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(2004) 01 GUJ CK 0059

In the Gujarat High Court

Case No : Special Civil Application No''s. 8442 and 15995 to 16003 of 2003 15 January 2004

AOP of Sanjaybhai R. Patel and Others APPELLANT

Vs

Assessing Officer RESPONDENT

Date of Decision : 15-01-2004

Acts Referred:
Constitution of India, 1950 — Article 226
Income Tax Act, 1922 — Section 17(1), 34, 35
Income Tax Act, 1961 — Section 116, 119, 131, 131, 132
Penal Code, 1860 (IPC) — Section 196

Citation : (2004) 187 CTR 583

Hon'ble Judges : K.A. Puj, J;A.R. Dave, J

Bench : Full Bench

Advocate : J.P. Shah, for the Assessee and B.B. Naik, for the Revenue, for the Appellant;

Judgement

K.A. Puj, J.

Since common issue is involved in all these petitions, the same are being disposed of by this common judgment.

2. The petitioners have filed these petitions under article 226 of the Constitution of India challenging the orders passed by the Settlement Commission, respondent No. 2 herein, on 20-3-2003, u/s 154 of the Income Tax Act, 1961 withdrawing the reduction or waiver of interest granted by the Settlement Commission under sections 234A, 234B and 234C of the Act, while passing the orders u/s 245D(4) of the Act on 31-3-1999.

3. The brief facts giving rise to the present petitions are as under :

The petitioners have approached the Settlement Commission for settlement of their cases in accordance with the provisions of Chapter XIX-A of the Income Tax Act (hereinafter referred to as the Act). The Settlement Commission had passed orders on 31-3-1999 u/s 245D(4) in respect of each of the petitioners, inter alia, waiving and/or reducing interest under sections 234A, 234B and 234C of the Act in accordance with the state of law at the relevant point of time. After a period of little less than four years, the petitioners received notices dated 21-2-2003, from the Settlement Commission stating that in view of the decision of the Hon''ble Supreme Court in the case of Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, the orders passed on 31-3-1999, required rectification and the petitioners were asked to file their objections latest by 7-3-2003 and to attend the hearing on 11-3-2003. Since the time-granted was very short, the petitioners have asked for further time to file their reply and hence, the Settlement Commission had issued another notice dated 7-3-2003, for rectification of the order dated 31-3-1999. The petitioners have filed their reply on 8-3-2003, stating inter alia that the Settlement Commission has no power to rectify its order u/s 154 of the Act as it is not an Income Tax Authority referred to in section 116 of the Act. The Settlement Commission after having, considered the said reply had passed orders on 20-3-2003, withdrawing the reduction or waiver of interest granted by it vide its order dated 31-3-1999.

4. It is these orders of the Settlement Commission passed u/s 154 of the Act which are under challenge in the present group of petitions.

5. Mr. J.P. Shah, learned advocate for the petitioners in all these petitions submitted that the Settlement Commission does not have any power to rectify its order u/s 154 of the Act inasmuch as such power is vested in an Income Tax Authority referred to in section 116 of the Act. He has further submitted that the Settlement Commission is not an Income Tax Authority referred to in section 116 of the Act. Over and above this contention, he has also submitted that the past debatibility of the issue does not disappear because of a later decision of the Hon''ble Supreme Court. In support of his submission, he relied on the decision of the Calcutta High Court in the case of Jiyajeerao Cotton Mills Ltd. Vs. Income Tax Officer, "C" Ward and Others, . Prior to the decision of the Hon''ble Supreme Court in Ghaswalas case (supra) the law was understood to the effect that the Settlement Commission has the power to waive or reduce interest under sections 2344, 234B and 234C and in any case, the position of law prior to the Supreme Court decision was that whether such power was there or not was debatable and hence such debatable issue cannot be made the subject-matter of proceedings u/s 154 of the Act.

6. Mr. Shah has further submitted that the very foundation of passing the order u/s 154 by the Settlement Commission is erroneous as the Hon''ble Supreme Court in the case of CIT v. Anjum M.H. Ghaswala (supra) has held that the Settlement Commission has power to waive or reduce interest under sections 234A, 234B and 234C of the Act. In this connection, he has invited our attention to the penultimate para of the said judgment wherein the Hon''ble Supreme Court has taken the view that the Settlement Commission has no power to issue circulars. However, if the assessee is entitled to the benefit granted under the circular, the

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Settlement Commission has power to grant that benefit by reducing or waiving interest under sections 234A, 234B and 234C of the Act, under the circulars issued by the Board u/s 119 of the Act.

7. Mr. Shah has further submitted that under the Act, no specific power is given to the Settlement Commission to rectify order passed u/s 245D(4) of the Act by invoking the provisions of section 154 of the Act. In absence of such powers, the action taken by the Settlement Commission while passing the impugned order is absolutely without jurisdiction and deserves to be quashed and set aside. In this connection, he relied on the decision of the Privy Council in the case of (1938) 6 ITR 414 (Privy Council) wherein it is held that once a final assessment is arrive at, it cannot be reopened except in the circumstances detailed in sections 34 and 35 of the Act and within the time-limit by these sections. Section 34 of the old Act, i.e., Act of 1922 deals with reopening of assessment whereas section 35 of the said Act deals with rectification of mistake.

8. Mr. Shah has further submitted that the decision of the Privy Council in the case of CIT v. Khemchand Ramdas (supra) was considered by this court in the case of MANDAL GINNING AND PRESSING CO. LTD. Vs. COMMISSIONER OF Income Tax. KESHAVLAL HIRACHAND v. COMMISSIONER OF Income Tax. DIGVIJAY WOOLLEN MILLS LTD. v. COMMISSIONER OF Income Tax., and it was held that when an order of rectification is passed u/s 35(1) it undoubtedly rectifies the assessment u/s 23 and is a part of the procedure for ascertainment and imposition of tax liability. But the enhanced tax liability which results owes its validity to the exercise of power u/s 35(1) and not to the exercise of power u/s 23. There-is no mandate that when the Income Tax Officer rectifies an assessment order u/s 35(1) he must follow the procedure laid down in sections 22 and 23 as laid down in section 34, nor is there any fiction created by the statute that when an assessment is rectified in exercise of the power conferred u/s 35(1), the rectified assessment shall be deemed to be an assessment u/s 23 or shall be treated as an assessment u/s 23." Based on these observations, Mr. shah has submitted that the order passed by the Settlement Commission u/s 154 of the Act cannot be treated as the order passed by it u/s 245D(4) of the Act.

9. Mr. Shah has further submitted that section 245F(1) of the Act does not include the power to rectify the order passed by the Settlement Commission u/s 245D(4) of the Act. In this connection, he invited our attention to the decision of the Hon''ble Supreme Court in the case of Commissioner of Income Tax, Calcutta [Central] Vs. Paharpur Cooling Towers Pvt. Ltd., wherein while dealing with the contention raised on behalf of the assessee that sub-section (1) of section 245F confers the powers of an Income Tax Authority upon the Settlement Commission including the power to reopen the assessments as contemplated by section 147, the Hon''ble Supreme Court has held that we do not know whether the power u/s 147 can also be claimed by the Commission. But assuming it can, the said power has to be exercised in accordance with the provisions contained in sections 147 to 150 including sections 148 and 149. Admittedly, they were not complied with

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in this case." According to Mr. Shah even the Hon''ble Supreme Court was of the view that it is not certain as to whether the Settlement Commission has got the power to reopen the assessment u/s 147 of the Act and hence, it cannot be said that by virtue of section 245F(1) of the Act, the Settlement Commission has got the power to rectify the order u/s 154 of the Act.

10. Mr. Shah has further submitted that the order passed by the Settlement Commission u/s 245D(4) is final and conclusive. Such a finality intended to be given by the legislature and it has been made clear in section 245-I of the Act which lays down that every order of Settlement Commission passed u/s 245D(4) shall be conclusive as to the matters stated therein. Unless such an order becomes void on the grounds of fraud and/or misrepresentation of facts as provided in section 245D(6), the order cannot be disputed or impugned. Mr. Shah has, therefore, submitted that the Settlement Commission has no power to rectify its own order by resorting to the provisions of section 154 of the Act as the order passed by it earlier granting reduction and/or waiver of interest under sections 234A, 234B and 234C of the Act has become final and conclusive.

11. Mr. Shah has further relied on the decision of the Hon''ble Supreme Court in the case of Prakash H. Jain Vs. Ms. Marie Fernandes, wherein the issue before the court was that whether the competent authority under the Maharashtra Rent Control Act, 1999 has got the power to condone the delay in filing an application. The Hon''ble Supreme Court has observed that this question can be considered not only on the nature and character of the authority, whether it is court or not but also on the nature of powers conferred on such authority or Court, the scheme underlying the provisions of the Act concerned and the nature of powers, the extent thereof or the limitations, if any, contained therein with particular reference to the intention of the legislature as well, found expressed therein. There is no such thing as any inherent power of court to condone the delay in filing proceedings before a Court/authority concerned, unless the law warrants and permits it. Such competent authority is merely and at best a statutory authority created for a definite purpose and to exercise, no doubt, powers in a quasi-judicial manner but its powers are strictly circumscribed by the very statutory provisions which conferred upon it those powers and the same could be exercised in the manner provided therefore and subject to such conditions and limitations stipulated by the very provision of law under which the competent authority itself has been created." Based on these observations, Mr. Shah has submitted that since no specific power is conferred upon the Settlement Commission to rectify its order u/s 154 of the Act, it cannot be inferred that the Settlement Commission has got such powers by virtue of the provisions contained in section 245F(1) of the Act.

12. Mr. Shah has further submitted that section 245F(1) of the Act is more or less similar to section 255(6) of the Act. Section 255(6) confers all the powers on the Tribunal, for the purpose of discharging its functions, which are vested in the Income Tax Authorities referred to in section 131. Despite this provision, u/s

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254(2) of the Act, a specific power is conferred on the Tribunal to amend any order passed by it under sub-section (1) and to make amendment if the mistake is brought to its notice by the assessee or the assessing officer, at any time within 4 years from the date of the order, with a view to rectify any mistake being apparent on the record. Power similar to one which is conferred upon the Tribunal u/s 254(2) of the Act is not conferred on the Settlement Commission and in absence of such powers, the Settlement Commission cannot resort to the provisions of section 154(1) of the Act for the purpose of rectifying the order passed by it u/s 245D(4) of the Act.

13. Mr. Shah has further submitted that even u/s 154 of the Act only a mistake apparent from record or arithmetical mistake can be rectified and a mistake apparent from the record must be one to point out which no elaborate argument is required. It must be a glaring, obvious or self-evident mistake. If it is a mistake which requires to be established by complicated process of investigation, argument or proof, it cannot be regarded as a mistake apparent from the record. In this connection, he relied on the decision of this court in the case of P.M. Bharucha and Co. Vs. G.S. Venkatesan Income Tax Officer, Circle I Ward A, Bhavnagar, wherein this court has taken the view that "the question whether capital gain in the hands of the firm would be business income in the hands of the partners was a highly debatable question on which there might conceivably be two opinions, and therefore even if any mistake was committed by the officer, it was not a mistake apparent from the record so as to attract the corrective jurisdiction u/s 35 of the old Act."

14. Mr. Shah has further relied on the decision of the Hon''ble Supreme Court in the case of T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, wherein the Hon''ble Supreme Court has held that "the question whether section 17(1) of the Act of 1922 was applicable to the case of the respondent firm was not free from doubt, and it was not open to the Income Tax Officer to go into the true scope of the provisions of the Act in a rectification proceedings u/s 154 of the Income Tax Act, 1961, the Officer was wrong in holding that there was a mistake apparent from the record of assessments of the firm. The Hon''ble Supreme Court has further held that a mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may be conceivably two opinions. A decision on a debatable point of law is not a mistake apparent from the record. The Hon''ble Supreme Court has further held that the High Court was not justified in going into the question whether the original assessments were in accordance with law."

15. Mr. Shah has further submitted that the very fact that the Settlement Commission has waived and/or reduced the interest while passing the order u/s 245D(4) of the Act itself suggests that a conscious decision was taken by it considering the relevant provisions of the Act and thereby it cannot be said that it has committed any error. In this connection, Mr. Shah has relied on the

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decision of this court in the case of Commissioner of Income Tax Vs. Gordhanbhai Jethabhai, wherein this court as taken the view that not recording a finding and not passing a specific order in favour of the assessee cannot always be regarded as an error justifying the passing of a rectification order. As a general proposition, it can be said that an act of waiver being a conscious act, no inference of waiver can be drawn from an omission or inaction. But as the omission is not by a person ignorant of law but by the Income Tax Officer who must be presumed to be and who is also otherwise likely to be well conversant with the relevant provisions of sections 215, 216 and 217, then such an inference can be drawn. If the Income Tax Officer does not pass an order for levy of interest even where levy of interest is mandatory, then only two inferences are possible. One is that he forgot to pass such an order and the other is that he had decided to waive the interest because the court cannot assume or infer that oven though he was aware of the said provisions, he deliberately did not pass that order. An intention to act contrary to law cannot ordinarily be inferred. The court cannot also draw an inference that he forgot to pass an order. That being the state of his mind, the successor-Income Tax Officer cannot definitely say that either it was a case of overlooking the provisions or a deliberate lapse on the part of the Income Tax Officer. Considering the practice which is ordinarily followed by the Income Tax Officers while making assessment orders and levying interest and the nature of discretion conferred upon the Income Tax Officer and the fairness with which he is expected to exercise his powers, the better inference that can be drawn from the omission to pass any order with respect to payment of interest u/s 215 after passing the order of assessment would be that he had decided to waive payment of interest. Merely because discretion is not absolute and its exercise is dependent upon existence of certain facts and circumstances, it is difficult to appreciate how it can be said that no inference as stated above can be drawn from an omission to pass an order u/s 215."

16. In view of the aforesaid submissions and the authorities relied on by him, Mr. Shah has vehemently submitted that the impugned order passed by the Settlement Commission u/s 154 of the Act is beyond the jurisdiction of the Settlement Commission and contrary to the provisions of the Act. The order, therefore, deserves to be quashed and set aside.

17. Mr. B.B. Naik, learned senior standing counsel for the revenue has submitted that the petitioners have raised new contentions before this court during the course of argument. The petitioners only contention before the Settlement Commission as well as in the writ petition was that the Settlement Commission is not an Income Tax Authority within the meaning of section 116 of the Income Tax Act and hence, the Settlement Commission has no power to pass an order u/s 154 of the Act. Over and above this contention the petitioners have raised the contention that the Settlement Commission has power to waive or reduce the interest and the discretion was rightly exercised by the Settlement Commission while passing the original order u/s 245D(4) of the Act. It is further contended that even otherwise, whether the Settlement Commission has got the discretion

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to reduce or waive the interest or not is a debatable issue and such a debatable issue cannot be decided while exercising the power u/s 154 of the Act. These contentions were not raised earlier and hence, the petitioners should not be permitted to raise these contentions.

18. Mr. Naik has further submitted that the provisions of section 245F are very clear. Section 245F(1) empowers the Settlement Commission to exercise all the powers which are vested in an Income Tax Authority under this Act. Section 245F(2) confers exclusive jurisdiction to exercise the powers and perform functions of Income Tax Authority under the Act in relation to the case pending before the Settlement Commission. Such powers can be exercised by the Settlement Commission no sooner the application made u/s 245C has been allowed to be proceeded with u/s 245D and till an order is passed under sub-section (4) of the section 245D of the Act. He has, therefore, submitted that the Settlement Commission has all the powers of the Income Tax Authorities u/s 245F(1) of the Act prior to and subsequent to the application decided by the Settlement Commission. The Settlement Commission has, therefore, power to rectify any mistake which is found in the order passed u/s 245D(4) of the Act. He has further submitted that though the Settlement Commission has no discretion to reduce or waive the interest under sections 234A, 234B and 234C of the Act and still the interest was reduced or waived, the Settlement Commission has committed an error apparent from record and hence, the same was rightly rectified by the Settlement Commission while passing order u/s 154 of the Act.

19. Mr. Naik has further submitted that the language of section 245F is very clear and unambiguous. By reading some other provisions of the Act, namely, section 254(2) of the Act in the present case, it cannot be presumed that the Settlement Commission has no such power to rectify the order passed u/s 245D(4) of the Act. The wordings of section 245F(1) are very wide enough to empower the Settlement Commission to rectify the mistake apparent on record and wavier or reduction of interest under sections 234A, 234B and 234C while passing the order u/s 245D(4) of the Act by the Settlement Commission, when no such powers similar to one u/s 254(2) of the Act are conferred on the Settlement Commission, is clearly a mistake apparent on record and the same is rightly rectified by the Settlement Commission. Mr. Naik has further submitted that while interpreting the provisions contained in section 245F(1) of the Act, it cannot be inferred that the powers u/s 154 of the Act are totally excluded so far as the Settlement Commission is concerned. The principles governing the interpretation of statute are well-established. In this regard, he has invited our attention to the decision of the Hon''ble Supreme Court in the case of Bhatia International Vs. Bulk Trading S.A. and Another, wherein it is held that "while examining a particular provision of a statute to find out whether the jurisdiction of a court is ousted or not, the principle of universal application is that ordinarily the jurisdiction may not be ousted unless the very statutory provision explicitly indicates or even by inferential conclusion the court arrives at the same when such a conclusion is the only conclusion."

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20. Mr. Naik has further submitted that true meaning and import should be given to sections 245F(1) and 245F(2) of the Act. If it is held that the Settlement Commission has no power to rectify the mistake u/s 154 of the Act, though such powers are conferred on the Income Tax Authority u/s 154, the provisions contained in section 245F(I) would be rendered nugatory. He has, therefore, submitted that the principles of harmonious construction require that efforts should be made to see that each provision in the statute will have its play. Consequences likely to flow from the intended interpretation should be considered by Court. In this connection, he has relied on the decision of the Hon''ble Supreme Court in the case of British Airways Plc. Vs. Union of India and ors, wherein it is held that "while interpreting a statute, the court should try to sustain its validity and give such meaning to the provisions which advance the object sought to be achieved by the enactment. The court cannot approach the enactment with a view to pick holes or to search for defects of drafting which make its working impossible. It is a cardinal principle of construction of a statute that effort should be made in construing the different provisions so that each provision will have its play and in the event of any conflict a harmonious construction should be given. The well-known principle of harmonious construction is that effect shall be given to all the provisions and for that any provision of the statute should be construed with reference to the other provisions so as to make it workable. A particular provision cannot be picked up and interpreted to defeat another provision made in that behalf under the statute. It is the duty of the court to make such construction of a statute which shall suppress the mischief and advance the remedy. While interpreting a statute the Courts are required to keep in mind the consequences which are likely to flow upon the intended interpretation."

21. Mr. Naik has further relied on the decision of the Hon''ble Supreme Court in the case of Grasim Industries Ltd. Vs. Collector of Customs, Bombay, wherein it is held that "No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the means or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so, what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided.

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22. Mr. Naik has further submitted that though the Settlement Commission has not referred to in its order passed u/s 245D(4) of the Act that interest was reduced or waived following the larger Bench decision of the Settlement Commission in the case of Anjum M.H. Ghaswala, In re (1998) 145 CTR (SC) 10 it was the prevalent practice of the Settlement Commission to pass such orders based on the said decision. However, the said decision has been reversed by the Hon''ble Supreme Court in the case of CIT v. Anjum M.H. Ghaswala (supra), and hence, it is obligatory on the part of the Settlement Commission to rectify the said order by resorting to the provisions contained in section 154 of the Act. In this connection, Mr. Naik has invited specific attention of the court to the observations made by the Hon''ble Supreme Court in the said decision wherein it is in terms held that "if the scheme of levy of interest is thus to be analysed on the anvil of the provisions referred to hereinabove, it shows that the interest contemplated under sections 234A, 234B and 234C is mandatory in nature and the power of waiver or reduction having not been expressly conferred on the Commission, the same indicates that so far as the payment of statutory interest is concerned, the same is outside the purview of the settlement contemplated in Chapter XIX-A of the Act. The Hon''ble Supreme Court has shown indulgence only to the extent that it the assessee is entitled to the benefit under the circular issued by the CBDT to that extent the Settlement Commission can waive or reduce the interest. However, it was not the case before the Settlement Commission that the present petitioners were entitled to the benefit conferred under the circular and on that basis, the interest was waived or reduced by the Settlement Commission, In view of the Supreme Courts decision in the case of Anjum M.H. Ghaswala (supra), the Settlement Commission has rightly passed the order u/s 154 of the Act withdrawing the reduction or waiver of interest under sections 234A, 234B and 234C granted at the time of passing the order u/s 245D(4) of the Act. Mr. Naik has further submitted that the Hon''ble Supreme Court has rightly made distinction and held that the Settlement Commission has no power to issue circulars and in this regard, the powers exercised by the Central Board of Direct Taxes u/s 119A of the Act cannot be exercised by the Settlement Commission. However, the Settlement Commission is certainly an Income Tax Authority vis-a-vis the benefit which is to be given to the assessee on the basis of the circular issued by the Central Board of Direct Taxes. Mr. Naik has, therefore, submitted that once the law is declared by the Hon''ble Supreme Court, it becomes law of the land and once it is held that the Settlement Commission has no power to waive or reduce the interest chargeable under sections 234A, 234B and 234C of the Act, but for the circular, the Settlement Commission cannot waive or reduce interest without taking recourse to the said circular and if it is done, the same is amounting to the mistake apparent from record which can be rectified while exercising powers u/s 154 of the Act. Since the powers were exercised by the Settlement Commission within four years from the date of the judgment of the Hon''ble Supreme Court in Anjum M.H. Ghaswalas case (supra), the limitation prescribed in section 154 has been duly complied with and hence, such an order cannot be challenged in the present

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petition.

23. Mr. Naik has further relied on the decision of the Hon''ble Supreme Court in the case of CIT v. Hindustan Bulk Carriers (2002) 259 ITR 449 wherein all the three Hon''ble Judges have given their separate concurrent findings and they have come to the conclusion that the Settlement Commission has no power to waive the tax or interest because, as laid down in section 246D(4), it has to pass orders on the matter determining the quantum of income and tax in accordance with the other relevant provisions of the Act applicable to the relevant assessment year or years. There is no power in the Settlement Commission to settle the "case" de hors the provisions of the Income Tax Act.

24. Mr. Naik has further submitted that even the Hon''ble Supreme Court had an occasion to deal with similar issue while considering the provisions contained in section 147 of the Act. In the case of CIT v. Paharpur Cooling Towers (P) Ltd. (supra), though the Hon''ble Supreme court has expressed doubt as to whether the Settlement Commission-has got the power to reopen the assessments as contemplated u/s 147 of the Act, it was held that even if the Settlement Commission has got such powers, the said powers will have to be exercised in accordance with the provisions contained in sections 141 to 150 of the Act. The Court, therefore, took the view that the possibility of having such powers u/s 147 of the Act could not be ruled out. The only condition which was to be complied with while exercising such powers is that the said powers are to be exercised in accordance with the provisions contained in sections 147 to 150 of the Act.

25. Mr. Naik has further submitted that in view of the decision of the Hon''ble Supreme Court in Anjum M.H. Ghaswalas case (supra), the interest waived or reduced by the Settlement Commission under sections 234A, 234B and 234C of the Act while passing the order u/s 245D(4) of the Act is clearly a mistake apparent from the record and it has to be rectified while passing the order u/s 154 of the Act. He relied on the decision of this court in the case of Standard Radiators Vs. Commissioner of Income Tax, wherein it is held that "it is implicit in the power of supervision conferred on a superior Tribunal that all the Tribunals subject to its supervision should conform to the law laid down by it. Hence, the law laid down by the High Court has to be followed by the Income Tax Authority situated in the area over which the High Court has jurisdiction. While dealing with the case before the Court, it was held that the decision of the High Court was rendered in September, 1973 and the Income Tax Officer had passed the order of rectification on 6-3-1975, In the light of this decision which was binding on the Income Tax Officer, it must be held that the Income Tax Officer had committed an error apparent on the face of the record in failing to determine the tax payable on the capital goods which were computed and included in the total income of the assessee. It was immaterial that the decision of the court was not before the Income Tax Officer when he passed the assessment order. When the court held that capital gains were taxable in the hands of a registered firm, it merely stated what the law had always been and must always be understood to

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have been. The assessment order which failed to determine such tax was bad from its very inception and was liable to be rectified in exercise of the powers conferred u/s 154."

Mr. Naik has, therefore, submitted that in view of the aforesaid decision of this Court, the Settlement Commission is justified in taking the view that order passed u/s 245D(4) of the Act granting reduction or waiver of interest under sections 234A, 234B and 234C of the Act suffers from mistake apparent from record and hence the same is required to be rectified u/s 154 of the Act.

26. We have heard at length Mr. J.P. Shah, learned advocate appearing for the petitioners and Mr. B.B. Naik, learned senior standing counsel for the revenue. We have also minutely examined various submissions made and contentions raised by them in support of their case. Various authorities of this court as well as of the Hon''ble Supreme Court cited before us were read, reread and closely considered. Before deciding the controversy raised before us, it is of utmost importance to have a look at the relevant provisions of the Act so as to throw light on the controversy and resolve it Chapter XIX-A of the Act deals with settlement of cases. Section 245C of the Act empowers the assessee to make an application for settlement of cases. Section 245D prescribes the procedure to be followed by the Settlement Commission in respect of an application u/s 245C of the Act. An application for settlement of cases may be made by a tax payer at any stage of proceeding. On receipt of the application, the Settlement Commission calls for a preliminary report from the Commissioner who has jurisdiction over the case. The Commissioner can object to the application being proceeded with by the Settlement Commission, if he is of the view that concealment of income was perpetration by fraud or evading any tax or other sum chargeable under the Act, on the part of the applicant has been established or is likely to be established in relation to the case by an Income Tax Authority. On the basis of the materials contained in the Commissioners report and having regard to the nature and circumstances of the case of the complexity involved in the investigation therein, the Settlement Commission may decide to proceed with the application or reject the application. If the Settlement Commission decides to proceed with the application, sub-section (4) of section 245D will start playing its role. It reads as under :

"245B(4)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 tinder 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)."

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27. From a perusal of section 245B(4), it is clear that the Settlement Commission, after examination of the records and the report of the Commissioner and after giving an opportunity to the applicant and to the Commissioner to be heard and after such further evidence as may be placed before it or obtained by it, may pass an order in accordance with the provisions of the Act.

28. Section 245E empowers the Settlement Commission to reopen completed proceedings subject to the conditions laid down therein. It confers an extended jurisdiction so as to cover certain assessment which had already become final in absence of any remedial proceedings pending thereagainst.

29. Section 245F deals with powers and procedure of Settlement Commission. Sub-sections (1) and (2) of section 245F are very relevant for our purpose. They read as under :

"Section 245F(1) : In addition to the powers conferred on the Settlement Commission under this Chapter, it shall have all the powers which are vested in an Income Tax Authority under this Act.

"Section 245F(2) : Where an application made u/s 245C has been allowed to be proceeded with u/s 245D, the Settlement Commission shall, until an order is passed under sub-section (4) of section 245D, have, subject to the provisions of sub-section (3) of that section, exclusive jurisdiction to exercise the powers and perform the functions of an Income Tax Authority under this Act in relation to the case.

30. Section 245F(1) vests Settlement Commission with all the powers which are vested in an Income Tax Authority under the Act, in addition to the powers that the Commission has under Chapter XIX-A of the Act. Section 245F(2) clarifies that between the dates when the Settlement Commission allows an application u/s 245C to be proceeded with and when it makes a final order under section

"245D(4), the Commission is vested with the exclusive jurisdiction to exercise the powers and perform the functions of an Income Tax Authority in relation to the matters covered by the case before it. Section 245-I lays down that every order of Settlement Commission passed u/s 245D(4) shall be conclusive as to the matters stated therein. It reads as under :

"Section 245-I. : Every order of settlement passed under sub-section (4) of section 245D shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this chapter, be reopened in any proceeding under this Act or under any other law for the time being in force."

31. On the basis of the aforesaid provisions contained in Chapter XIX-A of the Act, if we appreciate the orders passed by the Settlement Commission, firstly u/s 245D(4) of the Act on 31-3-1999 and thereafter u/s 154 of the Act on 20-3-2003, we find that while passing the order u/s 245D(4) of the Act, the

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Settlement Commission has dealt with the issue regarding waiver of interest chargeable under sections 139(8)/ 234A and 215/ 234B of the Act.

32. Without ascertaining the legal position as to whether, it has got such powers to waive or reduce the interest or not, the same was reduced or waived, The Settlement Commission has also not referred to the circular issued by Central Board of Direct Taxes bearing No. F. No, 400/234/95-IT(B), dt, 23-5-1996, which empowers the Chief Commissioner and Director General of Income Tax to waive or reduce. interest charged under sections 234A, 234B and 234C of the Act in the class of taxes or in the class of incomes specified in para 2 of the said order for the period and on conditions which are enumerated therein. It is not the case of the petitioners before the Settlement Commission that they are entitled to reduction or waiver of interest by virtue of the circular issued by the Central Board of Direct Taxes. The Settlement Commission, however, passed the said order of reduction or waiver of interest possibly on the basis of the order dated 12-12-1997 of the IT Settlement Commission, Special Bench, Mumbai in the case of Anjum M.H. Ghaswala, In re (supra). The Settlement Commission has, however, not referred to the said judgment of the Special Bench of the Settlement Commission. But the fact remains that during that period, the Settlement Commission used to pass such orders with regard to waiver of interest under sections 234A, 234B and 234C on the Act following the said Special Bench decision which has taken the view that the Settlement Commission is empowered to reduce or waive the interest under sections 234A, 234B and 234C of the Act.

33. As observed earlier, the said decision of the Special Bench of the Settlement Commission was challenged by the revenue before the Hon''ble Supreme Court and the Hon''ble Supreme Court has reversed the said decision of the Settlement. Commission. The Hon''ble Supreme Court in Anjum M.H. Ghaswalas case (supra) has specifically held that there is no specific empowerment of waiver or reduction of interest or tax. It is made clear from the use of the expression "in accordance with the provisions of this Act" in section 245D(4) that the Settlement Commission will have to be in conformity with the Act and not contrary to or in conflict with it. Interest contemplated u/s 234A for default for furnishing a return, u/s 234B for deficiency for default in payment of advance tax and u/s 234C for deferment of advance tax is mandatory in nature and the fact that the power of waiver has not been conferred on the Settlement Commission, indicates that so far as payment of statutory interest is concerned, the same is outside the purview of Settlement contemplated in Chapter XIX-A. While the Settlement Commission arrives at the taxable income of the assessee on the basis of the records having before it, it has to levy the mandatorily chargeable tax on such income arrived at by it and whatever interest is due on the mandatory provisions like sections 234A, 234B and 234C, it has to include that interest also in the settlement. The Hon''ble Supreme Court has also made it clear that since the circular is beneficial to the assessee, such benefit can be conferred also on the assessee who approach the Settlement Commission u/s

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245C on such terms and conditions as are specified in the circular. It is for this purpose that section 245F has empowered the Settlement Commission to exercise the power of an Income Tax Authority under the Act. While exercising the power derived under the Circulars of the Board, the Commission does not act as a subordinate to the Board but will, be enforcing the relaxed provisions for the benefit of the assessee in the process of settlement.

34. The above principles laid down by the Hon''ble Supreme Court were reiterated in the later decision in the case of CIT v. Hindustan Bulk Carriers (supra) and it was held in unequivocal terms that interest payable on the tax due has to be determined by the Settlement Commission after settlement of the case and there is no power in the Settlement Commission to settle the case de hors the provisions of the Income Tax Act.

35. Based on aforesaid two decisions, if the Settlement Commission issues notice for rectification of its earlier order and ultimately passes an order u/s 154 of the Act, can it be said that Settlement Commission has no such power or that it is not an Income Tax Authority within the meaning of section 116 of the Act or that the issue regarding waiver and/or reduction of interest is a debatable issue which cannot be rectified u/s 154 of the Act ? To examine this issue, it is necessary to decide as to whether the Settlement Commission is an Income Tax Authority or not ? Section 116 of the Act enumerates Income Tax Authorities which reads as under :

"Section 116 : There shall be the following classes of Income Tax Authority for the purposes of this Act, namely :

(a) Central Board of Direct Taxes constituted under the Central Boards of revenue Act, 1963 (54 of 1963),

(b) Directors-General of Income Tax or Chief Commissioners,

(c) Directors of Income Tax or Commissioners or Commissioners (Appeals),

(d) Dy. Directors of Income Tax or Deputy Commissioners or Deputy Commissioners (Appeals),

(e) Assistant Directors of Income Tax or Assistant Commissioners,

(f) Income Tax Officers,

(g) TROs,

(h) Inspectors of Income Tax."

36. Admittedly, the name of the Settlement Commission does not figure in this list and hence, in strict sense, it cannot be said that the Settlement Commission is an Income Tax Authority. Power u/s 154 of the Act is exercised by the Income Tax Authority as enumerated in section 116 of the Act. Section 154 reads as under :

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"Section 154 : With a view to rectifying any mistake apparent from the record an Income Tax Authority referred to in section 116 may,

(a) amend any order passed by it under the provisions of this Act

(b) amend any intimation or deemed intimation under sub-section (1) of section 141"

37. Section 116 of the Act does not include Settlement Commission and section 154 empowers only the Income Tax Authority to rectify its orders and hence, the argument canvassed before us that since the Settlement Commission is not an Income Tax Authority, it has no power to rectify its earlier order. However, provisions contained in section 245F(1) of the Act cannot be lost sight of. It states in unequivocal terms that in addition to powers conferred on the Settlement Commission under this Chapter, it shall have all the powers which are vested in an Income Tax Authority under this Act. The word "powers" cannot be read in the restricted sense that it is used in respect of only those powers which are mentioned in Chapter XIII-C starting with sections 131 to 136 of the Act. It may also contemplate powers to make assessment, reassessment or rectification. The Hon''ble Supreme Court in the case of CIT v. Paharpur Cooling Towers (P) Ltd. (supra) has, however, kept that issue open by observing that it is not sure as to whether the power u/s 147 can also be claimed by the Settlement Commission. However, even assuming that the Commission could exercise the power u/s 147, the said power has to be exercised in accordance with the provisions contained in sections 147 to 150. Here in the present case, even without going into the aspect as to whether the Settlement Commission has got the power u/s 154 of the Act to rectify its own order and if we proceed on that assumption that the Commission could exercise the power u/s 154. the said power has to be exercised in accordance with the provisions contained in section 154 of the Act. Section 154 of the Act contemplates that powers thereunder can be exercised only with a view to rectify the mistake apparent from record and that the said powers are exercised by an Income Tax Authority referred to in section 116. Sub-section (7) of section 154 prescribes the time-limit for exercise of such powers and it says that no amendment under this section shah be made after the expiry of four years from the end of the financial year in which the order sought to be amended was passed. The Settlement Commission has waived or reduced the interest under sections 234A, 234B and 234C of the Act despite the fact that it has no such power under the Act and it is contrary to the law laid down by the Hon''ble Supreme Court. Based on two decisions of the Hon''ble Supreme Court, the Settlement Commission was of the view that it has committed a mistake apparent from record while granting reduction and/or waiving of interest and hence, it is required to be rectified. In view of the decision of this court in the case of Standard Radiators (supra), it is certainly a mistake apparent from record wherein this court has taken the view that the Income Tax Officer had committed an error apparent on the face of the record in failing to determine the tax payable on the capital goods which are computed

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and included in the total income of the assessee. We are also of the view that the Settlement Commission has committed an error apparent on the face of the record in reducing and/or waiving the interest chargeable under sections 234A, 234B and 234C of the Act. When the Hon''ble Supreme Court held that the Settlement Commission has no power to reduce or waive the interest, it merely stated what the law had always been and must always to be understood to have been. As far as the issue as to whether the Settlement Commission is an Income Tax Authority or not would not detain us any longer as section 245F specifically states that the Settlement Commission has got all the powers of an Income Tax Authority, over and above the powers under Chapter XIX-A of the Act. The Hon''ble Supreme Court has also made a distinction in Ghaswalas case by taking the View that powers of the Central Board of Direct Taxes cannot be exercised by the Settlement Commission and in that sense it is not an Income Tax Authority. In other words, the Settlement Commission cannot issue the circulars which power is vested in the Central Board of Direct Taxes u/s 119 of the Act, but it is certainly an Income Tax Authority to confer the benefit available to the assessee under the circular and for that purpose, section 245F can be pressed into service. If we apply this very analogy to the facts of the present case, even if we assume that Settlement Commission is not an Income Tax Authority, for the purpose of exercising powers u/s 154 of the Act, it is certainly an Income Tax Authority to give effect to the judgment of the Hon''ble Supreme Court which says that but for the circular, the Settlement Commission has no power to waive or reduce the interest under sections 234A, 234B and 234C of the Act and if such powers are exercised by the Settlement Commission within four years from the date of original order passed u/s 245D of the Act, the same can certainly be in accordance with the provisions contained in section 154 of the Act. In this view of the matter, there is no infirmity in the order passed by the Settlement Commission while exercising the powers u/s 154 of the Act. for the purpose of rectifying the mistake committed by it in the original order ,Inder section 245D of the Act.

38. This leaves us to deal with the submission of Mr. Shah that the provisions similar to one contained in sections 255(6) and 254(2) are not there on the statute book so as to empower the Settlement Commission to rectify its order. The Tribunal is vested with powers u/s 255(6) of the Act which reads as under :

"Section 255(6) : The Appellate Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the Income Tax Authorities referred to in section 131, and any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXXV of the Cr. P.C. 1898 (5 of 1898)."

39. Over and above these powers, the Tribunal is vested with power to rectify its order by virtue of section 254(2) of the Act. It reads as under .

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"Section 254(2) : The Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer."

40. Simply because provision similar to one which contained in section 254(2) of the Act is not there empowering the Settlement Commission to rectify its order, it cannot be said that the Settlement Commission cannot exercise such powers. In our opinion, section 245F is very wide and it covers within its sweep all the powers exercised by the Income Tax Authorities under the Act. As observed earlier, the rules of interpretation require that a true meaning and import should be given to the words used in the section and if the language is very clear, the court should not be influenced by the fact that provisions similar to one u/s 254(2) of the Act are absent in Chapter XIX-A and hence the Commission has no power to rectify the order. If the plain language of the section indicates that such powers can be exercised, the court should adhere to the said interpretation rather than to be influenced by the provisions made in respect of other authorities. Even otherwise, there is one basic difference between the provisions of sections 255(6) and 254F of the Act. Section 255(6) refers to only powers to be exercised by the Tribunal or an Income Tax Authority referred to in section 131 of the Act whereas u/s 245F, it is mentioned that the Settlement Commission has got all the powers which are conferred on the Income Tax Authorities under the Act. Thus, scope and ambit of section 245F is very wide enough to enable the Commission to rectify the order and presence of provisions like 254(2) of the Act in Chapter XIX-A, may not be considered to be indispensable.

41. The decisions relied on by Mr. Shah in the case of CIT v. Khemchand Ramdas (supra) and Mandal Ginning & Pressing Co Ltd. (supra) do not render much assistance to the petitioners as there is no dispute about the proposition that once a final assessment is arrived at, it cannot be reopened except in the circumstances detailed in sections 34 and 35 of the Act. However, provision similar to one contained in section 245F was not under consideration before the Privy Council. Even section 245-I also makes an exception that "Save as otherwise provided in this Chapter", meaning thereby that though the order passed by the Settlement Commission u/s 245D(4) is final and conclusive, it can be reopened or amended by resorting to the provisions contained in section 245F(1) of the Act.

42. Considering the over all view of the matter and taking into consideration the binding decisions of the Hon''ble Supreme Court and the law laid down therein, we are of the view that the Settlement Commission has no power to reduce or waive the interest chargeable under sections 234A, 234B and 234C of the Act, de hors the circular referred to by the Hon''ble Supreme Court in Anjum M.H. Ghaswalas case (supra) and since it was a mistake apparent from record, the said mistake was rightly rectified by the Settlement Commission while resorting

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to the provisions contained in section 154 of the Act. We accordingly dismiss all these petitions. Rule discharged without any order as to costs. Interim relief granted earlier is vacated.

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