

(2016) 01 KAR CK 0233

In the Karnataka High Court

Case No : Writ Petition Nos. 44007 of 2014 and 2745-2750 of 2015 (T-IT)

Commissioner of Income Tax, Karnataka (Central)

APPELLANT

Vs

M/s. RNS Infrastructure Limited

RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Income Tax Act, 1961 — Section 153A, 245C

Citation : (2017) 292 CurTR 507 : (2016) ILRKarnataka 2623

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : K.V. Aravind, Advocate, for the Petitioner; A. Shankar for S. Sukumar, Advocates, for the Respondent No. 1; Krishna S. Dixit, Additional Solicitor General, for the Respondent No. 2

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—The facts leading up to these petitions are as follows :-

The respondent is said to be an assessee within the jurisdiction of the petitioner. A search is said to have been conducted at the business premises of the respondent and the residential premises of its Directors, by the Income Tax Department, in exercise of power under Section 132 of the Income Tax Act, 1961 (Hereinafter referred to as the "IT Act", for brevity) as on 16.2.2012. It transpires that incriminating material regarding undisclosed income was found and seized.

The assessing officer is said to have initiated proceedings under Section 153 A of the IT Act, for the Assessment years 2006-07 to 2011-12, by a notice dated 7.12.2012. The respondent is said to have filed a return of income pursuant thereto. And further, during the pendency of the said proceedings, the assessee is said to have filed an application under Section 245C of the IT Act before the Settlement Commission, as on 6.2.2014, in Form No. 34B.

The Settlement Commission is said to have issued notice to respondent No. 1 under Section 245D(1) of the IT Act. It had then passed an order under Section 245D(1) to proceed with the application vide proceedings dated 18.2.2014. The Settlement Commission had then called for a report from the petitioner as required under Section 245D(2B) of the IT Act. The petitioner is said to have submitted a report in compliance with the same. The petitioner had objected to the application filed by respondent No. 1 on the ground that there was no true and full disclosure and that the requisite tax had also not been paid. It was emphasised that the unaccounted income detected during the course of search was not fully disclosed. And hence sought that the application be rejected. The Settlement Commission however chose to proceed with the further enquiry. It is the petitioner's contention that the Settlement Commission was required to adjudicate on the objection filed by the petitioner. Such adjudication, it is asserted, is mandatory and should be conducted with due application of mind and must be followed by a reasoned order. For otherwise, the exercise of calling for a report from the Commissioner of Income Tax is rendered an empty formality.

It is in the above background that the present writ petition is filed.

2. It is contended that the Settlement Commission has failed to take into consideration that the object of the provisions of Chapter XIX-A is to enable an assessee, who comes clean with full and true disclosure of his income and explains the manner in which such income has been derived, to move the Settlement Commission for settlement of the dispute. An applicant who fails to disclose frilly and truly the income which has not been disclosed before the Assessing Officer and fails to explain the manner in which such income has been derived and fails to pay the additional amount of income tax payable on such income, the Settlement Commission cannot proceed with the application. If the Commissioner objects regarding compliance of the above requirements, the Settlement Commission cannot assume jurisdiction to consider the application without adjudicating the objection. Hence, the progress in the application beyond Section 245D(2B) of the IT Act by the Settlement Commission is invalid and without jurisdiction.

It is contended that the total short fall in the declaration made by the respondent in the application before the Settlement Commission with reference to the seized material available with the Assessing Officer is Rs. 105,13,76,527/-. The short fall in declaration would clearly demonstrate that the declaration in the application before the Settlement Commission is not a true and foil disclosure of the additional income.

Reliance is placed on the following authorities by the Learned Counsel for the petitioner in seeking that the petition be allowed.

1. Commissioner of Income Tax v. Income Tax Settlement Commission, (2014) 365 ITR 0087 (Bom);

2. Commissioner of Income Tax (Central) v. Income Tax Settlement Commission (ITSC), (2014)361 ITR 068 (Bom);

3. Ajmera Housing Corporation and another v. Commissioner of Income Tax, (2010) 326 ITR 0642;

3. On the other hand, the Learned Counsel Shri A. Shankar appearing for respondent No. 1 would point out that Section 245D(2C) enjoins the Settlement Commission to declare an application as invalid on the basis of the report of the Commissioner. It does not contemplate "rejection" of the application on the basis of the objection by the Commissioner. It is asserted that Section 245 D(2C) does not require the Settlement Commission to adjudicate on the objection filed by the Commissioner. It is contended that the Settlement Commission has been empowered to declare whether the application under consideration is invalid on the basis of the report of the Commissioner and nothing more. There is no mandate contemplated under Section 245D(2C), for an adjudication on the objection filed.

It is pointed out that the Commissioner having objected to the application on the ground that there was no full and true disclosure, has provided the amount of unaccounted income said to have been detected by the Investigation Wing. The basis for arriving at the unaccounted income by the Investigation Wing, is not disclosed to this Court. There is no opportunity provided as yet, to the respondent by the Commissioner to dispute the correctness of the unaccounted income detected.

It is contended that the Settlement Commission has only taken a prima facie view that the application filed is not "invalid". A final order would be passed under Section 245D(4) only after obtaining the Report of the Commissioner under Rule 9 of the Income Tax Settlement Commission (Procedure) Rules, 1997 (Hereinafter referred to as the "1997 Rules", for brevity) and on being satisfied that there is full and true disclosure by the applicant.

4. In the light of the above contentions, the point that arises for consideration is, whether the Settlement Commission on receipt of an application under Section 245C, and on receipt of the report called for from the Commissioner of Income Tax, adjudicate on the report so filed and assign reasons in order to allow the application to be proceeded with.

5. The Apex Court has in the case of Ajmera Housing Corporation v. Commissioner of Income Tax, (supra), has while interpreting Section 245C(1) of the Act has held thus:

"21. xxx xxx xxx

A bare reading of the provision would reveal that besides such other particulars, as may be prescribed, in an application for settlement, the assessee is required to disclose (i) a full and true disclosure of the income which has not been disclosed before the AO; (ii) the manner in which such income has been derived

and (iii) the additional amount of income tax payable on such income.

22. It is clear that disclosure of "full and true" particulars of undisclosed income and "the manner" in which such income had been derived are the prerequisites for a valid application under Section 245C(1) of the Act. Additionally, the amount of income tax payable on such undisclosed income is to be computed and mentioned in the application. It needs little emphasis that Section 245C(1) of the Act mandates "full and true" disclosure of the particulars of undisclosed income and "the manner" in which such income was derived and, therefore, unless the Settlement Commission records its satisfaction on this aspect, it will not have the jurisdiction to pass any order on the matter covered by the application."

6. The Settlement Commission has examined the application and has opined thus in its order at Annexure-B to the petition:

"Decision

10. We have carefully considered the submissions of the learned A.R and the facts available on record. It cannot prima facie be inferred at this stage that the disclosure made in the Settlement Application is not full and true. So far as other conditions are concerned, they stand satisfied by the Applicant. We, therefore, allow the Settlement Application to be proceeded with under Section 245D(1) of the Act."

From the above, it is evident that the Settlement Commission has satisfied itself that the application of the assessee has made, what is claimed as, a full and true disclosure of the income which has not been disclosed before the Assessing Officer; the manner in which such income has been derived and the additional income tax payable on such income.

7. In so far as the procedure that is to be followed by the Settlement Commission under Section 245D of the Act, is discussed by the Apex Court, in the above decision, thus :

"26. The procedure laid down in Section 245D of the Act, contemplates that on receipt of the application under Section 245C(1) of the Act, the Settlement Commission is required to forward a copy of the application filed in the prescribed form (No.34B), containing full details of issues for which application for settlement is made, the nature and circumstances of the case and complexities of the investigation involved, save and except the annexures, referred to in item No. 11 of the form and to call for report from the CIT. The CIT is obliged to furnish such report within a period of 45 days from the date of communication by the Settlement Commission. Thereafter, the Settlement Commission, on the basis of the material contained in the said report and having regard to the facts and circumstances of the case and/or complexity of the investigation involved therein may by an order, allow the application to be proceeded with or reject the application. After an order under Section 245D(1) is made, by the Settlement Commission, r.8 of the 1987 Rides mandates that a

copy of the annexure to the application, together with a copy of each of the statements and other documents accompanying such annexure shall be forwarded to the CIT and further report shall be called from the CIT. The Settlement Commission can also direct the CIT to make further enquiry and investigations in the matter and furnish his report. Thereafter, after examining the record, CIT's report and such further evidence that may be laid before it or obtained by it, the Settlement Commission is required to pass an order as it thinks fit on the matter covered by the application and in every matter relating to the case not covered by the application and referred to in the report of the CIT under sub-section (1) or sub-section (3) of the said section. It bears repetition that as per the scheme of the Chapter, in the first instance, the report of the CIT is based on the bare information furnished by the assessee against item No. 10 of the prescribed form, and the material gathered by the Revenue by way of its own investigation. It is evident from the language of section 245C(1) of the Act that the report of the CIT is primarily on the nature of the case and the complexities of the investigation, as the annexure filed in support of the disclosure of undisclosed income against item No. 11 of the form and the manner in which such income had been derived are treated as confidential and are not supplied to the CIT. It is only after the Settlement Commission has decided to proceed with the application that a copy of the annexure to the said application and other statements and documents accompanying such annexure containing the aforesaid information are required to be furnished to the CIT. In our opinion even when the Settlement Commission decides to proceed with the application. It will not be denuded of its power to examine as to whether in his application under Section 245C(1) of the Act, the assessee has made a full and true disclosure of his undisclosed income, We feel that the report(s) of the CIT and other documents coming on record at different stages of the consideration of the case, before or after the Settlement Commission has decided to proceed with the application would be most germane to determination of the said question. It is plain from the language of sub-section (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 CIT under sub-section (1) or subsection (3) of the said section. A "full and true" disclosure of income, which had not been previously disclosed by the assessee, being a precondition 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."

(emphasis supplied)

8. Even assuming that the Settlement Commission has glossed over the initial report submitted by the Commissioner of Income Tax (CIT), as the procedure contemplates a further report to be submitted by the CIT, after examination of the annexure to the application, statements and other documents accompanying such annexure and on the basis of a further enquiry, if any, all of which is not

made available to the CIT in the first instance, and the Settlement Commission being in a position to still address the question whether a full and true disclosure of the income which was not disclosed before the Assessing Officer and being required to pass an appropriate order, the Revenue cannot be said to be prejudiced in any fashion.

Therefore, this Court is of the opinion that no procedural violation is caused by the Settlement Commission. It has only taken a prima facie view that the application is not invalid. A final order will necessarily have to be passed under Section 245D(4) only after obtaining the report of the Commissioner under Rule 9 of the 1997 Rules and after being satisfied that there is full and the disclosure by the applicant.

9. It is also to be noticed that the Legislature in its wisdom removed the provision of sub-Section (1 A) of Section 245D by Finance Act (No.2), 1991. The scope and effect of the amendment was explained by the Board of Direct Taxes vide Circular No. 621, dated 21.12.1991, thus:

"Simplification of procedure subsequent to the receipt of an application by the Settlement Commission

65. Under the existing provisions of sub-section (1) of section 245D of the Income-tax Act, the Settlement Commission, on receipt of an application under section 245C, has to call for a report from the Commissioner and on the basis of the materials contained in such report and having regard to the nature and circumstances of the case, etc., the Settlement Commission may allow the application to be proceeded with or reject the application. Further, sub-section (1A) of Section 245D provides for filing of objection by the Commissioner against proceeding with the application made under section 245C.

65.1 The above provisions cause delay, at times, in the disposal of applications filed before the Settlement Commission under section 245C. In order to expedite the disposal of such applications, sub-section (I) of section 245D has been amended to provide that the Commissioner shall furnish the report within a period of one hundred and twenty days of the receipt of communication from the Settlement Commission in case of all applications made under section 245C on or after the date on which the Finance Act received the assent of the President (i.e., 27th September, 1991) and if the Commissioner fails to furnish the report within the said period, the Settlement Commission may make the order on the application without such report. The provisions relating to filing of objection by the Commissioner against proceedings with the application made under section 245C contained in sub-section (1A) of section 245D. have also been omitted.

65.2 Similar amendment has been made to the corresponding provisions in section 22D of the Wealth-tax Act.

65.3 These amendments take effect from 27th September, 1991, i.e., the date on which the Act received the assent of the President"

(emphasis added)."

10. It would thus appear that the report submitted in the first instance by the CIT is "primarily on the nature of the case and the complexities of the investigation, as the Annexure filed in support of the disclosure of undisclosed income and the manner in which such income had been derived are treated as confidential and are not supplied to the CIT", as observed by the Apex Court. The question of an "adjudication" on the said report, which is termed as "objection ", by the petitioner, at that stage - does not arise.

11. Hence, the petition is without merit and is dismissed. The interim order of stay granted has spent itself out.