Court No. - 34

Case :- WRIT TAX No. - 532 of 2008

Petitioner :- M/S Bajaj Polyset Pvt. Ltd.
Respondent :- Union Of India Thru' Secretary Min. Of Finance & Others
Counsel for Petitioner :- S.D. Singh
Counsel for Respondent :- A.S.G.I.,B.J. Agrawal,G. Krishna

Hon'ble Sudhir Agarwal,J.
Hon'ble Kaushal Jayendra Thaker,J.

1. Heard Sri S.D. Singh, learned Senior Counsel assisted by Ms. Harshi Agarwal, Advocate for petitioners and Sri Piyush Agarwal for respondents.

2. Petitioner has sought following reliefs:-

> *"(i) issue a writ, order or appropriate direction to declare the amendments made by the Finance Act 2007 to Chapter XIXA of the Income Tax Act, 1961 (by which it has been provided that the applications for settlement filed prior to the amendment shall abate on 1.4.2008, provided under Section 245 D (4A) and 245 HA of the amending Act) ultra-vires the Constitution of India and direct the Income Tax Settlement Commission, New Delhi to decide the petitioner's settlement Application no. 7/23/02/6-IT filed on 8.10.2002 within such time as this Hon'ble Court may provide.*
>
> *(ii) Issue a writ, order or direction in the nature of mandamus and direct the respondents to exclude all materials on the file of the Settlement Commission arising from the application for settlement filed by the petitioner on 8.10.2002 from the any proceedings initiated and/continued against the petitioner by any Income Tax Authority."*

3. Counsel for petitioners stated that in **Star Television News Ltd. Vs Union of India, (2009) 317 ITR 66**, the aforesaid provisions were considered by Bombay High Court and it was held:-

> *6. "that where the plain literal interpretation of a statutory provision produces a discriminatory or incongruous or manifestly absurd or unjust result which could never have been intended by the legislature, the Court may modify the language used by the legislature or even do some violence to it, so as to achieve the obvious intention of the legislature and produce a rational*

construction. An interpretation leading to an unjust, inequitable, harsh and absurd result must be rejected. It further held that since the purported objective of the amendments introduced in Chapter XIX-A by the 2007 Act is to streamline the proceedings before the Settlement Commission and to ensure expeditious disposal of pending cases, the amendments cannot be construed so as to punish an applicant for the inability or failure of the Settlement Commission to dispose of its application within the period specified in section 245D (4A), where such delay in disposal is not attributable to the applicant. The time limit for disposal of an application under Section 245D (4A) (I) will have to be read as "may" to the extent that it is not on account of the fault of the applicant. Consequently, Section 245HA (1) (iv) must apply only where the applicants have, by some willful act or omission, prevented the Settlement commission from fulfilling its statutory mandatory duty under Section 245D (4A), and only such applications will abate. A harmonious interpretation of sections 245D (4A) and 245HA (1) (iv) would remove the vice of arbitrariness and save the provisions from being struck down as unconstitutional.

7. The operative portion of the judgment of the Bombay High Court is quoted for benefit as follows:-

"By reading the words "any other application made under Section 245C" in section 245HA (1) (iv) as "any other application made under section 245C, where due to reasons attributable to the assessee" this Court would avoid rendering any part of either section 245D (4A) (i) or section 245HA (1) (iv) otiose, meaningless or redundant. The two provisions, read in such a harmonious manner, would mean 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). In this manner both section 245D (4A) (i) and section 245HA (1) (iv) will have applicability, meaning and effect. We may also clarify that the expression "reasons attributable" should be reasonably construed. While so dealing, the Settlement Commission shall also to consider whether in the petition before this court the petitioner had averred that the proceedings were delayed not on account of any reason attributable to him, and whether the State had denied the same, if there be no denial then to reconsider that circumstances in favour of the petitioner.

From the above discussion having arrived at a conclusion that fixing the cut off date as March 31, 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). Considering the above, the Settlement Commission to consider whether the proceedings had been delayed on account of any reasons attributable on the part of the applicant. It it comes to the conclusion that it was not so, then to proceed with the application as if not abated. Respondent no.1 if desirous of early disposal of the pending applications, to consider the appointment of more Benches of the Settlement Commission, more so at the Benches where there is heavy pendency like Delhi and Mumbai.

Rules made absolute accordingly. There shall be no order as to costs."

8. The High Court of Jharkhand at Ranchi has relied on the reasoning; followed the conclusions drawn in the judgment of Bombay High Court and has preferred to read down the offending provisions instead of declaring them unconstitutional. The judgment was delivered in Writ Petition (T) No.1623 of 2008 (Md. Sanaul Haque vs. Union of India and others) and other connected writ petitions by Division Bench on 21.3.2012.

4. We are also informed that judgment of Bombay High Court in **Star Television News Ltd. Vs Union of India (supra)** stood confirmed by Supreme Court also in **Union of India Vs Star Television News Ltd., (2015) 373 ITR 528 (SC)** and the appeal has been dismissed.

5. Following the judgment in **Union of India Vs Star Television News Ltd. (supra)** a Division Bench of this Court in Writ Tax no. 785 of 2008 (M/s Jai Guru Jewellers Vs Union of India and others) decided on 16.07.2013 disposed of all the writ petitions with following directions:-

"Following the judgment of the Bombay High Court, with which we respectfully agree, and against which the department could not cite any judgment of any other High Court of Apex Court, which may have taken a different view and on the same reasoning we hold that by reading down the provisions of Section 245D (4A) (i) and Section 245HA (1) (iv) the constitutional validity of the amendments providing abatement of proceedings may be saved and protected from the vice of discrimination, and issue same directions to find out, if the delay is attributable to the applicants before making final order.

We further direct that in carrying out the directions of this Court in the pending applications, the Settlement Commission will, in arriving at a finding on the question whether the delay in disposal is attributable to the applicants, follow the same guidelines, which have been set out in the judgment in Star Television News Ltd v. Union of India (supra).

All the writ petitions are accordingly disposed of."

6. However, counsel for petitioner then further states that in this matter the Settlement Commission has already disposed of the application. Hence no further direction need to be issued and this writ petition rendered infructuous.

7. Since application of petitioner has already been disposed of, no further direction need be issued in this matter. Hence, writ petition is dismissed as infructuous.

Order Date :- 4.8.2016
Pravin