

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE N. TUKARAMJI

+ WRIT PETITION No.18627 of 2008

% Date: 03.01.2023

The Commissioner of Income Tax (Central),
Aayakar Bhavan,
Basheerbagh, Hyderabad.

... Petitioner

v.

\$ The Income Tax Settlement Commission,
Additional Bench,
640, Anna Salai,
Nandanam, Chennai,
And another.

... Respondents

! Counsel for the petitioner : Mr. J.V.Prasad,
learned Standing Counsel, Income Tax Department

^ Counsel for respondents No.2: Mr. M.Naga Deepak

< GIST:

➤ HEAD NOTE:

? CASES REFERRED:

1. AIR 1993 SC 1991
2. (1989) 176 ITR 169 (SC)

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE N. TUKARAMJI

WRIT PETITION No.18627 of 2008

ORDER: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. J.V.Prasad, learned Standing Counsel, Income Tax Department appearing for the petitioner and Mr. M.Naga Deepak, learned counsel for respondent No.2 – assessee.

2. This writ petition has been filed by the Commissioner of Income Tax (Central), Basheerbagh, Hyderabad, assailing the legality and validity of the order dated 18.03.2008 passed by the Income Tax Settlement Commission, Additional Bench, Chennai (briefly, 'the Settlement Commission' hereafter), in Settlement Application No.AP/HD51/06-07/18/IT.

3. Respondent No.2 is an assessee under the Income Tax Act, 1961 (briefly, 'the Act' hereinafter) and is engaged in the business of civil construction. It is stated that

business activities of respondent No.2 is spread over the then State of Andhra Pradesh, Maharashtra and Goa.

4. On 16.12.2004, a search and seizure operation was carried out in the business and residential premises of respondent No.2 under Section 132 of the Act. That apart, survey was also conducted under Section 133A of the Act. Pursuant to notice under Section 153A of the Act, respondent No.2 filed its returns of income for the assessment years 1999-2000 to 2005-2006 as under:

<u>Asst. Year</u>	<u>Addl. Income offered</u>
1999-00	Rs. 85,58,590
2000-01	Rs. 18,98,380
2001-02	Rs. 5,36,250
2002-03	Rs. 62,78,230
2003-04	Rs. 41,92,860
2004-05	Rs. 85,343
2005-06	Rs. 17,79,200

5. During pendency of the assessment proceeding following the search and seizure, respondent No.2 filed an application before the Settlement Commission under Section 245C of the Act. Respondent No.2 disclosed before the Settlement Commission additional income over and above which was declared under Section 153A of the Act in the returns of income as under:

<u>Asst. Year</u>	<u>Addl. Income offered</u>
1999-00	Rs. 28,63,800
2000-01	Rs. 15,07,500
2001-02	Rs. 25,000
2002-03	Rs. 25,000
2003-04	Rs. 25,000
2004-05	Rs. 25,000
2005-06	Rs. 25,000
Total	Rs. 44,96,300

6. In response to notice issued by the Settlement Commission, petitioner submitted objection under Rule 6 of the Income Tax Settlement Commission (Proceedings) Rules, 1986 (briefly, 'the Rules' hereinafter). In the said report, petitioner contended that application filed by respondent No.2 for settlement was not maintainable and should be rejected. However, Settlement Commission admitted the application of respondent No.2, whereafter petitioner had to submit a report under Rule 9 of the Rules disclosing therein as to how concealment of taxable income was detected by the revenue. It was mentioned therein that no new facts were disclosed by respondent No.2 in the application. In all, contention of the petitioner was that conditions for settlement in terms of Section 245C of the Act were absent and therefore, the application of

respondent No.2 should be rejected. However, by the impugned order dated 18.03.2008, respondent No.1 i.e., Settlement Commission accepted the additional income offered by respondent No.2 at Rs.44,96,300.00. Consequently, petitioner was directed to issue demand notice to respondent No.2 to pay the income tax as per the order dated 18.03.2008 passed under Section 245D(4) of the Act. As a consequence of the settlement, Settlement Commission granted immunity to respondent No.2 from prosecution as well as from imposition of penalty under the Act.

7. Assailing the aforesaid order dated 18.03.2008, the present writ petition has been filed. By order dated 29.08.2008, a Division Bench of this Court had admitted the writ petition for hearing, but declined to grant any stay.

8. Since stay was declined, the effect of the order dated 18.03.2008 passed by the Settlement Commission had been given effect to. Therefore, a view can be taken that the writ petition has become infructuous. Nonetheless, as Mr. J.V.Prasad, learned Standing Counsel has argued on

the merit of the order, we are of the view that a decision on merit would be appropriate.

9. Mr. J.V.Prasad, learned Standing Counsel for Income Tax Department submits that Settlement Commission mechanically accepted the application of respondent No.2 and brushed aside the objection raised by the petitioner under Rule 6 of the Rules as well as the report submitted under Rule 9 of the Rules. According to him, there was no additional disclosure of concealed income of respondent No.2 in the application filed for settlement. Whatever income was detected in the course of the search and seizure was mentioned in the application for settlement. Therefore, Settlement Commission was not justified in accepting the plea of settlement of respondent No.2.

10. On the other hand, Mr. M.Naga Deepak, learned counsel for respondent No.2 submits that same set of arguments were advanced before the Settlement Commission which were rejected. Scope of interference with an order of Settlement Commission in judicial review proceedings is very limited. In such a proceeding, Court

would only look into as to whether there is any procedural violation by the Settlement Commission or there is any violation of the principles of natural justice. In support of his contention, he has placed reliance on a decision of the Supreme Court in **Jyotendrasinhji v. S.I.Tripathi**¹. He, therefore, submits that the writ petition should be dismissed.

11. Submissions made by learned counsel for the parties have received the due consideration of the Court.

12. Before dealing with the order passed by the Settlement Commission, we may briefly advert to the scheme of settlement as provided under the Act.

12.1. Chapter XIX-A of the Act comprising Sections 245A to 245M deals with settlement of cases. Section 245A(f) of the Act defines “Settlement Commission” to mean the Income Tax Settlement Commission constituted under Section 245B of the Act.

¹ AIR 1993 SC 1991

12.2. As per sub-section (1) of Section 245B of the Act, the Central Government shall constitute a Commission to be called the Income Tax Settlement Commission for settlement of cases under Chapter XIX-A. We may mention that as per the proviso, Income Tax Settlement Commission so constituted had ceased to operate with effect from 01.02.2021. However, we have been informed at the Bar that an Interim Settlement Board is now in operation to ensure that there is no vacuum in the *interregnum*. Composition of the Settlement Commission is dealt with in sub-sections (2) and (3) of Section 245B of the Act.

12.3. Jurisdictional powers of Settlement Commission are delineated in Section 245BA of the Act.

12.4. Section 245C of the Act provides for filing of application for settlement of cases. As per sub-section (1), an assessee may, at any stage of a case relating to him, make an application in such form and in such manner as may be prescribed and containing a full and true disclosure of his income which has not been disclosed

before the assessing officer, the manner in which such income has been derived, the additional amount of income tax payable on such income and such other particulars as may be prescribed, to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner provided in the said section. Thus, what sub-section (1) of Section 245C of the Act contemplates is that there must be a full and true disclosure by the assessee not only of his undisclosed income but the manner of acquiring the same if he seeks settlement. The full and true disclosure should not only be confined to the income which had not been disclosed before the assessment officer, but should also indicate the manner in which such income had been derived and the additional amount of income tax payable on such income. As per the proviso, no such application shall be made unless the additional amount of income tax payable on the income disclosed in the settlement application exceeds rupees fifty lakhs.

12.5. The procedure on receipt of application under Section 245C of the Act is dealt with in Section 245D of the Act. Sub-section (1) says that on receipt of such an application, the Settlement Commission shall issue notice to the applicant within seven days to explain as to why he had made the application, whereafter the Settlement Commission is required to pass an order in writing within fourteen days either rejecting the application or allowing the application to proceed further. In the event no order is passed, the proviso to sub-section (1) contemplates that the application shall be deemed to have been allowed by the Settlement Commission to be proceeded with. As per sub-section (2B), the Settlement Commission shall call for a report from the Principal Commissioner or Commissioner who shall thereafter submit a report within thirty days. Further, the Settlement Commission may also call for the records from the Principal Commissioner or Commissioner if Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary.

12.6. Sub-section (4) of Section 245D of the Act is relevant. It says that after examination of the record and report of the Principal Commissioner or Commissioner and after giving an opportunity to the applicant as well as to the Principal Commissioner or Commissioner of being heard either in person or through an authorised representative and after examining such further evidence as may be necessary, the Settlement Commission may pass an order on the settlement application. Sub-section (6) says that every order passed under sub-section (4) shall provide for the terms of settlement including any demand by way of tax, penalty or interest, the manner in which any sum due under the settlement shall be paid and all other matters to make the settlement effective. It clarifies that if it is subsequently found by the Settlement Commission that the settlement was obtained by fraud or misrepresentation of facts, the settlement would be deemed to be void. Power of rectification of any mistake apparent from the record is available to the Settlement Commission in terms of sub-section (6B). That apart, Settlement Commission has the power to reopen concluded proceedings.

12.7. Finally, as per Section 245H of the Act, Settlement Commission has the power to grant immunity from prosecution and penalty in the event of allowing an application for settlement filed under Section 245C of the Act.

12.8. Section 245-I of the Act says that every order of settlement passed under sub-section (4) of Section 245D of the Act shall be conclusive as to the matters stated therein and no matter covered by such order shall save as otherwise provided in Chapter XIX-A be reopened in any proceeding under the Act or under any other law for the time being in force.

12.9. This is the overall scheme of settlement under the Act.

13. Supreme Court in **Jyotendrasinhji** (supra) posed the question as to the scope of an appeal before the Supreme Court under Article 136 of the Constitution of India against an order of the Settlement Commission. The issue was whether all the questions of fact and law as has been

decided by the Settlement Commission were open to judicial review under Article 136 of the Constitution of India. Supreme Court examined the scheme of settlement as provided in Chapter XIX-A of the Act as under:

15. The provisions of Chapter XIX-A are, however, qualitatively different and more elaborate than the said provisions in the 1922 Act. The proceedings under this chapter commence by an application made by the assessee as contemplated by Section 245-C. Section 245-D prescribes the procedure to be followed by the commission on receipt of an application under Section 245-C. Sub-section (4) says: "after examination of the records and the report of the commissioner received under sub-section (1), and the report, if any, of the commissioner received under sub-section (3), and after giving an opportunity to the applicant and to the commissioner to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the settlement commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the commissioner under sub-section (1) or sub-section (3)." Section 245-E empowers the Commission to re-open the completed proceedings in appropriate cases, while Section 245-F confers all the powers of an Income Tax authority upon the Commission. Section 245-H empowers the Commission to grant immunity from penalty and prosecution, with or without conditions, in

cases where it is satisfied that the assessee has made a full disclosure of his income and its sources. Under Section 245-HA, the Commission can send back the matter to assessing officer, where it finds that the applicant is not cooperating with it. Section 245 declares that every order of settlement passed under Sub-section (4) of Section 245(D) shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in Chapter XIX-A, be re-opened in any proceeding under the Act or under any other law for the time being in force. Section 245-L declares that any proceedings under chapter XIX-A before the settlement commission shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purposes of Section 196 of the Indian Penal Code.

14. Thereafter, Supreme Court held that despite the finality clause contained in Section 245-I of the Act, the same would not bar and cannot bar jurisdiction of the High Court under Article 226 of the Constitution of India or the jurisdiction of the Supreme Court under Article 32 or Article 136 of the Constitution of India. However, having regard to the nature of settlement contemplated under Chapter XIX-A, Supreme Court held that the scope of enquiry under Article 226 of the Constitution of India would be very limited – confined to procedural irregularity

or violation of the principles of natural justice (*audi alteram partem*), challenge on the ground of bias, fraud and malice. Supreme Court referred to its earlier decision in **Sri Rant Durga Prasad v. Settlement Commission**², wherein it was held that judicial review is concerned with the legality of procedure followed and not with the validity of the order; judicial review is concerned not with the decision, but with the decision making process. It was held as follows:

16. It is true that the finality clause contained in Section 245-I does not and cannot bar the jurisdiction of the High Court under Article 226 or the jurisdiction of this court under Article 32 or under Article 136, as the case may be. But that does not mean that the jurisdiction of this Court in the appeal preferred directly in this court is any different than what it would be if the assessee had first approached the High Court under Article 226 and then come up in appeal to this court under Article 136. A party does not and cannot gain any advantage by approaching this Court directly under Article 136, instead of approaching the High Court under Article 226. This is not a limitation inherent in Article 136; it is a limitation which this court imposes on itself having regard to the nature of the function performed by the Commission and keeping in view the principles of judicial review. May be, there is also some force in what Dr. Gauri Shankar says viz., that the order of commission is in the nature of a package deal and

² (1989) 176 ITR 169 (SC)

that it may not be possible, ordinarily speaking, to dissect its order and that the assessee should not be permitted to accept what is favourable to him and reject what is not. According to learned counsel, the Commission is not even required or obligated to pass a reasoned order. Be that as it may, the fact remains that it is open to the Commission to accept an amount of tax by way of settlement and to prescribe the manner in which the said amount shall be paid. It may condone the defaults and lapses on the part of the assessee and may waive interest, penalties or prosecution, where it thinks appropriate. Indeed, it would be difficult to predicate the reasons and considerations which induce the commission to make a particular order, unless of course the commission itself chooses to give reasons for its order. Even if it gives reasons in a given case, the scope of inquiry in the appeal remains the same as indicated above viz., whether it is contrary to any of the provisions of the Act. In this context, it is relevant to note that the principle of natural justice (*audi alterant partem*) has been incorporated in Section 245-D itself. The sole overall limitation upon the Commission thus appears to be that it should act in accordance with the provisions of the Act. The scope of enquiry, whether by High Court under Article 226 or by this Court under Article 136 is also the same - whether the order of the Commission is contrary to any of the provisions of the Act and if so, has it prejudiced the petitioner/appellant apart from ground of bias, fraud & malice which, of course, constitute a separate and independent category. Reference in this behalf may be had to the decision of this Court in **Sri Rant Durga Prasad v. Settlement Commission** (MANU/SC/0429/1989 :

[1989]176ITR169(SC)), which too was an appeal against the orders of the Settlement Commission. Sabyasachi Mukharji, J., speaking for the Bench comprising himself and S.R. Pandian, J. observed that in such a case this Court is "concerned with the legality of procedure followed and not with the validity of the order." The learned Judge added "judicial review is concerned not with the decision but with the decision-making process." Reliance was placed upon the decision of the House of Lords in Chief Constable of the **N.W. Police v. Evans** ([1982] 1 W.L.R.1155). Thus, the appellate power under Article 136 was equated to power of judicial review, where the appeal is directed against the orders' of the Settlement Commission. For all the above reasons, we are of the opinion that the only ground upon which this Court can interfere in these appeals is that order of the Commission is contrary to the provisions of the Act and that such contravention has prejudiced the appellant. The main controversy in these appeals relates to the interpretation of the settlement deeds - though it is true, some contentions of law are also raised. The commission has interpreted the trust deeds in a particular manner, Even if the interpretation placed by the commission the said deeds is not correct, it would not be a ground for interference in these appeals, since a wrong interpretation of a deed of trust cannot be said to be a violation of the provisions of the Income Tax Act. It is equally clear that the interpretation placed upon the said deeds by the Commission does not bind the authorities under the Act in proceedings relating to other assessment years.

15. Keeping the above in mind, let us now examine the impugned order dated 18.03.2008 passed by the Settlement Commission under Section 245D(4) of the Act. After reference to the factual matrix and after hearing the revenue as well as the assessee, Settlement Commission found that there was no basis for estimation and quantification of undisclosed income by the department. Settlement Commission found that a sum of Rs.2,00,00,000.00 comprising of Rs.50,00,000.00 offered in the return filed under Section 153A, Rs.1,13,70,000.00 in the settlement application as well as a further sum of Rs.36,30,000.00 offered in the course of hearing would meet the ends of justice. The same was accepted and the issue was settled.

16. We do not find any procedural or substantive error or infirmity in the approach of the Settlement Commission. Settlement Commission had followed the laid down procedure contemplated under Chapter XIX-A of the Act as well as under the Rules. Principles of natural justice were duly complied with. There is no allegation of any fraud or

misrepresentation. In the absence thereof, we are afraid we cannot reopen a concluded settlement in a proceeding under Article 226 of the Constitution of India like an appellate authority.

17. In the circumstances, we are of the view that there is no merit in the writ petition.

18. Writ petition is accordingly dismissed.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

UJJAL BHUYAN, CJ

N. TUKARAMJI, J

03.01.2023

Note: LR copy to be marked.

B/o.

vs