

CASE NO.:

Appeal (civil) 7248 of 1999

Special Leave Petition (civil) 18012-18015 of 2000

PETITIONER:

COMMISSIONER OF INCOME TAX, MUMBAI CITY-XIII, MUMBAI

Vs.

RESPONDENT:

M/S DAMANI BROTHERS

DATE OF JUDGMENT: 11/02/2002

BENCH:

N. Santosh Hegde & Doraiswamy Raju

JUDGMENT:

D E R
RAJU, J.

Pursuant to the order dated 28.3.2001, these matters, which were directed to be delinked from the other batch, have come up for hearing.

Civil Appeal No.7248 of 1999 :

This appeal has been filed against the decision dated 15.4.1999 of the Income-Tax Settlement Commission, Additional Bench, Mumbai. The said decision was rendered by the Special Bench of the Income-Tax Settlement Commission constituted by the Chairman in exercise of his powers under Section 245BA (5A) of the Income-Tax Act (hereinafter referred to as "the Act"). The Reference to the Special Bench was in respect of the following questions :-

1. Was the Special Bench of the Settlement Commission right in holding in the case of Om Metals and Minerals Pvt. Ltd. (193 ITR 57 - ITSC) that the assessment order passed by the assessing officer before the admission of the settlement application subsisted and recovery proceedings continued even after the admission of the said application, especially after the judgment of the Supreme Court in the case of CIT Vs. Express Newspapers Ltd. (206 ITR 443) ?

(The Hon'ble Court, inter alia, made the following observation:-

It is equally evident that once an application made under Section 245C is admitted for consideration (after giving notice to and considering the report of the Commissioner of Income-tax as provided by Section 245D) the Commission shall have to withdraw the case relating to that assessment year (or years, as the case may be) from the assessing/appellate/revising authority and deal with the case, as a whole, by himself. In other words, the proceedings before the Commission are not confined to the income disclosed before it alone. Once the application is allowed to be proceeded with by the Commission, the proceedings pending before any authority under the Act relating to that assessment year

have to be transferred to the Commission and the entire case for that assessment year will be dealt with by the Commission itself.")

2. If the answer to question No.1 is in the affirmative, would it be correct to say that once the Settlement Commission determines a liability of the applicant for tax, penalty and interest under Section 245D (4), the orders of the lower authorities would automatically stand set aside and consequently there will be no liability under Section 220 (2) of the Act ?

3. If the answer to question No.1 is in the affirmative, the question No.2 in the negative, has the Settlement Commission powers to waive interest under Section 220 (2) of the Act ?"

The three questions were separately and individually considered and answered. Thereupon, the answers given have been summed up as follows:-

"Para 37. In sum, our answers to the three questions referred us are as follows:-

Question No.1

(i) That the Special Bench in the case of Om Metals & Minerals Pvt. Ltd. (supra) was right in holding that the assessment orders passed by the Assessing Officer before the admission of the settlement application subsisted only insofar as such finding applies to assessment orders passed before the date of filing of application under Section 245C(1).

(ii) The Special Bench of the Settlement Commission was not right in holding that the orders passed by the Assessing Officer insofar as the finding applies to orders passed after the date of application but before the application is allowed to be proceeded with.

(iii) The Special Bench was not right in holding that the recovery proceedings based on the order of assessment can be continued even after the admission of the said application. In our view, recovery proceedings cannot be continued after the application has been admitted except in the matter of self-assessment tax and in the manner laid down in section 245DD for safeguarding any likely future demand.

Question No.2.

(i) The orders of lower authorities do not automatically stand set aside by the Commission's order u/s 245D(4). The order of assessment stands modified to give effect to the order u/s 245D(4) by the theory of merger applying to such order.

(ii) In cases where assessment orders were passed before filing of application, the liability of interest u/s 220(2), if any, will be upto the date of order u/s 245D(1). There will be no liability for interest u/s 220(2) thereafter. In cases where assessment orders were passed after filing of

application, there will be no liability of interest under section 220 (2).

Question No.3.

Yes. The Commission has the power to reduce/waive interest chargeable u/s 220 (2)."

Aggrieved, the Revenue has come up in appeal to this Court.

S.L.P. [C] Nos. 18012-18015 of 2000 :

The above Special Leave Petitions have been filed against the order dated 20.9.1999 passed by the Income-Tax Settlement Commissioner (IT & WT), Additional Bench, Calcutta. The said order came to be passed on the applications seeking for rectification of the earlier order dated 16.2.1999 placing reliance upon the decision of the Settlement Commission, Special Bench, in Anjum Mohammed Hussein Ghaswala Vs. C.I.T. [1998] 230 ITR (AT) 1. The Special Bench felt obliged to apply the decision in 230 ITR (AT) 1 and allowed full waiver of interest charged under Section 234B of the Act for the Assessment Years 1991-92, 1992-93, and for the Assessment Year 1993-94 allowed waiver of interest restricting to 50% of the interest charged under Section 234B of the Act. Aggrieved, the Revenue has filed these petitions.

It may be noticed even at this stage that on appeal filed by the Revenue against the decision reported in [1998] 230 ITR (AT) 1, this Court in the decision reported in C.I.T. Vs. Anjum M.H. Ghaswala & Ors. [2001] 252 ITR 1, varied the order of the Commission holding that in exercise of its power under Section 245D (4) and (6) of the Act, the Settlement Commission had no power to reduce or waive interest statutorily payable under Sections 234A, 234B and 234C of the Act, except to the extent of granting relief in accordance with Circulars issued by the Central Board of Direct Taxes under Section 119, e.g. Circular No.400/234/95-IT(B) dated May 23, 1996.

We have heard arguments in the appeal made by Shri R.P. Bhatt, Senior Advocate, for the appellant and Ms. Shobha Jagtiani, Advocate, for the respondent. In the other appeal, the respondent sought time, but having regard to the decision taken by us to have the matter placed before a larger Bench, both are dealt with together by this order.

Serious issue has been raised in the matter before us with directly conflicting stands on either side as to the extent of powers that could be exercised by the Settlement Commission, pursuant to the applications filed under Section 245C of the Act. Whereas it was vehemently contended for the Revenue that the Settlement Commission is not empowered to waive or reduce the interest under Section 234A read with Section 220 (2) of the Act while exercising its jurisdiction under Section 245D (4) of the said Act, that the assessment order passed by the Assessing Officer prior to the admission of Settlement Application under Section 245C will subsist so as to enable the Revenue to continue the recovery proceedings and that on the determination of liability by the Settlement Commission on the application filed before it, the orders passed by the lower authorities would not automatically stand set aside, revoked or cancelled, on behalf of the assessee, a contrary position and stand has been asserted with equal vehemence. Both parties sought to place strong reliance upon the earlier decision of this Court in C.I.T. Vs. Express Newspapers Ltd. [1994] 206 ITR 443.

We have carefully considered the matter in the light of the relevant provisions of the Act and decisions to which a reference will be made hereafter. The decision in Express Newspapers Ltd. (supra) has been rendered by a Bench of three learned Judges. That was a case where in a question of the nature now sought to be raised was not directly in issue or under detailed consideration and the judgment also specifically clarifies that the order therein was confined only to the question of jurisdiction of the Settlement Commission and the validity of its order taking seisin of the case. On the conclusion arrived at that the application

filed before the Settlement Commission in that case was not in compliance with the first and foremost requirement of Section 245C(1) the very application was held to be not maintainable and ought to have been rejected in limine. In the course of dealing with the said case, a conspectus of the relevant provisions of law came to be incidentally considered and there has been an observation at page 451 of the Report that "it is equally evident that once an application made under Section 245C is admitted for consideration (after giving notice to and considering report of the CIT as provided by Section 245D) the Commission shall have to withdraw the case relating to that assessment year (or years, as the case may be) from the assessing/appellate/revising authority and deal with the case, as a whole, by itself. In other words, the proceedings before the Commission are not confined to the income disclosed before it alone. Once the application is allowed to be proceeded with by the Commission, the proceedings pending before any authority under the Act relating to that assessment year have to be transferred to the Commission and the entire case for that assessment year will be dealt with by the Commission itself".

Yet the said decision did not specifically and clearly spell out to what extent it can grant relief or deal with the case and could such consideration be to the extent of over-reaching an earlier order passed and concluded or even if proceedings were pending, to what extent the consideration by the Commission can expand.

In C.I.T. Vs. Paharpur Cooling Towers Pvt. Ltd. [1996] 219 ITR 618] the powers of the Settlement Commission came to be considered by a Bench of two learned Judges and Jeevan Reddy, J., who spoke for the earlier Bench, speaking for the Bench in this case also, while dealing with the Scheme of the provisions contained in Chapter XIX-A, has categorically held that not only an application envisaged under Section 245C can be made only in respect of a pending case and the Commission take over all the proceedings relating to that case which may be pending before any authority under the Act, such power is confined to "the case before the Commission, which means the case relating to the assessment year for which the application for settlement is filed and admitted for settlement". It has also been stated that while Section 245E empowers the Commission to reopen any completed proceedings connected with the case before it, such power is circumscribed by the requirement expressly stated in that Section that such reopening of completed proceedings should be "necessary or expedient for the proper disposal of the case pending before it". It was also observed therein as follows :-

"There are two other limitations upon this power, viz., that this reopening of the completed proceedings can be done, even for the aforesaid limited purpose, only with the concurrence of the assessee and secondly that this power cannot extend to a period beyond eight years from the end of the assessment year to which such proceeding relates. These two features make it abundantly clear that the section contemplates reopening of the completed proceedings not for the benefit of the assessee but in the interests of the Revenue. It contemplates a situation where the case before the Commission cannot be satisfactorily settled unless some previously concluded proceedings are reopened which would normally be to the prejudice of the assessee. It is precisely for this reason that the section says that it can be done only with the concurrence of the assessee and that too for a period within eight years. This section cannot be read as empowering the Commission to do indirectly what cannot be done directly."

At page 631 of the Report, it is further observed as follows:-

"Lastly, we may refer to Sri Poddar's submission based upon section 245F(1). According to him, sub-section (1) confers the powers of an income-tax authority upon the

Settlement Commission including the power to reopen the assessments as contemplated by section 147. We do not know whether the power under section 147 can also be claimed by the commission. But assuming it can, the said power has to be exercised in accordance with the provisions contained in sections 147 to 150 including sections 148 and 149. Admittedly, they were not complied with in this case."

In the decision reported in 252 ITR 1 (supra) also, a Constitution Bench of this Court observed that the object of Chapter-XIX-A is not to give an amnesty to a tax evader from paying the tax due and that it would be preposterous to hold that the Commission has been conferred with the power for either reducing or waiving the tax due.

We find that Section 245C has undergone a specific amendment of considerable significance with effect from 1.10.1984 under the Taxation Laws (Amendment) Act, 1984 (Act 67 of 84) making it imperative that an application to be filed is not only to be in such form and in such manner as has been prescribed, but it should contain full disclosure of an income "which has not been disclosed before the assessing officer and the manner in which such income has been derived, with the additional amount of income tax payable "on such income" and with such further and other particulars as may be prescribed. Sub-section (4) of Section 245D enables the Commission to pass, in accordance with the provisions of the Act, orders on "matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner under Sub-section (1) or Sub-section (3)." Reference has been earlier made to Section 245E and the powers thereunder. The scope and impact of Section 245F (4) are also required to be considered. We further find that nowhere in any of the provisions contained in the said Chapter XIX-A, any specific provision or stipulation is made that once the application is taken up for consideration after notice to the Commissioner and after receipt of the Report from the Commissioner, the proceedings pending on the file of the income-tax authority at various stages shall stand transferred automatically to the Commission to be dealt with as a whole, nor is there any specific indication as to the extent or manner in or upto which the Settlement Commission can deal with the claims other than those covered by the application made by an applicant. Does the Settlement Commission get a complete role in total substitution of the other authorities under the Act and, if so, for what purpose and to what extent. An answer to the questions thus raised before us may call for a detailed consideration of the views expressed in the earlier decisions in order either to further elaborate or to confine them in a manner that is desirable or permissible in terms of the Scheme, the language used and the purpose underlying the various statutory provisions. Therefore, we would consider it more appropriate as well as proper to have the matter referred for the consideration of a larger Bench than merely a Bench of two Judges as we are. Such questions, being recurring in nature, deserve to be decided at an early date.

We direct that the papers may be placed before the Hon'ble the Chief Justice for appropriate orders as the matter may deserve.

.J.
[N. Santosh Hegde]

J.
[Doraiswamy Raju]

February 11, 2002.