

PETITIONER:
COMMISSIONER OF INCOME TAX, CALCUTTA [CENTRAL]

Vs.

RESPONDENT:
M/S.PAHARPUR COOLING TOWERS PRIVATE LIMITED

DATE OF JUDGMENT: 11/03/1996

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
MUKHERJEE M.K. (J)

CITATION:
JT 1996 (3) 144 1996 SCALE (2)655

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

B.P.JEEVAN REDDY, J.

The Commissioner of Income Tax, Calcutta (Central) has preferred these appeals against the judgment and order dated March 1, 1979 made by the Settlement Commission under Section 245-D of the Income Tax Act [the Act]. The respondent-assessee, Paharpur Cooling Towers Private Limited, is engaged in the manufacture of cooling towers and their parts. For the Assessment Years 1970-71 to 1974-74 [five years], it had filed its returns. [The accounting year was the year ending list October.] For Assessment Year 1975-76, the assessee had filed its return. It was pending. While so, on October 27, 1976 and on the following dates, searches were conducted by the Director of Inspection and his officers in the premises of the assessee at Calcutta, Bombay and Delhi. The assessee's factories and the residential premises of the Managing Director, Sales Manager, Directors and their associates were also searched simultaneously. A number of documents were seized.

On June 24, 1977, the assessee approached the Settlement Commission [Commission] with an application under Section 245-C of the Act. The application was made in the prescribed proforma. Against Column No.5 "Assessment Years in connection with which the application for settlement is made", the assessee stated, "Assessment Year 1975-76 and any other proceeding that may be decided by the Settlement Commission (now pending before the ITO)". Against Column No.8, "Particulars of the matters to be settled", the assessee stated, "assessment of total income for Assessment Year 1975-76 and any other matter that may be decided by the Settlement Commission".

The application made by the assessee was forwarded to the Commissioner of Income Tax for his report under Section 245-D(1). In his report dated July 6, 1977, the Commissioner stated that "he has no objection to the application for settlement being processed with in respect of the Asstt.

Year 1975-76". By order dated July 21, 1977, the Commission admitted the application for settlement.

On November 15, 1977, the assessee filed "a brief statement of facts" stating inter alia the following facts: it had filed the return of its income for the Assessment Year 1975-76 on February 10, 1976 showing a total income of Rs.64,75,860/-; the assessment for the said year is not yet completed; while so, searches were conducted in its various premises; the accounts department and the Managing Director were not aware of many facts which have since been discovered; in view of the said fact and with a view to cooperate with tax authorities and to avoid harassment and unnecessary litigation, it has been advised to approach the Commission for settlement; the value of the finished goods as mentioned in the return for the Assessment Year 1975-76 is Rs.14,25,077,16p; It should in fact be Rs.31,55,000/-; similarly the value of the stocks and of finished goods at the end of accounting year ending with 31st October, 1975 ought to be Rs.19,85,000/- as against disclosed figure of Rs.5,36,304/-. The assessee requested that the aforesaid revised figures may be accepted in the place of the figures disclosed in the return. It then stated, "8. Since the value of the opening stock is required to be amended by Rs.14,48,696/- (Rs.19,85,000/- minus Rs.5,36,304/-) as aforesaid, this will have effect on the profits of the previous years as the increased stocks were not and could not be built up in any one accounting year only. (9)...for a proper fixation of the profits for the Asstt. Year 1975-76, due to increased value of the closing stocks, the company submits that the Commission may consider reopening of the earlier five years assessment years, i.e., Asstt. Years 1970-71 to 1974-75. (10) The company hereby gives its consent for reopening all the earlier five years assessments as required in Section 245E of the Act." Similar request is said to have been made regarding the other item of disclosure, viz., certain capital expenditure claimed in the return as revenue expenditure, but which the assessee now conceded may be treated as a capital expenditure. The assessee also requested that all further proceedings with respect to Assessment Year 1975-76 as well as those relating to the said earlier Assessment Years be stayed.

The Commission called upon the Commissioner to file his response to the aforesaid "statement of facts" filed by the assessee. In his response/report dated January 3, 1978, the Commissioner stated inter alia, "the applicant...asked for settlement in respect of asstt, year 1975-76, but in the Statement of Facts now submitted, it is stated that the amount now offered for settlement will have effect on earlier 5 years' assessments.....all these assessments have long been completed and in none of these years, the under-valuation of stock, as now offered, was considered for assessment/re-assessment.....There is absolutely no material in the file in support of this contention of the applicant". The Commissioner further submitted that since the assessee's original application was for settlement in connection with the Assessment Year 1975-76, the assessee's prayer in Para-13 of the statement of facts for issuing stay orders in respect of penalty proceedings pertaining to earlier assessment years is unwarranted, more particularly when the said penalty proceedings do not relate to under-valuation of stock but to other matters some of which were not even contested in appeal. To this response/report, the Commissioner enclosed the report of the concerned Income Tax Officer stating in detail the facts relating to the said earlier assessment years. It was stated therein that there

was substantial concealment on the part of the assessee, that in certain cases assessments were reopened and that penalty proceedings were also pending for concealment in respect of the said assessment years. Several irregularities in the maintenance of accounts and records by the assessee were also pointed out.

The Commission comprising the Chairman and two members heard the parties at length and disposed of the application for settlement under the impugned order. The Chairman and the two members differed on one issue - which is the only issue in these appeals. The question is whether the Commission could drop the penalty proceedings relating to Assessment Years 1970-71 to 1974-75 in an application for settlement relating to Assessment Year 1975-76. We are not concerned with the other directions made by the Commissioner. They were not argued before us and we express no opinion thereon. The only question we are considering is the power of the Commission to drop/waive penalty proceedings and penalties for the Assessment Years 1970-71 to 1974-75 in an application for settlement relating to the Assessment Year 1975-76. The majority opinion [of the Commission] mainly relied upon Section 245-E for holding that Commission did have such power while the Chairman held to the contrary. The Chairman opined that since the application for settlement before the Commission was only in respect of Assessment Year 1975-76, the penalty proceedings relating to earlier assessment years "were in no way connected with the present settlement application or statement of facts made by the assessee" and, therefore, the Commission had no jurisdiction to waive or drop the said penalty proceedings. He pointed out further that the said penalty proceedings were "in respect of some other concealment already detected by the Income Tax Officer and not relating to incomes considered in the settlement application". [Emphasis added]

CONTENTIONS URGED BY THE PARTIES:

In these appeals, the main submission of Sri J.Ramamurthy, learned counsel for the Revenue, is with respect to the jurisdiction of the Commission to drop the penalty proceedings relating to Assessment Years 1970-71 to 1974-75. Counsel submitted that the application for settlement pertained only to Assessment Year 1975-76 and not to the said earlier assessment years. The assessee did disclose certain additional income for the Assessment Year 1975-76 requesting at the same time that the said additional income be spread over all the six Assessment Years 1970-71 to 1975-76. The assessee had so requested and had given its consent for re-opening the said earlier assessment years for the limited purpose of the spreading over/distributing the said additional income over the six years, which was a request made in his own self-interest. He did not want the entire additional income to be added to his income in the Assessment Year 1975-76 which would have enhanced his tax liability. The request to re-open the assessments of the said earlier assessment years was, said the learned counsel, for the limited purpose of giving due and appropriate relief for the Assessment Year 1975-76. The advantage he was asking for could not be granted except by re-opening the assessments for the said earlier assessment years for the limited purpose of adding certain amounts as a consequence of "spreading over". There was no request or concurrence to re-open the earlier assessments for all purposes. In short, the application filed by the assessee did not pertain to the said earlier assessment years but only to 1975-76. Whatever was asked for was being asked for only to reduce the tax

liability for the Assessment Year 1975-76. Learned counsel emphasized the admitted fact that the penalty proceedings relating to the said earlier assessment years, pending at the time of filing of the settlement application, pertained to some other concealments and not to the items which were disclosed in the settlement application. Counsel also submitted that a settlement application can be filed only in respect of a pending matter whereas the assessments in respect of the said earlier assessment years were already concluded. They were also not appealed against by the assessee. Sri Ramamurthy commended the opinion of the Chairman for our acceptance.

Sri N.K.Poddar, learned counsel for the respondent-assessee supported the reasoning and conclusion of the majority. His reasoning runs thus: the assessee had expressly requested and had given his consent/concurrence for re-opening the assessments for the earlier Assessment Years 1970-71 to 1974-75. It is true that this request and concurrence was for giving the relief asked for by the assessee in respect of the Assessment Year 1975-76. But for giving the relief so asked for by the assessee, it was necessary to re-open the assessment for the said earlier assessment years and add certain amounts on account of enhanced valuation of the opening stocks in each of the relevant accounting years. The Commission did have the undoubted power, in these circumstances, to re-open the assessments relating to the said earlier assessment years for the aforesaid purpose. Once the Commission re-opened the said assessments, it was entitled to pass necessary and appropriate orders relating to those earlier assessment years; there was no restriction or limitation upon the Commission's power. Even though the penalty proceedings relating to the said earlier assessment years pertained to certain other alleged concealments by the assessee [other than the two items concerned in the settlement application] the Commission had the power, in law, to direct the dropping of those penalty proceedings also, once it re-opened the assessments relating to the said earlier assessment years. The majority opinion of the Commission is, therefore, the correct one both on facts and in law. The scheme and the object underlying Chapter XIX-A supports the said interpretation. The learned counsel submitted further that the penalty proceedings are co-related to the amount of concealment. Once the amount concealed undergoes a change by virtue of additions made in the said earlier assessment years on account of spreading over [of the value of opening stock] in each of the relevant accounting years, the penalty proceedings become automatically unsustainable in law. They cannot proceed further. Fresh penalty proceedings have to be initiated on the basis of the revised figure of concealment - and that can be done only by the Commission and not by the Income Tax Officer.

RELEVANT PROVISIONS OF LAW:

For a proper appreciation of the questions arising herein, it is necessary to notice the relevant provisions in Chapter XIX-A as they were obtaining at the relevant time. The definition of the expression "Case" in clause (a) of Section 245-A reads:

"'Case' means proceeding under the Indian Income-tax Act, 1922, or under this Act for or in connection with the assessment or reassessment of any person in respect of any year or years which may be pending before an income-tax authority on

the date on which an application under sub-section (1) of section 245C is made."

Section 245-C provides that the application for settlement shall be filed in the form prescribed and containing prescribed particulars. Section 245-D prescribes the procedure to be followed on receipt of an application for settlement. The second proviso to sub-section (1) says "provided further that an application shall not be proceeded with under this sub-section if the Commissioner objects to the application being proceeded with on the ground that concealment of particulars of income on the part of the applicant or perpetration of fraud by him for evading any tax or other sum chargeable or impossible under the Indian Income-tax Act, 1922, or under this Act, has been established or is likely to be established by any Income-tax authority, in relation to the case."

Sub-section (4) provides that after examining the entire material including the report(s) of the Commission, the Commission may pass final orders in accordance with the provisions of the Act. It is not necessary to refer to other sub-sections in Section 245-D for the purposes of these appeals.

Section 245-E is relevant for our purposes and may be set out in full:

"245E. Power of Settlement Commission to reopen completed proceedings.-- If the Settlement Commission is of the opinion (the reasons for such opinion to be recorded by it in writing) that, for the proper disposal of the case pending before it, it is necessary or expedient to reopen any proceeding connected with the case but which has been completed under the Indian Income-tax Act, 1922, or under this Act by any Income-tax section 245C was made, it may, with the concurrence of the applicant, reopen such proceeding and pass such orders thereon relation to which the application for settlement had been made by the applicant under that section covered such proceeding also:

Provided that no proceeding shall be reopened by the Settlement Commission under this section after the expiry of a period of eight years from the end of the assessment year to which such proceeding relates."

Sub-section (1) of Section 245-F provides that "in addition to the powers conferred on the Settlement Commission under this Chapter, it shall have all the powers which are vested in an Income-tax authority under this Act". Sub-section (2) provides that "where an application made under section 245C has been allowed to be proceeded with under section 245D, the Settlement Commission shall, until an order is passed under sub-section (4) of section 245D, have, subject to the provisions of sub-section (3) of that section, exclusive jurisdiction to exercise the powers and perform the functions of an Income-tax authority under this Act in relation to the case."

Section 245-H empowers the Commission to grant immunity from prosecution under Indian Penal Code or any other Central Act to an applicant if it is satisfied that he has made full disclosure of his income and has fully cooperated with the Commission.

Section 245-I declares that "every order of settlement passed under sub-section (4) of section 245D shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force."

CONSIDERATION OF THE CONTENTIONS URGED:

Section 245-C(1) provides that an application for settlement shall be filed in the prescribed form containing prescribed particulars; in this case, the application filed by the assessee pertaining only to one assessment year, viz., 1975-76 and to no other assessment year. According to the second proviso to Section 245-D(1), as in force at the relevant time, no such application can be proceeded with by the Commission if the Commissioner objects to the application being proceeded with on the ground that concealment of particulars of income on the part of the applicant or perpetration of fraud by him for evading any tax or other sum chargeable has been established or is likely to be established by any income tax authority in relation to the case; in this case, the Commissioner objected to the Commission passing any orders with respect to assessment years other than the Assessment Year 1975-76; so far as Assessment Year 1975-76 is concerned, the Commissioner put forward no objection. Sub-section (4) of Section 245-D says that after examining the entire material, the Commission shall "pass such orders as it thinks fit on the matters covered by the application and any other material relating to the case not covered by the application", "in accordance with the provisions of the Act"; in other words, the Commission has not only to act in accordance with the provisions of the Act but that its jurisdiction is confined to the matters covered by the application before it. The further words "and any other material relating to the case not covered by the application" show that the Commission can take into consideration any other material not covered by the application but it must be one relating to the case before it. It must be remembered that this chapter [XIX-A] prescribes a procedure which is a departure from the normal procedure provided by the Act. Once an application is admitted - an application can be made only in respect of a pending case - the Commission takes over all the proceedings relating to that case which may be pending before any authority under the Act. But this 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 - to wit, Assessment Year 1975-76 in this case. Section 245-E, which is the sheet anchor of the majority opinion, empowers the Commission to re-open any completed proceedings connected with the case before it but this power is circumscribed by the requirement expressly stated in the section that such re-opening of completed proceedings should be necessary or expedient for the proper disposal of the case pending before it. There are two other limitations upon this power, viz., that this re-opening 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 re-opening of the completed proceedings not for the benefit of the assessee but in the interests of Revenue. It contemplates a situation where the case before the Commission cannot be satisfactorily settled unless some previously concluded proceedings are re-opened 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. We may explain. The Commission has jurisdiction to settle the case which is before it. Take this very case: the application for settlement before it pertains to the Assessment Year 1975-76. Its jurisdiction is limited to settling this case alone. In this case, it cannot settle the matters relating to other assessment years, which are not before it. The Commissioner cannot touch the proceedings relating to the earlier or other years. This rule is, however, relaxed by Section 245-E to a limited extent and for a limited purpose. The concluded proceedings can be re-opened by the Commission provided (a) such re-opening is necessary or expedient for the proper disposal of the case before it, (b) the reasons for such opinion are recorded in writing by the Commission, (c) the applicant-assessee must give his concurrence therefore and (d) the proceeding which is being re-opened must relate to an assessment year which is within eight years from the end of the assessment year to which the case before the Commission relates. The power conferred by Section 245-E is thus a circumscribed and a conditional power. It can be exercised only in accordance with and subject to the conditions aforementioned and in no other manner. Now, let us see whether Section 245-E availed the Commission to direct the dropping of penalty proceedings relating to Assessment Years 1970-71 to 1974-75 while settling the case relating to Assessment Year 1975-76.

In the present case, the application filed by the assessee was in respect of only one assessment year, viz., 1975-76. This is clear from the particulars mentioned in his application for settlement dated June 24, 1977 referred to hereinbefore. In his response/report to the said application, the Commissioner had stated that he had no objection to the application for settlement being processed with in respect of Assessment Year 1975-76 vide Commissioner's report dated July 6, 1977. Thereafter, the assessee filed, what he called, "a brief statement of facts". In this statement, he requested that the enhanced value of the opening stock disclosed by him should not be added in the assessment of the Assessment Year 1975-76 alone but should be appropriately spread over all the six assessment years, viz., Assessment Years 1970-71 to 1975-76. This he requested because, doing so would have reduced his overall tax liability. It is for this purpose that he gave his consent/concurrence for re-opening the assessments of the earlier assessment years.* It was, therefore, not a situation contemplated by Section 245-E. This was not a case where the Commission wanted to re-open the concluded assessments because it was found necessary or expedient to do so for the proper disposal of the case pending before it; it was a case where the assessee was requesting for a benefit and for the purpose of obtaining that benefit, he was requesting the

*This request was promptly opposed by the Commissioner of Income Tax. He stated that while in the original application, settlement was sought in respect of Assessment Year 1975-76 alone, the assessee was now saying that the settlement of Assessment Year 1975-76 will have effect upon earlier years as well. The Commissioner of Income Tax stated that the assessments for the said earlier assessment years "have long been completed" and that the valuation of stock was never under consideration in those assessment years. This objection of the Commissioner is also a limiting factor on the power and jurisdiction of the Commission in the light of the second proviso to Section 245-D(1). re-opening of the earlier assessments. Even this request of the assessee was for a limited purpose, viz., for spreading over the enhanced value of opening stock disclosed by him over the said six assessment years. It was not a request or concurrence to re-open the entire assessment and penalty proceedings relating to the said earlier assessment years. [As a matter of fact, penalty proceedings for the said earlier assessment years were pending on the date of filing of the application for settlement and its admission. As pointed out by the Chairman in his opinion, the said proceedings were in respect of certain concealments already discovered by the Income Tax Officer, i.e., concealments established or likely to be established by the Income Tax Officer within the meaning of the second proviso to Section 245-D(1) - another limiting factor on the power of the Commission.] It, therefore, follows that the Commission could re-open the assessment proceedings for the said earlier assessment years only for the aforesaid limited purpose, i.e., for spreading over the said enhanced value. Under the guise of re-opening the said assessments for the aforementioned limited purpose, the Commission could not have re-opened or for that matter, settled the matters relating to the said earlier assessment years. It is not permissible for the Commission to say that since it has re-opened the assessments of earlier assessment year for the limited purpose of giving relief for the assessment year before it, it gets full command and total jurisdiction over all the said earlier assessment years and that it can pass such orders as it thinks fit in respect of all the matters relating to the said assessment years including the penalty proceedings. This would amount to doing indirectly what cannot be done directly. The ultimate orders passed by the Commission should relate to the case before it; it is only for the purpose of effectively settling the case before it that the Commission can re-open concluded proceedings subject to the four conditions set out hereinabove. We fail to see how the penalty proceedings (which have now been dropped) fall within the ambit of the power conferred by Section 245-E. The penalty proceedings not only relate to assessment years not before the Commission but they relate to alleged concealments during those earlier assessment years which concealments were not before the Commission. The disclosures before the Commission related to two other concealments [disclosed for the Assessment Year 1975-76 but which amounts the assessee wanted to be spread over all the six Assessment Years 1970-71 to 1975-76] wholly different and distinct from the concealments on account of which the said penalty proceedings were initiated. We are, therefore, of the opinion that the Commission exceeded its jurisdiction in directing that the said penalty proceedings [relating to Assessment Years 1970-71 to 1974-75] should be dropped or that penalties be waived in respect of the said assessment years. The interpretation placed by the Chairman upon

Section 245-E is the correct one and not the interpretation placed by the majority.

We are also not impressed by the argument of Sri Poddar, learned counsel for the assessee, that inasmuch as the quantum of penalty depends upon the quantum of the income assessed and because the income assessed for the said earlier assessment years was bound to undergo a change on account of the "spreading over" aforesaid, the earlier penalty proceedings fall to the ground automatically and that, thereafter penalties, if any, can be levied only by the Settlement Commission. There is a clear fallacy in the said submission. The penalty proceedings related to certain other concealments, i.e., other than the two concealments disclosed in the assessee's application for settlement and which were sought to be spread over backwards. The said penalty proceedings could not, therefore, have been affected or rendered nugatory by the addition to the total income resulting from the aforesaid "spreading over". It is difficult to see any connection, much less an intimate connection, between the said "spreading over" and the consequent enhancement of the income assessed for the said assessment years and the penalty proceedings.

Lastly, we may refer to Sri Poddar's submission based upon Section 245-F(1). According to him, sub-section (1) confers the powers of an income tax authority upon the Settlement Commission including the power to re-open 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 and 150 including Sections 148 and 149. Admittedly, they were not complied with in this case.

The appeals are accordingly allowed and the order of the Settlement Commission is set aside to the extent it has dropped the penalty proceedings relating to Assessment Years 1970-71 to 1974-75 and to the extent it has waived the penalties for the said assessment years. The orders and directions made by it shall not affect the said penalty proceedings which can now proceed according to law. The Settlement Commission shall modify its judgment and order in terms of and in accordance with this judgment.

The appeals are accordingly allowed with costs. The appellants' costs are quantified at a consolidated sum of Rupees twenty thousand.