

HIGH COURT OF MADHYA PRADESH : AT JABALPUR

Writ Petition No : 20817 of 2015

Pr. Commissioner of Income Tax (Central) Bhopal
- V/s -
Smt. Seema Suryavanshi and another.

Writ Petition No : 20818 of 2015

Pr. Commissioner of Income Tax (Central) Bhopal
- V/s -
M/s Dilip Buildcon Limited

Writ Petition No : 20892 of 2015

Pr. Commissioner of Income Tax (Central) Bhopal
- V/s -
Shri Dilip Suryavanshi and another

Present : **Hon'ble Shri Justice Rajendra Menon,
Acting Chief justice; and,
Hon'ble Shri Justice Anurag Shrivastava.**

In all the three cases.

Shri Sanjay Lal, Counsel for the petitioner (s).

Shri Sumit Nema with Shri Mukesh Agrawal,
Counsel for the respondent (s).

Whether approved for reporting:

Yes / No.

ORDER
27/07/2016

As common questions of law and fact are involved in all these three writ petitions filed by the Principal Commissioner of Income Tax (Central) MP, Bhopal , they are being heard analogously. For the

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sake of convenience, pleadings and documents available in the record of Writ Petition No.20817/2015 are being referred to in this order.

2- Search and seizure operations were carried out in the establishment of respondent No.1/assessee. Based on the same and the material collected in the search and seizure operation, Department proceeded for assessment and when the assessment proceedings were pending, the respondent/assessee preferred an application under section 245-C(1) of the Income Tax Act, 1961 before the Income Tax Settlement Commissioner – namely respondent No.2, for the purposes of settling the issue with the Income Tax Department. It is said that after the applications were filed under section 245-C on 12.3.2015, the Settlement Commissioner passed an order under section 254-D(1) on 24.3.2015 allowed the application to be proceeded with. After the application was so allowed, notices were issued to the petitioner/Department for submitting their report under section 245-D(2B) vide Annexure P/2 on 24.3.2013. The Report as required was submitted by the Department on 28.4.2015 vide Annexure P/3, but thereafter without taking note of the Report and the objections as the matter is being proceeded with vide order-dated 13.5.2015 – Annexure P/5, this writ petition has been filed by the petitioner and it is the case of the petitioner in the writ petition that the order passed for proceeding with the matter for settlement under section 245-D(2)(3) is unsustainable.

3- Various grounds are raised in the writ petition to say that the procedure followed by the Department is unsustainable and in support thereof reliance is placed on the cases of Bombay High Court and Delhi Court: **Commissioner of Income Tax (Central) Vs. Income Tax Settlement Commissioner (ITSC), (2014) 267 CTR 0007 (BOM)**; and, **Marc Bathing Luxuries Limited Vs. Income Tax Settlement Commission and Another, (2013) 94 DTR 0241 (DEL)**, to say that the order passed under section 245-D(2C) without taking note of the Report of the Department is unsustainable and the prayer made is that the matter be remanded back and proceeded with.

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4- Refuting the aforesaid Shri Sumit Nema, learned counsel for the respondent, invites our attention to an order passed by the Supreme Court in the case of **Commissioner of Income Tax Vs. K. Jayaprakash Narayanan, (2009) 184 TAXMAN 85 (SC)**, to say that interference at this stage is not called for. The proceedings are still pending before the Settlement Commissioner and, therefore, the Department can raise all such question before the Settlement Commissioner, where the matter is pending and the Settlement Commissioner can still take note of the same.

5- Further reliance is placed on a Division Bench Judgment of this Court in the case of **Commissioner of Income Tax, Indore Vs. Asian Natural Resources India Limited, (2015) 63 taxman.com 169 (MP)**, wherein similar question was considered and an order was passed admitted an application under section 245-D(1), challenge to which made by the Department, was disposed of with liberty to the Department to raise the grounds before the Settlement Commissioner, who was directed to consider the same.

6- We have heard learned counsel for the parties at length and perused the records.

7- We find that merely because the application filed under section 245-D(1) has been admitted and the Report of the Department under section 245-D(2) has not been considered, no case is made out for interference. The matter is still pending before the Settlement Commissioner, the petitioner can raise all the grounds before the Settlement Commissioner, including the objection as are raised in the writ petition, and it is for the Settlement Commissioner to look into this aspect of the matter and proceed in accordance with law. This is the principle which we find from the order passed by the Supreme Court in the case of **K. Jayaprakash Narayanan** (supra) and the law laid down by a Coordinate Bench of this Court, in the case of **Asian Natural Resources India Limited** (supra).

8- The judgments cited by the Revenue based on the decision rendered by the Bombay High Court and the Delhi High Court, in the

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cases of **Commissioner of Income Tax (Central)** [supra) and **Marc Bathing Luxuries Limited** (supra) need not be considered at this stage, when a Coordinate Bench of this Court under similar circumstances in the case of **Asian Natural Resources India Limited** (supra) has refused to interfere and has relegated the Department to raise the objections before the Settlement Commissioner, who has been directed to proceed in the matter in accordance with law.

9- Accordingly, finding no ground to interfere in the matter, we dispose of the writ petitions with liberty to the petitioner/Revenue to raise the grounds before the Settlement Commissioner, who shall before deciding the matter consider and proceed in accordance with law.

10- Accordingly, with the aforesaid observations, **the three writ petitions stand disposed of.**

(RAJENDRA MENON)
ACTING CHIEF JUSTICE

(ANURAG SHRIVASTAVA)
J U D G E

Aks/-