

R.B. SHREERAM DURGA PRASAD & FATEHCHAND
NURSING DAS

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v.
SETTLEMENT COMMISSION (IT & WT) & ANR.

JANUARY 27, 1989

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[SABYASACHI MUKHARJI AND
S. RATNAVEL PANDIAN, JJ.]

Income Tax Act, 1961: ss. 245C, 245D(1) & 245D(1A)—Application for Settlement—Objections by Commissioner—Whether Settlement Commission should hear the applicant on the objections made by the Commissioner.

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Constitution of India, Article 136: Decision of Settlement Commission under Income Tax Act—Judicial review of—Court concerned with legality of procedure followed and not with validity of order.

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Administrative Law: Natural justice—Violation of rule of audi alteram partem—Effect of—Judicial review—Concerned not with the decision but with the decision making process.

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Sub-section (1) of section 245C of the Income Tax Act, 1961 entitles an assessee, at any stage of the case, to make an application to the Settlement Commission to have his case settled. Sub-section (1) of section 245D requires the Settlement Commission, as and when such an application is made to call for a report from the Commissioner of Income Tax. The first proviso thereto interdicts rejection of the application under that sub-section unless an opportunity has been given to the applicant of being heard. The second proviso thereto provides that no application shall be proceeded with under that sub-section if the Commissioner objects to the same 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 has been established or is likely to be established. Sub-section (1A) inserted in section 245D by the Finance Act, 1979 empowered the Settlement Commission to overrule the objections of the Commissioner.

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The appellant made a composite application under section 245C of the Act for settlement of his assessments for the assessment years 1948-49 to 1975-76. The Commissioner objected to the proposals under sec-

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- A tion 245D(1) for settlement for the years 1948-49 to 1959-60, but agreed to the settlement for the later years. The Commission accordingly made an order on 24th August, 1977 rejecting the application for settlement for the years 1948-49 to 1959-60. The appellant thereupon applied to the Commission to recall its order since the same had been made without furnishing him any opportunity of hearing. That application was pending. When sub-section (1A) was inserted to section 245D, the appellant applied to the Commission to permit him to contest the objections of the Commissioner contending that these should be dealt with in accordance with the amended provisions of section 245D(1A). On 7th August, 1987 the Settlement Commission accepted the first part of the contentions holding that the applicant was entitled to a re-hearing since its order of 24th August, 1977 had been made in violation of the principles of natural justice and also express provision of section 245D(1) proviso, but rejected the second part of the submission on the view that the application for settlement would have to be disposed of in accordance with law which prevailed on 24th August, 1977. It further held that since the Commissioner had objected only to some of the years under settlement the entire application would have to be rejected.

Allowing the appeal by Special Leave,

- E HELD: 1. It is necessary as a concomitant of the fulfilment of natural justice that an applicant before the Settlement Commission should be heard before his application under Section 245C of the Act is rejected. The order made by the Commission on 24th August, 1977 in the instant case in violation of the principles of natural justice was, therefore, of no value. If that is so, then the application made for settlement was still pending before the Commission when the amendment made by the Finance Act of 1979 came into effect and the said amendment being procedural, it would govern the pending proceedings and the Commission would have the power to overrule the objections of the Commissioner. [342E; 341E, G-H]

- G *Income Tax (Central), Calcutta v. B.N. Bhattacharjee & Anr.*, [1979] Vol. 118 ITR 461; *M.S. Gill v. Chief Election Commissioner*, [1978] 1 SCC 405; *Maneka Gandhi v. Union of India*, [1978] 1 SCC 248; *State of Orissa v. Dr. (Miss) Binapani Dei & Ors.*, [1967] 2 SCR 625; *Ridge v. Baldwin*, [1964] A.C. 40; *Anisminic Ltd. v. Foreign Compensation Commission*, [1969] 2 A.C. 147 and *Administrative Law*, by H.W.R. Wade, 5th Edn. pp. 310-311 referred to.

- H 2.1 The appellant had a right to be heard on the objections of the

Commissioner. But no clear opportunity was given to him to make submissions in the sense to demonstrate that the Commissioner was not justified in making the objections and that the Commission should not accept or accede to the objections. He should, therefore, be heard on the said objections. [342D-E]

2.2 Though for the relevant orders for the years for which the Commissioner had objected the concealment had been upheld in the appeal before the appropriate authorities, but in spite of this it may be possible for the appellant to demonstrate or to submit that in disclosure of concealed income for a spread over period settlement of the entire period should be allowed and not bifurcated in the manner sought to be suggested for the Commissioner's objections. This objection the appellant should have opportunity to make. [342F-G]

3. In exercise of its power of judicial review of the decision of the Settlement Commission under Article 136 of the Constitution the Court is concerned with the legality of procedure followed and not with the validity of the order. [342G]

Chief Constable of the North Wales Police v. Evans, [1982] 1 W.L.R. 1155 referred to.

4. The order dated 7th August, 1987 is set aside and the matter is remanded back to the Settlement Commission to hear and dispose of the settlement petition in accordance with law. [343A]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 528 (NT) of 1989.

From the Judgment and Order dated 7.8.1987 of the Settlement Commission (IT & WT), New Delhi in Settlement Appln. No. 22/1/3/ 77-IT.

Harish N. Salve and Miss Bina Gupta for the Appellant.

Dr. V. Gauri Shankar and Miss A. Subhashini for the Respondents. G

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. Special leave granted.

This is an appeal against the judgment and order of the Settle- H

A ment Commission dated 7th August, 1987. The fact that an appeal under Article 136 of the Constitution lies against the order of the Settlement Commission is now beyond pale of any controversy in view of the decision of this Court in *Commissioner of Income Tax (Central), Calcutta v. B.N. Bhattacharjee and another*, [1979] Vol. 118 Income Tax Reports 461. The appellant had applied to the Settlement B Commission for settlement of his assessment for the assessment years 1948-49 to 1975-76 under the Income-tax Act, 1961 (hereinafter referred to as 'the Act'). That application had to be proceeded in accordance with section 245C of the Act which is as follows:

C "245C. (1) An assessee may, at any stage of a case relating to him, make an application in such form and in such manner and containing such particulars as may be prescribed to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided."

D Sub-sections (2) and (3) of section 245C of the Act are not relevant for our present purpose.

E The application made by the appellant was a composite one for settlement of his assessments for the assessment years 1948-49 to 1975-76. The purpose for the introduction of the Settlement Commission has been explained by this Court in the aforesaid decision. This Court observed that these are contained in Chapter XIX-A of the Income-tax Act, 1961. The said Chapter was enacted by the Taxation Laws (Amendment) Act, 1975 whose beneficiaries were ordinarily those whose tax liability was astronomical and criminal culpability perilous. As has been observed that this Chapter was introduced with the debatable policy, fraught with dubious potentialities in the context of Third World conditions of political peculium and bureaucratic abetment, that composition and collection of public revenue from tycoons is better than prosecution of their tax-related crime and litigation for total revenue recovery. The Wanchoo Committee appointed by the Government of India had recommended this step.

G It appears that on 12th August, 1977 the Commissioner of Income-tax objected to the proposal of the appellant under section 245D(1) of the Act. The Commissioner objected to the settlement for the years 1948-49 to 1959-60, but agreed to the settlement for later years. The Commissioner, it appears, accordingly made an order on H 24th August, 1977 rejecting the application for settlement for the years

1948-49 to 1959-60. The appellant on 20th September, 1977 applied to the Commission to recall its earlier order dated 24th August, 1977 since the same had been made without furnishing any opportunity of hearing to the appellant.

Section 245D(1) provides as follows:

"245D. PROCEDURE ON RECEIPT OF AN APPLICATION UNDER SECTION 245C

(1) On receipt of an application under Section 245C, the Settlement Commission shall call for a report from the Commissioner and on the basis of the materials contained in such report and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, the Settlement Commission may, by order, allow the application to be proceeded with or reject the application:

Provided that an application shall not be rejected under this sub-section unless an opportunity has been given to the applicant of being heard.

Provided further that an application shall not be proceeded under this sub-section if the Commissioner objects to the application on 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 imposable under the Indian Income-tax Act, 1922 (XI of 1922), or under this Act, has been established or is likely to be established by any Income-tax authority, in relation to the case."

About hearing the applicant prior to the rejection of the application this Court in the aforesaid decision at page 472 of the report held that an applicant before the Settlement Commission was entitled to a hearing before his application for composition was rejected. This Court observed that section 245D(1) does not negate natural justice and in the absence of an express exclusion of the rule of *audi alteram partem*, it is fair, and indeed fundamental, that no man be prejudiced by action without opportunity to show to the contrary. Natural justice must be followed. This also is the natural corollary of the decisions of this Court in *M.S. Gill v. Chief Election Commissioner*, [1978] 1 SCC

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A 405 and *Maneka Gandhi v. Union of India*, [1978] 1 SCC 248.

B The Finance Act, 1979, however, was amended with effect from 1st April, 1979 and sub-section (1A) was inserted to section 245D which empowered the Settlement Commission to overrule the objection of the Commissioner. Sub-section (1A) of section 245D reads as follows:

C "Notwithstanding anything contained in sub-section (1), an application shall not be proceeded with under that 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 imposable under this Act, has been established or is likely to be established by any Income-tax Authority in relation to the case:

D E Provided that where the Settlement Commission is not satisfied with the correctness of the objection raised by the Commissioner the Settlement Commission may, after giving the Commissioner an opportunity of being heard, by order, allow the application to be proceeded with under sub-section (1) and send a copy of its order to the Commissioner."

F G H Though the Commission is empowered not to accept the objection of the Commissioner yet the Commissioner's objection is of "lethal potency" as described by Krishna Iyer, J. in the aforesaid decision. From the facts of this case, however, it has to be noted that the appellant applied to the Settlement Commission to permit him to contest the objections of the Commissioner on the proviso now inserted as mentioned above. It has to be borne in mind that this was done after the proceedings had proceeded to a certain extent. As mentioned hereinbefore, the appellant had applied to the Settlement Commission as aforesaid on 22nd January, 1977. On 12th August, 1977 the Commissioner had tendered the objections as mentioned hereinbefore. On 24th August, 1977, the Settlement Commissioner made an order rejecting the application for settlement for the assessment years 1948-49 to 1959-60. This had been done without hearing the appellant. On 20th September, 1977 the appellant applied to the Commission to recall its order dated 24th August, 1977 since it had been passed without giving an opportunity of hearing to the appellant. That application

was pending. In the meantime, as mentioned hereinbefore, on 1st April, 1979, the Finance Act, 1979 inserted sub-section (1A) to section 245(D) which empowered the Settlement Commission to overrule the objections of the Commissioner. On 29th May, 1979 the appellant applied to the settlement Commission to permit him to contest the objections of the Commissioner under the said proviso now inserted. The matter was taken up after a long gap in June 1987 and it was heard on 18th June, 1987 and 1st July, 1987. The appellant contended that the order of 24th August, 1977 should be recalled and the objections of the Commissioner be dealt with in accordance with the amended provisions of section 245D(1A) and it also contended that if the Commissioner's objections were not to be interfered with then the entire application should be dismissed. On 7th August, 1987, which is the date of impugned order in this appeal, the Settlement Commission accepted the first part of the contentions and held that the applicant was entitled to a rehearing since its order of 24th August, 1977 had been made in violation of the principles of natural justice and also express provision of section 245D(1) proviso, but rejected the second part of the submission that the application for settlement made by the petitioner would have to be disposed of in accordance with law which prevailed on 24th August, 1977. The Commission, however, held that since the Commissioner had objected only to some of the years under settlement, the entire application would have to be rejected. It is this order which is under challenge before us.

We are definitely of the opinion that on the relevant date when the order was passed, that is to say, 24th August, 1977 the order was a nullity because it was in violation of principles of natural justice. See in this connection, the principles enunciated by this Court in *State of Orissa v. Dr. (Miss) Binapani Dei and Ors.*, [1967] 2 SCR 625 as also the observations in *Administrative Law* by H.W.R. Wade, 5th Edition, pages 310-311 that the act in violation of the principles of natural justice or a *quasi-judicial* act in violation of the principles of natural justice is void or of no value. In *Ridge v. Baldwin*, [1964] A.C. 40 and *Anisminic Ltd. v. Foreign Compensation Commission*, [1969] 2 A.C. 147 the House of Lords in English has made it clear that breach of natural justice nullifies the order made in breach. If that is so then the order made in violation of the principles of natural justice was of no value. If that is so then the application made for the settlement under section 245C was still pending before the Commission when the amendment made by Finance Act of 1979 came into effect and the said amendment being procedural, it would govern the pending proceedings and the Commission would have the power to overrule the objec-

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A tions of the Commissioner. Dr. V. Gauri Shanker, appearing for the Revenue, did not seriously contest that position. He accepted the position that the law as it is, after the amendment authorises the Commission to consider and overrule the Commissioner's objection. He also very fairly, in our opinion, and rightly accepted the position that the appellant was entitled to be heard on the Commissioner's

B objections. It appears to us, therefore, if that is the position then, in our opinion, the appellant was entitled to be heard on the objections of the Commissioner. As mentioned hereinbefore, the only short ground which was sought to be canvassed before us was whether after the amended Act the order had been rightly set aside and whether the appellant had a right to be heard on the objections of the Commissioner. Mr. Harish Salve, counsel for the appellant contends that it

C had a right to be heard. On the other hand, Dr. V. Gauri Shankar, learned counsel for the respondents submitted that the order proceeded on the assumption that the objections had been heard. He did not, in fairness to him it must be conceded, contest that in a matter of this nature the appellant had a right to be heard. Reading the order,

D it appears to us, that though the appellant had made submissions on the Commissioner's objections but there was no clear opportunity given to the appellant to make submissions on the Commissioner's objections in the sense to demonstrate that the Commissioner was not justified in making the objections and secondly, the Commission should not accept or accede to the objections in the facts and circumstances of the present case. We are of the opinion that in view of the facts and circumstances of the case and in the context in which these objections had been made, it is necessary as a concomitant of the fulfilment of natural justice that the appellant should be heard on the objections made by the Commissioner. It is true that for the relevant orders for the years for which the Commissioner had objected the

E concealment had been upheld in the appeal before the appropriate authorities. But it may be that in spite of this concealment it may be possible for the appellant to demonstrate or to submit that in disclosure of concealed income for a spread over period settlement of the entire period should be allowed and not bifurcated in the manner sought to be suggested for the Commissioner's objections. This objection the appellant should have opportunity to make. In exercise of our power of judicial review of the decision of the Settlement Commission we are concerned with the legality of procedure followed and not with validity of the order. See the observations of Lord Hailsham in *Chief Constable of the North Wales Police v. Evans*, [1982] 1 W.L.R. 1155. Judicial Review is concerned not with the decision but with the decision making process.

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We therefore allow the appeal. We set aside the order of 7th A
August, 1987 and remand the matter back to the Settlement Commission to hear and dispose of the settlement petition made by the appellant dated 22nd January, 1977 taking into consideration objections made by the Commissioner and the objections made by the appellant to the Commissioner's objections and after giving the appellant an opportunity of showing reasons and causes why the Commissioner's objections should not be accepted by the Commission. After considering the said objections of the Commissioner as well as the objections to the Commissioner's objections made by the appellant, the Settlement Commission would be free to pass such orders as it considers fit and proper in accordance with the law. Since the matter is pending for a long time, we do hope that the Settlement Commission will dispose of the matter as expeditiously as possible. It is not necessary for us in this appeal to express any opinion on the correctness or otherwise of the Commissioner's objections or on the validity of the appellant's objections to the Commissioner's objections. B C

The appeal is disposed of accordingly. There will be no order as to costs. D

P.S.S.

Appeal disposed of.