NC: 2024:KHC:31915
WP No.11153 of 2020

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 09TH DAY OF AUGUST 2024

BEFORE

THE HON'BLE MR.JUSTICE S. SUNIL DUTT YADAV

WRIT PETITION No.11153 OF 2020 (T-IT)

BETWEEN:

THE PR. COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE,
C.R. BUILDING,
QUEEN'S ROAD,
BENGALURU – 560 001.

…PETITIONER

(BY SRI. RAVI RAJ Y.V., SENIOR STANDING COUNSEL)

Digitally signed by SWETA KULKARNI
Location: HIGH COURT OF KARNATAKA

AND:

1. SMT. UMAH AGARWAL
   AGED YEARS,
   11/3, NANDIDURGA ROAD,
   BENGALURU,
   KARNATAKA – 560 046.

2. THE INCOME TAX SETTLEMENT COMMISSION
   ADDITIONAL BENCH-I,
   MAHALAXMI CHAMBERS,
   MUMBAI – 400 034.

…RESPONDENTS

(BY SRI. K.K.CHAITHANYA, SENIOR ADVOCATE FOR
SRI. TATA KRISHNA, ADVOCATE FOR R1;
SRI. SHANTI BHUSHAN, D.S.G.I., FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER PASSED BY THE SETTLEMENT COMMISSION DATED 11.03.2020 BEARING NO.KA/BACC/ 029/2019-20/IT AT ANNEXURE-D AND TO DECLARE THAT THE ASSESSEE/1ST RESPONDENT IS LIABLE TO PAY TAX AS PROVIDED UNDER SECTION 115BBE OF THE ACT AND ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 19.06.2024 AND COMING ON FOR PRONOUNCEMENT OF ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE S SUNIL DUTT YADAV

C.A.V. ORDER

(PER: HON'BLE MR JUSTICE S SUNIL DUTT YADAV)

The present petition is filed by the Revenue seeking for setting aside of the order passed by the Settlement Commission dated 11.03.2020 at Annexure-'D' whereby application of the petitioner for settlement under Section 245C of the Income Tax Act, 1961 for the Assessment Years 2012-2013 to 2019-2020 was accepted and it was ordered that the additional income offered of Rs.2,20,00,000/- was reasonable and fair, immunity

from penalty and prosecution was also ordered, however interest under Section 234A, 234B and 234C was to be levied by applying provision of Section 234B (2A) of the Act.

2. The Revenue being aggrieved by the order of the Settlement Commission and in light of finality to the order of the Settlement Commission in terms of Section 245-I has approached this Court and invoked the writ jurisdiction to assail the order of the Settlement Commission.

3. The petitioner had filed an application under Section 235C of the Act on 18.11.2019 seeking settlement for the Assessment Years 2012-2013 to 2019-2020. In terms of the procedure under Section 245D(1) of the Act, the application was permitted to be proceeded with by order dated 25.11.2019.

4. It is made out from the facts that the applicant is an individual assessee and source of income was from salaries. The Department is stated to have carried out search under Section 132 of the Act on 20.03.2018, during which records/documents and jewellery worth Rs.3,23,02,607/- is stated to have been seized. The statements under Section 132(4) of the Act were also stated to have been recorded and during such search, an undisclosed income of Rs.2,16,00,000/- was stated to have been offered for tax, which statement was retracted subsequently vide letter dated 16.12.2018.

5. The additional income offered before the Settlement Commission was stated to be Rs.2,20,00,000/-, which it is asserted to be an amount constituting cash gifts received from the relatives and well wishers during the Assessment Years 2012-2013 to 2016-2017.

6. It is further asserted that the cash payment made for purchase of jewellery from the vendors of Neerav Modi group was Rs.2,16,00,000/-.

7. The petitioner had filed Affidavit under Rule 8 of the Income Tax Settlement Commission (Procedure) Rules, 1997 and declared that she had not maintained the details of cash gifts.

8. The PCIT also has filed a report under Rule 9 and raised various objections.

9. The Settlement Commission has passed the order dealing with the objections raised by the Department. The Settlement Commission has ruled on the objections as follows:-

(i) The contention of PCIT that the difference of Rs.79,40,086/- on account of valuation of jewellery should be added to the income disclosed of the petitioner

was rejected, while observing that no material was found during the search or in post search proceedings to show that the applicant had made cash payment above the consideration shown in the invoices of purchase. It was also observed that the Department had failed to produce any material to demonstrate that actual consideration passed was more than the consideration shown in the invoices of purchase.

(ii) It was the stand of the Department that the petitioners' claim of cash gifts cannot be accepted, as no declaration to that effect was made in the wealth tax returns filed for the relevant years.

10. The Settlement Commission has taken note of the declaration made under Rule 8 of the Income Tax Settlement Commission (Procedure) Rules and has accepted the assertion of cash gifts. It was also observed that if indeed the applicant had disclosed the

cash gifts as 'cash in hand' in the wealth tax returns, the alleged unaccounted cash would have stood explained as noticed in the search and there would have been no occasion for disclosure as made before the Settlement Commission. Accordingly, the Commission deemed the additional income offered for tax of Rs.2,20,00,000/- as being fair and reasonable and proceeded to dispose of the application as indicated in para-(1).

11. At the outset, the scope of interference in orders of the Settlement Commission require to be determined.

12. Section 245-I of the Income Tax Act reads as follows:-

> ***245-I. Order of settlement to be conclusive. -*** *Every order of settlement passed under sub-section (4) of section 245-D shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force.*

Accordingly, the order is 'conclusive as to the matters stated therein' and hence, there is finality as regards the conclusion on fact and law in terms of the statutory scheme.

13. Under the scheme of the Act, once an application is filed under Section 245-C, the Commission calls upon the applicant to explain the maintainability of such application and an order is passed either rejecting or allowing it to be proceeded.

14. The report of the Principal Commissioner/ Commissioner may be called for and on the basis of which the application may be treated as invalid or be allowed to progress upon report being filed and it may cause a further enquiry or investigation and direct report to be filed. The Settlement Commission may, in accordance with the provisions of the Act, pass such order as it thinks fit on the matters covered by the application.

15. Thus, it is clear that a procedure has been spelt out and the only limitation by way of statutory mandate is that the Settlement Commission must act "in accordance with the provisions of the Act." The words "in accordance with the provisions of the Act" is to be construed as stipulating that the order passed ought not to be contrary to the provisions of the Act.

16. It is also necessary to note that the Settlement Commission has been conferred with powers under Section 245-F which are:-

> *(a) "… all the powers which are vested in an income tax authority under this Act."*
>
> *(b) …. exclusive jurisdiction to exercise the powers and perform the functions of an income tax authority under the Act in relation to the case."*

17. Though there is conferment of powers of the concerned tax authority, the nature of such power conferred are best described in the observations of the Delhi High Court in ***Agson Global Pvt. Ltd., v. ITSC - (2016) 65 Taxmann.com 5***

> *11. … Sub-section (1) of Section 245F stipulates that in addition to the powers conferred on the Settlement Commission under Chapter XIX A, it shall have all the powers which are vested in an income tax authority under the said Act. But, in our view, this has to be read in the context of and scope of the settlement proceedings. It does not entail that the powers of regular assessment which are vested in an income tax authority can be exercised by the Settlement Commission. What we mean to say is that the Settlement Commission does not engage itself in the process of assessment and cannot make an assessment order. The order that the Settlement*

Commission makes under Section 245 D(4) is not in the nature of an assessment, but by way of a settlement and contains the terms of settlement. Thus, we reiterate that the powers which are vested in an income tax authority and could be exercised by the Settlement Commission are such which have a nexus with the settlement proceedings which does not include, in our view, the making of an assessment under the said Act."

(emphasis supplied)

18. The above view is in line with the view of the Constitution Bench (Bench of 5 Judges) of the Apex Court in the case of ***Brij Lal and Others v. Commissioner of Income Tax, Jalandhar, reported in (2011) 1 SCC 1.*** The relevant extract from the said judgment reads as follows:

"39. Moreover, as stated above, under the Act, there is a difference between

assessment in law [regular assessment or assessment under section 143(1)] and assessment by settlement under Chapter XIX-A. The order under section 245-D(4) is not an order of regular assessment. It is neither an order under section 143(1) or Section 143(3) or Section 144. Under sections 139 to 158, the process of assessment involves the filing of the return under section 139 or under section 142; inquiry by the AO under Sections 142 and 143 and making of the order of assessment by the AO under Section 143(3) or under section 144 and issuing of notice of demand under section 156 on the basis of the assessment order. The making of the order of assessment is an integral part of the process of assessment. No such steps are required to be followed in the case of proceedings under Chapter XIX-A. The said Chapter contemplates the taxability determined with respect to undisclosed income only by the process of settlement/ arbitration. Thus, the nature of the orders

under sections 143(1), 143(3) and 144 is different from the orders of the Settlement Commission under Section 245-D(4).”

(emphasis supplied)

19. The Division Bench of this Court in the case of ***N. Krishnan v. Settlement Commission reported in (1989) 180 ITR 585 (Karnataka)*** has dealt with the specific question of "scope of interference under Article 226 of the Constitution against a decision of the Settlement Commission." It has been observed at para-15 as follows:-

"15 … We are of the view that a decision of the Settlement Commission could be interfered with only:-

(i) If grave procedural defect such as violation of the mandatory procedural requirements of the provisions in Chapter XIX-A and/or in violation of Rules of natural justice is made out;

(ii) If it is found out that there is no nexus between the reasons given and the decision taken by the Settlement Commission;

(iii) This Court cannot interfere with an error or fact or error of law, alleged to have been committed by the Settlement Commission.

In light of the above discussion, the validity of the order of the Settlement Commission requires to be tested.

20. It must be noticed that the Settlement Commission while dealing with the contention that genuineness of the declaration of gifts cannot be accepted as the assessee had not shown the cash gifts as closing cash balance in the wealth tax return, has recorded a finding that the question of making such declaration did not arise as, if such declaration was made earlier, the question of disclosure seeking settlement

would not have arisen. In fact, the petitioner has filed an affidavit under Rule 8 explaining the receipt of gifts from friends and relatives. Such declaration has not been rebutted by the revenue by placing any additional facts to the contrary.

21. In light of the same, conclusion of the Settlement Commission by accepting the explanation 'in the spirit of settlement' cannot be faulted calling for interference in exercise of the limited jurisdiction.

22. Insofar as the allied contention that the additional income disclosed is to be treated as income under the head referred to in Section 68 or 69 of the Act, the Settlement Commission has once again referred to the affidavit filed under Rule 8 and observed that the report under Rule 9 does not place any contra material. It is observed that the PCIT has not shown how the conditions prescribed under Section 115 BBE are met.

23. It is to be noticed that the special slab of higher rate as specified under Section 115 BBE would be applicable as regards the income referred to in Sections 69, 69, 69A, 69B, 69C or Section 69D. As rightly pointed out, the PCIT has not stated as to which particular provision would be applicable as each provision has distinct scope and applicability. In the facts of the present case, the question of invoking Section 69D does not arise. If any of the provisions of Section 69, 69A to 69C are sought to be invoked, in all such provisions the non-acceptance of the explanation would result in such amount "may be deemed to be the income of the assessee for such financial year." The Apex Court in the case ***Commissioner of Income Tax v. Smt.P.K.Noorjahan reported in (1999) 237 ITR 570 (SC)*** has observed that discretion is conferred on the Assessing Officer to treat the unexplained income appropriately in the facts of the case. The observation

made in para 3 of the said judgment would be of relevance and reads as follows:

> *"3. Shri Ranbir Chandra, the learned Counsel appearing for the revenue, has urged that the Tribunal as well as the High Court were in error in their interpretation of Section 69. The submission is that once the explanation offered by the assessee for the sources of the investments found to be non-acceptable the only course open to the ITO was to treat the value of the investments to be the income of the assessee. The submission is that the word 'may' in Section 69 should be read as 'shall'. We are unable to agree. As pointed out by the Tribunal, in the corresponding clause in the Bill which was introduced in Parliament, the word 'shall' had been used but during the course of consideration of the Bill and on the recommendation of the Select Committee, the said word was*

substituted by the word 'may'. This clearly indicates that the intention of Parliament in enacting section 69 was to confer a discretion on the ITO in the matter of treating the source of investment which has not been satisfactorily explained by the assessee as the income of the assessee and the ITO is not obliged to treat such source of investment as income in every case where the explanation offered by the assessee is found to be not satisfactory. The question whether the source of the investment should be treated as income or not under section 69 has to be considered in the light of the facts of each case. In other words, a discretion has been conferred on the ITO under section 69 to treat the source of investment as the income of the assessee if the explanation offered by the assessee is not found satisfactory and the said discretion has to be

exercised keeping in view the facts and circumstances of the particular case."

24. Accordingly, in the present case, the conclusion arrived at by the Settlement Commission while accepting the contents of the affidavit filed under Rule 8 'in the spirit of the settlement' and refusing to accept the contention of having recourse to Section 115BBE cannot be permitted to be interfered with.

25. Further, as regards the declaration with respect to cash gifts, alleged non-disclosure of the same in the wealth tax returns of the previous years, the Settlement Commission has dealt with the said contention by observing as follows:

"No incriminating material was found during search, declaration being made in the Settlement Commission is supported by affidavit under Rule 8 in support of an assertion of fact that is not borne out by

record, no contra material is produced by the Department to conclude that the assessee has not received gift by way of cash".

Such conclusion also is well reasoned which would constitute plausible reason and a finding recorded on a satisfaction of the authority in keeping with the spirit of settlement does not warrant interference.

26. The observations of the Apex Court in the case of ***Jyotendrasinhji v. S.I.Tripathi reported in (1993) 201 ITR 611 (SC)*** are very apt in defining the scope of interference in orders of the Settlement Commission and are extracted as below:

"16. …Be that as it may, the fact remains that it is open to the Commission to accept an amount of tax by way of settlement and to prescribe the manner in which the said amount shall be paid. It may condone the defaults and lapses on the part of the assessee and may waive interest, penalties or prosecution, where it thinks

appropriate. Indeed, it would be difficult to predicate the reasons and considerations which induce the Commission to make a particular order, unless of course the Commission itself chooses to give reasons for its order. Even if it gives reasons in a given case, the scope of enquiry in the appeal remains the same as indicated above viz., whether it is contrary to any of the provisions of the Act. In this context, it is relevant to note that the principle of natural justice (audi alteram partem) has been incorporated in Section 245-D itself. The sole overall limitation upon the Commission thus appears to be that it should act in accordance with the provisions of the Act. The scope of enquiry, whether by High Court under Article 226 or by this Court under Article 136 is also the same — whether the order of the Commission is contrary to any of the provisions of the Act and if so, has it prejudiced the petitioner/appellant apart from ground of bias, fraud and malice which, of course, constitute a separate and

independent category. Reference in this behalf may be had to the decision of this Court in R.B. Shreeram Durga Prasad and Fatechand Nursing Das v. Settlement Commission (IT and WT) [(1989) 1 SCC 628 : 1989 SCC (Tax) 124 : (1989) 176 ITR 169] which too was an appeal against the orders of the Settlement Commission. Sabyasachi Mukharji, J., speaking for the Bench comprising himself and S.R. Pandian, J. observed that in such a case this Court is "concerned with the legality of procedure followed and not with the validity of the order". The learned Judge added "judicial review is concerned not with the decision but with the decision-making process". Reliance was placed upon the decision of the House of Lords in Chief Constable of the N.W. Police v. Evans [(1982) 1 WLR 1155 : (1982) 3 All ER 141] . Thus, the appellate power under Article 136 was equated to power of judicial review, where the appeal is directed against the orders of the Settlement Commission. For all the above reasons, we

are of the opinion that the only ground upon which this Court can interfere in these appeals is that the order of the Commission is contrary to the provisions of the Act and that such contravention has prejudiced the appellant."

27. Accordingly, keeping in mind the narrow scope of interference in light of the discussion supra, the order of the Settlement Commission with elaborate reasoning which has a nexus with the objective of settlement as regards the statutory provisions in Chapter XIX-A of the Act, the order does not call for interference and the petition is rejected.

Sd/-
(S. SUNIL DUTT YADAV)
JUDGE

VGR / NP