IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

:: J U D G M E N T ::

D.B. CIVIL SPECIAL APPEAL (W) NO.745/2004

M/s Shreyans Gems Pvt. Ltd., Jaipur
Vs.
The Income Tax Settlement Commission, Principal Bench, New Delhi & Ors.

Date of Judgment :: 10th October, 2006

P R E S E N T

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE SHRI JUSTICE P.S. ASOPA
::

Shri N.M. Ranka Sr. Advocate assisted by
Shri J.K. Ranka for the appellant.
Shri J.K. Singhi)
Shri Anuroop Singhi) for the respondents.

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BY THE COURT (PER HON'BLE THE CHIEF JUSTICE)

This special appeal is directed against the order of the learned Single Judge dated 8.11.2004 in

S.B. Civil Writ Petition no.3959/2004 dismissing the writ petition of the appellant.

The writ petition had been filed for quashing of the order of the Settlement Commission rejecting the settlement application of the appellant filed under Section 245C(1) of the Income Tax Act, 1961 (in short, 'the Act'). The appellant had filed another writ petition being S.B. Civil Writ Petition no.312/2004 seeking stay of recovery of demand till disposal of the settlement application, and also direction to postpone hearing of the appeal against the assessment order till disposal of the settlement application. Both the writ petitions were dismissed by the same order.

Facts of the case, briefly stated, are that between 29.10.1999 and 11.11.1999 business premises of one Prakash Chand Dhadda was searched by the investigation wing of the Income Tax Department. Prakash Chand Dhadda is said to be proprietor of M/s P.C. Dhadda & Company. He also happens to be Director of the appellant-Company M/s Shreyans Gems Pvt. Ltd.

During the search – which was conducted when Dhadda was away – stock-in-trade worth Rs.93,83,598/- was seized.

Case of the appellant-Company is that seized stock included the stock of the Company to the extent of Rs.66,31,434/-. On 13.11.1999 Prakash Chand Dhadda informed the Director of Income Tax (Investigation), Jaipur about mixing of stocks. On 22.12.2000 he filed application under Section 245C of the Act before the Settlement Commission which was admitted on 8.5.2001. The appellant-Company filed similar application under Section 245C on 1.3.2001 for assessment years 1998-99, 1999-2000 and 2000-01. The Deputy Commissioner of Income Tax, Investigation Circle 1 (1), Jaipur and the Commissioner of Income Tax, Jaipur submitted reports in terms of Section 245D(1) of the Act and rule 6 of the Income Tax Settlement Commission (Procedure) Rules, 1997. On receipt of the reports, the application was rejected on 20.9.2001. The Commission took the view that as regards assessment years 1998-99 and 1999-2000 the period available for issue of statutory notices under Section 143(2) /142(1) of the

Act had already expired and no proceeding could be said to be pending on the date of filing of settlement application. The Commissioner observed that one of the essential requirements of application under Section 245C(1) is that there should be a proceeding pending on the date of application. As such, application for assessment years 1998-99 and 1999-2000 was not maintainable. As regards assessment year 2000-01, the Commission observed that although assessment proceeding was technically pending on the date of application, in view of the report of the Commissioner of Income Tax that Section 158 BD proceedings are yet to be initiated during finalization of the case of M/s. P.C. Dhadda & Co., and in view of the admitted position that no notice under Section 158 BD or 158 BC had been issued till date, the return for the block period shall have to be filed by the applicants covering part of the assessment year 2000-01, in case the department decides to issue notice under Section 158 BD of the Act. Any view taken by the Commission on the application under consideration at this stage may be premature and lead to anomalous results. The Commission accordingly declined to admit the

settlement application for the assessment year 2000-01 as well vide order dated 20.9.2001.

The appellant filed another settlement application for the assessment year 2000-01 on 16.12.2002. That application too was rejected on 14.5.2004. We shall refer to the relevant part of the order later in this judgment. The appellant filed the writ petition as mentioned above, and the same having been dismissed, he has come to the Division Bench in appeal.

Before proceeding further, it may be appropriate to mention that under Section 245C(1), an assessee may, at any stage of the case relating to him, make an application (for settlement of the case against him) containing full and true disclosure of his income which has not been disclosed before the assessing officer. Section 245D(1) provides that on receipt of an application under Section 245C, the Settlement Commission shall call for a report from the Commissioner, and on the basis of the materials contained in such report, and having regard to the

nature of circumstances of the case or complexity of the investigation involved therein, reject or allow the application to be proceeded with. In terms of proviso to sub-section (1), the application cannot be rejected without giving opportunity of hearing. In case the application is allowed, it is to be dealt with in the manner laid down in the section. It is not necessary to notice the mechanism provided in the Section in this regard for disposal of the case.

Case of the appellant is that the application of P.C. Dhadda having been admitted by the Commission, there is chance of conflicting findings with respect to the seized stock which included the stock of the appellant-Company. It is relevant to mention here that at the time of filing of the application under Section 245C of the Act, appeal preferred by the appellant against the assessment order of the Assistant Commissioner of Income Tax was pending before the Commissioner of Income Tax and that is how submission was made about the possibility of conflicting findings. Counsel for the appellant was at pains to convince the Court that the provisions relating to

filing of settlement application are intended to shorten the litigation which may otherwise be long drawn, and therefore the application of P.C. Dhadda having been admitted, with part of the seized stock belonging to the appellant-Company, it would be in the fitness of things to decide both the applications – filed by Dhadda and the appellant-Company – together.

On behalf of the Department it was stated that during the intervening period, the Assessing Officer completed assessment of the appellant-Company for the assessment year 2000-01 on 6.3.2003 against which the appellant preferred appeal before the Commissioner of Income Tax, but in the grounds of appeal it was nowhere pleaded that there was mixing of stock with that of M/s P.C. Dhadda & Co. and there would be complexity of investigation. The grounds of appeal would show that the appellant was aggrieved by the valuation and certain additions made by the Assessing Officer.

In order to appreciate the controversy, it may be appropriate to notice the relevant part of the

report of the Commissioner of Income Tax submitted in terms of Section 245D(1) in response to the first settlement application of the appellant as under :-

> "There was a search action on 29.10.1999 at the business premises of Shri Prakash Chand Dhadda Prop. M/s. P.C. Dhadda & Co., Jaipur who also happens to be a Director of M/s. Shreyans Gems Pvt. Ltd., Jaipur, the applicant Co. The appraisal report shows that unaccounted excess stock to the tune of Rs.93,83,598/- was found and seized by the search party. On the eve of search, it was claimed by Shri Babu Lal Jain, the accountant of M/s. P.C. Dhadda & Co.., that the stock kept at the said premises belonged to M/s. P.C. Dhadda & Co., but thereafter, it was on 5.11.1999 that a new claim was made to the effect that the stock of M/s. Shreyans Gems Pvt. Ltd., the applicant Co., was also lying there and the stock of the applicant has been mixed up with the stock of M/s. P.C. Dhadda & Co., by the search party. However, this explanation appears to be an after thought. It appears to be an attempt on the part of the applicant to create an impression that there is a complexity of the investigation involved in this case. It is also with this intention that the applicant and other connected persons has taken contrary stand not only in regard to the excess stock but also in regard to the books of accounts. It is also relevant to point out that so far the AO has not taken any action by issue of any notice u/s. 158BD and merely on the basis of apprehension by the applicant Co. that the AO may issue such notice on future date, it cannot be said that this case involves a complexity of investigation."

The report also stated that the accountant of

M/s. P.C. Dhadda & Co., Shri Babu Lal Jain, was present during search. He was examined with respect to the stock on 29.10.1999 i.e. the first day of search. He stated that the stock belonged to M/s. P.C. Dhadda & Co. only. On 5.11.1999 Shri Babu Lal Jain alongwith Chartered Accountant and the Advocate attended the office and examined the stock register of M/s. P.C. Dhadda & Co. During the examination they found the excess stock of goods. They tried to reconcile the book stock with the actual stock by stating that *Ghat & Tall* might have been mistaken for cut stones/rough emerald. On examination Shri Babu Lal Jain stated that cut stones did not include *Ghat or Tall*. At this stage the “story was concocted” that the stock of M/s. Shreyans Gems Pvt. Ltd i.e. the appellant-Company was also lying at the above premises and the same had been mixed up. The report contained references to the events to substantiate the conclusion that the plea of part of the excess stock as belonging to the appellant-Company was an after thought. The report went on to state that the inspectors were also deputed to the office of Shri P.C. Bafna, Chartered Accountant, during the first day of search itself for

making inquiries and taking over the books of various concerns of Shri Dhadda in view of the statement of Babu Lal Jain that the books of the assessee were with the Chartered Accountant. Shri P.C. Bafna, the Chartered Accountant, gave in writing that he did not have the books of M/s. P.C. Dhadda & Co.

On consideration of the matter, the Settlement Commission observed as follows in the impugned order dated 14.5.2004 :-

> "We are in agreement with the submissions made by CIT(DR) that the claim of the applicant of its stock having been mixed up with that of Shri P.C. Dhadda or that seizure of stock in the case of Shri P.C. Dhadda included the stock of the applicant did not find any mention either in the assessment order framed in the case of the applicant or in the ground of appeal before the CIT(A). The arguments of learned A.R., therefore, that this issue raises the complexity of investigation is without any basis. It has been claimed before us by the learned A.R. that both the applicant as also M/s. P.C. Dhadda maintained stock registers. If that is so we do not see any complexity involved even if this issue had been raked up by the Department. No doubt this issue may be relevant in the case of Shri P.C. Dhadda for explaining the stock found at the time of the search. If that is so the issue may be examined in the case of Shri P.C. Dhadda whose case has already been admitted by us. So far as the applicant is concerned there is no complexity of investigation left to be settled on the basis of the submissions made before us. We accordingly hold that on the

facts and circumstances this case is not a fit case to be admitted u/s. 245D(1) of the Act."

Shri N.M. Ranka learned counsel for the appellant cited authorities in support of the plea that in order to shorten an otherwise long drawn litigation, the Commission should have entertained the application and decided the matter along with that of P.C. Dhadda. He submitted that once settlement application is filed, the Assessing Officer should stay his hands but in the present case, over-ruling the request, assessment was completed leaving no option to the appellant but to prefer appeal. On behalf of the Department it was stated the CIT (Appeals) has decided the appeal of the appellant, and the appellant had filed second appeal before the Income Tax Appellate Tribunal which is pending. It was submitted that filing of the settlement application is no bar to completing the assessment or deciding the appeal and proceeding with the recovery of demand as held in Commissioner of Income-Tax Vs. Hindustan Bulk Carriers, [2003] 259 ITR 449. It was submitted that the Settlement Commission is supposed to entertain the application only when some complexity of investigation

is involved, and not as a matter of course, and the Commission having declined to entertain the application, it is not open to this Court while making judicial review to sit in appeal over the decision of the Commission.

After considering the submissions of the counsel for the parties, we find force in the stand of the department. In Shyam Glass Works Vs. Income-Tax Settlement Commission & Anr., [1997] 228 ITR 672 while construing the scope of writ petition against the decision of the Settlement Commission rejecting the application for settlement, the Allahabad High Court has held that whether the application under Section 245C(1) could or could not be allowed is a matter which is to be decided by the Settlement Commission giving due weight to the matters mentioned therein and in Section 245D. The writ Court is merely concerned with the legality of the procedure followed, that is, the decision-making process and not with the merits of the order. In Harphool Singh Vs. Income-Tax Settlement Commission & Ors., [1995] 215 ITR 216, the Punjab & Haryana High Court has held that the question whether the settlement application filed under Section 245C of

the Income Tax Act may be admitted or not, would depend upon the facts and circumstances of each case and where the application is rejected on the ground that most of the controversial issues had already been settled and the appeal was pending before the Appellate Authority, it is open to the petitioner to challenge the issues which he wanted to be settled before the Appellate Forum, and the High Court would not interfere with the order of the Settlement Commission. In C.A. Abraham & Ors. Vs. Assistant Commissioner of Income-Tax & Ors., [2002] 255 ITR 540, the Madras High Court has held that the High Court's power of judicial review of the decision of the Settlement Commission is limited. While exercising jurisdiction under Article 226 of the Constitution, the Court cannot go into the factual aspects of the case. In Southern Herbals Ltd. Vs. Settlement Commission (IT & WT) & Anr., [2003] 261 ITR 681, the Karnataka High Court has held that the decision of the Settlement Commission can be interfered with only in case of grave procedural defects such as violation of mandatory procedural requirements of the provisions in Chapter XIX-A of the Income Tax Act, and/or violation

of the rules of natural justice or where it is found that there is no nexus between the reasons assigned and the decision taken by the Settlement Commission. The Court cannot interfere with an error of fact or law alleged to have been committed by the Settlement Commission.

The Settlement Commission in the instant case declined to entertain settlement applications on two occasions accepting the statutory report of the Commissioner of Income Tax that the plea was an after thought – substantiated by the facts and circumstances of the case. We do not think it is possible for this Court to interfere in the matter. As mentioned above, during the intervening period, the appeal preferred by the appellant-Company was decided by the Commissioner of Income Tax (Appeals) against which the appellant preferred second appeal before the Income Tax Appellate Tribunal which is pending. The plea that part of the seized stock-in-trade belongs to the appellant-Company has been found to be an after thought – an attempt to salvage the case of P.C. Dhadda, we do not think there is any possibility of

conflicting findings. The Settlement Commission having declined to entertain the settlement application on two occasions, satisfied that there was no complexity of investigation involved, we do not think, a mandamus can be issued to the Commission to entertain the application.

In the result, we find no merit in this appeal which is accordingly dismissed.

[P.S. ASOPA], J. **[S.N. JHA], CJ.**

Skant/-