(2008) 08 GUJ CK 0024

In the Gujarat High Court

Mahavir Inductomelt (P) Ltd. APPELLANT

Vs

Income Tax Settlement Commission (ITSC) RESPONDENT

Date of Decision : 07-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Income Tax Act, 1961 — Section 158BC, 220, 245C, 245D

Citation : (2008) 08 GUJ CK 0024

Hon'ble Judges : K.A. Puj, J;Bankim N. Mehta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.A. Puj, J.—The petitioner has filed this petition under Article 226 of the Constitution of India praying for quashing and setting aside the orders passed by the Settlement Commission on 24-1-2007 and 9-1-2008 and seeking direction to the Settlement Commission to pass de novo order u/s 245D(4) of the Income Act, 1961 after considering the petitioner''s submission dated 12-2-2007 filed in accordance with the permission of the Settlement Commission and after giving opportunity of hearing to the petitioner as well as the revenue. The petitioner has also prayed for the direction to the Settlement Commission for passing appropriate orders in the case of the petitioner company in consonance with tlae orders passed by the Settlement Commission in the case of directors on similar facts and circumstances of the case by directing the Settlement Commission to compute the unaccounted sales as undisclosed income by granting deduction of cost of purchase price and taxing the net income and further directing to pass specific order on levy of interest u/s 220(2) of the Income Tax Act, 1961.

2. It is the case of the petitioner that search took place on 20-9-1995. The petitioner filed its return for the block period on 22-5-1996. Thereafter, the petitioner filed settlement application u/s 245C(1) of the Income Tax Act, 1961 on 27-9-1996. The assessing officer passed an order u/s 158BC of-the Income Tax Act; 1961 for the block period on 30-9-1996. The application was admitted

by the Settlement Commission and order was passed u/s 245D(1) of the Income Tax Act, 1961 on 26-5-1998. Final hearing was fixed by the Settlement Commission u/s 245D(4) of the Act on 10-11-2006. It is the case of the petitioner that the petitioner had to file written submissions, but before written submissions were filed, the order was passed u/s 245D(4) on 24-1-2007 whereas the written submissions were filed by the petitioner on 12-2-2007. The grievance of the petitioner was that there was no specific time limit for filing the written submissions and the petitioner was given to understand that the copy of the written submissions should be served on the department and if there is any rebuttal the same should also be filed by the department thereafter in the matter.

3. Mr. R.K. Patel, learned advocate appearing for the petitioner submits that the petitioner filed written submissions on 12-2-2007, by that time copy of the order passed by the Settlement Commission on 24-1-2007 was not received by,the petitioner and hence the petitioner was under the belief that the order was not passed. He has, therefore, submitted that the impugned order is passed by the Settlement Commission without considering the written submission.

4. Mr. Patel further submitted that the petitioner has moved miscellaneous application pointing out defects in the order and also pointing out that the written submissions were not considered. The said application is also rejected. The petitioner has, therefore, filed present petition before this Court.

5. Having heard learned advocate for the petitioner and having considered the averments made in the petition as well as documents attached therewith, we are of the view that there is no substance in the present petition. First of all, the petitioner has filed written submissions after the period of three months. If the Settlement Commission has directed the petitioner to file written submissions the same should have been filed within reasonable time period. The Settlement Commission passed an order on 24-1-2007, before that written submissions were not filed by the petitioner. Since the written submissions were not filed there is no question of rebuttal and there is also no question of giving any further hearing in the matter. All other aspects raised by the petitioner in the present petition are considered by the Settlement Commission in its order dated 24-1-2007 as well as subsequent order passed in miscellaneous application.

6. Looking to the facts and circumstances of the case and considering the scope and jurisdiction of this Court under Article 226 of the Constitution of India, we are of the view that no case is made out by the petitioner to interfere in the order passed by the Settlement Commission. We, therefore, dismiss this petition at the threshold.