

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF DECEMBER, 2021

PRESENT

THE HON'BLE MRS.JUSTICE S.SUJATHA

AND

THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

W.A.No.238/2017 (T - IT)

BETWEEN :

- 1 . THE COMMISSIONER OF INCOME TAX (CENTRAL), C.R.BUILDING, QUEEN'S ROAD, BENGALURU 560 001.
- 2 . THE DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-2(3), C.R.BUILDING, QUEEN'S ROAD, BENGALURU-560001

...APPELLANTS

(BY SRI K.V.ARAVIND, ADV.)

AND :

- 1 . M/s RNS INFRASTRUCTURE LIMITED
REP. BY ITS MANAGING DIRECTOR,
SRI NAVEEN R. SHETTY,
AGED ABOUT 48 YEARS,
OFFICE AT NO.14, 7TH FLOOR,
NAVEEN COMPLEX, M.G.ROAD,
BENGALURU-560001
- 2 . THE INCOME TAX SETTLEMENT
COMMISSIONER

ADDITIONAL BENCH, 640,
ANNA SALAI, SATHGURU COMPLEX,
NANDANAM, CHENNAI-600 035
REP. BY ITS SECRETARY.

...RESPONDENTS

(BY SRI A.SHANKAR, SENIOR COUNSEL A/W SRI GURUMURTHY
& SRI BHAIKAV KUTTAIAH, ADVS. FOR R-1; R-2 SERVED.)

THIS W.A. IS FILED UNDER SECTION 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE
ORDER PASSED IN THE WRIT PETITION NOS.46275-46289/2016
DATED 07.12.2016.

THIS APPEAL COMING ON FOR HEARING, THIS DAY,
S. SUJATHA, J., DELIVERED THE FOLLOWING:

J U D G M E N T

This intra-Court appeal is filed by the Revenue under Section 4 of the Karnataka High Court Act, 1961 challenging the order passed by the learned Single Judge dated 07.12.2016 in W.P.Nos.46275-46289/2016 whereby the writ petitions filed by the respondent No.1 - assessee have been allowed quashing the order dated 27.05.2016 in No.KA/BL/51/2013-14/26/IT (Annexure - A1), order dated 11.08.2016 and all consequent orders and demand notices.

2. The respondent No.1 - assessee is a company incorporated under the Companies Act, 1956, engaged in the business of infrastructure development, construction of buildings, roads, dams, canals and power projects. The respondent No.1 - assessee filed return of income for assessment years 2006-07 to 2012-13 under Section 139(1) of the Income Tax Act, 1961 ('Act' for short) and assessments came to be completed under Section 143(3) of the Act. Pursuant to the search conducted under Section 132 of the Act in the case of the assessee, the Assessing Officer issued notice under Section 153A of the Act after seizing certain incriminating material. The respondent No.1 - assessee filed return of income as declared in the original return for the assessment years 2006-07 to 2011-12. For the assessment year 2012-13, the assessee filed return under Section 139(1) of the Act declaring an income of Rs.8,09,17,240/-.

3. During the pendency of the scrutiny of the said assessment proceedings, the assessee preferred an application before the Income Tax Settlement Commission offering additional income of Rs.16,80,07,102/- for the assessment years 2008-09 to 2012-13. The Settlement Commission passed an order dated 03.04.2014 declaring the application filed by the respondent No.1 - assessee is valid, against which the Revenue preferred W.P.Nos.44007/2014 and 2745-2750/2015. The said writ petitions came to be dismissed on 18.01.2016. The Revenue preferred W.A.Nos.489-493/2016 against the said order. However, the same was withdrawn on 28.09.2016.

4. Settlement Commission passed an order dated 27.05.2016 under Section 245D(4) of the Act, determined the total income and computed the tax liability. Respondent No.1 - assessee filed an application for rectification of the said order before the

Settlement Commission which came to be rejected by order dated 11.08.2016. The respondent No.1 - assessee challenged the aforesaid orders of Settlement Commission in W.P.Nos.46275-46289/2016 which came to be allowed. Hence, this writ appeal by the Revenue.

5. Learned counsel Sri. K.V. Aravind appearing for the Revenue submitted that the writ Court committed an error in deciding the writ petition on merits sans issuing notice to the Settlement Commission, more particularly when statement of objections was filed by the appellants only to the interim prayer sought and the arguments were heard only on the interim prayer. The order of the learned Single Judge is in violation of principles of natural justice since no reasonable opportunity was provided to the appellants to address the arguments on the merits of the case. Inviting the attention of the Court to Section

245D(4A) and 245HA(1)(iv) of the Act, it was submitted that limitation provided under Section 245D(4) is directory and not mandatory. Reference was made to the judgment of the Hon'ble High Court of Bombay in the case of ***Star Television News Ltd., vs. Union of India [(2009) 184 Taxman 400]*** which has been confirmed by the Hon'ble Apex Court in support of his contentions. Thus, the learned counsel sought for setting aside the order of the learned Single Judge allowing the writ appeal.

6. Learned Senior counsel representing the respondent No.1 – assessee supporting the impugned order submitted that the order of the Hon'ble High Court of Bombay in the case of ***Star Television News Ltd., supra***, is not applicable to the facts of the present case. The order passed by the Settlement Commission on 27.05.2016 being beyond the limitation prescribed under Section 245D(4A)(iii) of the Act and by operation

of Section 245HA(1)(iv) of the Act, learned Single Judge was right in reaching a conclusion that the said order was abated and as such, the Settlement Commission ought to have entertained the rectification application filed by the assessee. Learned Senior counsel argued that the Hon'ble High Court of Bombay in **Star Television News Ltd.**, supra, has categorically held that the Court was not concerned with the issue of an application made to the Settlement Officer after 01.06.2007. It is further fortified in the concluding para that the entire gamut of the order was relating to fixing the cut-off date as 31.03.2008 and the same is held to be arbitrary. Consequentially, the provisions of Section 245HA(1)(iv) of the Act to that extent is declared to be arbitrary. Thus, the Hon'ble High Court of Bombay has dealt with Section 245D(4A)(i) of the Act and not with clause (iii) which applies to the present case. The learned Single Judge having considered these aspects

has rightly allowed the writ petition which requires to be confirmed by this Court.

7. We have carefully considered the rival submissions of the learned counsel appearing for the parties and perused the material on record.

8. The undisputed facts are that the respondent No.1 – assessee filed an application before the Income Tax Settlement Commission under Section 245C of the Act along with the tax and interest payable thereon, on 06.02.2014. The Settlement Commission passed orders, by allowing the settlement application to be proceeded with, on 18.02.2014. Order dated 03.04.2014 was passed by the Settlement Commission under Section 245D(2)(c) of the Act declaring the application filed by the respondent No.1 – assessee as valid. W.P.No.44007/2014 and allied matters were filed by the Revenue on 08.09.2014 challenging the order of the Settlement Commission dated 03.04.2014. Interim

order was granted by the writ Court on 29.04.2015 till the next date of hearing and the same was extended on 09.06.2015 but subsequently no extension of interim order was granted. Finally, the said writ petitions were dismissed on 18.01.2016. Settlement Commission passed the order under Section 245D(4) of the Act on 27.05.2016. Writ Appeal Nos.489-493/2016 filed by the Revenue against the order passed in W.P.No.44007/2014 and allied matters came to be dismissed as withdrawn on 28.09.2016. Period of limitation for passing the order by the Settlement Commission would be 18 months from the date of filing of the application. Considering the total number of 51 + 7 days wherein the interim order of stay in W.P.No.44007/2014 was in operation, the last date for passing the order by the Settlement Commission would be 10.12.2015. Thus, the Settlement Commission ought to have passed an order on or before 10.12.2015, but admittedly the order was passed on 27.05.2016.

The application filed by the respondent No.1 – assessee to rectify the said orders came to be rejected. Hence, respondent No.1 – assessee approached the writ Court in W.P.Nos.46275-46289/2016.

9. Section 245D(4A) of the Act reads thus:-

“245D(4A) The Settlement Commission shall pass an order under sub-section (4),—

(i) in respect of an application referred to in sub-section (2A) or sub-section (2D), on or before the 31st day of March, 2008;

(ii) in respect of an application made on or after the 1st day of June, 2007 but before the 1st day of June, 2010, within twelve months from the end of the month in which the application was made;

[“but before the 1st day of June, 2010” was inserted by Finance Act, 2010 with effect from 01.04.2010]

(iii) in respect of an application made on or after the 1st day of June, 2010, within eighteen months from the end

of the month in which the application was made.”

[This provision was inserted with effect from 01.06.2010.]

10. In the case of **Star Television News Ltd.,** supra, the assessee challenged the constitutional validity and legality of provision of Section 245HA(1)(iv) and Section 245HA(3) of the Act as inserted by the Finance Act, 2007 with effect from 01.06.2007 as being ultra-vires and violative of Article 14 of the Constitution of India. The Hon’ble High Court of Bombay having regard to the provisions which were relevant during the period as it stood then, has held in paragraph 8 as under:-

“8. On a consideration of the above provisions, it would be clear that though earlier there was no mandatory time limit for the Settlement Commission to dispose of the application and it could as far as possible do within four years, by the Finance Act, 2007, a time limit has been set out under section 245D(4A). Another relevant aspect of the Finance

Act, 2007, is that if the Settlement Commission is unable to pass final settlement order on 31.03.2008 in case of applications which were pending before 01.06.2007 it would ipso facto abate and consequence of section 245HA(3) would follow. The I.T. Authorities including the Assessing Officer then was entitled to use all material and other information produced by the petitioner before respondent No.2 including that disclosed as confidential. It is also necessary to note that in so far as the applicant is concerned, once an application is made, the applicant could not withdraw that application. Similarly, when the Settlement Commission allowed the application to proceed it could only allow or reject it. If the application was allowed then that order in terms of section 245-I would be conclusive and could not be reopened in any proceedings under the Act or any other law for the time being in force. In the event the application was rejected the confidential material will be available to the authorities under the Income-Tax Act. The effect of the Finance Act, 2007 is that if the application which was filed on or before 31.05.2007 even for no fault of the applicant could not be disposed of on or before 31.03.2008 it would abate and consequently all the information is available to

*the Assessing Officer and other authorities under the Income-Tax Act. **In the instant petition we are not concerned with the issue of an application made to the Settlement Officer after 01.06.2007.***

(emphasis supplied)

11. The Hon'ble Court observed that the real controversy therein had arisen due to fixing 31.03.2008 as the date for disposal of the applications which were filed and pending as on 01.06.2007 vis-à-vis the machinery available for disposal of the pending applications. Non-disposal of the applications within the cut-off period resulting in abatement of the application for no fault of the applicants wherein confidential information was made available before the Settlement Commission, it was observed that on such abatement, the confidential information would be transferred to the Assessing Officer and other authorities under the Act. In that context, the cut-off date fixed by the legislature was held to be arbitrary not being supported by any rational

reasons having regard to the number of cases pending before the Settlement Commission i.e., the applications filed prior to 01.06.2007. In paragraph 49, it is observed that the time limit for disposal of an application under Section 245D(4A)(1) of the Act will have to be read as “may” to the extent that it is not on account of the fault of the applicant.

12. On giving harmonious interpretation to Section 245D(4A) and Section 245HA(1)(iv), the Hon’ble Court has read down the amended provisions of Section 245HA(1)(iv) in paragraph 54 as under:-

“54. From the above discussion having arrived at a conclusion that fixing the cut-off date as 31.03.2008 was arbitrary the provisions of section 245HA(1)(iv) to that extent will be also arbitrary. We have also held that it is possible to read down the provisions of section 245HA(1)(iv) in the manner set out earlier. This recourse has been taken in order to avoid holding the provisions as unconstitutional. Having so read, we would have to read section 245HA(1)(iv) to

mean that in the event the application could not be disposed of for any reasons attributable on the part of the applicant who has made an application under section 245C. Consequently, only such proceedings would abate under section 245HA(1)(iv)."

13. Thus, the Hon'ble Court has held that the Settlement Commission must fulfill its mandatory statutory duty in disposing of such applications as are referred to in Section 245D(4A)(i) by the date specified therein except where prevented from doing so due to any reason attributable on the part of the applicant, and that an application in respect of which the Settlement Commission has been prevented from fulfilling the aforesaid mandatory statutory duty due to any reasons attributable on the part of the applicant shall abate on the specified date under Section 245HA(1)(iv). It is declared that in this manner, both Section 245D(4A)(i) and Section 245HA(1)(iv) will have applicability, meaning and effect.

14. A comprehensive reading of this order with the relevant provisions of the Act as it stood then, it is clear that the ruling of **Star Television News Ltd.**, supra, would be applicable only to the cases where the application was made to the Settlement Officer before 01.06.2007. The said order has been upheld by the Hon'ble Apex Court **[(2015) 57 taxman.com 305]** observing that the Hon'ble High Court of Bombay having found Sections 245HA(1)(iv) and 245HA(3) to be violative of Article 14 etc., but did not invalidate the same as the Hon'ble High Court was of the opinion that it is possible to read down the said provisions in particular to avoid holding the said provisions as unconstitutional. Thus, the Hon'ble Apex Court has held that the said judgment of the Hon'ble High Court of Bombay does not call for any interference being a well considered judgment.

15. As discussed above, in our considered opinion, the said judgment of **Star Television News Ltd.**, supra, is not applicable to the applications filed subsequent to 01.06.2007 before the Settlement Commission. Indisputably, in the case on hand, the application was filed by the respondent No.1 – assessee before the Settlement Commission after 01.06.2007. As could be seen from the material on record, it is discernable that the Revenue has approached this Court in W.P.No.44007/2014 and allied matters challenging the order of the Settlement Commission dated 03.04.2014 passed under Section 245D(2)(c) but failed to take the matter to the logical end. Writ Appeal Nos.489-493/2016 were withdrawn and now the final order dated 27.05.2016 passed by the Settlement Commission is supported by the Revenue whereas the assessee has challenged the same in the present proceedings. Learned Single Judge has meticulously arrived at a decision on marshalling the facts of the case

vis-à-vis considering the ruling of **Star Television News Ltd.**, supra, with the relevant provisions applicable to the facts of the present case.

16. Learned counsel for the Revenue has also placed reliance on the ruling of the Hon'ble High Court of Gujarat in **M. Kantilal and Co. vs. Income Tax Settlement Commission** [(2018) 94 taxmann.com 293 (Gujarat)] and **M. Kantilal and Exports vs. Income-tax Settlement Commission** [(2018) 94 taxman.com 295 (Gujarat)] wherein the applicants have approached the Hon'ble High Court of Gujarat contending that by virtue of operation of the statutory provisions, their settlement applications would likely to abate shortly for no fault of them. Admittedly, the applications were filed by the assessee before the Settlement Commission in those cases prior to 01.06.2007. In that scenario the Hon'ble High Court of Gujarat considering the case of **Star Television News**

Ltd., supra, has held that the order of the Settlement Commission in disposing of the proceedings as having abated is unjustifiable.

17. The other grounds urged by the Revenue inasmuch as non-providing of reasonable opportunity etc., cannot be countenanced for the reason that the learned ASG has appeared for respondent No.1 - assessee and argued the matter *in extenso*. Considering the arguments of both sides, the learned Single Judge has proceeded to decide the writ petition. In the circumstances, we find no jurisdictional error in the order of the learned Single Judge in allowing the writ petition filed by the assessee.

18. Viewed from any angle, no exception can be found with the order impugned.

Writ appeal is devoid of merits, accordingly stands dismissed.

**SD/-
JUDGE**

**SD/-
JUDGE**

PMR