

(1999) 12 MAD CK 0077

In the Madras High Court

Case No : Writ Petition No"s. 15853, 17150,17151, 17160,17462, 18472, 18558, 18751, 18756, 18757, 18764 and 18932 Of 1999 Writ Miscellaneous Petition No"s. 24859, 24860, 24869, 25371, 25372, 26993, 26994, 27108, 27109, 27397, 27398, 27406, 27408, 27414, 27415, 27

C.A. ABRAHAM

APPELLANT

Vs

ASSISTANT COMMISSIONER OF INCOME TAX

RESPONDENT

Date of Decision : 21-12-1999

Acts Referred:

Income Tax Act, 1961 — Section 158BC, 284(8)

Citation : (2000) 109 TAXMAN 16

Hon'ble Judges : K. Govindrajan, J;K. Govindarajan, J

Bench : Division Bench

Advocate : K. Rajagopal, for the Petitioner and C.V. Rajan,, for the appearing parties;

Judgement

1. A search was conducted in the residential premises of Shri C.A. Abraham (SR) on 14-12-1995. During the course of search, the officials had seized certain indiscriminating documents revealing the investments made by him in movable and immovable properties. It was also revealed that the assessee was doing business in benami names. So a notice u/s 158BC of the Income Tax Act, 1961 (herinafter referred to as "the Act") was issued to him on 13-6-1996. In response to the notice, the said Abraham filed a return declaring his disclosed income at Rs. 1,50,000 on 29-8-1996. The Assistant Commissioner, Investigation, Circle 1, Trichur, after hearing the assessee"s representative found that the assessee did not explain the sources of investment in properties and he did not adduce any reason for not filing the return in conformity with the declaration made u/s 132(4) of the Act. Though the assessee requested to keep the proceedings aside till the petition filed by the assessee is disposed of, the Assistant Commissioner did not accede to the same, as the assessment would become time barred by 31-12-1996. So he computed the income on the basis of

the materials available on record and he passed the order determining the undisclosed income at Rs. 66,58,300 in his proceedings dated 23-12-1996. Thereafter, the said Abraham, his wife, his three sons who are associated with Mr. Abraham as partners in the firms of Shoranur Road Transport, Mayilvahanam Roadlines and Mayilvahanam Industries, have also joined with the above said person to file application before the Settlement Commission. Since the issue involved is connected, the Settlement Commission considered the application jointly and passed orders on 21-12-1998. Thereafter, the petitioner and his wife Annamma Abraham and his three sons filed miscellaneous applications to direct that the "undisclosed income be recomputed on the basis of the findings under the provisions of Chapter XIV-B of the Act. In the proceedings dated 14-5-1999, the Settlement Commission rejected the applications filed by the assessee stating that the applications in effect seeking review of the order u/s 245D(4) of the Act cannot be entertained as the order passed u/s 245D(4) has become final and conclusive as to the matter stated therein in view of section 245D(I) of the Act.

2. The petitioners filed W.P. Nos. 15853, 17462, 18472, 18558, 18751, 18757, 18764 and 18932 of 1999 challenging the order of the Settlement Commission dated 21-12-1998 and seeking a direction to the Settlement Commission to pass orders in accordance with Chapter XIV-B.

3. In W.P. Nos. 17150, 17151, 17160 and 18756 of 1999, the petitioners have challenged the order dated 14-5-1999 in which the Settlement Commission rejected the miscellaneous petitions and reviewed its own order.

4. The main ground raised in these writ petitions as stated in the affidavit and as submitted by the learned counsel is that, the block assessment which has been made by the first respondent, Assistant Commissioner, should be confined only to the income deducted or discovered from the records and documents as a result of search and in respect of other income, the authorities have to assess in the regular assessment u/s 143 of the Act. It is also stated that the income which is not detected due to the search cannot be construed as "undisclosed income" for the purpose of assessing the petitioners' income under Chapter XIV-B.

5. The learned counsel for the petitioners has stressed the point stating that only the undisclosed income alone can be taken into consideration for the purpose of assessment under Chapter XIV-B. With respect to the other income the authorities should assess on regular basis u/s 143(2) and if the petitioners are aggrieved, they can always challenge the same by way of appeal or revision. Moreover, with respect to such income, the petitioners should not be made liable to pay 60 per cent of the tax as contemplated u/s 113 of the Act.

6. While replying to the said submission of the learned counsel appearing for the petitioners, Mr. Rajan, the standing counsel for the department, has submitted that the Assistant Commissioner has taken into consideration only the undisclosed income arrived at pursuant to the search and not other income as

alleged by the learned counsel for the petitioners. Relying on the judgments in R.B. Shreeram Durga Prasad and Fatechand Nursing Das Vs. Settlement Commission (It and Wt) and Another, and in Jyotendrasinhji Vs. S.I. Tripathi and others, , he has submitted that the judicial review with respect to the orders of the Settlement Commission is very restricted. The learned counsel also has submitted that the review application cannot be maintained and so the rejection of the miscellaneous applications was only in accordance with law.

7. Though the learned counsel appearing for the petitioners took me to various provisions of the Act, in support of his submission that the Assistant Commissioner has taken into consideration all the income which cannot be construed as undisclosed income as defined u/s 158B(b) of the Act, the Settlement Commission failed to appreciate the same by rejecting the miscellaneous petitions. I am not inclined to deal with the same elaborately in view of the scope of dispute in this case. The only dispute in this case, according to the petitioners, is that the Assistant Commissioner while making assessment on undisclosed income of the block period has taken into consideration all the income which cannot be construed as undisclosed income.

8. So, it has to be decided whether the undisclosed income has been taken into consideration for the purpose of assessment under Chapter XIV-B of the Income Tax Act and even if it is, whether this Court can go into that question at this stage.

9. Chapter-B consisting of sections 158B to 158BH was inserted by the Finance Act, 1995 and it came into force with effect from 1-7-1995. Under the said Chapter, a special procedure for assessment of undisclosed income has been contemplated as a result of search. Section 136 of the Act gives power for certain seizure. The said procedure is for assessment of undisclosed income as defined u/s 158B(b). For convenience, the said provision is extracted hereunder:

Definitions.-In this Chapter, unless the context otherwise requires,-

(a) "block period" means the previous years relevant to ten assessment years preceding the previous year in which the search was conducted u/s 132 or any requisition was made u/s 132A, and includes, in the previous year in which such search was conducted or requisition made, the period up to the date of the commencement of such search or, as the case may be, the date of such requisition;

(b) "undisclosed income" includes any money, bullion, jewel Ivory or other valuable article or thing or any income based on any entry in the books of account or other documents or transactions, where such money, bullion, jewellery, valuable article, thing, entry in the books of account or other document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of this Act."

10. u/s 158BA(l) of the Act, the assessing officer can proceed to assess the

undisclosed income only if a search is initiated u/s 132 by the concerned Officer. As specified u/s 113, the total undisclosed income relating to the block period has to be charged to tax at the rate of 60 per cent after making assessment of undisclosed income in accordance with the provisions of Chapter XIV-B by the assessing officer. The said assessments have to be made irrespective of the previous year or years to which such income relates and irrespective of the fact whether regular assessment for any one or more of the relevant assessment years is pending or not. Section 158BB deals with the computation of undisclosed income of the block period. According to the said provision, the undisclosed income of the block period shall be the aggregate of the total income of the previous years falling within the block period computed. Section 158BC contemplates procedure for block assessment. From the above provisions, it is very clear that the first respondent is empowered to assess the petitioners' undisclosed income under Chapter XIV-B.

11. There cannot be any doubt that the procedure contemplated Under Chapter XIV-B is different and independent of the regular assessment u/s 143. To decide the present issue raised before me, I have to find out whether the petitioners are correct in saying that even the income other than undisclosed income has been taken into consideration for the purpose of assessment under Chapter XIV-B.

12. The first respondent passed an order under Chapter XIV-B on 23-12-1996. The petitioners made an application invoking the jurisdiction of the Settlement Commission u/s 245D to settle the dispute. So the Settlement Commission only on the basis of the applications filed by the petitioners u/s 245C passed the order. It is relevant to mention here that the order passed by the first respondent dated 23-12-1996 has become final subject to the modification by the Settlement Commission. The petitioners have not challenged the said order of the Assistant Commissioner. Even before the Settlement Commission, originally the petitioners did not raise the issue saying that the income which is not undisclosed on the basis of the search, has been taken into consideration for the purpose of assessment under Chapter XIV-B. Only by way of miscellaneous petitions, the petitioners have taken the said issue before the Settlement Commission. The Settlement Commission has rightly rejected the same as the order passed by the Settlement Commission has become final and there is no ground to review the matter. Now, by filing these writ petitions, the petitioners are challenging the order of the first respondent indirectly.

13. When the petitioners have not raised the issue in question before the Settlement Commission, the petitioners cannot expect the Commission to decide about the same. Moreover, the Settlement Commission has decided the issue on the basis of the petitioners' applications disclosing full and true income which was not disclosed before the assessing officer and the materials placed by the petitioners by way of Annexure.

14. As submitted by the learned standing counsel, the Court's power of judicial review on the decision of the Settlement Commission is very restricted. In R.B.

Shreeram Durga Prasad's case (supra), the Apex Court has held as follows:

Settlement Commission, we are concerned with the legality of procedure followed and not with the validity of the order. See the observations of Lord Hailsham in *Chief Constable of the North Wales Police v. Evans* (1982) (1) WLR 1155. Judicial review is concerned not with the decision, but with the decision-making process." (p. 175)

15. Even in *Jyotendrasinhji's* case (supra), the Apex Court while dealing with the power of judicial review of the order of the Settlement Commission has held as follows:

". - . The scope of enquiry, whether by the 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. Reference in this behalf may be had to the decision of this Court in *R.B. Shreeram Durga Prasad and Fatechand Nursing Das Vs. Settlement Commission (It and Wt) and Another*, , 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 the 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 North Wales Police v. Evans* (1982) (1) WLR 1155 . Thus, the appellate power under article 136 was equated with the 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.. . ." (p. 623)

16. In the present case, the first respondent and the Settlement Commission proceed on the basis that the income dealt with in the orders is only undisclosed income and has been taken into consideration for the purpose of assessment of block period. So this Court now while exercising jurisdiction under article 226 of the Constitution cannot go into the facts whether that income is undisclosed income or the income other than undisclosed income. So it cannot be said that the Settlement Commission has followed an illegal procedure so as to enable this Court to interfere with the order of the Commission. No argument was made as to how the order rejecting the miscellaneous petition is wrong. Moreover, the issue raised in the writ petition was raised only by way of review applications. This view is supported by the following portion of the order of the Settlement Commission:

"These applicants have claimed that the aforesaid benami concerns were being

regularly assessed to Income Tax in the status of firm and they had also paid the tax demands raised for the various assessment years forming part of the block period. It is pointed out that there will be double taxation if the same incomes are being assessed once again in the hands of the present applicants, unless credit is given in their hands for the taxes already paid by these firms. Accordingly, the applicants pray for a direction for adjusting all the tax payments already made by the benami concerns against the demands arising in their cases, as per the present order u/s 245-0(4) of the Income Tax Act.

Though there may be some force in the applicants' contentions, strictly, according to law, we cannot direct the assessing officer to adjust the tax payments made by the benami concerns against the payments arising as a result of our present order. There is no provision in this regard in Chapter XIX-A of the Income Tax Act. However, it is open to the above benami firms to file applications u/s 264 of the Income Tax Act before the Commissioner of Income Tax requesting him to pass such order thereon not being an order prejudicial to the assessment so that their assessed/ returned incomes for the relevant assessment years, which have been included in the hands of the present applicants, are excluded from their assessments. Considering the principle of natural justice, we hope that the Commissioner would condone the delay in filing the revision applications as per the proviso to section 284(8) of the Income Tax Act."

17. The Settlement Commission has computed the income of the petitioners only on the basis of the Annexures to the order. In the order it is specifically stated that the petitioners offered the unaccounted incomes of the concerns of their own in the respective settlement applications.

18. Hence, I do not find any merits in the writ petitions and the same are dismissed. Consequently, the connected miscellaneous petitions are also dismissed. No costs.