IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

Present :- Hon'ble Mr. Justice Md. Nizamuddin

W.P.O. No. 289 of 2017

Principal Commissioner of Income Tax, Central-2, Kolkata
Vs.
Settlement Commission (Income Tax & Wealth Tax) & Anr.

For the Petitioner :- Mr. P. K. Bhawmick, Adv.

For the Respondent No. 2 :- Mr. Abhratosh Mazumdar, Sr. Adv.
Mr. Vineet Tibrewal, Adv.
Mr. Avra Mazumdar, Adv.
Mr. Riya Bhattacharjee, Adv.

Judgement On :- 14.09.2021

MD. NIZAMUDDIN, J.

Heard Learned Counsel appearing for the parties.

In this Writ Petition petitioner/Principle Commissioner of Income Tax, Central-2, Kolkata has challenged the impugned order dated 29th July, 2016 passed by the Income Tax Settlement Commission/respondent no. 1, making prayer for revocation of the aforesaid impugned order.

On perusal of the Writ Petition, affidavit-in-opposition and reply thereto, relevant facts involve in short emerged in this case are as follows.

M/s UTC Marketing Pvt. Ltd./respondent no. 2 filed a settlement application relating to Assessment Year 2012-13 before the Income Tax Settlement Commission/respondent no. 1 on 8th April, 2015 for settlement of its Income Tax matters by disclosing an income of Rs. 3,93,93,544/-. The aforesaid application of the respondent no. 2 was proceeded with under Section 245 D (1) of the Income Tax Act, 1961 by an order dated 21st April, 2015. After receipt of the Report under Section 245 D (2B) of the Act, from the

Commissioner of Income Tax concerned, hearing under Section 245 D (2C) of the Act was fixed on 3rd June, 2015 and the aforesaid Settlement application was held to be "not invalid". Thereafter, a Report under Rule 9 of Income Tax Settlement Commission (Procedure) Rules, 1997 was called from the Principle Commissioner of Income Tax concerned and the said Report was received by the Learned Settlement Commission/respondent no. 1 on 3rd September, 2015.

In the aforesaid Report under Rule 9 of Income Tax Settlement Commission (Procedure) Rules, 1997 petitioner/Principle Commissioner of Income Tax (Central-2) objected to the settlement of the case of the assessee/respondent no. 2 by alleging that it has not at all made true and correct disclosure of its undisclosed income before the respondent Settlement Commission and that the respondent no. 2 has failed to establish the manner in which profit was earned and in the aforesaid Report it also alleged that on analysis of facts and figures available in the return of income of the respondent no. 2 for the Assessment Year 2012-13 it was found that the assessee respondent no. 2 has earned Rs. 17,98,022/- and has profit against gross receipts /sale of Rs. 31,80,72,237/- which showed 0.566% profit on sale/gross receipts and in view of such finding it was contended that to earn trading profit of Rs. 1.9 Crore the assessee must have sale/gross receipt of Rs. 336,28,31,858/- and also must have incurred expenditure for corresponding amount of purchases and further contended that except few handwritten expenditure entries of date and corresponding amount of profit earned on such dates in a slip of paper as reproduced before the head UTC-Trading Profit, nothing was provided by the assessee/respondent no.2 in its settlement application.

Petitioner has also alleged in its report under Rule 9 of Income Tax Settlement Commission (Procedure) Rules, 1997 that the assessee/respondent no.2 was in the habbit of not disclosing its true and correct income before the department without citing any instance in the said Report but admitted that the assessee/respondent no. 2 was compelled to disclose its undisclosed

income arising out of unrecorded business transactions only when the existence of the same was brought to light by the survey operation and alleged that had the survey not been conducted and the documents not seized the assessee/respondent no. 2 would not have disclosed any unaccounted income voluntarily which indirectly is an admission by the petitioner that the respondent no. 2 has disclosed before the Learned Commission its undisclosed income may be under compulsion. Apart from these objections in its Report under Rule 9 of Income Tax Settlement Commission (Procedure) Rules, 1997, petitioner submitted before the Learned Settlement Commission for allowing it for further enquiry for arriving at true and correct undisclosed income of the assessee/respondent no. 2.

Against the aforesaid Report under Rule 9 of Income Tax Settlement Commission (Procedure) Rules, 1997 assessee/respondent no. 2 filed objection by submitting that the petitioner/Commissioner of Income Tax concerned has not cited any instance which could raise a bona fide doubt on the intention of the respondent no. 2 or its application under Section 245 C (1) of the Act for settlement. Respondent no. 2 further contends that petitioner could not produce any material to contradict the claim of the respondent no. 2 in its aforesaid application for settlement and considering the aforesaid settlement application, materials and documents before it, learned Settlement Commission/respondent no. 1 has proceeded with the same under Section 245 D (1) of the Act. Respondent no. 2 further contended that the explanation in the aforesaid Report under Rule 9 of Income Tax Settlement Commission (Procedure) Rules, 1997, has no material and the whole case of the petitioner is on surmises and conjectures and is without any evidence in support of its suspicious claim. Respondent no. 2 also contended that it has fulfilled the criteria required for availing itself of immunity from penalty and prosecution and it has cooperated with the Settlement Commission and also extended full co-operation at every stage of the proceeding right from the survey operation conducted under Section 133A of the Act.

Learned Settlement Commission/respondent no. 1 considering the submission and documents filed both by the petitioner and the assessee/respondent no.2 allowed the application for settlement in question by passing the impugned order on 29th July, 2016 under Section 245 D (4) of the Income Tax Act, 1961 by inter alia recording its conclusion as would appear from Paragraph-8 of the said impugned order which are as follows:

> **"We have considered the facts of the case, submissions of the A.R., report of Pr. CIT and arguments of CIT (DR). We are in agreement with the above submissions of the A.R. We also agree with the A.R. that once the documents have been impounded in the course of survey, contents of the documents are presumed to be true as per provisions of section 292C. Once the applicant has disclosed the profit/income as per nothings on those documents, any further probe or query in the matter would serve no purpose. We, accept the additional income shown by the applicant in the application. Further, the A.R. has agreed to the proposed addition on account of commission paid for introduction of share capital @ 2% which works out to Rs. 7,80,000/-. The same shall also be included in addition to Rs. 12,606/- as per Tax Audit Report."**

Learned Advocate appearing for the petitioner/Income Tax Authority in support of his contention and against the impugned order of the Settlement Commission apart from its Report under Rule 9 of Income Tax Settlement Commission (Procedure) Rules, 1997, has relied on a decision of the Hon'ble Delhi High Court in the case of Commissioner of Income Tax –vs- Godwin Steel Pvt. Ltd. Reported in (2013) 353 ITR 353 (Del.)

Learned Advocate appearing for the assessee/respondent no.2 in support of his contention has relied on the following decisions:

(i) 1993 Supp (3) Supreme Court Cases 389 (Para 16) (Jyotendrasinhji –vs- S.I. Tripathi & ors.)

(ii) (2011) 4 Supreme Court Cases 635 (Para 22) (Union of India & Ors. – vs- Ind-Swift Laboratories Limited.)

Before recording my conclusion in this judgment I would like to refer the relevant portion of the aforesaid judgments upon which parties have relied which are as follows:

Placitum 23 at Page 365 of the judgment in the case of Godwin Steels Pvt. Ltd. (supra).

"The limits of judicial review of an order of a Tribunals under Article 226 have been laid down by the Supreme Court in several judgments. Suffice to refer to the observations of S.B. Sinha J. in State of U.P. v. Johri Mal [2004] 4 SCC 714. The following observations sum up the entire legal position:

> **"It is well-settled that while exercising the power of judicial review the court is more concerned with the decision making process than the merit of the decision itself. In doing so, it is often argued by the defender of an impugned decision that the court is not competent to exercise its power when there are serious disputed questions of facts; when the decision of the Tribunal or the decision of the fact finding body or the arbitrator is given finality by the statute which governs a given situation or which by nature of the activity the decision maker's opinion on facts is final. But while examining and scrutinizing the decision making process it becomes inevitable to also appreciate the facts of a given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. How far the court of judicial review can re-appreciate the findings of facts depends on the ground of judicial review. For example, if a decision is challenged as irrational, it would be well-nigh impossible to record a finding whether a decision is rational or irrational without first evaluating the facts of the case and coming to a plausible conclusion the then testing the decision of the authority on the touch-stone of the tests laid down by the court with**

special reference to a given case. This position is well settled in Indian administrative law. Therefore, to a limited extent of scrutinizing the decision making process, it is always open to the court to review the evaluation of facts by the decision maker."

I would like to refer the relevant portion of the same judgment - Placitum 24 & 25 at Page 366 & 367 which according to me is relevant for this case which are as follows:

"24. We may now notice a few judgments of the Supreme Court in which the decision of the ITSC was under challenge. In R.B. Shreeram Durga Prasad and Fatechand Nurshing Das v. Settlement Commission (IT and WT) [1989] 176 ITR 169 (SC), the Supreme Court observed that the power of judicial review is concerned not with the decision but with the decision making process. In that case the Supreme Court was concerned with the correctness of the order of the ITSC in an appeal under Article 136. It was further observed that the court is concerned only with the legality of the order. Referring to this Judgment, lit was observed by Jeevan Reddy J., speaking for the Supreme Court in the case of Jyotendrasinhji v. S.I. Tripathi [1993] 201 ITR 611 (SC) that the only ground upon which the court can interfere against the orders of the ITSC is that the orders are contrary to the provisions of the Act and such contravention has prejudiced the appellant. At Page 623 the court dealt with the contention that the ITSC is not required or obligated to pass a reasoned order. Vis-à-vis this contention, the court observed as under:

"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 lit thinks appropriate. Indeed, it would be difficult to predicate the reasons and

considerations which induce the Commission to make a particular order, unless 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 245D 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, apart from ground of bias, fraud and malice which, of course, constitute a separate and independent category has it prejudiced the petitioner/appellant."

"25. In Shriyans Prasad Jain v. ITO [1993] 204 ITR 616 (SC) the Supreme Court, speaking through the same learned judge, observed as follows (page 627):

"Mr. Poti, learned counsel for the Revenue, is right in submitting that in this appeal this court would not go into questions of the fact or review the findings of fact recorded by the Commission. As pointed out by this court in Jyotendrasinhji v. S.I. Tripathi [1993] 201 ITR 611 (SC) this court can interfere with the Commission's order only if it is found to be 'contrary to any of the provisions of the Act'. To the same effect is the earlier decision of this court in R. B. Shreeram Durga Prasad and Fatechand Nursing Das v. Settlement Commission (IT and WT) [1989] 176 ITR 169 (SC)."

Judgment relied upon by the assessee/respondent no. 2 in the case of Jyotendrasinhji (supra) para 16 of which is 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 the Commission is in the nature of a package deal and 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 enquiry 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 alteram 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 and malice which, of course, constitute a separate and independent category. Reference in this behalf; may be had to the decision of this Court in R.B. Shreeram Durga Prasad and Fatechand Nursing Das v. Settlement Commission (IT and WT) (1989) 1 SCC 628: 1989 SCC (Tax) 124: (1989) 176 ITR 169 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 WLR 1155: (1982) 3 ALL ER 141. 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 the 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 on 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 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."

Another judgment relied upon by the assessee/respondent no.2 in the case of Ind-Swift Laboratories Ltd. (supra) para 22 which is as follows:

"22. An order passed by the Settlement Commission could be interfered with only if the said order is found to be contrary to any provisions of the Act. So far as the findings of fact recorded by the Commission or question of facts are concerned, the same is not open for examination either by the High Court or by the Supreme Court. In the present case the order of the Settlement Commission clearly indicates that the said order, particularly, with regard to the imposition of simple interest @10% per annum was passed in accordance with the provisions of Rule 14 but the High Court wrongly interpreted the said Rule and thereby arrived at an erroneous finding. So far as the second issue with respect to interest on Rs.50 lakhs is concerned, the same being a factual issue should not have been gone into by the High Court exercising the writ jurisdiction and the High Court should not have substituted its own opinion against the opinion of the Settlement Commission when the same was not challenged on merits."

Considering the submission of the parties, findings and reasons recorded by the learned Settlement Commission/respondent no.1 in its impugned order for allowing the settlement application of the assessee/respondent no.2 and taking into consideration the law laid down by the Hon'ble Delhi High Court and the Hon'ble Supreme Court in the aforesaid judgments cited in this case by the parties with regard to ambit and scope of interference by the High Court in its Constitutional writ jurisdiction under Article 226 of the Constitution of India, in the income tax settlement proceedings before the Settlement Commission, I am not inclined to interfere with the impugned order of the Settlement Commission in this Writ Petition and dismissing the same for the following reasons:

i) Petitioner/Income Tax authorities have failed to make out any case in this Writ Petition that the learned Settlement Commission has acted in any manner contrary to or in violation of any provision of law in course of impugned settlement proceeding or in passing the impugned order or that the same is not legal and valid or without jurisdiction and in disregard to the materials available before the learned Income Tax Settlement Commission.

ii) Petitioner/Income Tax authorities have failed to make out any case that any documents or materials which they had placed or filed by it before the learned Income Tax Settlement Commission/respondent no.1 was sufficient for rejection of the application of settlement filed by the petitioner.

iii) On perusal of report under Rule 9 of Income Tax Settlement Commission (Procedure) Rules, 1997, which was filed by the petitioner before the learned Settlement commission in objection to the settlement application of the assessee/respondent no.2, I do not find any specific and cogent material for rejection of the settlement application in question rather petitioner itself has admitted that the respondent no. 2 has disclosed the undisclosed income though under compulsion and itself prayed for further enquiry to find out material against the assessee/respondent no.2 for contradicting the claim of the assessee/respondent no. 2 which shows that its Report under Rule 9 of the Income Tax Settlement Commission (Procedure) Rules, 1997, had no sufficient materials and had no substance for rejection of the claim made under settlement application in question filed by the assessee/respondent no. 2.

iv) Petitioner/Income Tax authority could not make out any exceptional case in this Writ Petition for exercising constitutional writ jurisdiction of this Court under Article 226 of the Constitution for scrutinizing or reappreciating the facts, evidence or findings of the learned Settlement

Commission in reaching to its conclusion for allowing the claim of the

assessee/respondent no. 2 made in settlement application and further Court in exercise of its constitutional jurisdiction under Article 226 of the Constitution of India cannot substitute the findings of the Income Tax Settlement Commission with its own findings and come to a different conclusion.

v) Petitioner could not demonstrate before this Court any legal infirmity in decision making process in course of impugned income tax settlement proceeding.

In view of the discussion made hereinabove this Writ Petition being WPO No. 289 of 2017 is dismissed with no order as to costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(MD. NIZAMUDDIN, J.)