

(2011) 12 GUJ CK 0021
In the Gujarat High Court

Case No : Special Civil Application No. 1272 of 2005

Krishnamurarilal Agarwal (HUF)

APPELLANT

Vs

Income Tax Settlement Commission and Another

RESPONDENT

Date of Decision : 07-12-2011

Acts Referred:

Income Tax Act, 1961 — Section 143(1), 143(3), 144, 147, 154

Citation : (2012) 1 GLH 724

Hon'ble Judges : S.G. Gokani, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Tusharphemanif, for the Appellant; Manish Bhatt With Mrs. Mauna M. Bhatt 1-2, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Akil Kureshi, J.—Since common questions of law and facts arise in these petitions, they have been heard together and are being disposed of by this common order. For the purpose of this order, we may notice facts as emerging in Special Civil Application No. 1272/2005. The petitioner assessee has challenged an order dated 25.3.2004 as at Annexure-A to the petition passed by respondent No. 1 i.e. Income Tax Settlement Commissioner.

2. With respect to certain proceedings pertaining to the petitioner, Settlement Commissioner had previously passed an order dated 28.4.1999. The Settlement Commissioner in the said order had granted waiver of interest u/s 234B of the Income Tax Act, 1961("the Act" for short).

3. Revenue thereafter, moved an application for rectification of said order passed by the Settlement Commissioner urging the Commission to rectify the order in exercise of powers u/s 154 of the Act. Primary contention of the Revenue was that in view of the decision in case of Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, , levy of interest under Sections 234A, 234B and 234C of the Act is mandatory. It was therefore, the stand of the Revenue

that Settlement Commissioner while exercising its powers u/s 245D of the Act, does not have the power to reduce or waive the interest which is of mandatory nature.

4. The Settlement Commissioner by the impugned order accepted the Revenue's stand on the question of charging interest. Relying on and referring to the decision of the Apex Court in case of Anjum M H Ghaswala and others (supra). Settlement Commissioner modified its earlier order insofar as the provisions of Section 234A, 234B and 234C of the Act are concerned. For the assessment year 1989-1990 and onwards when such provisions were added in the statute, the orders were amended. Waiver of interest previously granted was withdrawn.

5. It is this order that the petitioner has challenged in the present petition. Facts are similar in all cases. In fact impugned order passed by the Settlement Commissioner is common for all different years pertaining to the same assessee. Separate petitions are filed by the petitioner calling in question, same common order passed by the Settlement Commissioner.

6. Short question that the petitioner has raised in the present petition is with respect to the power of the Settlement Commission to rectify its own order in exercise of powers u/s 154 of the Act. This issue both sides would agree is no longer res integra. The Apex Court in case of Brij Lal and Others Vs. Commissioner of Income Tax, Jalandhar, , clearly held that powers u/s 154 of the Act are not available to the Settlement Commissioner to rectify the order. Apex Court in said decision held and observed as under :- 14. As stated, proceedings before Settlement Commission are similar to arbitration proceedings. It contemplates assessment by settlement and not by way of regular assessment or assessment u/s 143(1) or u/s 143(3) or u/s 144 of the Act. In that sense, it is a Code by itself. It does not begin with the filing of the return but by filing the application for settlement. As stated above, under the Act, procedure for assessment falls in Chapter XIV (in which Section 154 falls) which is different from procedure for settlement in Chapter XIX-A in which Sections 245C and 245D fall. Provision for levy of interest for default in payment of advance tax u/s 234B falls in Chapter XVII [Section F] which deals with collection and recovery of tax which as stated above is incidental to the liability to pay advance tax u/s 207 (which is also in Chapter XVII) and to the computation of total income in the manner indicated under Chapter XIX-A vide Sections 245C(1B) and 245C(1C) read with the provisos to Section 245C(1) on the additional income tax payable on the undisclosed income. Further, if one examines the provisions of Sections 245C(1B) and 245C(1C), one finds that various situations are taken into account while computing the additional amount of tax payable, viz., if the applicant has not filed his returns, if he has filed but orders of assessment are not passed or if the proceedings are pending for reassessment u/s 147 (again in Chapter XIV) or by way of appeal or revision in connection with such reassessment and the applicant has not furnished his return of total income in which case tax has to be calculated on the aggregate of total income as assessed in the earlier

proceedings for assessment u/s 143 or u/s 144 or u/s 147 [see Section 245C(1B)]. The point to be noted is that in computation of additional income tax payable by the assessee, there is no mention of Section 154. On the contrary, u/s 2451 the order of the Settlement Commission is made final and conclusive on matters mentioned in the application for settlement except in the two cases of fraud and misrepresentation in which case the matter could be re-opened by way of review or recall. Like IT AT, the Settlement Commission is a quasi-judicial body. u/s 254(2), the ITAT is given the power to rectify but no such power is given to the Settlement Commission. Thus, we hold that Settlement Commission cannot reopen its concluded proceedings by invoking Section 154 of the Act. Lastly, one must keep in mind the difference between review/ recall of the order and rectification u/s 154. The Schedule of Chapter XIX-A does not contemplate invocation of Section 154 otherwise there would be no finality to the assessment by settlement which is different from assessment under Chapter XIV where there is an appeal, revision, etc. Settlement of liability and not determination of liability is the object of Chapter XIX-A.

In view of above situation, we have no hesitation in holding that Settlement Commissioner could not have modified its original orders in purported exercise of rectification u/s 154 of the Act. Impugned common order is therefore, quashed. Rule made absolute to above extent. All petitions disposed of accordingly.