IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 08.09.2016

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.5610 & 5687 of 2005

Varghees Mathew .. Petitioner in WP.5610/2005

Sebastian Mathew .. Petitioner in WP.5687/2005

Vs.

1.The Income Tax Settlement Commission,
Additional Bench, 488-489,
Anna Salai,
Chennai – 600 035.

2.The Union of India represented by
The Chairman,
Central Board of Direct Taxes,
North Block, New Delhi.

3.The Commissioner of Income Tax,
Cochin, Kochi.

4.The Assistant Commissioner of Income Tax,
Circle 2(1) Range 2,
Trichur.

.. Respondents in both WPs.

Prayer in WP.5610/2005:Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records of the 1st respondent Income Tax Settlement Commission, Additional Bench, Chennai in its file Settlement Application Nos.13/CHN/63/95-IT & 682/CHN/72/98-IT for assessment years 1991-92 to 1995-96 quash the impugned order dated 27.02.2004.

Prayer in WP.5687/2005:Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records of the 1st respondent Income Tax Settlement Commission, Additional Bench, Chennai in its file Settlement Application Nos.13/CHN/62/95-IT & 682/CHN/73/98-IT for assessment years 1991-92 to 1995-96 quash the impugned order dated 27.02.2004.

For Petitioners : Mr.R.Kumar

For Respondents : Mr.T.Pramod Kumar Chopda
Standing Counsel

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C O M M O N O R D E R

Heard Mr.R.Kumar, learned counsel for the petitioners and Mr.Pramod Kumar Chopda, learned Standing Counsel for the respondents.

2.The learned counsel for the petitioners submitted that the issue which he proposed to raise in these writ petitions are covered by the decision of this Court in the case of ***R.Vijayalakshmi V. Income Tax Settlement Commission, Chennai, in W.P.Nos.5553 to 5558 of 2008*** and therefore, it is submitted that, that part of the order of the Commission requires to be set aside.

3.It is seen that the Revenue filed Special Leave challenging the order of the Settlement Commission. In the instant case, in C.A.Nos.110 – 114 of 2001 and 5836 – 5840 of 2000, this is along with the other batch of similar matters were clubbed together and the Hon'ble Supreme Court, in ***Commissioner of Income Tax V. Nagraj Chandanmal and Company in Civil Appeal Nos.8705-8706 of 1996,*** disposed of the appeals, by a common order, dated 12.11.2002, which reads as follows:

> *"Heard parties.*
> *Delay condoned.*
> *Leave granted in all the SLPs.*
> *In all these appeals the revenue has questioned the authority of Settlement Commission to either waive the statutory interest or reduce the same. This Court in the case of Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala & Ors. Reported in 2002(1) SCC 633 has held that the Settlement Commission in exercise of its powers under Sections 245(D)(4)(6) does not have the power to reduce or waive the interest statutory payable under Section 234-A, 234-B, and 234-C except to the extent of granting relief under CBDT circulars.*
>
> *However, the learned counsel for the revenue points out that there are two circulars issued by the Board under Section*

119 of the Income Tax Act, 1961, one dated 2nd May, 1994 F.No.212/495/92-IT(A-II) and the other dated 23rd May, 1996 F.No.400/234/95-IT(B), the benefit of which some of the respondents herein may be entitled to.

In view of the above submission on behalf of the revenue, we allow these appeals and set aside the impugned order and remand the matter back to the Settlement Commission for the limited purpose of examining whether the two circular referred to hereinabove are applicable to the facts of these appeals, if so to what relief the respondents will be entitled to.

0 The appeals are accordingly disposed of."

4.In terms of the above direction of the Hon'ble Supreme Court, all that the Commission was required to see as to whether the two circulars referred therein issued by the Central Board dated 02.05.1994 and 23.05.1996 would be applicable. Thus, in other words, the remand was a limited remand with a specific direction and the Commission cannot proceed beyond the said direction. In terms of the direction, the Commission has considered the matter and passed the impugned orders thereby withdrawing the waiver of interest and holding as hereunder:

Settlement Application No.:13/CHN/61/95-IT & 682/CHN/70/98/IT [W.P.No.5363/2005]:

"1.Internet u/s 234A

(i) Interest for the A.Y.s 1990-91 to 1992-93 waived to the extent of 75%, 80% and 60% respectively is not covered under the Board's circular and is accordingly withdrawn.

(ii) Interest for the A.Y. 1993-94 and 1994-95 waived fully is also not covered under the Board's circular and has to be withdrawn.

2.Interest u/s 234B

1. Interest for the A.Y.s 1990-1995-96 waived to the extent of 75%, 80% 60%, 60%, 60%, 75% and 50% respectively is not covered under the Board's circular and is accordingly withdrawn."

Settlement Application No.:13/CHN/64/95-IT & 682/CHN/71/98/IT [W.P.No.5364/2005]:

"1.Internet u/s 234A

(i) Interest for the A.Y.s 1992-93 to 1993-94 waived to the extent of 80%, and 50% respectively is not covered under the Board's circular and is accordingly withdrawn.

(ii) Interest for the A.Y. 1994-95 waived fully is also not covered under the Board's circular and has to be withdrawn.

2.Interest u/s 234B

1. Interest for the A.Y.s 1991-92 to 1993-94 and 1995-96 reduced to the extent of 80% 50%, 75% and 50% respectively is not covered under the Board's circular and is accordingly withdrawn."

5.The learned counsel for the petitioners, on instructions, submitted that the petitioners have not questioned the above orders and they agree with the orders passed by the Commission.

6.Thus, to the above extent, the order of the Commission stands confirmed. The petitioners are aggrieved only by the penultimate portion of the order where the Commission shifted the terminal date for calculation of interest under Section 234B of the Income Tax Act, based on the decisions in the case of ***Hindustan Bulk Carrier (259 ITR 449) and CIT V. Damani Bros. (259 ITR 475),*** the correctness of such order is being questioned in these writ petitions.

7.The very issue was considered by this Court in the case *R.Vijayalaksmi* (cited supra) and it was held that the Commission had no jurisdiction to reopen the matter for the purpose of shifting the terminal date. The operative portion of the order reads as follows:

> *"7. 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(I) 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 1.6.2011. 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 were 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 decisions 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 19.1.2005, 13.12.2004 and 19.1.2005 and order dated 14.7.2005, 4.2.2005, 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 8.8.2007 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 16.7.1998,15.10.1998 and 16.7.1998 under Section 245D(4) has become final and the Department will be entitled to *interest only as ordered by the commission."*

8.Thus, by following the above decisions, the observation of the Settlement Commission by extending terminal date upto 25.02.2000, calls for interference. Accordingly, the Writ Petitions are allowed to that extent and the terminal date as fixed by the Commission in its original order dated 25.02.2000, is confirmed. No costs.

08.09.2016

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To

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T.S.SIVAGNANAM, J.,

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