(2019) 05 MP CK 0024

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3907 Of 2019

M/S. Samdariya Builders Private Limited — APPELLANT

Vs

Income Tax Settlement Commissioner (Through Secretary) Principal Bench — RESPONDENT

Date of Decision : 07-05-2019

Acts Referred:

Income Tax Act, 1961 — Section 131, 133A, 139, 142(1), 153A, 245C, 245(C), 245C(1), 245D, 245D(1), 245D(2C), 245D(4), 245D(6)

Citation : (2019) 05 MP CK 0024

Hon'ble Judges : S.K. Seth, CJ;Vijay Kumar Shukla, J

Bench : Division Bench

Advocate : N.P.Sahni, Sanjay Lal

Final Decision : Disposed Off

Judgement

1. Petitioner is assailing the order dated 30.8.2017 passed by the Settlement Commissioner.

2. The controversy in the present writ has arisen in the following factual background.

3. Petitioner is a Private Limited Company. It is a part of Samdariya Group, comprising of four entities, viz. M/s. Samdariya Enterprises;

(2) M/s. Samdariya Builder Green City;

(3) M/s. Samdariya Dharamchand Tejraj Saraf (HUF) and (4) M/s. Samdariya Builders Private Limited, (the petitioner above).

4. On 16.5.2013 search and seizure under Section 132 and 133A by the Income Tax Act were conducted by the Department on the Samdariya Group,

including Petitioner Company, covering residential and business premises of the group including some brokers. So far as the petitioner company is concerned, it is alleged, that no incriminating material was found against the petitioner company during the search and seizure operations, except 9

loose sheets of papers, allegedly relating to petitioner company were seized from one broker Abhishek Gupta.

5. It is further alleged that in compliances of notices issued under Section 153 A of the Act for the A.Y. 2008-09 to A.Y. 2013-14 and 142(1) for the

A.O. 2014-15. Petitioner Company filed the returns of income. During the assessment proceedings, Petitioner Company filed application under Section

245C(1) of the Act for settlement. The application was admitted to be proceeded with by the Settlement Commissioner under Section 245D(1) and

after considering the submissions of the Department, the Settlement Commissioner proceeded ahead under Section 245D(2C) with the application for

settlement. Thereafter, the Principal Commissioner filed the Rule 9 report. The Settlement Commissioner, by the order impugned under Section

245D(4) without deciding the application on merit, relegated the Petitioner Company to the Assessing Officer. Hence, the Assistant Commissioner of

Income Tax, Central-Circle Jabalpur issued notice dated 8.9.2017 to the Petitioner Company to comply with the previous notice issued under Section

142(1) of the Act.

Initially, petitioner Company challenged the order impugned in a writ petition before the Delhi High, but later on withdrew the said writ petition with a

liberty to challenge the order impugned in this Court. Hence the present writ petition, to assail the Order of the Settlement Commissioner pertaining to

the Petitioner Company.

6. After notice, respondents have filed the reply contending that no interference is called for with the order impugned and the writ petition is liable to

be dismissed.

7. We have heard Shri Sahni, learned counsel for the petitioner and Shri Sanjay Lal, learned counsel for the respondents at length and considered the

material placed on record.

8. Shri Sahni, learned counsel for petitioner submitted that the Settlement Commissioner while passing the order impugned under Section 245 D(4) of

the Act committed serious illegality in not providing settlement when the Petitioner Company had made full and true disclosure of income along with

the manner in which such income was derived in the application filed under

Section 245(C) of the Act. He submitted that the Settlement

Commissioner had only two options, either to reject the application when true and correct disclosure is not made in the application or allow it to be

further proceeded. In any case, he submitted the Settlement Commissioner could not have relegated the petitioner to be dealt with by the assessing

officer. According to him, the order impugned is therefore unsustainable in law and deserves to be quashed by allowing the writ petition.

9. On the other hand, Shri Lal, learned counsel for the Revenue supported the order passed by the Settlement Commissioner. He submitted that that in

the facts and circumstances of the case, Settlement Commissioner by referring the petitioner to the Assessing Officer committed no illegality so as to

warrant interference by this Court in exercise of extra-ordinary writ jurisdiction. He prayed that the writ petition be dismissed.

10. A new Chapter XIX-A was introduced in the Income Tax Act by the Taxation Laws (Amendment) Act, 1975 (in short â??the Amendment

Actâ?) w.e.f. 1- 4-1976 introducing provision for settlement of cases. The Commission is constituted by the Central Government for the settlement of

cases under Chapter XIX-A.

11. Scheme of Chapter XIX-A shows that the filing of application by the assessee is a unilateral act. When an application for settlement is filed under

Section 245-C, it is not automatically admitted. Section 245-D deals with the procedure on receipt of an application under Section 245C. Under sub-

section (1) thereof, the Commission after following the Â prescribed procedure can allow the application to be proceeded with or rejected. Only after

the Commission allows the petition to be proceeded with, it exercises the power of settlement.

12. The Commissionâ??s power of settlement has to be exercised in accordance with the provisions of the Act. Though the Commission has

sufficient elbow room in assessing the income of the applicant, it cannot make any order with a term of settlement which would be in conflict with the

mandatory provisions of the Act, like in the quantum and payment of tax and the interest. The object of the legislature, in introducing Section 245-C is

to see that protracted proceedings before the authorities or in courts are avoided by resorting to settlement of cases.

13. A bare reading of Section 245D(6) shows that every order passed under sub-

section (4) has to provide the terms of the settlement and also to

provide that the settlement shall be void if it is found subsequently by the Commission that it has been obtained by fraud or by misrepresentation of

facts. The decision whether the order has been obtained by fraud or misrepresentation of facts is that of the Commission.

14. The foundation for settlement is an application which the assessee can file at any stage of a case relating to him in such form and in such manner

as is prescribed. The statutory mandate is that the application shall contain â?? full and true disclosureâ? of the income which has not been disclosed

before the assessing officer, the manner in which such income has been derived. The fundamental requirement of the application under Section 245C

is that full and true disclosure of the income has to be made, along with the manner in which such income was derived. On receipt of the application,

the Commission calls for the report from the Commissioner and on the basis of the material contained in the report and having regard to the nature and

circumstances of the case or complexity of the investigation involved therein, it can either reject the application or allow the application to be

proceeded with as provided in Section 245D(1).

15. It has to be noted that the Commission exercises power in respect of income which was not disclosed before the authorities in any proceeding, but

is disclosed in the petition under Section 245C. It is not that any amount of undisclosed income can be brought to the notice of the Commission in the

said petition. The Commission exercises jurisdiction if the additional amount of tax on such undisclosed income is more than a particular figure. The

assessee must have in addition furnished the return of income which he is or was required to furnish under any of the provisions of the Act. In

essence, the requirement is that there must be an income disclosed in a return furnished and undisclosed income disclosed to the Commission by a

petition under Section 245C.

16. It is pertinent to note that unlike Section 139 of the Act which provides for filing of revised return, there is no provision for revision of an

application made in terms of Section 245C. That shows clear legislative intent that the applicant for settlement has to make a true and fair declaration

from the threshold. It is on the basis of the application received that the Commission calls for the report to decide whether the application is to be rejected or permitted to be continued. The declaration contemplated in Section 245C is in the nature of voluntary disclosure of concealed income, but

as noted above it must be true and fair disclosure. Voluntary disclosure and making a full and true disclosure of the income are necessary

preconditions for invoking the Commissionâ??s jurisdiction. In the scheme of thing, we are of the considered opinion that learned counsel for the

petitioner company is right in contending that the Settlement Commissioner could have either rejected the application or allowed it to be proceeded

further. If the Commission felt that the matter required further inquiry, it could have directed the Principal Commissioner or Commissioner of Income

Tax to enquire and submit the report to the Commission to take a decision. The Commission could not get round the application for settlement. When a

duty is casts on the Commission, it is expected that the Commission would perform the duty in the manner laid down in the Act, especially when no

further remedy is provided in the Act against the order of the Settlement Commissioner.

17. In view of the foregoing discussion, we set aside the order dated 30.8.2017 and dispose of the writ petition with a direction to the Settlement

Commission to proceed to decide the application for settlement afresh in accordance with law and pass order.

18. Ordered accordingly.

