(2004) 11 RAJ CK 0028

In the Rajasthan High Court

Case No : Civil Writ Petition No''s. 312 and 3959 of 2004

Shreyans Gems (P) Ltd. APPELLANT

Vs

Income Tax Settlement Commission and Others RESPONDENT

Date of Decision : 08-11-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 143(1), 143(2), 158BC, 158BD, 245(1)
Income Tax Settlement Commission (Procedure) Rules, 1997 — Rule 6

Citation : (2005) 195 CTR 341

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Advocate : N.M. Ranka and Raj Kumar Yadav, for the Appellant; J.K. Singhi and Anuroop Singhi, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Rathore, J.—Since both the aforesaid writ petitions involve common legal as well as factual questions, at the request of both the parties, they are being decided by this common order.

2. The Writ Petn. No. 312 of 2004 has been filed by the petitioner with the following prayers :

"1. By an appropriate writ, order or direction, a writ of certiorari or any other writ or direction in nature thereof may be issued for directing the respondent Nos. 1, 2 and 3 to stay the recovery of demand vide letter dt. 28th/29th Aug., 2003 (Annex. 1), and notice dt. 15th Dec., 2003 (Annex. 2);

2. By an appropriate writ, order or direction, a Writ in the nature of mandamus commanding the respondent Nos. 1 and 2 to grant stay of demand of Rs. 60 lakhs and odd till disposal of settlement application by the Settlement Commission appeal;

3. By an appropriate writ, order or direction, the respondent No. 4 be directed to

adjourn hearing of appeal sine die to be taken up for hearing after order u/s 245D of the Act by the Hon''ble Settlement Commission;

4. By an appropriate writ, order or direction, writ of prohibition restraining the respondents from proceeding with the notice dt, 15th Dec., 2003 (Annex. 2), be issued."

3. The case of the petitioner is that while Shri Prakash Chand Dhadda, director of the petitioner-company was out of India, a search was conducted at the business of the petitioner-company and M/s Prakash Chand Dhadda & Co. on 29th Oct., 1999, and onwards. At the material time, no responsible person was available. Shri Shreyans Dhadda, who is aged about 20 years and student, was called from the residence and search was conducted. It is alleged that there was no search warrant against the petitioner-company and search warrant was against Shri P.C. Dhadda. During the search, books of account, supporting record, stock register, etc. were seized and proceedings were closed on 11th Nov., 1999.

4. Shri P.C. Dhadda filed a settlement application before the Settlement Commission, New Delhi, for regular assessment for the asst. yr. 2000-01, which was admitted by the Settlement Commission. The petitioner-company also filed a settlement application before the Settlement Commission, New Delhi.

5. The CIT and Dy. CIT, Jaipur, submitted the report u/s 245D(1) of the IT Act on 20th July, 2001. In the light of the report, the Settlement Commission declined to admit the settlement application with the observations as under :

"As regards the application for the asst. yr. 2000-01, although assessment proceedings were technically pending on the date of the said application, we are of the view that the application for this year also does not deserve to be admitted. The application for settlement has been filed following the search by the Department at the admittedly common business premises of the applicant-company and Shri Prakash Chand Dhadda on 29th Oct., 1999. The CIT in his report under Rule 6 of the Income Tax Settlement Commission (Procedure) Rules, 1997, has clearly stated that 158BD proceedings to be initiated during the finalisation of the case of M/s Prakash Chand Dhadda & Co.'' The applicant has admitted that no notice u/s 158BD or Section 158BC has been issued till today. A return for the block period shall have to be filed by the applicants covering a part of the asst. yr. 2000-01, in case the Department decides to issue notice u/s 158BD of the Act. Any view taken by the Commission on the application under consideration at this stage may be premature and lead to anomalous results. In our considered view, therefore, the facts and circumstances of this case do not justify admission of the application."

6. The petitioner-company did not receive any notice u/s 158BD of the Act. However, notices u/s 143(2)/142(1) of the Act were received and reply to the notices were also submitted by the petitioner supporting with the record.

7. The main grievance which has been raised by the petitioner is that petitioner''s

case are intermixed and connected with the issues involved in the case of Shri Prakash Chand Dhadda, whose application stands admitted for the regular asst. yr. 2000-01 on 8th May, 2001, by the Settlement Commission. The request was made on behalf of the petitioner-company not to make the assessment and further request was made to expedite the report to enable the Income Tax Settlement Commission to admit u/s 245D(1) of the Act. The petitioner has filed this writ petition against the non-grant of stay in favour of the petitioner-company.

8. This Court vide order dt. 21st Jan., 2004, stayed the recovery proceedings initiated against the petitioner during the pendency of the appeal and the settlement application upto 29th Jan., 2004, and this order was not further extended. On 10th Oct., 2004, this Court observed that since the interim order dt. 21st Jan., 2004, is not extended, it is deemed to be non est (rejected).

9. Learned counsel for the respondents, Mr. J.K. Singhi, submits that this writ petition (SBCWP No. 312 of 2004) has become infructuous for the reason that the Settlement Commission has passed the final order on 14th May, 2004, and appeal against the said order dt. 14th May, 2004, has been preferred by the petitioner. Another writ petition has also been filed by the petitioner against the order dt. 14th May, 2004, which has been registered as SBCWP No. 3959 of 2004.

10. Without entering into factual as well as legal aspect of the matter, I am convinced with the submissions made on behalf of the respondents that since the final order has been passed by the Settlement Commission, this writ petition has become infructuous and the same is hereby dismissed as having become infructuous.

11. So far as Writ Petn. No. 3959 of 2004 is concerned, I am of the view that since appeal against the order dt. 14th May, 2004, is pending and the petitioner has raised the several questions other than the plea which has been raised in the appeal, which is pending for consideration, it is not a fit case where any interference is called for while exercising power under Article 226 of the Constitution of India. Consequently, the writ petition fails and the same is hereby dismissed.

