JAGDISH TRANSPORT CORPORATION & ORS.

v.

UNION OF INDIA AND ORS.

(Civil Appeal Nos. 2352-2353 of 2019)

APRIL 28, 2023

[M. R. SHAH* AND C. T. RAVIKUMAR, JJ.]

Income Tax Act, 1961 – ss.245, 245C(1), 245HA, 245D – Application u/s.245C(1) was filed by the appellants before the Settlement Commission – Order dtd. 31.03.2008 passed by the Settlement Commission – High Court while dismissing the writ petition, filed by the appellants challenging the show cause notice for re-assessment issued in terms of order dtd. 31.03.2008, observed that the said order was a nullity – Justification of – Held: Settlement Commission specifically observed in the order dtd. 31.03.2008 that it was not practicable to examine the records, investigate the case for proper settlement and give adequate opportunity to the applicant and the Department as laid down in s.245D(4) however, it passed the order to comply with the directions of the High Court to dispose of the application on or before 31.03.2008 – Thus, in view of the manner in which the Settlement Commission disposed of the application u/s.245, High Court was justified in observing that the order passed by the Settlement Commission was a nullity and cannot be said to be an order in the eye of law – Order dtd. 31.03.2008 set aside – Subsequent assessment/re-assessment order passed by the A.O also set aside – Matter remitted to the Settlement Commission/Interim Board for fresh decision following the due procedure u/s.245.

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2352-2353 of 2019.

From the Judgment and Order dated 29.03.2017 in Writ Petition (Misc. Bench) No.4858 of 2008 and dated 18.07.2017 in Review Petition No. 50944 of 2017 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow.

Pawanshree Agrawal, Raktim Gogoi, Advs. for the Appellants.

Balbir Singh, ASG, Arijit Prasad, Sr. Adv., Vikrant Yadav, Rupesh Kumar, Sundeep Pandhi, Arjun Garg, Vimla Sinha, Rupender Singhmar, I. Prasad, V. Gautam, Raj Bahadur Yadav, Advs. for the Respondents.

* Author

The Judgment of the Court was delivered by

M. R. SHAH J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 29.03.2017 passed by the High Court of Judicature at Allahabad, Lucknow Bench Lucknow, by which the Division Bench of the High Court has dismissed the Writ Petition No. 4858 of 2008 preferred by the appellants herein, the original writ petitioners have preferred the present Appeals. The subsequent order passed by the High Court dismissing the review application is also the subject-matter of the present Appeals.

2. The facts leading to the present Appeals in a nut shell are as under:-

   i) That a search was conducted under Section 132 of the Income Tax, Act, 1961 (for short "the Act") on the business premises as well as the residence of the partners.

   ii) Notices under Section 153A were issued to all the appellants for the Assessment Years 1998-1999 to 2004-2005.

   iii) The return of income was filed by the appellants under Section 153A of the Act for the aforesaid Assessment Years.

   iv) An application under Section 245C(1) of the Act was filed by the appellants before the Income Tax Settlement Commission (for short "the Settlement Commission").

   v) As per Section 245HA, inserted by the Finance Act, 2007, the application was to be decided by the Settlement Commission on or before 31.03.2008, failing which the proceedings before the Settlement Commission shall stand abated.

   vi) The High Court, by way of an interim order, directed the Settlement Commission to dispose of the application under Section 245D of the Act by 31.03.2008.

   vii) By order dated 31.03.2008, the Settlement Commission disposed of the proceedings and settled the undisclosed income at Rs. 59,00,000/-. The Settlement Commission also passed an order that the CIT/AO may take such action as appropriate in respect of the matters, not placed before the Commission by the applicant, as per the provisions of Section 245F(4) of the

Act. The Settlement Commission passed the following order:-

"In the abovementioned cases, the Hon'ble High Court of Uttar Pradesh at Lucknow has passed orders dated 19.03.2008 directing the Settlement Commission to complete the proceedings u/s 245D(4) by 31.03.2008.

2. The Rule 9 Report in this case has been received.

3. In all, the Principal Bench of the Commission has till 26.3.2008 received more than 325 orders from various High Courts in the month of March, 2008, directing the Principal Bench to complete the cases by 31.3.2008.

4. This would involve more than 1500 assessments. The Settlement Commission deals only with the assessments which involve complexity of investigation and the application is intended to proved quietus to litigation. For example, in one group of cases where 23 applications are involved, the paper book, which has been filed before the Settlement Commission runs into thirty thousand pages. It goes without saying that sufficient and proper opportunity is required to be given both to the applicant and the Commissioner of Income Tax for arriving at a proper settlement.

5. At this juncture, it is not practicable for the commission to examine the records and investigate the case for proper settlement. Even giving adequate opportunity to the applicant and the department, as laid down in section 245(D)(4) of Income Tax Act, 1961 is not practicable. However, to comply with the directions of the Hon'ble High Court, we hereby pass an order u/s 245D(4) of Income Tax Act, 1961, as under:

6. The undisclosed income is settled as under:

Jagdish Transport Corporation	Rs.32,00,000/-
Surendar Kr. Tandon	Rs.6,00,000/-
Sandhya Tandon	Rs.6,00,000/-
Kiran Tandon	Rs.7,00,000/-
Virender Kr. Tandon	Rs.8,00,000/-
Total	Rs.59,00,000/-

7. The CIT/AO may take such action as appropriate in respect of the matters, not placed before the Commission by the applicant, as per the provisions of section 245F(4) of IT Act ,1961.

8. Prayer for granting immunity from penalty and prosecution under all Central Acts. In view of the discussions in preceding paras, we grant immunity from prosecution and penalty under the Income Tax Act only as regards issues arising from the application and covered by this Order.

9. Interest leviable, if any, shall be charged as per law.

10. It is settled that the amount of tax along with interest shall be paid by the applicants within 35 days from the date of receipt of intimation from the Assessing Officer.

11. In view of the statutory time limit prescribed u/s 245 D(4A)of the Act, the Settlement Commission directs the Commissioner of Income Tax to compute the total income, income tax, interest and penalty, if any, payable as per this order and communicate to the applicant immediately along with the demand notice and challan under intimation to this office.

12. In case of failure to adhere to the scheme of payment, the immunity granted under Section 245(H)(1) shall be withdrawn in terms of sub-section (1A) of the said section."

viii) That thereafter, in the light of the observations made in para 7 by the Settlement Commission, the A.O. issued the show cause notice for re-assessment on the various transactions which are detected but were not disclosed by the appellants before the Settlement Commission.

ix) The show cause notice was the subject-matter of Writ Petition before the High Court. However thereafter, during the pendency of the proceedings, the A.O. passed the Assessment Order, which was challenged before the High Court by way of an amendment.

x) By the impugned order, the Division Bench of the High Court has dismissed the writ petition on the ground that the order passed by the Settlement Commission dated 31.03.2008 was a nullity as the Settlement Commission itself observed that it

was not practicable for the Commission to examine the records and investigate the case for proper Settlement and even giving adequate opportunity to the applicant and the Department, as laid down in Section 245D(4) of the Act is not practicable.

3. Having heard learned counsel appearing for the respective parties and considering the order passed by the Settlement Commission dated 31.03.2008 and the manner in which the Settlement Commission disposed of the application under Section 245, as such, the High Court is absolutely justified in observing that the order passed by the Settlement Commission is a nullity and cannot be said to be an order in the eye of law. It is required to be noted that, as such, the Settlement Commission specifically observed in para 5 of the order dated 31.03.2008 that it is not practicable for the Commission to examine the records and investigate the case for proper Settlement and that even giving adequate opportunity to the applicant and the Department, as laid down in section 245D(4) of the Act is not practicable. However thereafter, the Settlement Commission passed an order to comply with the directions of the High Court to dispose of the application on or before 31.03.2008. If that be so, the High Court in fact ought to have remitted the matter back to the Settlement Commission to pass a fresh order in accordance with law and on merits after following due procedure as required under Section 245D(4) of the Act.

4. In view of the above and for the reasons stated hereinabove, we set aside the impugned judgment and order passed by the High Court. We set aside the subsequent assessment/re-assessment order passed by the A.O, which was the subject-matter of writ petition before the High Court. We also set aside the order passed by the Settlement Commission dated 31.03.2008 and remand the matter to the Settlement Commission for a fresh decision. It is reported that the Settlement Commission has been wound up and the matters pending before the Settlement Commission are being adjudicated and decided by the interim Board constituted under Section 245AA of the Act. In view of the above position, the matter would be remitted to the interim Board with a request that the matter to be taken up expeditiously and would be preferably decided within a period of six months from the date of first hearing and a reasoned order would be passed.

5. In view of the above and for the reasons stated above, the present appeals are accordingly allowed. The matter is remitted to the Settlement Commission/interim Board for a fresh decision in accordance with law and on its own merits and after following due procedure as required under Section 245 of the Act. It will be open for the interim Board to call for a fresh report under Rule 9 and thereafter to pass the final order on the application, after following due procedure as required under Section 245D(4) of the Act.

The present Appeals are, accordingly, allowed to the aforesaid extent. No costs.

Headnotes prepared by: Divya Pandey (Assisted by: Abhishek Pratap Singh and Roopanshi Virang, LCRAs)

Result of the case: Appeals allowed.