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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2814 OF 2016

M/s.Rashmi Infrastructure Developers Ltd. ... Petitioner

vs.

Income Tax Settlement Commission ... Respondent
and 3 Ors.

…....

Mr. Ajaykumar Singh a/w. Mr. Rajendra Poojary for the Petitioner.
Mr. A. K. Malhotra a/w. Mr. N. A. Kazi for the Respondent.

…....

CORAM : M.S.SANKLECHA &
A.K. MENON, JJ.
DATE : 20th JANUARY, 2017

P.C. :

1. This Petition under Article 226 of the Constitution of India challenges the order dated 9th August, 2016 under Section 245(D)(4) of the Income Tax Act, 1961 (the Act) passed by the Income Tax Settlement Commission (the Commission).

2. The grievance of the petitioner to the impugned Order dated 9th August, 2016 of the Commission is it had rejected its application for settlement under Section 254(D)(4) of the Act on the ground of failure to make a full and true disclosure in the application for settlement. It is contended by the petitioners that

the impugned order held that there is no full and true disclosure on account of the following three claims:

(a) On money received by the petitioner;

(b) Estimated expenses incurred out of on money; and

(c) The entitlement to the benefit of Section 80IB of the Act.

3. However, we note that the impugned order dated 9th August, 2016 rejects the petitioners application for settlement on the following two grounds :

(a) The application does not contain full and true disclosure of the applicant's income; and

(b) The application does not contain the manner in which income disclosed has been earned.

Consequently not satisfying the jurisdictional requirements of Section 245C(1) of the Act.

4. There is no challenge by the petitioner on the second issue as (b) above on which also the impugned order dismissed the application for settlement. In the petition, we do not find any challenge made to the aforesaid finding of the Tribunal of non disclosure of the manner in which the income was earned. On being asked Mr. Singh, learned Counsel appearing for the petitioner was at pains to point out that the petition challenges the entire order and therefore this finding is also a subject matter of challenge before this Court.

5. This is not acceptable as the impugned order records a finding of fact of non disclosure of the manner of earning income in the application in the following manner:-

> *"Although the applicant has filed a Settlement Application for six years, yet for A.Y's. 2007-08, 2010-11, 2011-12, and 2012-13, it has declared additional income of Rs. 1 lakh each on an adhoc basis, without spelling out the manner of earning such income. Section 245C(1) mandates "full and true" disclosure of the particulars of undisclosed income together with the 'manner' in which such income was derived. Adjudged against the above touchstone, the applicant has failed miserably. The Bombay High Court in its order dated 28.02.2014 in CIT (Central IV) vs. ITSC WP No.2135 of 2013, following its decision dated 13th June, 2013 in WP 3900 of 2013 CIT (Central), Pune vs. ITSC, has held as under:*
>
> > *"...even if the application for settlement is declared valid in terms of Sec 245D((2C) of the Act , yet it would not estop / bar the Commission from rejecting the application for settlement at later date for non-disclosure of true and full information of the income or the manner in which income was derived. As the requirement of full and true disclosure of the income and the manner in which the income is derived is a requirement to be satisfied by the applicants at all time before this Commission"*

6. Therefore, examination of the petitioner's grievance with regard to true and full disclosure in the facts of the present case is academic. This is so as the other issue on which the application for settlement has been rejected is not challenged before us. Therefore no useful purpose would be served by entertaining this petition as the rejection of settlement application would continue to stand in view

of no challenge to the finding of the Commission to the petitioner's failure to disclose the manner of earning income. This notwithstanding the view we may take after hearing the parties on the first issue of failure to make full and true disclosure of its income on the part of the petitioner.

7. Be that as it may, as pointed out by Mr.Malhotra , the learned Counsel for the Revenue, we note that the petitioner in its written submission dated 11th July, 2015 filed before the Commission had while estimating the expenses incurred out of on money received averred as under:

> *"As regard the allegation of the Learned CIT, the applicant submit that the nature of business of the applicant is such where unaccounted expenses is required to be incurred from time to time without which this type of business cannot function. Instances of such expenses explained by the applicant on page 13 of SOF which are reproduced for the sake of convenience:-*
>
> *a. Payment to slum dwellers illegally holding the area.*
>
> *b. Payment to owners of slums who were not allotted alternate accommodation as someone else was occupying their slums on rentals.*
>
> *c. Shifting expenses and Rental payments to slum dwellers.*
>
> *d. Compensation of slum dwellers who were using the residential slum for commercial purpose.*
>
> *e. Brokerage paid for gtting the approvals of slum dwellers.*
>
> ***f. <u>Speed money for getting clearances.</u>***
>
> *g. Expenses incurred for security and protection.*
>
> *h. Construction expenses on material etc. for construction of rehab buildings.*

All these expenses have been incurred from the unaccounted business receipts from projects. These expenses were not recorded in the regular books of accounts as the same is incurred out of unaccounted receipts."

8. In the petition at page 18 in ground (G) the petitioner has stated as under :-

"*The Petitioner submit that the nature of business of the Petitioner is such where unaccounted expenses is required to be incurred from time to time without which this type of business cannot function. Instances of such expenses explained by the Petitioner which are reproduced for the sake of convenience :-*

a. Payment to slum dwellers illegally holding the area.

b. Payment to owners of slums who were not allotted alternate accommodation as someone else was occupying their slum on rentals.

c. Shifting expenses and Rental payments to slum dwellers.

d. Compensation of slum dwellers who were using the residential slum for commercial purposes.

e. Brokerage paid for getting the approvals of slum dwellers.

f. Expenses incurred for security and protection.

g. Construction expenses on material etc. for construction of rehab buildings.

All these expenses have been incurred from the unaccounted business receipts from projects. These expenses were not recorded in the regular books of accounts as the same is incurred out of unaccounted receipts.

9. It would be evident that while reproducing, for the sake of convenience the case of the petitioner before the Commission, the written submission dated 11th

July, 2015 is in effect extracted. However, clause "(f) Speed money for getting clearances" as found in the submission has been omitted in the body of the petition. The learned Counsel sought to explain the same by stating that it was not referred to in the petition as speed money expenses incurred for getting clearances are not expenses which are allowable in view of Explanation I to Section 37 of the Act. However no such explanation is offered in the petition. One would have therefore proceeded on the basis that no speed money expenses were estimated while working out the estimated expenditure out of 'on money' received.

10. In the submission dated 11th July, 2015 filed before the Commission the applicant refers to page 13 of the Statement of facts and in particular makes references to speed money for getting clearance as one of the unaccounted expenditure incurred for business purposes. This in fact is the basis of the claim made by the applicant before the Commission. If according to the petitioner this amount of expenditure incurred on account of speed money for getting clearance was not allowable as expenditure, then the same could not have been taken into account while estimating the expenditure incurred by it before the Commission.

11. It needs no repeating that relief under Article 226 of the Constitution of India is extraordinary and discretionary. It is a relief in equity and the writ granted is prerogative writ and not a matter of course. Therefore the obligation on

the petitioner to act with utmost good faith i.e. uberrimae fidei. Thus the petitioner must disclose all material facts even if not favourable to him. It is not open to the petitioner to selectively disclose facts and suppress some facts and yet seek extra ordinary remedy of a prerogative writ. As pointed out above, one of the heads of expenses claimed before the Commission for arriving at estimated expenses is the amount paid as "speed money". Thus it was a material fact. The degree of materiality is of no consequence and once the court comes to the view that the non-disclosure was deliberate and possibly made with a view to present a picture different from what existed before the Commission, this Court will not exercise its writ jurisdiction. Therefore, the petitioner has not come with clean hands. In the present case, we are of the view that there was suppression of facts in the petition which was material to the issue at hand. Therefore, we see no reason to entertain this petition on the above ground also.

11. For all the above individual reasons, we see no reasons to entertain this petition. Accordingly, petition is dismissed.

12.. Needless to state that the Assessing Officer will decide the assessment of the petitioner in accordance with law.

(A.K. MENON,J.) **(M. S. SANKLECHA,J.)**