Commissioner of Income Tax-I Vs Income Tax Settlement Commission & 1

Court: GUJARAT HIGH COURT

Date of Decision: July 12, 2016

Acts Referred: Income Tax Act, 1961 - Section 145D(1), Section 245C(1)

Citation: (2016) 290 CurTR 635 : (2017) 390 ITR 306

Hon'ble Judges: Mr. Akil Kureshi and Mr. A.J. Shastri, JJ.

Bench: Division Bench

Advocate: Mrs. Mauna M. Bhatt, Advocate, for the Petitioner; Mr. S.N. Soparkar, Senior Advocate with Mr. B.S. Soparkar, Advocate, for the Respondent no. 2

Final Decision: Dismissed

Judgement

Mr. Akil Kureshi, J. - These petitions arise in a common background. We may refer to facts arising in Special Civil Application No. 11909 of

2014. The petition is filed by the Department of Income Tax challenging the order of Income Tax Settlement Commissioner (""Settlement

Commissioner"" for short) dated 13.2.2014 by which the Settlement Commission accepted offer of settlement made by respondent-assessee for

three years 2011-12 to 2013-14. Upon the assessee paying tax as per computation of the income-tax made by the Settlement Commission in the

said order, the assessee has been offered immunity from penalty and prosecution.

2. Taking us at length through the impugned order passed by the Settlement Commission, learned counsel for the department submitted that the

Settlement Commission has not recorded proper reasons for accepting offer of settlement by the assessees. The Settlement Commission has not

provided any basis or yardstick for estimating income of the assessees and finally the Settlement Commission has allowed the assessees to revise

their offers which would indicate that initially the disclosures made by the assessees were not full and true disclosures. The Settlement Commission

should not have permitted the assessees to revise such offers as is held by the Supreme Court in the case of Ajmera Housing Corporation &

another v. Commissioner of Income Tax, reported in 326 ITR 642.

3. In addition to relying on the said case of the Supreme Court in the case of Ajmera Housing Corporation (supra), counsel referred to the

following decisions :

(1) Commissioner of Income-tax, Jalpaiguri v. Om Prakash Mittal, reported in 273 ITR 326 in which the full bench of Calcutta High

Court observed that though the Settlement Commission has sufficient elbowroom in assessing the income of the applicant, it is a statutory

requirement that a condition has to be incorporated in the order passed under sub-section of section 245 specifying that settlement shall be void if

it is subsequently found that it has been obtained by fraud or misrepresentation of facts.

(2) Commissioner of Income-Tax, Madras v. Express Newspapers Limited, reported in 206 ITR 443, the full bench of Supreme Court

observed that the Settlement Commission while deciding whether to allow application to be proceeded with under section 245-(D)(1), the

Commission would not look into material collected after date of filing of the application under section 245-C of the Act.

4. On the other hand, learned counsel Mr. Soparkar for the respondent assessee opposed the petitions contending that the Settlement Commission

has given detailed reasons for passing the order. The consideration cannot be stated to be contrary to the provisions of the Act. The High Court

has limited jurisdiction to interfere with the orders passed by the Settlement Commission. The decision of the Supreme Court in the case of Ajmera

Housing Corporation (supra) does not lay down an inviolable rule that an offer made by the applicant for settlement cannot be improved or revised

under any circumstances. Counsel relied on the following decisions:

(1) Paul Mathews and sons v. Commissioner of Income tax, reported in 263 ITR 101 and

(2) Commissioner of Income Tax v. S. Khader Khan sons reported in 300 ITR 157 in which it was held that the statement recorded under

section 133-A of the Income Tax Act during survey operation would have no evidentiary value.

(3) In the case of Vishnubhai Mafatlal Patel v. Assistant Commissioner of Income-tax, reported in (2013) 31 taxmann.com 99, in which Gujarat

High Court referred to the decision in the case of Jyotendrasinhji v. S.I. Tripathi reported in 201 ITR 611 and observed that unless the

decision of the Commission is contrary to the statutory provisions contained in the Act, interference in exercise of writ jurisdiction under article 226

of the Constitution of India would not be warranted. This was reiterated in later decision in the case of Arpan Associates v. Income-tax Settlement

Commissioner, reported in (2013) 37 taxmann.com 317.

5. The fact that the scope of inquiry by the High Court in exercise of writ jurisdiction under Article 226 of the Constitution of India against an order

passed by the Settlement Commission is quite restricted, is no longer a new or unknown proposition. It is held by series of judgments by the

Supreme Court as well as by High Courts that though finality given to an order of Settlement Commission would not bar a writ petition before High

Court, the scope of judicial review would be restricted to considering whether order is contrary to any provisions of the Income Tax Act.

Reference in this respect made be made to the decision of the Supreme Court in the case of Jyotendrasinhji (supra) in which it was observed that

limitation upon the Commission appears to be that it should act in accordance with the provisions of the Act. The scope of inquiry, whether by the

High Court under Article 226 or by the Supreme Court under Article 136 is to see whether the order of the Commission is contrary to any of the

provisions of the Act and if so, apart from the ground of bias and malice which constitute a separate and independent category as it prejudices the

applicant. In the case of Saurashtra Cement Ltd. and others v. Commissioner of Customs and another reported in 2012(3) GLH 235,

Division Bench of this Court made following observations :

16. When examining the scope of judicial review in relation to a decision of Settlement Commission, we must further bear in mind that the

Settlement Commission is set up under the statute for settlement of revenue claims. Its decision is given finality and it also has power to grant

immunity from prosecution, of course, subject to satisfaction of certain conditions. The scope of court''s inquiry against the decision of the

Settlement Commission, therefore, is necessarily very narrow. The Apex Court in the case of State of U.P. And Another v. Johri Mal reported

in (2004) 4 SCC 714 observed that the scope and extent of power of judicial review of the High Court under Article 226 of the Constitution of

India would vary from case to case, the nature of the order, the relevant statute as also other relevant factors including the nature of power

exercised by the public authorities, namely, whether the power is statutory, quasi-judicial or administrative. It was observed that the power of

judicial review is not intended to assume a supervisory role. The power is not intended either to review governance under the rule of law nor for

the courts to step into the areas exclusively reserved by the suprema lex to the other organs of the State. The court observed that the limited scope

of judicial review is-

(i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies ;

(ii) A petition for a judicial review would lie only on certain well-defined grounds.

(iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that

exercise of discretion itself is perverse or illegal.

(iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a

Court is limited to seeing that the Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.

(v) The courts cannot be called upon to undertake the Government duties and functions. The court shall not ordinarily interfere with a policy

decision of the State. Social and economic belief of a judge should not be invoked as a substitute for the judgment of the legislative bodies. (See

Ira Munn v. State of Illinois.)

17. Despite such narrow confines of judicial review of the decision of the Settlement Commission, it is undeniable that the jurisdiction under Article

226 of the Constitution is not totally ousted. In a given situation if the Settlement Commission has taken into consideration irrelevant facts and such

consideration has gone into its decision-making process resulting into grave injustice and prejudice to the party then within the narrow confines of

the judicial review, interference would still be open.

6. With this background, we may revert to the facts of the case. The Settlement Commission had in the impugned order examined material on

record in the context of the declarations made by the applicants for settlement including certain transactions of the applicants of lending their on

money on short term basis. The Settlement Commission had thereafter come to the conclusion that the offers of the assessees for settlement

considering their disclosure of 15 per cent return on the revised figure of on money of Rs. 50 lakhs, Rs. 50 lakhs and Rs. 75 lakhs respectively

required to be accepted. We may recall that the initial declaration of such sums of Rs. 25 lakhs, Rs. 21 lakhs and Rs. 30 lakhs respectively and the

return offered by the applicants for tax was at the rate of 12.5 per cent thereof. These aspects we would refer to at a later stage when we deal with

the Revenue''s contention of later on improving or revising offer of settlement would essentially demonstrate that initial disclosures were not full.

However, at this stage of examining legality of the order passed by the Settlement Commission, we do not see that the Settlement Commission

committed breach of any provisions of the Act. The Settlement Commission has examined material on record, given its own findings and made

observations and come to conclusions which cannot be said to be perverse or that the order was contrary to any of the provisions of the Act.

Recognising the limitation of judicial review by the High Court in exercise of writ jurisdiction against the order of Settlement Commission, we do

not find any justifiable grounds for interference in this respect.

7. Coming to the question of disclosures, we may notice that under section 245-C of the Act, an assessee at any stage of a case relating to him is

allowed to make application for settlement in a prescribed form which would require a full and true disclosure to be made by him of his income

which has not been disclosed before Assessing Officer and the manner in which such income has been derived. We may also notice that while

processing such application under section 245-D of the Act, it would be open for the Settlement Commission to reject an application for settlement

if it is found that the applicant has not made true and full disclosure of his income in the application for settlement. In the context of these provisions,

the Supreme Court had an occasion to examine the issue of true and full disclosure and the stage where the same must be made in the case of

Ajmera Housing Corporation (supra). It was a case where the assessee had filed an application seeking immunity under section 245C(1) of the

Act disclosing additional income of Rs. 1.94 crores (rounded off) for the assessment years 1989-90 to 1993-94 which was in addition to income

declared in the return filed before Assessing Officer. The Settlement Commission called for return from the Commissioner in terms of section

245D(1) of the Act. The Commissioner opposed the disclosures made by the assessee as not being true and full disclosures and suggested that the

income of the group assessees should not be settled at less than Rs. 223.55 crores. The arguments on the question whether Settlement

Commission should allow the application to proceed further were concluded and order was reserved at which stage, the assessee filed revised

settlement application declaring additional income of Rs. 11.41 crores. The Settlement Commission thereafter passed an order on 17.11.1994

deciding to proceed with the application of settlement. The Settlement Commission thereupon asked the Commissioner to furnish a further report.

The Commissioner in his report dated 30.8.1995 contended that the income disclosed by the assessee should not be treated as true and correct

and asserted that the total unaccounted income of the assessee was to the tune of Rs. 187.09 crores. Hearing of the case commenced before the

Settlement Commission. During the course of such hearing, the assessee made a further disclosure of unaccounted income of Rs. 2.76 crores.

Ultimately on 29.1.1999 the Settlement Commission passed an final order determining total income of the assessee for the said assessment years at

Rs. 42.58 crores.

8. This order was challenged by the Commissioner before Bombay High Court. Aggrieved by the order of High Court, the assessee had

approached Supreme Court. The Supreme Court remanded the matter back before Bombay High Court for fresh consideration upon which

Bombay High Court on 29.1.1999 passed an order remitting the matter back to the Settlement Commission against which the applicants-assessees

approached Supreme Court. It was in this background that the Supreme Court observed as under :

26.....It is plain from the language of subsection (4) of Section 245D of the Act that the jurisdiction of the Settlement Commission to pass such

orders as it may think fit is confined to the matters covered by the application and it can extend only to such matters which are referred to in the

report of the Commissioner under subsection (1) of sub-section (3) of the said Section. A ""full and true"" disclosure of income which had not been

previously disclosed by the assessee, being a pre-condition for a valid application under Section 245C(1) of the Act, the scheme of Chapter XIX-

A does not contemplate revision of the income so disclosed in the application against item No. 11 of the form. Moreover, if an assessee is

permitted to revise his disclosure, in essence, he would be making a fresh application in relation to the same case by withdrawing the earlier

application. In this regard, Section 245C(3) of the Act which prohibits the withdrawal of an application once made under sub-section (1) of the

said Section is instructive in as much as it manifests that an assessee cannot be permitted to resile from his stand at any stage during the

proceedings. Therefore, by revising the application, the applicant would be achieving something indirectly what he cannot otherwise achieve

directly and in the process rendering the provision of sub-section (3) of Section 245C of the Act otiose and meaningless. In our opinion, the

scheme of the said Chapter is clear and admits no ambiguity.

31. We are convinced that, in the instant case, the disclosure of Rs. 11.41 crores as additional undisclosed income in the revised annexure, filed

on 19th September, 1994 alone was sufficient to establish that the application made by the assessee on 30th September, 1993 under Section

245C(1) of the Act could not be entertained as it did not contain a ""true and full"" disclosure of their undisclosed income and ""the manner"" in which

such income had been derived. However, we say nothing more on this aspect of the matter as the Commissioner, for reasons best known to him,

has chosen not to challenge this part of the impugned order.

9. We may recall that such observations were made by the Supreme Court being conscious of the fact that the Revenue had not preferred any

appeal against judgment of the High Court on the question of full and true disclosures. Despite which the Supreme Court examined the issue

threadbare and made above-noted observations.

10. It can thus be seen that on the issue of true and full disclosure, stage at which such disclosures should be made and the effect of making further

disclosures by revising initial offers of settlement was examined by the Supreme Court in the case of Ajmera Housing Corporation (supra). The

manner in which the Supreme Court has dealt with such issue and has made elaborate and conclusive observations, it cannot be stated contrary to

what was argued before us that the above-noted portion of the judgment should not be seen as ration of the judgment of the Supreme Court. Ratio

of this judgment is that the true and full disclosure of the income must be made at the initial stage and large scale remissions in such disclosure itself

would show that the initial disclosures were not true.

11. However, the facts of the present case are somewhat different. The applicants had initially offered on money rotation of Rs. 25 lakhs, Rs. 21

lakhs and Rs. 30 lakhs respectively and income at the rate of 12.5 per cent thereof by way of interest earned which during the course of

assessment proceedings was revised to Rs. 50 lakhs, Rs. 50 lakhs and Rs. 75 lakhs respectively with rate of return at 15 per cent. With respect to

revised rate of return, even counsel for the Revenue would not be in a position to argue that the same would form part of declaration of two

incomes since whether rate of return should be estimated to 12.5 per cent or 15 per cent would be would be substantially in the realm of estimation

of not profit. He would however, strenuously contend that revised declaration of on money should be enough to establish that initial disclosures

made by the assessees were not full or true disclosures of such income. In this context, we had called for the letter written by the applicants making

such revised offers. Copies of such letters dated 6.2.2014 written by the partners of the firm are produced on record. In such letters, it was

conveyed that the applicants had filed a petition for settlement in which offered a sum of Rs. 7,75,000/- at the rate of 12 per cent on peak balance

of funds deployed in money lending activity. It was further stated that ""the applicant during the course of hearing under section 245D(4), in the

spirit of settlement, agreed to further additional income of Rs. 39,12,667/- which is computed on the basis stated herein below :

a. interest in money lending activity @ 15% p.a. ;

b. Amount deployed in money lending activity Rs. 50,00,000/-

c. Income out of on money receipt @ 15%.

12. Similar declarations were made in the case of other applicants as well. It can thus be seen that these revised offers of tax was in the nature of

spirit of settlement and cannot be seen in strict sense of abandoning initial disclosures and replacing the same by fresh disclosures on the basis of

such revised offers. What in essence the assessee did was to raise their offers marginally to put an end to the entire dispute through settlement or in

the spirit of settlement as is referred to in the said letter. This cannot be seen as accepting that original or initial declaration was not true and full

disclosure thereby paving way for the application of judgment in the case of Ajmera Housing Corporation (supra).

13. In the result, the petitions are dismissed.