IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1004 OF 2017

Principal Commissioner of Income-Tax
(Central)-4, Mumbai ....Petitioner
V/s.
Income-Tax Settlement Commission,
(ITSC), Additional Bench-I,
Mumbai and anr. .....Respondents

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Mr. N.C. Mohanty, Advocate for the petitioner.

Mr. Cyrus Ardeshir a/w. Mr. Ravi Gandhi,
Ms. Mahek Kamdar, Mr. Rishabh Parkar and
Mr. Niwas Dharmadhikari i/by. Kanga & Co.,
Advocate for respondent no.2.

CORAM :- M.S. SANKLECHA, &

SANDEEP K. SHINDE, JJ.

DATE :- 21ST JUNE, 2018.

P.C. :-

1. This petition under Article 226 of the Constitution of India, challenges the order dated 20th September, 2016 passed by the Income-Tax Settlement

Commission (the Commission). By the impugned order passed under Section 245(D)(4) of the Income-Tax Act, 1961 (the Act), the petitioner's application for settlement under the Act was allowed. The challenge in the petition is inter-alia on the premise of failure to make a full and true disclosure.

2. At the very outset, Mr. Cyrus Ardeshir, Learned Counsel appearing for the respondents, raised a preliminary objection to the petitioner's challenge to the impugned order dated 20th September, 2016 of the Commission by filing this petition. This for the reasons that the impugned order dated 20th September, 2016 was an order passed on consent of both the petitioner and the respondents. In particular, our attention is invited to para-9.1 of the impugned order, wherein it has recorded as follows :-

> *"Accordingly, it was decided to accept the voluntary offer by the applicant to peg the additional income on account of on money at Rs. 27 crores (including the on money*

amounting to Rs.9,51,92,517/- offered in the SOF) + Rs. 10 lakhs offered as income from sale of scrap and miscellaneous receipts (offered in the SOF) aggregating to 27,10,00,000/- out of which income of Rs.25,69,781/- has already been offered in the return of income for AY 2014-15 filed before the AO. Hence, the aggregate income is computed at Rs.26,84,30,219/- (27,10,00,000/- - 25,69,781/-). There was no objection from the Department as well as the applicant on this estimation. This suo motu offer in no way detracts from the character of full and true disclosure. Both the sides have agreed to this addition, and the applicant, vide its letter dated 07.09.2016 filed on 08.09.2016 has accepted the same and have provided the bifurcation assessment year wise. This settles all the issues in the applicant's case, and the case is settled accordingly." (emphasis supplied)

3. Mr. Mohanty, Learned Counsel appearing in support of the petition states that the settlement recorded by the Commission on consent of the parties is

to be ignored as this recording does not reflect the correct position, when seen in the context of the conduct of the petitioner at all stages of settlement proceedings. The petitioner has consistently opposed the respondent's application for settlement, in view of failure to make a full and true disclosure of its income.

4. We find that the Supreme Court in **State of Maharashtra Versus. Ramdas Shrinivas Nayak and another, reported in (1982) 2 Supreme Court Cases 463**, the Apex Court had observed in para-4 as under :-

> *"4. When we drew the attention of the learned Attorney General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public Policy bars us. Judicial decorum*

restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation".[(1) Per Lord Atkinson in Somasundaran v. Subramanian, A.I.R 1926 P.C. 136]. We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. (2) (Per Lord Buckmaster in Madhusudan v. Chanderwati, A.I.R. 1917 P.C. 30). That is the only way to have the record corrected. If no *such step is taken, the matter must necessarily end there. Of course a party may resile and an appellate Court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment."*

5. In the above view, the contention of Mr. Mohanty, Learned Counsel appearing for the Revenue that the recording of the Tribunal as reproduced hereinabove does not correctly reflect the state of affairs before the Commission cannot be accepted. It is not open to the petitioners to challenge the correctness of facts recorded in the order by the Settlement Commission before this Court, particularly when it is not even remotely the case of the petitioner that the consent was given/made on a wrong appreciation of law. The remedy, if any, would have been to move the Settlement Commission to correct, what according to the petitioners,

was an incorrect recording in the impugned order. Thus, we see no reason to interfere. Besides, the contention urged on behalf of the Revenue that the concession be ignored in view of the conduct of the Revenue is not even averred to in the petition as filed and/or that the concession made was contrary to law.

6. In the above facts, we see no reason to exercise our extra-ordinary jurisdiction to entertain this petition under Article 226 of the Constitution of India.

7. Accordingly, the petition is dismissed. No order as to costs.

(SANDEEP K. SHINDE, J) **(M.S. SANKLECHA, J)**