



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2534 OF 2006

Shri Puranchandra J.Rao ..Petitioner

Versus

Income tax Settlement Commission & Ors..Respondents

Mr.Arun Sathe Sr.Counsel with Mr.Mandar Vaidya &
Mr.Panjabrao Naik for the petitioner.

Mr.Vimal Gupte with Mr.P.S.Sahadevan for respondents

**Coram : F.I.REBELLO &
R.S.MOHITE, JJ**

Date : 14.01.2008.

PC

1. Petitioner has moved this Court seeking to challenge the order dated 9.6.2006 passed by the Settlement Commission under Section 245 D(1) of the Income Tax Act and the order dated 2.8.2006 under Section 142 (2A) of the Income Tax Act.

2. In so far as the order of the Settlement Commission is concerned, learned Counsel submits that the application was rejected on two counts. Firstly that there was no complexity of investigation and secondly there was no full and true disclosure.

3. In so far as 2nd order dated 2.8.2006, it is submitted that the special audit has been ordered

considering the complexity of accounts. This was done without giving an hearing to the petitioner as required by Law. Apart from that it is submitted that once the authority had come to the conclusion that a special audit is required on complexity of account, the natural corollary is that this will include expression complexity of investigation, consequently order of the settlement commission is liable to be set aside. Our attention was invited to the judgment of this Court in **Centurion Bank of Punjab Ltd., v. Income-tax Settlement Commission & Ors.** reported in [2007] 290 ITR 555 (Bom).

4. On the other hand, on behalf of the respondent learned Counsel submits that settlement commission has rightly rejected the application of the petitioner as there was no true and full disclosure.

5. We have heard learned Counsel for the parties. The settlement commission in the impugned order at paragraph-9 firstly held that they do not see any complexity of investigation in resolving the disputes. In so far as full and true disclosure, it held, that both the quantum and the manner of the disclosure do not pass the test of being full and true. It is also held that the issues emerging out of the search are not satisfactorily addressed while making the disclosure, after having carefully gone through the legal submissions and paper book.

6. We find from the report of the Commissioner and the application made by the petitioner herein that he had disclosed income as managing agent of two petrol pumps. On investigation, it had come on record that the petitioner was not managing the petrol pump but infact, was running the same and paying commission to the licence holders therein. It is this material which was before the settlement commission.

7. In the instant case it is clearly set out that the issues emerging out of the search are not satisfactorily addressed. In our opinion, this cannot be said to be the case of "No reasons". We are therefore, of the opinion that in so far as challenge to the order of the commission, this would not be a fit case where we should exercise our extraordinary jurisdiction.

8. In so far as consequential order dated 2.8.2006 under Section 142(2A) of the Income Tax Act, learned Counsel fairly conceded that they would give hearing to the petitioner. In the light of that, order dated 2.8.2006 is quashed and set aside. The matter is referred back to the respondent no.2 to pass fresh order after giving the petitioner an opportunity of hearing.

9. Rule made partly absolute accordingly with no order as to costs.

(R.S.MOHITE,J)

(F.I.REBELLO,J)