IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2016

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THE HONOURABLE **MR.JUSTICE T.S.SIVAGNANAM**

W.P.No.8580 of 2005

V.Pandi ... Petitioner

Vs.

1.The Settlement Commission (IT & WT),
Additional Bench,
488-489, Anna Salai, Chennai – 35.

2.The Commissioner of Income Tax – I,
Madurai. ... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of certiorari to call for the records of Settlement Commission (Income Tax and Wealth Tax) No.21/MDU/176/94-IT, dated 27.08.2002 and 11.03.2003 of the first respondent and quash the same as illegal, arbitrary.

For Petitioner : Dr.A.Thiyagarajan, Senior Counsel
for Mr.S.Rameshkumar

For Respondents : Mr.T.Pramodkumar Chopda

ORDER

Heard Dr.A.Thiyagarajan, learned Senior counsel, for Mr.S.Ramesh Kumar, learned counsel for the petitioner and Mr.T.Pramodkumar Chopda, learned counsel for the respondents and with their consent, the the writ petition itself is taken up for disposal.

2. In this writ petition, the petitioner seeks for quashing the order passed by the Settlement Commission dated 27.08.2002 suo-motu revising its final order dated 19.06.1998 and the second suo-motu order dated 11.03.2003. The impugned orders are challenged on the ground of lack of jurisdiction and there is no authority for the Commission to rectify such mistake that too by way of suo-motu action.

3. The power of the Settlement Commission to rectify its order much belatedly by way of an application or otherwise came up for consideration before this Court in the case of ***R.Vijayalakshmi v. Income Tax Settlement, Commission Additional Bench, Chennai, and others (W.P.Nos.5553 to 5558 of 2008, dated 26.07.2016).*** The contention raised by the revenue to justify their action is identical to that of the contention raised in this writ petition also. This Court, after hearing the parties, allowed the writ petition and set aside the

impugned order therein. At this stage, it would be useful to extract the operative portions of the order, which read as under:

> *"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 only 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 cover 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, the statute does not provide power of review with the authority and if it is so, 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.*
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> *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."*

4. It is clear from the facts of the present case also that what has been done by the Settlement Commission is by virtue of the decision of the Hon'ble Supreme Court in ***Brij Lal and Ors. vs. Commissioner of Income Tax [(2010) 328 ITR 447 (SC)]***, which was subsequent to the decision of the Settlement Commission. In fact, the Settlement Commission passed final orders as early as 19.06.1998 and thus, by applying the decision of the Hon'ble Supreme Court in ***Brij Lal***, the order of Settlement Commission has to be taken as final and conclusive and when there is no allegation of fraud or misrepresentation, the question of reopening or revising the order, that too in the manner done in the

impugned orders cannot be sustained.

5. Accordingly, the writ petition is allowed and the impugned orders are set aside. However, it is made clear that the order dated 19.06.1998 passed by the Settlement Commission under Section 245D(4) of the Income Tax Act shall become final and the department will be entitled to demand interest as ordered by the Commission in the said order. No Costs. WPMP No.9261 of 2005 is closed.

10.08.2016

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Index: Yes
Internet: Yes

To

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T.S.SIVAGNANAM, J.

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