

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.19447 of 2003

A.Pounraj

.. Petitioner

versus

- 1.The Income Tax Settlement Commission,
Additional Bench,
488-489, Anna Salai,
Chennai - 600 035.
2. The Union of India,
Rep. by the Chairman,
Central Board of Direct Taxes,
North Block,
New Delhi.
3. The Commissioner of Income Tax,
Central Revenue Buildings,
Bibikulam,
Madurai - 625 002.
4. The Assistant Commissioner of Income Tax,
Investigation Circle III,
Central Revenue Buildings,
Bibikulam,
Madurai - 625 002.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for records of the first respondent Incometax Settlement Commission, Additional Bench, Chennai in its File settlement Application No.21/MDU/16/95-ID and quash the impugned order dated

21.03.2003.

For Petitioner : Mr.R.Kumar
For Respondent : Mr.M.Swaminathan, SC

ORDER

Heard Mr.R.Kumar, learned counsel appearing for the petitioner and Mr.M.Swaminathan, learned Standing Counsel, appearing for respondent department.

2. The petitioner seeks for issuance of Writ of Certiorari to quash the order passed by the Income Tax Settlement Commission, Additional Bench, Chennai, dated 21.03.2003. In fact, the challenge to the order is not in entirety, but only with regard to the terminal date from which interest got charged.

3. The learned Counsel for the petitioner as well as the learned Standing Counsel for the Revenue agreed that every issue is interpreted by the decision of this Court, in the case of R.Vijayalakshmi vs. Income Tax Settlement Commission Additional Bench and others, in W.P.Nos.5553 to 5558 of 2008 dated 26.07.2016. Identical issue was raised before this court and ultimately it was held that the Department will be entitled for interest only as ordered by the Commission while passing the order under section 245D (4) of the Income Tax Act. It would be beneficial to refer the operative portion of the order:

“...After hearing the learned counsel for the parties and perusing the materials placed on record, the first issue to be answered is with regard to the power of the Commission to reopen its proceedings. Section 245-I of the Act states that any order of the Commission passed under Section 245 shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in that Chapter, be reopened in any proceeding under the Act or under any other law for the time being in force. The said provision does not confer the power of review on the commission. It is settled legal position that power of review is to be specifically conferred on the authority by the statute and power of review is not inherent with the authority. However, when the statute does not provide power of review with the authority and if it is done, it has to be termed as wholly without jurisdiction. Sub section (1) of Section 245(F) which states that Settlement Commission shall have all powers which are vested in Income Tax Authority under the Act cannot be read in isolation but it should be read in tandem with

Section 245(l) and if it is done, then it is to be held that there is no power of review conferred on the Commission to reopen the proceedings. This position held the field till an amendment was inserted under Section 6(b) of Section 245D by Finance Act 2011 with effect from 01.06.2011. Even the said provision is not a power of review. But the phraseology used by the legislation is “rectification” and such rectification can be done on any mistake apparent from the record. Therefore, such power exercisable under sub Section 6D of Section 245D can be exercised only to rectify a mistake and such mistake should be apparent from the record. Thus, even as per the amendment made by Finance Act, 2011, power of review is not conferred on the Settlement Commission.

8. In the Case of *Smt.U.Narayanamma*, Writ Petitions are filed challenging the orders passed by the Settlement Commission on the ground that the Commission has no power to rectify its earlier order even under Section 245D of the Income Tax Act, 1961. The Hon'ble Division Bench of the Andhra Pradesh High

Court after taking into consideration the decision of the Hon'ble Supreme Court in *Brij Lal*, held that the order passed by the Settlement Commission rectifying its earlier order cannot be sustained and must perish. In the said case, rectification was sought for by the commission on the ground that the order passed by the Commission was contrary to the Board's circular. The Court held that even otherwise, it is an error within the jurisdiction of the Commission and it was not an error which went to the root of its jurisdiction and held that if at all revenue had to question the same, it should be by a writ of certiorari. The said decision squarely applies to the facts of the present case.

9. One more observation that is required to be made in the instant case is that the Revenue while rectification/recalling of the order passed by the Commission, referred to a decision of the Hon'ble Supreme Court in the case of *Hindustan Bulk Carriers* and *Damani Bros*, with respect to the terminal date for charging of interest under Section 234B. Admittedly, these decision were rendered by the Hon'ble Supreme

Court much after the final order was passed by the Commission under Section 245D(4).

10. Rudimentary legal principle is that subsequent development of law cannot be a ground to exercise review jurisdiction and that cannot be taken into consideration as an error apparent on the face of the record. Hence, on that ground also, the Department should be non suited. Hence for all the above, order of the Settlement Commission is held to be unsustainable and it is accordingly quashed. Consequently, the orders dated 19.01.2005, 13.12.2004 and 19.01.2005 and order dated 14.07.2005, 04.02.2005, insofar as it relates to the computation of terminal date for charging the interest under Section 234B alone and the order passed by the Settlement Commission dated 08.08.2007 are quashed.

11. After the above order was dictated, the learned Standing Counsel for the respondent Department submitted that if the order passed by the third respondent is quashed, then it would amount to setting

aside the rate of interest as ordered by the Commission.

The Revenue need not have any apprehension in this regard and this Court has held that the order passed by the Commission dated 16.07.1998, 15.10.1998 and 16.07.1998 under Section 245D(4) has become final and the Department will be entitled to interest only as ordered by the commission...”

Accordingly, the writ petition is allowed and the order passed by the Income Tax Settlement Commission in the impugned order is set aside insofar as the computation of the terminal date for charging of the interest under Section 234(B) alone and the impugned order passed by the Settlement Commission is set aside to that extent and it is held that the Department will be entitled for interest as ordered by the commission in its order dated 12.09.1998. No costs.

12.09.2016

Index :Yes/No.
Internet:Yes/No.
pvs

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T.S.SIVAGNANAM, J.,

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