b) The undisclosed suppressed receipts upto the date of search as per seized records and software amounted to Rs.51.64 crores comprising professional receipt of about Rs.44.25 crores and pharmacy sale of Rs.7.39 crores, out of which, assessee offered net additional income at Rs.15.88 crores only claiming unaccounted expenditure relating to suppressed receipt at Rs.19.41 crores being 55% of suppressed receipt of Rs.35.30 crores till 31.03.2011.

c) The ITSC accepted the undisclosed suppressed receipt at Rs.35.30 crores instead of Rs.51.64 crores found as per seized software but held that the claim of unaccounted expenditure at 55% of suppressed receipts is excessive and refixed the same at 7% of total receipts. The ITSC, however, granted deduction of 7% not only on the suppressed undisclosed receipt of Rs.35.30 crores but on entire gross receipts of Rs.113.83 crores, which included the income admitted before the Assessing Officer in normal course and deduction towards gross receipts admitted before the Assessing Officer was neither claimed by assessee nor an issue in the settlement application filed before the Commission. Hence, the expenses at 7% of undisclosed suppressed receipt of Rs.35.30 crores would be only Rs.2,47,14,448/- and not Rs.7,96,87,335/- as held by Commission.

6. The submissions of Mr.Srinivas can be disposed by observing that the learned Single Judge in the impugned judgment has, after considering all these submissions of Mr.Srinivas, proceeded on the basis that the assessee had not made true and full disclosure as required under the provisions of the Act. In our view, that was not even the case of the Department that there was no true and full disclosure because, if there was no true and full disclosure, the Commission itself would not have proceeded beyond the stage of Section 245D(2C) of the Act. The Commission was satisfied that assessee has made a true and full disclosure. On this ground alone, the impugned order requires to be quashed and set

aside.

7. Moreover, if what Mr.Srinivas submitted as noted above has to be accepted, then nothing prevented the department to go back to ITSC and bring to their notice the error, because it is a pure calculation error by the ITSC as submitted by Mr.Srinivas, though we hasten to note that we have not made any observation or accepted the submission of Mr.Srinivas on this aspect.

8. As held in ***Jyotendrasinhji*** (supra), even if the interpretation placed by the ITSC on the documents seized is not correct, it would not be a ground for interference since a wrong interpretation of documents cannot be said to be a violation of the provisions of the Act. Further, as held by the Apex Court in ***Kotak Mahindra Bank Ltd. vs. Commissioner of Income Tax and Anr.,***[4], the High Court cannot sit in appeal as to the sufficiency of material and particulars placed before the Commission based on which the

4***(2023) 7 NYPCTR 1343 (SC)***

Commission proceeded to pass its orders. The Court also held, relying on ***Jyotendrasinhji*** (supra), that while exercising powers under Article 226 of the Constitution of India, the High Court may not interfere with an order of the Commission passed in exercise of its discretionary powers and the scope of judicial review is very narrow. The Court held that sufficiency of material and particulars placed before the Commission, based on which the Commission proceeded to pass its orders are particularly beyond the scope of judicial review, except under the circumstances set out in ***Jyotendrasinhji*** (supra).

9. As held in ***N.Krishnan vs. Settlement Commission and Others***[5], the ITSC is a forum for self surrender and seeking relief and not a forum for challenging the legality of assessment order or orders passed in any other proceedings. The power conferred on the Settlement Commission is so wide that it can take any view on any questions of law, which it considers appropriate having regard to the facts and circumstances of a case including giving immunity against prosecution or imposition of penalty. Therefore, the scope of interference against a decision of a Settlement

5***(1989) 47 Taxman 294***

Commission is very narrow. As observed in ***N.Krishnan*** (supra), it is in the nature of statutory arbitration to which a person may submit himself voluntarily and the scope of interference is much more restricted than the power of the Court to interfere with the arbitration award.

10. As noted in ***Kotak Mahindra Bank Ltd.*** (supra), 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 and the larger picture has to be borne in mind. Paragraphs 24 to 31 of the judgment in **Commissioner of Income-tax, Central-II** (supra) read as under:

> *"24. As held in Jyotendrasinhji (supra), even if the interpretation placed by the ITSC on the documents seized is not correct, it would not be a ground for interference since a wrong interpretation of documents cannot be said to be a violation of the provisions of the Act. Further, as held in Kotak Mahindra Bank Ltd. (supra) sufficiency of the material and particulars placed before the Commission based on which the Commission proceeded to pass its orders are beyond the scope of judicial review. The High Court should not also scrutinize order of the ITSC as an appellate court because as held in Brij Lal And Others (supra), the orders of the Settlement Commission under Section 245D(4) of the Act is different from the nature of orders under Section 143(1), 143(3) and 144 of the Act.*
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> *25. Mr. Suresh Kumar relied on the judgment of the Bombay High Court in Harish Textile Engrs. Ltd. vs. Deputy Commissioner of Income Tax, Special Range–18 to buttress his submission that the ITSC should have ordered enquiry on the expenditure incurred by assessee. Said judgment is not applicable to the facts of the case at hand. In Harish*

Textile Engrs. Ltd. (supra) the court came to a finding that the documents found during the course of the search were inchoate and it does not indicate the person to whom payment was made or the address of the recipient or the person by whom the payment was made. The court also observed on facts that even if the presumption is to be applied and the documents are accepted as true, it would not lead to the conclusion that payments have been made in cash so as to claim the expenditure. As against that in the case at hand the documents are accepted as true. The Revenue cannot say that it will accept one part of the document but will not accept the other part.

26. In our view, the ITSC was entitled to exercise discretion and has rightly exercised its discretion. We find nothing wrong in the judicial decision making process of the Commission. When the department relies on the seized records for estimating the undisclosed income, we see no reason why the expenditure stated therein should be disbelieved. We find support in Commissioner of Income Tax vs. P. D. Abraham Alias Appachan And Another [2012] 249 ITR 442 (Ker). Moreover there was no justification for doubting the entries found in seized records pertaining to expenditure while accepting the income found recorded therein.

27. In our view, there is neither violation of any mandatory procedure prescribed under any of the sections of Chapter XIX-A of the Act nor any violation of any of the Rules of natural justice. Further, it cannot be said that the reasons assigned by the ITSC for granting relief sought for by assessee have no nexus to the decision taken.

28. As held in N. Krishnan (supra), the ITSC is the forum for self surrender and seeking relief and not a forum for challenging the legality of assessment order or orders passed in any other proceedings. This is evident from the provisions of the Act because it even prevents the application made from being withdrawn. The power conferred on the settlement commission is so wide that it can take any view on any questions of law, which it considers appropriate having regard to the facts and circumstances of a case including giving immunity against prosecution or imposition of penalty. Therefore, the scope of interference against a decision of the Settlement Commission is very narrow. As observed in N. Krishnan (supra), it is in the nature of statutory arbitration to which a person may submit himself voluntarily and the scope of interference is much more restricted than the power of the court to interfere with an arbitration award.

29. Unsettling reasoned orders of the Settlement Commission, as *noted by the Hon'ble Apex Court in Kotak Mahindra Bank Ltd. (supra), may erode the confidence of bona fide assessee, thereby leading to multiplicity of litigation where settlement is possible and this larger picture has to be borne in mind.*

30. Moreover, we also should note that Section 245B(3) of the Act provides that Chairman, Vice Chairman and other members of the Settlement Commission shall be appointed by the Central Government from amongst persons of integrity and outstanding ability, having special knowledge of, and, experience in, problems relating to direct taxes and business accounts. Therefore, the members of the ITSC have been appointed because of their integrity and outstanding ability and for the special knowledge and experience in problems relating to direct taxes and business accounts. It is rather unfortunate that the Central Government questions the findings of the ITSC without explicitly and in detail explaining how the order of the Commission is contrary to the provision of the Act or there was miscarriage of justice or order has been passed without jurisdiction. More so when bias or fraud or malice is not alleged in the petition against the members of the ITSC. In the case at hand we are not satisfied that the order of the ITSC is contrary to the provisions of the Act. It is rather unfortunate that the Commissioner who has filed the Writ Petition is sitting in appeal over findings of the members of the ITSC. Chapter XIX-A was inserted to enable an assessee, at any stage of a case relating to him, to make an application containing a full and true disclosure of his income which has not been disclosed before the A.O., the manner in which such income has been derived, the additional tax payable on such income and such other particulars as may be prescribed, to the ITSC to have the case settled. When such an application is made and the ITSC is satisfied that there has been a full and true disclosure, the department cannot raise any grievance. Unless a case of bias or fraud or malice is alleged, not being a bald allegation, but with details, no petition by Revenue impugning an order by the ITSC should be entertained. We say this because the Central Government has appointed the persons who are members of the Commission as they are persons of integrity and outstanding ability, having special knowledge of, and, experience in, problems relating to direct taxes and business accounts. Or the order impugned must be so perverse that no person would pass such an order, like for e.g., it is said the sun rises in the west. An assessee may have a little more leeway as per the scope prescribed in Jyotendrasinhji (supra).

31. As observed by the Hon'ble Apex Court in Kotak Mahindra Bank Ltd. (supra), interference with the orders of the ITSC should be avoided, keeping in mind the legislative intent. The scope of interference *is very narrow and certainly the High Court should not scrutinize an order of the ITSC as an appellate court. Unsettling reasoned orders of the ITSC may erode the confidence of assessees. This larger picture has to be kept in mind."*

11. In the circumstances, in our view, the learned Single Judge erred in interfering with the order passed by the ITSC. The impugned order is hereby quashed and set aside.

12. At this stage, Mr.Srinivas states that the Revenue should be given liberty to move the Interim Board for correcting the order of the ITSC in view of his submissions recorded above in Paragraph 5. We express no opinion. If law permits, Revenue may apply and if law permits, the Board may consider. At the cost of repetition, we do not express any opinion. All rights and contentions are kept open.

Appeal is, accordingly, allowed. There shall be no order as to costs.

(K.R.SHRIRAM, CJ.) **(SUNDER MOHAN, J.)**

11.06.2025

Index : Yes
Neutral Citation : Yes

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To

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The Hon'ble Chief Justice
and
Sunder Mohan, J.

(sra)

W.A.No.2443 of 2021

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