(2012) 03 P&H CK 0433

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 17402 of 2004

M/s Bansal Engineering Works		APPELLANT
	Vs	
Union of India and Others		RESPONDENT

Date of Decision : 12-03-2012

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

Citation : (2012) 166 PLR 765

Hon'ble Judges : M.M. Kumar, J;Alok Singh, J

Bench : Division Bench

Advocate : Pankaj Jain and Mr. Sandeep Goel, for the Appellant; Rajesh Katoch, for the Respondent

Final Decision : Allowed

Judgement

M.M. Kumar, J.—This order shall dispose of bunch of 11 petitions [C.W.P. 11727 of 2003; 16541, 16542, 17335, 17355, 17377, 17378, 17403, 17404, 17456, 17407 of 2004] [Editor] as the matter involved in all these petitions is covered by a judgment of the Constitution Bench of Hon''ble the Supreme Court rendered in the case of Brij Lal and Others Vs. Commissioner of Income Tax, Jalandhar, . The question which needs determination in all these petitions is as under: Whether the Settlement Commission could reopen its concluded proceedings by invoking section 154 of the Income Tax Act, 1961 so as to levy interest u/s 234B of the Act if it was not done in the original proceedings ?

In all the cases in hand proceedings have been completed by the Settlement Commission and no interest u/s 234B of the Income Tax Act, 1961 (for brevity ''the Act'') was initially imposed. Facts may be referred from CWP No. 17402 of 2004 where the premises of the petitioner were searched by the Income Tax Department on 10.12.1987 and the cash as well as the account books were seized by the raiding party. The petitioner filed Settlement Application u/s 245D of the Act before the Income Tax Settlement Commission- respondent No. 2. The Settlement Commission determined the income of the petitioner vide order dated

12.8.1999 (P. 1). On the issue concerning interest under Sections 234A, 234B and 234C of the Act the Settlement Commissioner placing reliance on the decision rendered by the Special Bench of the Settlement Commission, Bombay held that interest would be charged as per law laid down by Hon''ble the Supreme Court in the case of Swan Mills Ltd. Vs. Commissioner of Income Tax,

2. On an application for rectification filed by the Income Tax Department u/s 154 of the Act before the Settlement Commission it was claimed that interest was required to be charged upto the date of order passed by the Settlement Commission. The petitioner contested the application and argued that the law laid down by Hon''ble the Supreme Court would not result into reopening the already settled cases and it would apply to cases either pending on that date or which were yet to mature. The argument was that the proceedings which had already attained finality and stood concluded cannot be reopened on the basis that there was a mistake apparent on the record.

3. Mr. Pankaj Jain and Mr. Sandeep Goyal learned counsel for the petitioners have vehemently argued that the matter is covered in favour of the assessee and against the revenue by the judgment of the Constitution Bench in Brij Lal''s case (supra). According to the learned counsel the Settlement Commission cannot reopen its concluded proceedings by invoking Section 154 of the Act so as to levy interest u/s 234B of the Act particularly in view the bar imposed by Section 245I of the Act.

4. Mr. Rajesh Katoch, learned counsel for the revenue could not successfully controvert the aforesaid argument.

5. Having heard the learned counsel for the parities, we find that the third question posed in the judgment of the Constitution Bench in the case of Brij Lal (supra) squarely covers the issue raised in these petitions. The view of the Constitution Bench is discernible from para 15 of the judgment. According to the ratio of the judgment, 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. It was also held that the provisions of sections 245C (1B) and 245C(1C) take into account various situations while computing the additional amount of tax pay able, 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 re-assessment 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)].Thus in the computation of additional income tax payable by the assessee, there is no mention of section 154. On the contrary, u/s 245I 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 ITAT, the Settlement Commission is a quasijudicial body. u/s 254(2), the ITAT is given the power to rectify but no such power is given to the Settlement Commission. It was held that Settlement Commission cannot reopen its concluded proceedings by invoking section 154 of the Act. Their Lordships also cautioned that 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. It has been held that u/s 234B of the Act interest is chargeable till the Commission acts in terms of section 245D(1) and after the Settlement Commission allows the application for settlement to be proceeded with there would be no further charge of interest u/s 234B. Thus, even on the question of terminus there was lot of controversy and in the circumstances, their Lordships held that invocation of section 154 (held to be inapplicable to Chapter XIX-A proceedings) was justified. The eventual result has been recorded in para 16 which reads thus:

16. (1) Sections 234A, 234B and 234C are applicable to the proceedings of the Settlement Commission under Chapter XIX-A of the Act to the extent indicated hereinabove. (2) Consequent upon conclusion (1), the terminal point for the levy of interest u/s 234B would be up to the date of the order u/s 245D(1) and not up to the date of the Order of Settlement u/s 245D(4). (3) The Settlement Commission cannot re-open its concluded proceedings by invoking section 154 of the Act so as to levy interest u/s 234B, particularly, in view of section 245 I.

6. In view of the above and the conceded position by the learned counsel for the Revenue, all these petitions are allowed and the impugned orders passed by the Settlement Commission are set aside. A copy of this order be placed on the file of connected petitions.

