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

Reserved on: 27.01.2014
Pronounced on:10.02.2014

\+ **WP(C) No.2347/2008 & C.M. APPL. 4489/2008**

ASHWANI KUMAR GOEL ..... Petitioner

Through: Ms. Meenakashi Midha with Mr.L.G. Dass, Advocates

versus

INCOME TAX SETTLEMENT COMMISSION & ORS .... Respondents

Through: Sh. N P Sahni, Sr. Standing Counsel with Mr.Nitin Gulati, Jr. Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.V. EASWAR

MR. JUSTICE S. RAVINDRA BHAT

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1. The petitioner seeks a direction challenging an order of 04.03.2008 issued by the Income Tax Settlement Commission, which rejected the petitioner's application that the assessment for the period 01.04.1986 to 07.04.1987 was time barred. On 07.08.1997, search and seizure operations were conducted at the residential and business premises in respect of the petitioner, his wife and other relatives. Several articles and documents were

seized. The last panchnama was drawn on 26.09.1997. Upon receipt of notice, the petitioner filed a return for the period 01.04.1986 to 07.04.1987. After considering this, the Income Tax Authorities were of the opinion that the accounts indicated had sufficient complexities warranting an audit under Section 142-(2)A. An order was accordingly made on15.09.1999. A special auditor submitted the audit report on 14.02.2000. It was contended during the pendency of these proceedings that the Settlement Commission by its order dated 10.08.2000 entertained the application made to it. The order was a speaking one and made after submissions of the parties and was drawn up by the departmental authorities. Whilst the Settlement Commission's proceedings were pending, an order under Section 245 D (4) was contemplated and heard. The petitioner contended that the entire proceedings had to be closed since the block assessment had become time barred on 29.02.2000. It was submitted that by virtue of the then existing Section 158BE, which mandated that assessment were to be completed within a time bound manner which was to expire on 29.02.2000 (the period having been extended by virtue of special audit conducted under Section 142). In the absence of any order by the Settlement Commission admitting the matter or proceeding further, the Assessing Officer had the lost authority to pass any orders. Consequently, the Commission itself did not possess jurisdiction. The petitioner relied upon the decisions reiterated in *CIT* v. *Hindustan Bulk Carrier*, (2003) 259 ITR 449 (SC) and *CIT* v. *Damini Brothers*, (2003) 259 ITR 475 (SC).

2. After hearing counsel for the parties, the Settlement Commission rejected the petitioner's argument. Learned counsel relied upon the ruling of

the Supreme Court reported as *Brij Lal & Others* v. *Commissioner of Income Tax*, (2011) 1 SCC 1, for the following observations :

> *"41. Further, as stated above, the jurisdiction of AO is not fettered merely because the applicant has filed the settlement application. The Act does not contemplate stay of the proceedings during that period i.e. when the Settlement Commission is deciding whether to proceed or reject the settlement application. The jurisdiction of the Settlement Commission to proceed commences only after an order is passed under Section 245-D(1). That, after making an application for settlement the applicant is not allowed to withdraw it [see Section 245-C(3)]. Once the case stands admitted, the Settlement Commission shall have exclusive jurisdiction to exercise the powers of the Income Tax Authority."*

3. It was submitted that the Assessing Officer was always free to complete the assessment within the time period permitted by law, and was not constrained from making any order. Since he did not do so, the Settlement Commission which was invested with his powers could not likewise have proceeded further. It was submitted that the amendment made to Section 158 BE by the Finance Act, 2002 could not be made applicable in the present case as the block assessment had become time barred on 29.02.2000. Counsel reiterated that Settlement Commission did not enjoy exclusive jurisdiction by virtue of Section 25-F(1) prior to the passing of an order under Section 245-D(1) of the Income Tax Act. In support, counsel relied upon the *Damini Brothers case* (supra).

4. Counsel for the Revenue argued that the power of the Assessing Officer to make an order does not allow an applicant approaching the Settlement Commission to contend that jurisdiction ceases automatically if an assessment is not framed. Learned counsel submitted that a careful reading of *Hindustan Bulk Carrier* would show that mere filing of an application for settlement would not in any manner adversely affect the powers of the Assessing Officer. That formulation of law in no way meant that Settlement Commission was placed under the kind of restrain as was sought to be suggested. It was argued that in this case even at the stage of the order under Section 245-D(1), the petitioner never contended that the Commission had lost jurisdiction on account of the matter having become time barred under Section 158BE. Counsel also submitted that if the petitioner's argument were to be accepted, the Commission would be conferred with a review power despite conclusiveness provided to its order by Section 245-D(1). He also relied upon the judgment of this Court in *Capital Cables (India) Private Limited* v. *ITSE*, 2004 267 ITR 528 Delhi.

5. The pre-condition for the Commission to receive an application is that a case as defined under Section 245-A(b) should be pending as on the date of its presentation. Section 245-C spells out the conditions which the applicant has to satisfy and Section 245- D(1) outlines how such applications are to be proceeded with. The Commission after examining the matter and satisfying itself can either allow the case or reject it. It is a matter on record that when the application was admitted on 10.08.2000, the petitioner was represented and heard. At this stage, no objection as to the jurisdiction of the Settlement Commission was made, the observations in the impugned order of the

Commission that to re-visit the order of 10.08.2000 would in effect amount to impermissible review is, in the opinion of this Court, sound reasoning. The conclusiveness attached to the order made by the Commission has been emphasized time and again. Section 245 (1) reiterated this in no uncertain terms. The Supreme Court has also underlined this in *CIT, Mumbai* v. *Anjum M.H. Ghaswala & Ors.*, 2001 252 ITR (1).

6. The decision in *Deen Dayal* v. *Union of India*, (1986) 160 ITR 12, in our opinion, concludes the issue sought to be urged against the petitioner. In fact the Court visualized the very situation which we are called upon to examine and held that even while upholding the authority of the Assessing Officer to complete assessment, clarify that "*there will be no impediment to the Settlement Commission in exercise its powers if it decides to exercise them. On the other hand this Settlement Commission decides not to proceed with application, there is no distinct possibility of department not being able to realize the taxes in the circumstances of this case."*

7. The authority of a Settlement Commission to make such orders as are necessary in regard to the matters before it also extends to other matters relating to the case not covered by the application but referred to in the report of the Commission. There is also an element of exclusiveness to the jurisdiction of the Settlement Commission, reiterated by Section 245-F(2). Section 245-E empowers the Settlement Commissions to re-open any proceedings connected with the case in respect of which assessment too has been completed. Given these powers, the fact as to whether the Assessing Officer was in the process of making the assessment or not becomes irrelevant. If indeed the Assessing Officer had completed the assessment,

the wide nature of the Commission's jurisdiction, nevertheless, would have allowed to over-ride that assessment order while framing its order under Section 245-D(4).

8. The consequence of accepting the argument of the assessee would be that even though there was a search of his premises u/s 132 of the Act which yielded incriminating material, the proceedings arising out of which he wanted to settle by approaching the Settlement Commission, he would still end up not paying any tax, as the block assessment became barred by time and there would also be no settlement order u/s 245D(4). Such a situation could not have been intended by the statute. Though now the situation has been taken care of by the insertion of the first proviso to Section 245F(2) by the Finance Act, 2007 w. e. f. 01.06.2007, but that cannot prejudice the rights of the revenue prior to that date as it seems to us that it was inserted only "*ex abundant cautela*". In *Commissioner of Income-Tax, (Central), Calcutta vs. B.N. Bhattachargee and Anr.*, (1979) 118 ITR 461 (SC), Justice Krishna Iyer, dealing with the first case to reach the Supreme Court under Chapter XIX-A, when faced with a situation not specifically provided for in the said chapter, observed as follows: -

> "*Be that as it may, fiscal philosophy and interpretative technology must be on the same wavelength if legislative policy is to find fulfilment in the enacted text. That is the challenge to judicial resourcefulness the present appeals offer, demanding, as it does, a holistic perspective and harmonious construction of a whole chapter, especially a complex provision therein, so that a balance may be struck between purpose and result without doing violence to statutory language and social values. The chapter is fresh and the issue is virgin; and that makes the judicial adventure hazardous, compounded by the involved and obscure drafting of the bunch of provisions in Chap. XIXA.*"

9. In our view, this rule should govern our approach to the situation arising in the case in hand.

10. It is a settled rule of construction that tax laws, like all other laws, shall be interpreted reasonably and in consonance with justice so as to avoid an absurd consequence that may lead to mischief or abuse: (Hegde, J., *in Jodha Mal Kuthiala vs. CIT*, (1971) 82 ITR 570 (SC). A machinery provision in the Income Tax Act cannot be subjected to the literal or strict rule of construction that is adopted to interpret a charging section. In *Calcutta Jute Manufacturing Co. vs. CTO*, (AIR 1997 SC 2920), the Supreme Court held that a machinery provision must be so interpreted as to effectuate its purpose, and the distinction between a charging section and a machinery provision whose function is to effectuate the charge, was pointed out in the context of the rule of interpretation to be adopted. In *S.P.A.M.*

Krishnan Chettiar and Son vs. Income-Tax Settlement Commission and Another, (1993) 202 ITR 81 (Mad.), a Division Bench of the Madras High Court ruled that Chapter XIX-A of the Act providing for settlement of cases is a machinery provision; the following observations are relevant: -

> "*Chapter XIX-A in the Act, introduced by the Taxation Laws (Amendment) Act, 1975, was the result of implementing the recommendations of the Wanchoo Committee to arrest the evil of black money and large scale tax evasion. One of the recommendations made was a compromise measure by which a disclosure could be made and the quantum of tax is determined and the assessee not only secured quittance for himself, but also freedom from levy of penalty and prosecution. The machinery, initially conceived of by the Wanchoo Committee to achieve this, was a Tribunal, though, later, it was rechristened the Settlement Commission with full powers to investigate, quantify the amount of tax, penalty as well as interest, etc., and grant immunity from prosecution at its discretion. The details of the application, probe, consideration, hearing and disposal, found in the report, had been incorporated in the statutory provisions in Chapter XIX-A. Thus, a careful study of the anatomy of Chapter XIX-A clearly brings out that it was only in the nature of machinery provisions for the purpose of settlement of tax disputes between the assessee and the Revenue. The provisions do not compel any assessee to resort to section 245C, but that can be availed of, if the assessee so chooses. In other words, the remedy provided under section 245C, as a machinery provision for effecting settlement of tax disputes, was only in the nature of a concession or option open to the assessee who desired to settle his tax matters.*"
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> We concur with the above view.

12. In view of the above discussion, this Court is of the opinion that there is no merit in the petition and it is accordingly dismissed without any orders as to cost. All pending applications also stand disposed of.

S. RAVINDRA BHAT
(JUDGE)

R.V. EASWAR
(JUDGE)

FEBRUARY 10, 2014