(2015) 05 BOM CK 0055

In the Bombay High Court

Case No : Writ Petition No. 605 of 2014

Commissioner of Income Tax Aaykar Bhavan APPELLANT

Vs

Sai Prasad Properties Ltd. RESPONDENT

Date of Decision : 07-05-2015

Acts Referred:
Income Tax Act, 1961 — Section 245 D(2C), 245C, 245C(1), 245D, 245D (2C)

Citation : (2015) 05 BOM CK 0055

Hon'ble Judges : F.M. Reis, J;M.S. Sanklecha, J

Bench : Division Bench

Advocate : Asha Desai, for the Appellant; V.P. Thali, Advocates for the Respondent

Judgement

M.S. Sanklecha, J.—Rule. Rule made returnable forthwith. Mr. V.P. Thali, learned Counsel waives service on behalf of the respondent. At the request of the Counsel, the petition is taken up for final disposal.

2. This petition challenges the order dated 19/05/2014, passed under Section 245D (2C) of the Income Tax Act, 1961 (the Act) by the Income Tax Settlement Commission (Settlement Commission), Mumbai. By the impugned order dated 19/05/2014 the settlement application filed by the respondent for assessment years 2011-12 to 2013-14 have all been held not to be invalid and is allowed to be proceeded with further in accordance with law.

3. On 27/03/2014, the respondent-assessee filed a settlement application for assessment years 2011-12 to 2013-14 under Section 245C(1) of the Act. On 3/04/2014, the Settlement Commission by order passed under Section 245D(1) of the Act admitted the settlement application. Thereafter, in terms of Section 245D(2B) of the Act, the petitioner-Revenue furnished a report on 29/04/2014 praying that the settlement application as filed by the respondent be rejected as invalid. This was inter alia on the grounds of jurisdiction including the failure to disclose truly and fully all facts before the Settlement Commission. In particular, rejection was sought on the ground that no additional income has been declared

in the application, so far as assessment year 2011-12 is concerned no proceedings were pending before the Assessing Officer on the date of the application and that there has been failure on the part of the applicant to make a full and true disclosure in its application, etc.

4. The grievance of the petitioner is that the impugned order dated 19/05/2014 is a non-speaking order inasmuch as the objections to the settlement application filed by the respondent has not been considered. The impugned order dated 19/05/2014 has allowed the application to be proceeded with under Section 245 D(2C) of the Act without even a semblance of discussion/reasoning as to why the objections of the petitioner are not sustainable.

5. We find that the petitioner has raised various objections to the entertainment of the settlement application filed by the respondent such as no proceedings were pending, income disclosed to the Revenue before filing the settlement application was much higher than that disclosed in the settlement application thus there being no additional income which was declared by the respondent and the respondent had not made a full and true disclosure of its income before the Settlement Commission. The impugned order records the various submissions made by the petitioner and the respondent before it and finally disposes off the petitioner''s objection by passing the impugned order under Section 245D(2C) of the Act on the following finding :

"We have considered in the above case the report filed by the CIT under the provisions of section 245D(2B). We have also considered the arguments put forward during the hearing by Shri Rejeshwar Yadav who appeared on behalf of the department before us. Shri Yadav''s arguments were mainly concentrated on the ground that true and full disclosure has not been made. After considering the report the argument of Shri Yadav and the detailed argument put forward by Shri Phadke on behalf of the applicant we are of the considered view that all the conditions specified in the Act regarding validity of the application have been complied with by the applicant. The technical requirements like pendency of proceedings, payment of tax beyond threshold limit and interest thereon, filing fees, intimation to the AO etc. are not disputed by the department. The manner of earning of undisclosed income now disclosed before us have also been elaborated in the SOF and the arguments put forward by Shri Phadke before us. Shri Phadke has fully and squarely dealt with all issues raised by the CIT in the report u/s. 245D(2B) in the rejoinder as well as note on recognition of profits and related accounting policies filed at the time of hearing. We are therefore satisfied that true and full disclosure of income has been made by the applicant in the application before us and there exist no infirmity in the application. As such the application is held not to be invalid and is allowed to be proceeded with further in accordance with law."

6. No reasons are indicated as to why the objections raised by the petitioner are not acceptable to the Settlement Commission. This Court in Commissioner of Income Tax Vs. Income Tax Settlement Commission, (2014) 365 ITR 87 has held

that an application under Section 245D(2C) of the Act has to be disposed of after considering the objections raised by the Revenue supported by some modicum of reasons. In the absence of some consideration of the objections, the entire exercise under Section 245D(2C) of the Act would render the provisions redundant. Mere recording of submissions without considering why the submissions are acceptable or not, would clearly exhibit non-application of mind.

7. Mr. V.P. Thali, learned Counsel appearing for the respondent-assessee very fairly submits that he has no objection if the impugned order is set aside and the issue is restored to the Settlement Commission for fresh disposal at the stage of 245D(2C) of the Act. However, he points out that after the respondent filed their application before the Settlement Commission on 27/03/2014 for the Assessment year 2011-12 to 2013-14 and the same was allowed to be proceeded with under Section 245D(1) of the Act on 3/04/2014, the petitioner has issued notices dated 17/12/2014 and 29/04/2015 under Section 271D of the Act seeking to impose penalty upon the petitioner. It is correctly submitted by Mr. Thali, the learned Counsel of the respondent that in view of Section 245F(2) of the Act when an application under Section 245C of the Act has been allowed to be proceeded with under Section 245D(1) of the Act then all powers and functions of authorities under the Act are vested in the Settlement Commission. This exclusive jurisdiction of the Settlement Commission continues till it either rejects the application or finally disposes of the application under Section 245D(4) of the Act. The authorities under the Income Tax Act have no jurisdiction to issue any notices under the Act for assessment and/or penalty in respect of the assessment years of which the Settlement Commission is seized of the matter.

8. Ms. A. Dessai, learned Counsel for the Revenue, on instructions, accepts the above position and states that no further proceedings would be taken in respect of penalty notices already issued and no further penalty notices would be issued to the petitioner. This position she fairly states will continue till the Settlement Commission either rejects the application under Section 245D(2C) of the Act or finally disposes off the application under Section 245D of the Act. The statement made on behalf of the Revenue is accepted.

9. Accordingly, accepting the said statement on behalf of the Revenue, the petition is disposed of by setting aside the impugned order date 19/05/2014 passed by the Settlement Commission and restoring the application dated 27/03/2014 before the Settlement Commission for fresh disposal under Section 245D(2C) of the Act in accordance with principles of natural justice. Rule is made absolute in the above terms. Accordingly, the petition is allowed. No order as to costs.

