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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: May 21, 2015.

+ ITA 404/2013

COMMISSIONER OF INCOME TAX DELHI CENTRAL-III

..... Appellant

versus

VISHAN DAS

..... Respondent

+ ITA 405/2013

COMMISSIONER OF INCOME TAX DELHI CENTRAL -III

..... Appellant

versus

GOVIND LAL

..... Respondent

+ ITA 408/2013

COMMISSIONER OF INCOME TAX DELHI CENTRAL -III

..... Appellant

versus

VED PRAKASH

..... Respondent

Presence : Mr. P Roy Chaudhuri, sr. standing counsel for revenue
Mr. Piyush Kaushik, Adv. for assessee

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K. GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. In these three appeals, the revenue urges that the common order of the

Income Tax Appellate Tribunal in IT(SS) Nos.29 to 32/D/2011 covering the block period 1.4.95 to 5.10.01 is erroneous insofar as it upheld cancellation of interest added under Section 245D(2C) of the Income Tax Act.

2. A search took place in the premises of one K.C.Group on 5.10.2001. Besides cash to the extent of ₹2,16,500/- and stock to the tune of ₹53,21,218/-, certain documents and books of accounts were seized. Notice under Section 158BC was served on the assessee on 8.10.2002; responding to it assessee filed return for the block period ending 5.10.2001 on 10.12.2002, disclosing Nil income. Soon thereafter, on 11.12.2002 they applied under Section 245D(1) to the settlement commission and disclosed ₹10 lakhs in the hands of each of the four persons i.e. a total of ₹40 lakhs at 2% of turnover of ₹20 crores. By a speaking order, these applications were admitted under Section 245D(1) on 23.10.2003.

3. The settlement commission called for a report under Rule 9 read with Section 245D(1) from the Commissioner of Income Tax. The matter was heard on several dates and finally an order was made on 26.3.2010. The final order directed the revenue to accept the offer of additional income of ₹1,48,16,160/- referred to in the body of settlement commission's order. The settlement commission rejected the waiver of interest under various provisions of the Act. Consequently, interest under Section 220(2) in terms of Section 245D(2C) was directed to be recovered. While computing the amounts payable, the AO passed in his consequential order dated 4.5.2010, ₹13,03,211/- as interest recoverable for the period between 1.1.2004 and 26.3.2010. This addition was appealed to the CIT(A) as untenable. The CIT took note of the dates when these amounts were offered - soon after the admission of the application before the settlement commission and also the

date on which the deposit was made pursuant to final order which was on 4.5.2010. This is to be found in the following chart, prepared by the CIT(A). The said chart is extracted below:

Date of filing of Application u/s 245C(1)	11.12.2002
Date of admission of Application u/s 245D(1)	23.10.2003
Undisclosed Income Declared as per order u/s 245D(1) dated 23.10.2003	₹10/00/000/-
Due date of payment of tax	01.01.2004
Date on which tax has been deposited by the appellant	26.12.2003
Tax paid by the appellant in pursuance of order u/s 245D(1)	₹6,12,000/-
Additional Tax paid as on 24.07.2007	₹12/240/-
Date of passing of order u/s 245D(4)	26.03.2010
Undisclosed Income finally settled	₹37,04,040/-
Balance Tax Paid by the appellant in response to Order passed by the Settlement Commission u/s 245D(4)	₹16,43,000/-
Date on which the tax has been paid by the appellant in pursuance of order 245D(4)	04.05.2010

4. In view of these facts, the CIT returned the finding that the assessee had deposited tax within the time specified under Section 245D(2A). The CIT(A) also observed that, however, the AO while passing the order under Section 158BC read with 245D(4) of the Act charged interest under 245D(2C) of the Act for the period starting from 01.01.2004 to 26.3.2010 @ 15% amounting to ₹13,03,211/- without appreciating that Section 245D(2C) of the Act can be invoked only if the assessee does not deposit income tax payable on income disclosed and admitted under section 245D(1) of the Act. In the instant case, the appellant deposited ₹6,12,000/- within the time prescribed under Section 245D(2C) on the income of ₹10 lakhs as per order under Section 245D(1) in view of the admission.

5. It is thus apparent that there were clear findings rendered by the CIT(Appeals) with respect to the error in calculation of the interest payable, as per the AO's determination.

6. The ITAT has, in its decision, elaborately considered the provisions of Chapter XIX-A, more particularly the scope of the settlement commission's jurisdiction. It also took into consideration several authorities as well as the judgment of the Supreme Court in *Ajmera Housing Corporation & Anr. Vs CIT 234 CTR (SC) 118*. The ITAT thereafter concluded as follows :

“.....In view of the foregoing, especially when the Revenue did not place any material before us controverting the aforesaid findings of the Id. CIT(A) nor referred us to any contrary decision, so as to enable us to take a different view in the matter, we are not inclined to interfere. Therefore, ground nos.1 & 2 in the appeal are dismissed.”

7. Counsel for the revenue argued that the decisions of the CIT(Appeals)

and the ITAT are erroneous and submitted that the AO's decision to direct payment of ₹13,03,211/- as interest was justified. The revenue also submits that the decision in *Ajmera Housing Corporation & Anr.* (supra) was inapt in the circumstances of the case.

8. We notice that the question of levying any additional interest over and above what is permissible under Chapter XIX-A would not arise in the given circumstances of the case.

9. Concededly at the time when the application was filed before the settlement commission, the assessee deposited the admitted tax liability. Soon thereafter, when the application was admitted, the amount required was deposited within the time stipulated under Section 245D(6A). The further tax liability determined was payable after the final decision. The records and materials examined by the CIT(A) and upheld by the ITAT disclose that even the tax liability finally determined was satisfied. In these circumstances, the addition of interest for the period during the pendency of the application before the settlement commission was entirely unwarranted. We do not see any reason to disturb the concurrent findings of fact. The appeals do not raise any substantial question of law and are consequently dismissed.

S. RAVINDRA BHAT
(JUDGE)

R.K. GAUBA
(JUDGE)

MAY 21, 2015

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