

IN THE HIGH COURT OF KARNATAKA AT
BENGALURU

DATED THIS THE 16TH DAY OF DECEMBER, 2015.

BEFORE

THE HON'BLE MR. JUSTICE ANAND BYRAREDDY

WRIT PETITION Nos. 47042-47045 OF 2015 (T-IT)

BETWEEN:

The Pr. Commissioner of
Income Tax, Central Circle,
C.R. Building,
Queen's Road,
Bangalore.

...PETITIONER

(By Shri. K.V. Aravind, Advocate)

AND:

1. Boyance Infrastructure Private Limited
No.15, 4th Floor, Bannerghatta Road,
3rd Phase, J.P. Nagar,
Bangalore-560 076.
Rep by its Managing Director.

2. Income Tax Settlement Commission
No.640, Anna Salai, Nandanam,
Chennai-600 035.
Represented by Secretary.

...RESPONDENTS

(By Shri. Uday Holla, Senior Advocate, Shri Ajay Vohra, Senior Advocate, Shri. Rohit Jain Advocate for Shri.Chandrashekhar.S, Advocate for Respondent No.1; Shri. Krishna.S.Dixit, Assistant Solicitor General for Respondent No.2)

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India praying to quash the order dated: 4.6.2015 passed by the Settlement Commission accepting the application without adjudicating full and true disclosure of income produced as Annexure-H to the writ petition and quash the notice dated: 2.7.2015 issued by the Settlement Commission calling for report Rule 9 of the Income Tax Settlement Commission (procedure) Rule in respect of application vide Annexure-J and etc.,

These Writ Petitions coming on for orders this day, the court made the following:

ORDER

Heard the learned counsel for the petitioner.

The petitioner is the Income Tax Department seeking to question an order passed by the Income Tax Settlement Commission. The background to the present petition is, there was a search conducted under Section 132 of the Income Tax Act, 1961 (hereinafter referred to as 'the IT Act', for brevity) of

the Company called Boyance Infrastructure Private Limited on 11.10.2012.

The statement made under Section 132(4) of the IT Act of the Chief Executive Officer and the Managing Director of the assessee company was recorded on 11.10.2012. It was admitted that the payments made to various subcontractors was without actual work being done and the genuineness of payments could not be substantiated. On 22.10.2012, the statement under Section 132(4) of the IT Act of the Director of the assessee company and the Director of several other companies of the Boyance group was recorded. It was admitted in the statement that a sum of Rs.130,54,97,928/- was undisclosed income. This was admitted for the Assessment year 2010-11, 2011-12 and 2012-13.

On 8.12.2013, the further statement of the Director of the assessee company was recorded under Section 132(4) of the IT Act admitting that a sum of Rs.300,69,69,246/- was the

undisclosed income and it was admitted for the very assessment years referred to above.

Hence, notice under Section 153A of the IT Act was issued calling upon the assessee to file a return of income within a period of 30 days from the date of service of notice, for the assessment years 2009-10, 2010-11, 2011-12 and 2012-13.

In response to the notice, the assessee filed return of income for the assessment years 2010-11, 2011-12 and 2012-13, admitting total income of Rs.40,63,90,380/- for the assessment year 2010-11, Rs.195,41,53,360/- for the assessment year 2011-12 and Rs.108,28,25,530/- for the assessment year 2012-13.

Notice under Section 142(1) of the IT Act was issued on 8.7.2014, as the provisions of Section 153A was not applicable for the assessment year 2013-14.

On 24.03.2015, the assessee had thereafter filed revised return of income for the assessment years 2010-11, 2011-12, 2012-13 and 2013-14. In the revised return for the said years,

the assessee had offered the same income which was offered in the returns filed under Sections 139(1), 139(4) and 139(5) of the IT Act. For the assessment year 2013-14, the income offered in the return filed under Section 139(1) was reduced considerably. The total income declared in the revised returns of income for the assessment year 2010-11 is Rs.70,53,040/-, for the assessment year 2011-12 is Rs.27,21,82,040/- and for the assessment year 2012-13 is Rs.52,23,44,370/-.

The assessee had then filed an affidavit dated 26.03.2015 through its Managing Director, withdrawing the admission made in the statement recorded under Section 132(4) of the IT Act and withdrawing the declaration made in the returns of income filed under Section 153A of the IT Act, though the same is not permissible under the IT Act.

The assessee had approached the Settlement Commission for the Assessment years 2010-11 to 2013-14. The additional income offered for the assessment years 2010-11 to 2013-14 was Rs.86,85,77,281/- which is less than the amount offered in

the returns filed under Section 153A of the IT Act for the assessment years 2010-11 to 2012-13 of Rs.344,33,69,270/-. The income offered for the assessment year 2013-14 in the original return of income was Rs.34,91,31,080/-, whereas in the revised return of income the same has been reduced to Rs.16,86,32,187/-.

The Settlement Commission it transpires, has passed an order on 7.4.2014 under Section 245D(1) of the IT Act by allowing the application to be proceeded further. The Settlement Commission had then called for a report under Section 245D(2B) from the petitioner, vide notice dated 17.04.2015. The Commissioner of Income Tax had submitted a report as required under the said section, vide letter dated 26.05.2015. Thereafter, the Settlement Commission has passed an order dated 4.6.2015 under Section 245D(2C) of the IT Act and proceeded to declare the application filed by the assessee as not valid, by keeping open the issue regarding full and true disclosure of income to be examined in the course of the

proceedings under Section 245D(4) of the IT Act. It is this which is sought to be challenged in the present petitions.

3. The learned counsel for the petitioner would submit that the procedure adopted by the Settlement Commission would set a very dangerous precedent, as the law as laid down by the Supreme Court is completely violated in the case of *Ajmera Housing Corporation & Anr. Etc. vs. Commissioner of Income Tax (2010) 326 ITR 0642*, wherein according to the learned counsel for the petitioner, the Supreme Court while considering the very issue as to the procedure to be followed in an application being filed before the Settlement Commission, had observed that the requirement of making a full and true disclosure of the income at the initial stage, was a precondition to entertainment of any such application. This has been laid down in Paragraph 26 of the judgment, which has been totally overlooked by the Settlement Commission. Therefore, he would seek intervention by this court.

4. While on the other hand, the learned Senior Advocate Shri Udaya Holla appearing for the learned counsel for Respondent No.1 would point out that there is no infirmity committed by the Settlement Commission. The judgment sought to be relied upon was a judgment rendered against a final order of the Settlement Commission. On the other hand, the irregularity sought to be complained of is no irregularity at all. The Supreme Court has recognized this position in a reported judgment in the case of *Commissioner of Income Tax vs. K. Jayaprakash Narayanan (2009) 184 Taxman 85 (SC)*, wherein the Supreme Court has observed that the case of the Department that the assessee had failed to make full and true disclosure in the first instance and the said declaration by way of second declaration, could not be a ground for admitting the application under Section 245D and since the petition was filed only against an order of the Settlement Commission admitting the application of the assessee under Section 245D, the court

did not feel it proper to interfere at that stage. But, it was made clear that the point of maintainability of the application could be raised as a contention by the Department before the Settlement Commission and the Settlement Commission would be entitled to examine that question at the final hearing.

On the other hand, if this court were to issue rule and to admit the case to file and take it up for final hearing several years down the line, it would cause prejudice to the Department. Therefore, since the Settlement Commission would be in a position to decide the application along with the point as regards the maintainability in the first instance, there is no prejudice caused to the Department.

Since it is also an admitted fact that the respondent has paid the entire tax on a sum exceeding Rs.300 crore, there is absolutely no prejudice caused to the Department. The petitions are misconceived. The submission that it would lay down a wrong precedent if the petitions are dismissed, is also

not correct, since the Supreme Court has already laid down the precedent. Therefore, the petitions are disposed of.

Interim order granted earlier stands vacated.

**Sd/-
JUDGE**

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