

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION NO. 2894 of 2018

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MAHESHBHAI SHANTILAL PATEL

Versus

SECRETARY INCOME TAX SETTLEMENT COMMISSION

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Appearance:

MR B S SOPARKAR(6851) for the PETITIONER(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI
and
HONOURABLE MR.JUSTICE B.N. KARIA

Date : 13/03/2018

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. The petitioner has challenged an order dated 11.07.2017 passed by the Settlement Commission rejecting the petitioner's application for settlement for the A.Y. 1991-92 to 1994-95.

2. The brief facts are as under;

The petitioner is an individual. Pursuant to a search action u/s.132 of the Income Tax Act, 1961 ("the Act", for short) carried out at the residence and office premises of the petitioner in September/October 1993, assessment proceedings for the relevant Assessment Years of the block period commenced. The petitioner applied for settlement of the cases before the Settlement

Commission by filing an application on 27.10.1995. During the pendency of such proceedings, Section 243D of the Act was amended by which a person, who has applied for settlement, was required to pay tax with interest latest by 31.07.2007. The Department raised dispute about the petitioner having discharged such liability. The Settlement Commission accepted the Department's stand and dismissed the application for settlement by a letter dated 26.11.2013.

3. The petitioner challenged such order of the Settlement Commission before the High Court by filing Special Civil Application No.4939 of 2015. The High Court accepted the petitioner's contention that after adjustment of the accounts of the petitioner, there was no shortfall in paying the tax with interest as per the declaration made in the settlement application. The High Court, by the judgment dated 14.06.2016 rendered in the said writ petition, placed the proceedings back before the Settlement Commission for further hearing. The Settlement Commission thereupon resumed hearing and after detailed consideration of all the materials on record, passed the impugned order rejecting the offer of settlement for all the Assessment Years.

4. Learned counsel Shri Soparkar for the petitioner vehemently contended that the Settlement Commission has committed serious error in rejecting the application for settlement for all the Assessment Years on the ground that the petitioner had not made true and full disclosures. The Settlement Commission had not cited any specific instance of not making true disclosure. Even if the petitioner's theory of existence of AOP was to be rejected, the same would have no bearing on the petitioner's application for settlement. Counsel further submitted that the offers made by the petitioner came to be revised from time to time purely in the spirit of settlement and that too at the suggestion of the departmental authorities. The revised offers should not be seen as a failure on the part of the petitioner to make true disclosures at the outset. Counsel lastly contended that in any case, such revised disclosures pertained to only two Assessment Years, i.e. 1991-92 and 1992-93. The Settlement Commission, therefore, in any case, could not have rejected the application for settlement for the A.Y. 1993-94 and 1994-95. Heavy reliance was placed on the decision of this Court in the case of **Ashish Prafulbhai Patel v. Income Tax Settlement Commission and others**, 251 Taxmann.com

441, to canvass that application for settlement would be separate and distinct for each year.

5. We have heard learned counsel for the petitioner and perused the documents on record. We have recorded the brief background facts leading to the present petition. The limited jurisdiction of judicial review while examining the correctness of the order of the Settlement Commission is a well settled principle. In brief, the Supreme Court as well as this Court has reiterated that the order of Settlement Commission would be subject to interference only if it suffers from any malafides or is opposed to the principles of natural justice or is passed against the provisions of the Income Tax Act. Reference in this respect can be made to the judgment of this Court in the case of **Jyotendrasinhji v. S.I. Tripathi and others**, [1993] 201 ITR 611.

6. In this background, we may revert back to the order of the Settlement Commission. Perusal of the order would show that the petitioner was found to be engaged in various land deals, from which, the Department contends, that he had earned sizable unaccounted income. In the settlement application, the petitioner had stated

that he along with one N.K. Patel would negotiate with agriculturists, who are land owners or those who are *Banakhat* right holders for purchase of agricultural lands, which would have commercial potential. After getting such agricultural lands converted into non-agricultural use by obtaining necessary permissions and approvals from the Government authorities, buyers for the lands would be identified. The land owners would directly transfer the lands to such buyers. If there are any *Banakhat* right holders or other intermediaries, they would be shown as confirming parties. In this background, the petitioner had made the disclosures in the settlement application and had offered different amounts to tax for the said four Assessment Years, i.e. A.Y. 1991-92 to 1994-95.

7. The Settlement Commission noted that during the search action, the petitioner had disclosed an amount of Rs.43.00 Lakhs having been invested in the AOP. As against that the petitioner had filed the settlement application disclosing additional income of Rs.32.97 Lakhs. The Department had all along opposed the theory of existence of the AOP. In this context, the Settlement Commission recorded that there was no documentary evidence regarding holding of the lands or any other property in the name of the

AOP. The reference made by the petitioner in his statement u/s.132(4) of the Act to such AOP was not backed by any other evidence or information. The Settlement Commission, therefore, agreed with the suggestion of the Department that there was no AOP in existence. In this background, the Settlement Commission recorded that the petitioner had not made true and full disclosures in his application for settlement made to the Settlement Commission.

8. Additionally, the Settlement Commission also noted that the petitioner had, from time to time, made several disclosures for two out of the four Assessment Years, namely, A.Y. 1991-92 and 1992-93. The Settlement Commission noted that against the total additional income of Rs.84.76 Lakhs (rounded off) for the A.Y. 1991-92 to 1994-95 disclosed in the application for settlement, the assessee revised the disclosure under letter dated 27.01.2017 to Rs.1.20 Crores (rounded off). This additional disclosure of Rs.84.76 Lakhs (rounded off) comprised of Rs.7.70 Lakhs for A.Y. 1991-92 and Rs.77.06 Lakhs for A.Y. 1992-93. Subsequently, under letter dated 16.03.2017, the assessee made further disclosure of additional income of Rs.13.25 Lakhs for A.Y. 1992-93 on account of unexplained expenses in the purchase of land. This was pursuant to the Department

pointing out the discrepancies in the investments and expenditures. The petitioner came up with yet another revised disclosure under letter dated 17.05.2017, which was based on the cash flow chart prepared on the basis of seized documents. The petitioner owned up the entire amount of Rs.3,05,500/- for A.Y. 1991-92 and Rs.24.81 Lakhs for A.Y. 1992-93. The petitioner filed yet another letter dated 01.06.2017 before the Settlement Commission and sought to distance himself from the income of the AOP, which he had earlier agreed to show proportionately on the ground that the other member of the AOP, i.e. N.K. Patel, had not agreed to that modality. Under the said letter dated 01.06.2017, therefore, the petitioner made final offer of additional income of Rs.68.02 Lakhs by way of settlement for the said four Assessment Years.

9. The Settlement Commission, therefore, recorded that all throughout the settlement proceedings, the petitioner had made a flip flop in his stand and also in the disclosures made from time to time. These are the main grounds which persuaded the Settlement Commission to dismiss the application.

10. We do not find any reason to interfere. As noted, the order of Settlement Commission is

founded on primary facts; (i) that the AOP was found to be non-existent and the petitioner had, therefore, not made true disclosure in this respect and (ii) that all throughout the petitioner shifted his stand on his correct undisclosed income. The existence or otherwise of AOP is a question of fact, in which, we would not interfere, in absence of any perversity in the Settlement Commission's findings. If this be so, the question of true and full disclosure in the settlement application would assume significance. The petitioner had tried to divert a part of his income in the hands of the AOP, which attempt failed. This had co-relation to all the Assessment Years and was not only confined to two of them. Further, the multiple disclosures made by the petitioner during the settlement proceedings, as noted by the Settlement Commission and referred to in the earlier portion of this judgment, would clearly show that the petitioner had scant regard for truth. Several revised settlement offers were made by the petitioner. Each time the petitioner shifted his stand, either on the quantum of undisclosed income or its source. On certain occasions, the Department brought out discrepancies in the disclosures, which forced the petitioner to make further revised offers for settlement. After making such revised offers on multiple attempts,

the petitioner took a complete 'U' turn and sought to delete certain income from his disclosures on the ground that, till then, he had taken into account his share of the AOP in question. However, the other member of the AOP refused to accept such a formula. The petitioner would, therefore also, downwardly revise his income offered through settlement, which was impermissible. Irrespective of the stand of the other member of the AOP, the petitioner had made conscious disclosures, which proceeded on two footings; (i) that the AOP did not exist and the petitioner's share of the AOP in question would now be disclosed by him and (ii) that the petitioner agreed that in the name of AOP, certain unaccounted income was generated, which was not offered to tax.

11. The Supreme Court in the case of **Ajmera Housing Corporation and another v. Commissioner of Income-Tax, [2010] 326 ITR 642 (SC)** had emphasized the requirement of true and full disclosure in settlement proceedings and highlighted that such disclosures should be made at the outset in the application for settlement itself. It was a case in which a person, who had applied for settlement, had made sizable further disclosures after filing the application for

settlement. The Supreme Court was of the view that this itself would show that the initial disclosure was not true. It was observed that full and true disclosure of income, which had not been previously disclosed, is a precondition for valid application u/s.245C(1) of the Act. The Scheme of Chapter XIX-A does not contemplate revision of the income as disclosed in the application. If the assessee is permitted to revise his disclosure, it would, in a sense, mean making a fresh application in relation to the said case by withdrawing the earlier application. Thus, the assessee cannot revise the application.

12. This Court in the case of *Ashish Prafulbhai Patel* (supra) did hold that application for settlement for each year would be separate and distinct. It was a case in which the petitioner had challenged the vires of Section 245D(2A) of the Act, besides other machinery provisions, essentially arguing that failure to pay tax along with interest by 31.07.2007 in settlement cases where applications were already filed by the time the statute was amended with a consequence of abatement of the settlement application was unconstitutional. The petitioner had also challenged the order of Settlement Commission on merits, by which the petitioner's request for continuing with the settlement offer for the

years during which full tax with interest was already paid, was also rejected by the Settlement Commission on the ground that no such dissection could be made. The Court rejected the challenge to the constitutionality of the statutory provisions to uphold the petitioner's contention that for the Assessment Years for which tax with interest was paid, the application for settlement should have been proceeded further. Said case, unlike in the present case, did not contain block assessment proceedings. The question of separate applications/proceedings of settlement for each year was, therefore, not examined in the context of block assessment. Further, in the present case, the Settlement Commission has held that there was lack of true and full disclosure and total flip flop on the part of the petitioner while making multiple disclosures.

13. In the result, the petition is dismissed.

(AKIL KURESHI, J)

(B.N. KARIA, J)

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