

**HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW)**

WRIT TAX No. -208 of 2017

Pronounced on : February 6, 2023

Principal Commissioner of Income Tax (Central) ...Petitioner

Through : Sri Manish Mishra, Advocate

v/s

Union of India and others ...Respondents

Through : Sri D.D. Chopra and Sri S.B.
Pandey Senior Advocates with
Sri Shishir Chandra and Sri
Shailesh Verma, Advocates

**CORAM : HON'BLE RAJESH BINDAL, CHIEF JUSTICE
HON'BLE ALOK MATHUR, JUDGE**

ORDER

ALOK MATHUR, J.

1. The Principal Commissioner of Income Tax (Central), Lucknow has approached this Court by means of the present Writ Petition assailing the orders of the Income Tax Settlement Commission (hereinafter referred to as Commission) dated 19/22.08.2016 and 17.02.2017.

2. The brief facts of the case are that a search and seizure was conducted on 31.07.2013 on different premises of 5 persons, namely, (1) Dr A. K. Sachan, (2) Ms. Richa Mishra, (3) Shekhar

Hospital (P) Ltd, (4) Shri Balaji Charitable Trust and (5) M/s Hind Charitable Trust. During the search cash of ₹1,76,94,500/- was seized from the residential premises and from the office rooms of the Dr A.K.Sachan and Ms Richa Mishra. At the time of the search one of the assessee Ms. Richa Mishra surrendered ₹8.00 crores as undisclosed income as under: -

Table- I

1.	Ms. Richa Mishra	₹5.00 crores
2.	Shri Balaji Charitable Trust	₹1.50 crores
3.	Shekhar Hospital (P) Ltd.	₹1.50 crores

3. Out of the 5 entities which were subject to search on 31/07/2013, three of them made separate applications on 27.02.2015 before the Settlement Commission under Section 245 of the Income Tax Act, disclosing their unaccounted income as under:-

Table- II

1.	Ms. Richa Mishra	₹1,93,16,254/-
2.	Shri Balaji Charitable Trust	₹1,69,04,560/-
3.	Shekhar Hospital (P) Ltd	₹4,84,46,020/-

4. The Settlement Commission on receipt of the application, decided to proceed further with the application, and sent a copy to the concerned Principal Commissioner of Income Tax seeking his response as per Rule 9 of the Income Tax Settlement (Procedure) Rules, 1997 and finally settled the matter rejecting the objections raised by Income Tax Department vide impugned order dated 19/22.8.2016.

5. Present Writ Petition was filed challenging the order of the Settlement Commission. During pendency of the present petition the Settlement Commission further proceeded at the behest of only two of the applicants to rectify the order in exercise of the powers under Section

245D(6B) of the Income Tax Act, 1961(hereinafter referred to as 'Act of 1961') and gave further benefit to the applicants by order dated 17.02.2017 which has also been assailed in the present petition, after amendment to the writ was carried out.

THE PARTIES BEFORE THE SETTLEMENT COMMISSION :

6. Applications before the Settlement Commission were filed by following entities/persons, the description of which are as follows:-

A:- **Ms. Richa Mishra**:- The applicant has described herself in the application as the Director controlling the administration of M/s Shekhar Hospital (Pvt. Ltd.) which is running a hospital and rendering nursing and health services. Further, she is also controlling and managing the affairs of M/s Shri Balaji Charitable Trust as a trustee, which is running a nursing college and rendering health services. She has further submitted that apart from managing these two institutions she is also running other institutions, wife of Dr. A.K. Sachan, who is working as regular employee and a Professor of Clinical Pharmacology in King George Medical University, Lucknow.

B:- **Shekhar Hospital (Pvt.) Ltd.**:- The applicant Shekhar Hospital (Pvt.) Ltd. was incorporated on 26.12.1995 and is engaged in running a hospital at Indira Nagar, Lucknow, Uttar Pradesh. The Directors of the hospital are: (1) Dr. Rich Mishra; (2) Mr. K.K. Sachan; (3) Dr. Harish Chandra and (4) Dr. A. K. Sachan.

C:- **M/s Balaji Charitable Trust**:- Ms. Richa Mishra is the managing trustee and Dr. A. K. Sachan is also a trustee of the said trust. The trust is running a nursing college and rendering health services. Dr A.K.Sachan is a regular

employee and a Professor of Clinical Pharmacology in King George Medical University, Lucknow.

7. In the application filed before the Settlement Commission on behalf of aforesaid three applicants, the amount of disclosure was re-computed and re-distributed as stated in Table II.

ARGUMENTS

8. Sri Manish Mishra, learned counsel appearing for the petitioner has assailed the orders of Settlement Commission

A. Firstly on the ground that the disclosure made by the applicants in their applications for settlement was not a full and true disclosure of the unaccounted income as mandated by Section 245(C) of the Act of 1961. It was submitted that it is a precondition for making an application before the Settlement Commission that the declaration of unaccounted income should be full and true, hence on this ground alone the application should have been dismissed by the Settlement Commission.

B. The second ground urged by the Counsel for petitioner was that Dr A. K. Sachan was subjected to search operation and number of undisclosed bank accounts were discovered, but receipts in the said bank accounts were sought to be attributed as income of M/s Hind Charitable Trust. It was submitted that Dr A. K. Sachan was not a party before the Commission, nor did he appear before the Commission. He did not give any evidence, hence, the Commission could not have returned finding in this regard in favour of respondents.

C. It was further submitted that Dr A. K. Sachan was subjected to regular assessment, and the Income Tax department had assessed the receipts found in the

undisclosed account as his income, which could not have been subject matter for Settlement before the Commission as it no longer remained “undisclosed income”. Further it was never the stand of Dr. A. K. Sachan that the income belongs to someone else and not him. Therefore the impugned order is illegal and without jurisdiction.

D. The order of Commission dated 17.02.2017 has also been assailed on the ground that while allowing the rectification application the Commission has materially altered and reviewed its initial order dated 19/22.08.2016, on the basis of newly pleaded facts, which was without jurisdiction as the Commission does not have any power of review.

E. The Commission has waived off the interest in favour of the respondents, which according to the learned Counsel for the petitioner could not have been done in light of the judgment of the Supreme Court in the case of **Commissioner of Income Tax vs Anjum M. H. Ghaswala & others**¹. He submitted that the Commission has not given any reasons or considered the guidelines of the Board.

F. Lastly it was contended that the manner in which the Commission has proceeded and settled the matter is on the face of it arbitrary in as much as the objections of the Income Tax department have not even been considered or dealt with, which shows that the impugned order is violative of principles of natural justice.

9. Sri D.D. Chopra, Senior Advocate appearing for the respondents supported the impugned order passed by the Settlement Commission. He submitted that during the search operations the details

¹ (2002) 1 SCC 633

of accounts were not available with the private respondents. Subsequently accounts were examined and looked into while filing application before the Commission. He further submitted that the jurisdiction of the Settlement Commission was confined only to settle a matter rather than to adjudicate on all the grounds raised by the department, hence, submitted that there was no illegality in the order passed by the Commission.

DISCUSSIONS

10. To consider the questions raised in the present petition one has to have regard to the scheme of Chapter XIX-A of the Income Tax Act, 1961. The Apex Court in the case of **Jyotendrasinhji v. S.I. Tripathi and others**², has delineated the scope and jurisdiction of the Commission, which is as follows:

“15. The first question we have to answer is the scope of these appeals preferred under Article 136 of the Constitution against the orders of the Settlement Commission. The question is whether all the questions of fact and law as may have been decided by the Commission are open to review in this appeal. For answering this question one has to have regard to the scheme of Chapter XIX-A. The said chapter was inserted by the Taxation Laws (Amendment) Act, 1975 with effect from April 1, 1976. A somewhat similar provision was contained in sub-sections(1-A) to (1-D) of Section 34 of the Income Tax Act, 1922, introduced in the year 1954. The provisions of Chapter XIX-A are, however, qualitatively different and more elaborate than the said provisions in the 1922 Act. The proceedings under this chapter commence by an application made by the assessee as contemplated by Section 245-C. Section 245-D prescribes

² 1993 Supp.(3) SCC 389 at page 399

the procedure to be followed by the Commission on receipt of an application under Section 245-C. Sub-section (4) says:

“After examination of the records and the report of the Commissioner, received under sub-section(1), and the report, if any, of the Commissioner received under sub-section(3), and after giving an opportunity to the applicant and to the Commissioner to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the 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).”

Section 245-E empowers the Commission to re-open the completed proceedings in appropriate cases, while Section 245-F confers all the powers of an Income Tax authority upon the Commission. Section 245-H empowers the Commission to grant immunity from penalty and prosecution, with or without conditions, in cases where it is satisfied that the assessee has made a full disclosure of his income and its sources. Under Section 245-HA, the Commission can send back the matter to the assessing officer, where it finds that the applicant is not cooperating with it. Section 245-I declares that every order of settlement passed under sub-section (4) of Section 245-D shall be conclusive as to the matters stated therein and no matter

covered by such order shall, save as otherwise provided in Chapter XIX-A, be re-opened in any proceeding under the Act or under any other law for the time being in force. Section 245-L declares that any proceedings under Chapter XIX-A before the Settlement Commission shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purposes of Section 196 of the Penal Code, 1860.

16. It is true that the finality clause contained in Section 245-I does not and cannot bar the jurisdiction of the High Court under Article 226 or the jurisdiction of this Court under Article 32 or under Article 136, as the case may be. But that does not mean that the jurisdiction of this Court in the appeal preferred directly in this Court is any different than what it would be if the assessee had first approached the High Court under Article 226 and then come up in appeal to this Court under Article 136. A party does not and cannot gain any advantage by approaching this Court directly under Article 136, instead of approaching the High Court under Article 226. This is not a limitation inherent in Article 136; it is a limitation which this Court imposes on itself having regard to the nature of the function performed by the Commission and keeping in view the principles of judicial review. Maybe, there is also some force in what Dr Gauri Shankar says viz., that the order of the Commission is in the nature of a package deal and that it may not be possible, ordinarily speaking, to dissect its order and that the assessee should not be permitted to accept what is favourable to him and reject what is not. According to learned counsel, the Commission is not even required or obligated to pass a reasoned order. Be that as it may, the fact remains that it is

open to the Commission to accept an amount of tax by way of settlement and to prescribe the manner in which the said amount shall be paid. It may condone the defaults and lapses on the part of the assessee and may waive interest, penalties or prosecution, where it thinks appropriate. Indeed, it would be difficult to predicate the reasons and considerations which induce the Commission to make a particular order, unless of course the Commission itself chooses to give reasons for its order. Even if it gives reasons in a given case, the scope of enquiry in the appeal remains the same as indicated above viz., whether it is contrary to any of the provisions of the Act. In this context, it is relevant to note that the principle of natural justice (*audi alteram partem*) has been incorporated in Section 245-D itself. The sole overall limitation upon the Commission thus appears to be that it should act in accordance with the provisions of the Act. The scope of enquiry, whether by High Court under Article 226 or by this Court under Article 136 is also the same—whether the order of the Commission is contrary to any of the provisions of the Act and if so, has it prejudiced the petitioner/appellant apart from ground of bias, fraud and malice which, of course, constitute a separate and independent category. Reference in this behalf may be had to the decision of this Court in *R.B. Shreeram Durga Prasad and Fatechand Nursing Das v. Settlement Commission (IT and WT)* [(1989) 1 SCC 628 : 1989 SCC (Tax) 124 : (1989) 176 ITR 169] which too was an appeal against the orders of the Settlement Commission. Sabyasachi Mukharji, J., speaking for the Bench comprising himself and S.R. Pandian, J. observed that in such a case this Court is “concerned with the legality of procedure followed and not

with the validity of the order”. The learned Judge added “judicial review is concerned not with the decision but with the decision-making process”. Reliance was placed upon the decision of the House of Lords in *Chief Constable of the N.W. Police v. Evans* [(1982) 1 WLR 1155 : (1982) 3 All ER 141]. Thus, the appellate power under Article 136 was equated to power of judicial review, where the appeal is directed against the orders of the Settlement Commission. For all the above reasons, we are of the opinion that the only ground upon which this Court can interfere in these appeals is that the order of the Commission is contrary to the provisions of the Act and that such contravention has prejudiced the appellant. The main controversy in these appeals relates to the interpretation of the settlement deeds — though it is true, some contentions of law are also raised. The Commission has interpreted the trust deeds in a particular manner. Even if the interpretation placed by the Commission on the said deeds is not correct, it would not be a ground for interference in these appeals, since a wrong interpretation of a deed of trust cannot be a violation of the provisions of the Income Tax Act. It is equally clear that the interpretation placed upon the said deeds by the Commission does not bind the authorities under the Act in proceedings relating to other assessment years.”

TRUE AND FULL DISCLOSURE OF INCOME :

11. The first contentions raised by learned counsel for the petitioner was that the respondents had not made full and true disclosure of income while making application under Section 245(C) of the Act of 1961 and consequently the Commission on noticing the facts should have dismissed the application. In support of his argument, it was submitted

that during search proceedings the assessee had voluntarily surrendered ₹8.00 crores as undisclosed income in the following manner. ₹5.00 crore was said to be undisclosed income by Ms. Richa Mishra, ₹1.50 crores by Sri Balaji Charitable Trust and ₹1.50 crores by Shekhar Hospitals Private Limited but in the applications made before the Commission the said figures were changed. The income and disclosure was made of ₹1,93,16,254/- by Dr. Richa Mishra, ₹1,69,04,560/- and ₹4,84,46,020/- by M/s Balaji Charitable Trust and Shekhar Hospital, respectively. It was further stated that the applications were filed by the department on 7.7.2015 to conduct further inquiries but no orders were passed by the Commission. Finally, it was also argued that a sum of ₹1.20 crores the alleged receipts from Sri B. D. Agarwal with Allahabad Bank, was for the first time disclosed and considered in rectification application. This was sufficient to place the matter beyond any doubt that the respondents had not made true and full disclosures of the income and, hence, blatantly violated the statutory requirement of Section 245(C) of the Act. The receipt of ₹1.20 crores was deliberately and willfully not disclosed when the application of Statement of Facts (S.O.F.) was filed before the Settlement Commission. Rather it was an explanation given introducing new facts in the rectification application. The Settlement Commission ought to have rejected the application for settlement as invalid for not truly and fully disclosing the undisclosed income.

12. During search, ₹8.00 crores were declared by Ms. Richa Mishra as undisclosed income pertaining to the three entities as mentioned in Table I. The application was filed before Settlement Commission with substantial variation, adjusting the income between the 3 entities who were applicants before the Settlement Commission in such a manner so as to not depict the true and full disclosure of their income. After passing of the final order by the Settlement Commission on 27.2.2015, an application for rectification was moved thereby disclosing a further undisclosed amount of ₹1.20 crores which has been accepted

and adjusted by the Settlement Commission in its order dated 17.02.2017. The aforesaid facts clearly indicate that the respondents did not truly and fully disclose their undisclosed income.

13. All these facts were brought to the knowledge of the Settlement Commission at the time when the petitioners had filed their objections to the settlement application which are as follows:

OBJECTION OF THE INCOME TAX DEPARTMENT TO THE APPLICATION FOR SETTLEMENT :

14. The Principal Commissioner of Income Tax submitted his report under Rule 9 of the Rules of 1997 to the application of Sri Balaji Charitable Trust stating that the additional income disclosed by the applicant was inadequate considering the material seized during the search proceedings. It was further placed on record that considering the fact that during the course of the search Dr. Richa Mishra had admitted cash deposits of ₹1.50 crores in the Axis Bank account of the trust in the financial year 2009-10, while only an amount of ₹25,40,030/- has been disclosed for the financial year 2009-10 and no evidence has been submitted in support of the disclosed income. It was also submitted that the account maintained with the Axis Bank in the name of Shekhar School of Nursing which is run under the management of M/s Balaji Charitable Trust, unaccounted cash and non-cash deposit were found in various accounts. On the basis of the material collected by the department it was of the considered view that M/s Balaji Charitable trust was not entitled for any deduction under section 10 (23-C) of the Act of 1961 as it does not fulfill the twin conditions prescribed for the application for eligibility for deduction under the said provision, in as much as, the educational institution does not exist solely for the purposes of education but for profit considering the huge amount of cash deposits received by it, and also that it's aggregate annual receipt exceeded the limit prescribed as per Rule 2 (B-C) of the Income Tax Rules. According to the records it

was stated that the group is being managed and controlled by Ms. Richa Mishra and Dr A.K Sachan.

15. After examining the accounts of the M/s Balaji Charitable Trust, it was further submitted that the trust is not only engaged in profitable activities but had also diverted the funds for personal benefits of the trustees, as per the statement made by the trustee herself during the proceedings under section 132(4) of the Income Tax Act. It was urged that the entire deposits in the account should be treated as the income of the assessee and should not be limited to 15% of the receipts since no document or evidence was submitted for allowing the expenses to the tune of 85%. During the search, evidence was also found that ₹65,000/- was received from a particular student towards building fund, and therefore it was assumed that similar amounts in cash were received from all the other students. On the basis of material discovered during the search operation, it was submitted that the undisclosed income of the M/s Balaji Charitable Trust for assessment years 2007-08 to 2014-15 would be ₹ 16,05,97,986/-. In light of the aforesaid calculations and findings it was stated that a true and full disclosure had not been made of all its income by the trust.

16. With regard to the application submitted by Ms. Richa Mishra, the report under Rule 9 of the Procedure Rules 1997 mentioned that the applicant had surrendered only ₹1,93,16,254/-. The applicant is the director and controls M/s Shekhar Hospital (P) Ltd which is running a hospital and rendering nursing and health services and is also controlling and managing the affairs of M/s Balaji charitable trust as a trustee which is also running nursing college and rendering health services. Various bank accounts were used to service the receipt and expenses, most of which were in the name of Dr A. K. Sachan. The disclosure made before the Settlement Commission amounting to ₹255.30 lakhs was inadequate considering the documents seized and the statements made during the

search proceedings.

17. During the search Ms. Richa Mishra had given a statement on oath under section 132(4) of the Act of 1961 and had surrendered ₹5.00 crores for the financial year 2009-10 to 2010-11. Before the Commission, an amount of only ₹1,30,40,256/- was disclosed as additional and total income for assessment year 2010-11 and 2011-12. During and post search operations, the applicant stated that she had surrendered ₹5.00 crores out of which she had given ₹4.00 crores to Dr A.K. Sachan. No satisfactory explanation was given by the applicant for the receipts and on the other hand, different versions were given by her, and no details were provided to department. Before the Commission she further set up a case that the money found in the undisclosed accounts of Dr A. K. Sachan was in fact given by her. She surrendered the deposits in the account of Axis Bank, Indira Nagar in the name of Dr A. K. Sachan amounting to ₹3,57,92,000/- but has gone back on her version offered only ₹ 1,30,40,256/- as additional and total income for the assessment years 2010-11 & 2011-12.

18. During the search proceedings ₹79.00 lakhs in cash was found at the residence of Ms Richa Mishra and Dr A. K. Sachan and according to the statement made during search it was informed that the said amount was received as admission fee from the guardian of the students, but before the Settlement Commission it was stated that the said amount belongs to Hind charitable trust and the same is as per their books of accounts. It was the stand of the department that the books were prepared post the search and no evidence could be produced in support of this said cash found at the residence.

19. In the report the department had proposed income of Dr Richa Mishra to be ₹13,87,96,615/- while she had offered only ₹1,93,16,254/- and on this basis it was stated that the applicant has not made a full and true disclosure of the income for all the years, hence, the

application was liable to be rejected.

20. Another application which was considered by the Settlement Commission was preferred by M/s Shekhar Hospital (P) Ltd. In the application for settlement M/s Shekhar Hospital Pvt. Ltd. had offered ₹4,84,46,020/- as additional income. The Income Tax Department while responding to the notice of the Commission had submitted that the tax was paid only on ₹3,85,80,097/- and not on the whole income which was declared as additional income. It was further stated that the disclosure made by the applicant was inadequate considering the recovery made during search. The applicant had surrendered only ₹91,33,857/- for assessment year 2013-14 while it should have been ₹1,63,12,242/- and therefore, submitted that there was no true disclosure of income. Similarly, for the assessment year 2014-15 the applicant surrendered ₹2,38,14,005/- while it's additional income should have been ₹2,65,01,543/- and there was a difference in the surrender of ₹26,87,538/- for the assessment year 2014-15. It was submitted that over and above the amount surrendered before the settlement Commission, the application should have surrendered an amount of ₹1,26,60,923/- and it demonstrated before the Commission that there was no true and actual disclosure of unaccounted/additional income by the applicant.

21. With regard to the first ground raised by the learned Counsel for the petitioner that the respondents who were the applicants before the Commission were dutybound to make a full and true disclosure of the undisclosed assets before the Commission. The law in this regard, has been settled by the judgment of Supreme Court in the case of **Ajmera Housing Corporation and another Vs. Commissioner of Income Tax**³. The relevant paragraphs 26 and 28 read as under :

“26. The procedure laid down in Section 245D of the Act, contemplates that on receipt of the application under Section 245C(1) of the Act, the Settlement Commission is

3 (2010) 8 SCC 739

required to forward a copy of the application filed in the prescribed form (No. 34B), containing full details of issues for which application for settlement is made, the nature and circumstances of the case and complexities of the investigation involved, save and except the annexures, referred to in item No. 11 of the form and to call for report from the Commissioner. The Commissioner is obliged to furnish such report within a period of 45 days from the date of communication by the Settlement Commission. Thereafter, the Settlement Commission, on the basis of the material contained in the said report and having regard to the facts and circumstances of the case and/or complexity of the investigation involved therein may by an order, allow the application to be proceeded with or reject the application. After an order under Section 245D(1) is made, by the Settlement Commission, Rule 8 of the 1987 Rules mandates that a copy of the annexure to the application, together with a copy of each of the statements and other documents accompanying such annexure shall be forwarded to the Commissioner and further report shall be called from the Commissioner. The Settlement Commission can also direct the Commissioner to make further enquiry and investigations in the matter and furnish his report. Thereafter, after examining the record, Commissioner's report and such further evidence that may be laid before it or obtained by it, the Settlement Commission is required to pass an order as it thinks fit on the matter covered by the application and in every matter relating to the case not covered by the application and referred to in the report of the Commissioner under sub-section (1) or sub-section (3) of the said Section. It bears repetition that as per the scheme of the

Chapter, in the first instance, the report of the Commissioner is based on the bare information furnished by the assessee against item No. 10 of the prescribed form, and the material gathered by the revenue by way of its own investigation. It is evident from the language of Section 245C(1) of the Act that the report of the Commissioner is primarily on the nature of the case and the complexities of the investigation, as the annexure filed in support of the disclosure of undisclosed income against item No. 11 of the form and the manner in which such income had been derived are treated as confidential and are not supplied to the Commissioner. It is only after the Settlement Commission has decided to proceed with the application that a copy of the annexure to the said application and other statements and documents accompanying such annexure, containing the aforesaid information are required to be furnished to the Commissioner. In our opinion even when the Settlement Commission decides to proceed with the application, it will not be denuded of its power to examine as to whether in his application under Section 245C(1) of the Act, the assessee has made a full and true disclosure of his undisclosed income. We feel that the report(s) of the Commissioner and other documents coming on record at different stages of the consideration of the case, before or after the Settlement Commission has decided to proceed with the application would be most germane to determination of the said question. It is plain from the language of sub-section (4) of Section 245D of the Act that the jurisdiction of the Settlement Commission to pass such orders as it may think fit is confined to the matters covered by the application and it can extend only to such matters which are referred to in

the report of the Commissioner under sub-section (1) or sub-section (3) of the said Section. A "full and true" disclosure of income, which had not been previously disclosed by the assessee, being a pre-condition for a valid application under Section 245C(1) of the Act, the scheme of Chapter XIX-A does not contemplate revision of the income so disclosed in the application against item No. 11 of the form. Moreover, if an assessee is permitted to revise his disclosure, in essence, he would be making a fresh application in relation to the same case by withdrawing the earlier application. In this regard, Section 245C(3) of the Act which prohibits the withdrawal of an application once made under sub-section (1) of the said Section is instructive in as much as it manifests that an assessee cannot be permitted to resile from his stand at any stage during the proceedings. Therefore, by revising the application, the applicant would be achieving something indirectly what he cannot otherwise achieve directly and, in the process, rendering the provision of sub-section (3) of Section 245C of the Act otiose and meaningless. In our opinion, the scheme of said Chapter is clear and admits no ambiguity.

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28. As afore-stated, in the scheme of Chapter XIX-A, there is no stipulation for revision of an application filed under Section 245C(1) of the Act and thus the natural corollary is that determination of (1921) 1 KB 64 (2000) 6 SCC 550 1961 (2) SCR 189 income by the Settlement Commission has necessarily to be with reference to the income disclosed in the application filed under the said Section in the prescribed form.”

22. Applying the principles enunciated by the Supreme Court in the aforementioned case to the facts of the present case, it is noticed that the applicant had substantially deviated in disclosure of the income from the affidavit submitted under Section 132(4) of the Act of 1961 before the Settlement Commission. During search Richa Mishra had surrendered ₹8.00 crores which included her receipts to the tune of ₹5.00 crores. Before the Commission she has disclosed an amount of ₹1,93,16,254/-, which is substantially less than the disclosure made during the search. The impugned order reveals that the objection of the petitioner/department have merely been mentioned as a passing reference. They have neither been considered and summarily rejected.

23. Apart from the above, at the stage of filing the rectification application the respondents further revealed undisclosed receipts amounting to ₹1.20 crores for the first time. In the rectification application, the undisclosed income was sought to be re-computed and even the receipt of ₹1.20 crores which was never disclosed in the application (SOF) before the Settlement Commission and disclosed at such a belated stage after passing of the final order by the Commission. The department had estimated the income of M/s Balaji Charitable Trust to be ₹16.05 crores for the assessment years 2007-08 to 2014-15, while that of Ms. Richa Mishra to be ₹13.87 crores, but only ₹1.69 crores was surrendered by M/s Balaji Charitable Trust and ₹1.93 crores by Ms. Richa Mishra which was substantially less. Faced with the said facts, it was incumbent upon the Commission to at least looked into the submissions of the department before proceeding with the matter. Without delving into the issue, the Commission accepted the undisclosed income surrendered by the applicants.

24. At this stage, we may hasten to add that it has to be kept in mind that the applicant before the Commission is an entity which has not disclosed its total income before the income tax authorities and on

adoption of coercive methods under Section 132 of the Income Tax Act or otherwise has declared the same before the Settlement Commission. In any view of the matter, such entity cannot be granted undue benefit in contrast to an honest taxpayer, who has voluntarily disclosed all his income and assets. In the present case, it is evident that the applicant has made certain disclosures before the income tax authorities during the search operations and has also submitted an affidavit to this effect. The income tax authorities in their report before the Commission have duly informed the Commission that the assets and receipts of the applicant are much more than what has been disclosed before the Settlement Commission. There is a huge variation in the amounts disclosed by the applicant Ms. Richa Mishra while filling the application before the Settlement Commission and all these facts were duly brought to the knowledge of the Commission. The Settlement Commission was bound to consider the material recovered during search and placed before the Commission in the reply filed by the department, and could have rejected the stand of the department, but not taking cognizance of the reply of the department and not dealing with the issue the Commission has acted arbitrarily.

25. It is further seen from the language of sub-section (4) of Section 245D of the Act that the jurisdiction of the Settlement Commission to pass such orders as it may think fit is confined to the matters covered by the application and it can extend only to such matters which are referred to in the report of the Commissioner under sub-section (1) or sub-section (3) of the said Section. A "full and true" disclosure of income, which had not been previously disclosed by the assessee, being a precondition for a valid application under Section 245(C-1) of the Act, the scheme of Chapter XIX-A does not contemplate revision of the income so disclosed in the application against item No. 11 of the form. Moreover, if an assessee is permitted to revise his disclosure, in essence, he would be making a fresh application in relation to the same case by

withdrawing the earlier application. In this regard, Section 245(C-3) of the Act which prohibits the withdrawal of an application once made under sub-section (1) of the said Section is instructive in as much as it manifests that an assessee cannot be permitted to resile from his stand at any stage during the proceedings. Therefore, by revising the application, the applicant would be achieving something indirectly what he cannot otherwise achieve directly and, in the process, rendering the provision of sub-section (3) of Section 245C of the Act otiose and meaningless. Apart from inadequate disclosure made in the application (SOF), in our opinion, the mere fact that the applicant had sought to revise his income by means of rectification application is demonstrative of the fact that he had not made a full and true disclosure of income, hence the application was bound to be rejected on this ground alone.

26. The above facts clearly demonstrate that the respondents had not made a full and true disclosure before the Settlement Commission. The Settlement Commission should have noticed and examined the fact itself, as it is a pre-condition for an application under section 245C of the Act of 1961 that the applicant makes a “true and full disclosure” of their income which has not previously been disclosed, or at subsequent stage when further disclosure was brought to their notice at the time of filing of the application for rectification. Accordingly, we are of considered view that the application before the Commission deserved to be rejected as the respondents had not made true and full disclosure of their undisclosed income. This issue is decided in favour of the petitioner.

VALIDITY OF THE ORDER OF THE SETTLEMENT COMMISSION ADJUSTING THE RECEIPTS IN THE ACCOUNT OF DR. A. K. SACHAN TOWARD THE INCOME OF THE APPLICANTS:

27. The argument of the petitioner was that the jurisdiction of the Settlement Commission limits only to passing the orders with regard to “undisclosed income” of the applicants. Number of undisclosed

income of Dr. A. K. Sachan was duly taken into consideration by the Assessing Officer in his assessment for the assessment year 2012-13. Once the receipts in the said accounts had been assessed as income of Dr. A. K. Sachan during regular assessment proceedings then the same could not have been considered by the Settlement Commission as undisclosed income of the respondents and such an issue could not have been considered by the Commission. There was no material before the commission for holding that the receipts in the said bank accounts held by Dr A. K. Sachan were income of M/s Shekhar Hospital (Pvt.) Ltd.

28. Submission of Sri D.D. Chopra, Senior Advocate, learned counsel for the respondents is that the Commission was within its competence to return a finding with regard to the receipts in the account of Dr. A.K. Sachan. His argument was that the said income was being claimed by the applicant to be his income, hence the said issue could have been duly considered and decided by the Commission. He had not disputed the fact that Dr. A.K. Sachan was not a party to the proceedings before the Commission and also that he did not participate in the same.

29. Considering the rival contentions it is clear that Dr. A. K. Sachan, who is the account holder of several accounts in Axis Bank, Indiranagar, Lucknow never approached the Commission either by filing an application for settlement, or as a witness before the Commission in the proceedings initiated by the respondents. It was never his stand before the Assessing Officer that the receipts in his bank account are in fact income of M/s Shekhar Hospital(Pvt.) Ltd.

30. It has come on record that M/s Balaji Charitable Trust under the control of Ms. Richa Mishra was using 11 undisclosed bank accounts with the Axis Bank, Indira Nagar Lucknow which were in the name of Dr. Richa Mishra and Dr. A.K. Sachan. In the said bank accounts the receipt from activity were deposited and expenditure was made after making withdrawals from these accounts from time to time. The Income

Tax Department having objected to the claims made by the applicant stating that the income disclosed in the bank accounts in the name of Dr. A.K Sachan was added to his income in the regular assessment, and he never took the stand that the income pertains to M/s. Balaji Charitable Trust and also that he was not an applicant before the Settlement Commission, still the Settlement Commission proceeded to decide the issue in favour of the respondents which clearly establishes that it had exceeded their jurisdiction.

31. The Income Tax Department had duly intimated to the Settlement Commission in its report submitted on 17.5.2016 the fact that “Assessing Officer” has also reported in this connection that unexplained deposits found in six bank accounts belonging to Dr. A. K. Sachan have been added in the hands of Dr. A. K. Sachan while completing his assessment under Section 153A and 143(3) of the Act of 1961 for the relevant assessment year in March, 2016, still the Commission proceeded to decide this issue in favour of the respondents and did not give any reason nor did it even consider the objections raised by the petitioner, which on the face of it is an arbitrary exercise of power. The Commission is under a duty to at least consider the objection raised by the department. But by not taking into consideration such objections, the Commission has acted arbitrarily and against the statutory provisions which mandate the Commission to adhere to the principles of natural justice while exercising its jurisdiction. Once the income has already been assessed at the hands of Dr. A.K. Sachan it no longer remained undisclosed income and in that regard to such an issue the Settlement Commission could not have passed any order as it was beyond its jurisdiction as per clear provisions of Section 245 of the Income Tax Act. Deciding the said issue merely at the behest and assertion of the respondents by the Commission and holding that the receipts in his bank account was income of M/s Shekhar Hospital Pvt. Ltd. is arbitrary and abuse of power vested in it. Such a procedure, and findings are clearly perverse and contrary to the settled judicial

norms and beyond jurisdiction of the Commission. The impugned order is liable to be set aside on this ground alone.

32. When the matter has been duly contested by the department and material was adduced, it was incumbent upon the Commission to have examined the objections raised by the department and return a specific finding either accepting or rejecting their objections but not considering the objections amounts to non application of mind which clearly points towards the arbitrary manner in which the Settlement Commission has proceeded to settle the matter in favour of the applicant. The Settlement Commission being a judicial body, having powers to determine the issues raised before it, it has to discharge its obligation and decided the issues in accordance with law and also to give reasons for the same.

33. Manipulation by the respondents and the two assesseees who were not before the Commission but were part of search seizure operation is evident from the fact that appeal was filed by Dr A. K. Sachan before the Commissioner (Appeal) against the assessment order. The Commissioner (Appeals) set aside the assessment order relying on the impugned order passed by the Settlement Commission. This clearly demonstrates that benefit was granted to entities from the impugned order who were not even before the Commission. Further the order passed by the Commission was still under challenge before this Court. Therefore the manner in which the Commission has proceeded is questionable and is accordingly the impugned order is liable to be set aside.

34. Transparency, fairness, giving reasonable opportunity and adherence to the prescribed procedure are some of the hallmarks of a judicial determination. Absence of any one of them will render an order nullity and invite interference of the High Court exercising its jurisdiction under Article 226 of the Constitution of India. The Commission by not considering the reply of the petitioner/department, by considering and

dealing with regards to income of an individual who is not before it and redistributing the same, not considering the objection of the department that the said income has already been assessed during regular proceedings, has clearly proceeded in violation of statutory provisions and has misdirected itself and we have no hesitation in holding the impugned orders to be illegal and arbitrary.

REGARDING RECTIFICATION ORDER

35. The next ground raised by the petitioners is with regard to the power of the Commission to rectify its orders as per section 245D(6B) of the Act of 1961. After passing of the impugned 19/22.08.2016 order an application for rectification under Section 245(6B) of the Act was preferred by the applicants on the ground that for the assessment year 2012-13 there was deposit of ₹1.20 crores which was received from the bank accounts of M/s B. D. Agarwal. As discussed, earlier a "full and true" disclosure of income, which had not been previously disclosed by the assessee, being a precondition for a valid application under Section 245(C-1) of the Act, the scheme of Chapter XIX-A does not contemplate revision of the income so disclosed in the application against item No. 11 of the form. Moreover, if an assessee is permitted to revise his disclosure, in essence, he would be making a fresh application in relation to the same case by withdrawing the earlier application. In this regard, Section 245(C-3) of the Act which prohibits the withdrawal of an application once made under sub-section (1) of the said Section is instructive in as much as it manifests that an assessee cannot be permitted to resile from his stand at any stage during the proceedings. Hence, the revision of income sought to be made in the application for rectification was not permissible, and the Commission has exceeded its jurisdiction by entertaining such an application and allowing the same.

36. A perusal of the order dated 17.02.2017 allowing the rectification application would clearly indicate that the Commission has

revisited, reviewed, and materially altered all the aspects decided by it. In the garb of a rectification application, entire liabilities of the applicants were redetermined by the Commission. The income which was not disclosed in the statement of facts (S.O.F.) was sought to be explained and admitted to the benefits of the same. The liability of Ms. Richa Mishra was reduced from ₹4,43,56,930/- to ₹2,81,26,297/-. The Commission, contrary to the settled legal position has illegally and arbitrarily reviewed its earlier order. It was further submitted that a perusal of the rectification application would clearly demonstrate that there was no full and true disclosure of income receipts of the applicants.

37. Having noticed the manner in which the Commission has proceeded in the present case without following the basic principles of judicial determination like affording proper opportunity of hearing, duly considering the submissions of parties, we deem it proper to observe that the Settlement Commission in exercise of its powers to settle a matter brought before it is endowed with the jurisdiction of the authority under the Income Tax Act. The purpose of conferment of these powers is to settle the matters concerning undisclosed income expeditiously and finally. Such an application should truthfully and fully disclose the undisclosed income. In such a situation where the applicant is granted exemption on account of the business expenses or takes benefit of any provisions of the Income Tax Act to compute total income then the Settlement Commission would be exercising the powers of the assessing authority and is duty bound to examine the claim of the applicant on the basis of evidence and material before it. The Commission while exercising power of the assessing officer will have to make necessary inquiry or it can also direct the Commissioner of Income Tax to make necessary inquiry and inform the Commission of the outcome of such inquiry. Therefore, it is abundantly clear that the Commission while settling any matter has to do the same in accordance with the provisions of the Act and where required will have to pass necessary orders giving

reasons for allowing any release or exemption in favour of the applicants.

WAIVER OF INTEREST

38. The Commission has waived off interest in favour of the respondents. This issue has been settled by the Hon'ble Supreme Court in **Anjum M.H. Ghaswala and others' case (supra)** and the other High Court in **Brij Lal and others vs. Commissioner of Income Tax, Jalandhar**⁴. In **Anjum M.H. Ghaswala and others' case (supra)** it was held :

“35. For the reasons stated above, we hold that the Commission in exercise of its power under Sections 245D(4) and (6) does not have the power to reduce or waive interest statutorily payable under Sections 234A, 234B and 234C except to the extent of granting relief under the circulars issued by the Board under Section 119 of the Act.”

39. The Settlement Commission, in a mechanical manner, waived off the interest without considering whether the matter of the respondents was covered by the circulars of the Board, and waiving off the interest in such a manner, which may indicate that statutory interest payable under sections 234A, 234B and 234C has also been waived which is clearly beyond the competence and jurisdiction of the Commission. Accordingly, this issue is decided in favour of the petitioner.

40. The judicial review of the orders of the Settlement Commission by the High Court in exercise of its power under Article 226 of the Constitution of India is limited to examine whether proper procedure and the prescription laid down in the statutory provisions has been followed. It is in the limited sphere that we have examined the order of the Settlement Commission and found that they have not

4 (2011) 1 SCC 1

considered the inputs/objections submitted by the department in their reply to the Commission. By not taking into account or dealing with the reply of the department there is a manifest error in the decision-making process by the Settlement Commission and hence such an order suffers from the vice of arbitrariness and is accordingly liable to be set aside. The golden rules of *audi alteram partem* inheres the principles that a person cannot be condemned unheard. Any judicial or quasi-judicial authority is bound to hear the party before it, the plea raised by the parties are to be duly considered otherwise the “right of hearing” will become meaningless and an empty formality. The Income Tax department submitted various details of assets recovered during the search, including the receipts in undisclosed bank accounts and documents, but the same does not find mention in the order passed by the Commission. Such non consideration by the Commission of the submission of the department is arbitrary and is in violation of principles of natural justice vitiating the impugned order and hence we have no hesitation in setting aside the impugned orders dated 19/22.08.2016 and 17.02.2017 as being violative of Article 14 of the Constitution of India. The writ petition is allowed. The impugned orders dated 19/22.08.2016 and 17.02.2017 are set aside. Dr. A.K. Sachan had got the benefit of orders passed by the Settlement Commission, which have been set aside by this Court, by filing appeal against the assessment orders passed against him. What transpired at the time of hearing was that at that stage, the department did not prefer any appeal against the order passed by the Commissioner of Income Tax (Appeals) as the tax effect, after giving benefit of the orders passed by the Settlement Commission, was less than the limit prescribed for filing and pursuing the appeals before the Tribunal. As the orders passed by the Settlement Commission have been set aside, to do complete justice, we grant liberty to the department to avail of appropriate remedy against the order passed by the Commissioner of Income Tax (Appeals) dated January 17, 2019 in the

appeal filed by Dr. A.K. Sachan. If any such remedy is availed of within a period of one month from the date of receipt of copy of the order, the same shall not be rejected only on account of delay and shall be considered on merits.

41. We also feel to observe that the conditions as contained in the circular issued by Central Board of Direct Taxes regarding filing or pursuing the appeals at different levels may have to be revisited and certain exceptions may have to be carved out to take care of cases like the one in hand.

42. It has also been brought on record that Dr. A. K. Sachan is a Doctor working as Professor in King Georges Medical University, Lucknow. This fact has come on record as well as in the report submitted by the Commissioner of Income Tax. It is surprising that a person working in a State University is a Director of a private entity and despite huge amounts of money have been found in his personal account including cash during search operations, no action has been taken by his employer which is a State entity. The conduct rules pertaining to government servant and even those employed in public corporation/utilities are not permitted to indulge in private practice unless there is specific rule or provisions in this regard. This Court has been informed that the Doctors of King Georges Medical University are entitled to non-practicing allowance and further that there is bar from private practice which clearly indicates that they cannot work anywhere except for the University where they are appointed.

43. This Court takes a very serious view of the facts placed before it and it is expected that the university concerned and the State Government shall make due inquiries and proceed appropriately against such individuals who are found indulged in blatant private practice and making profits in private companies and also being on their Boards as Directors. Let a copy of this

judgment be forwarded to the Principal Secretary, Medical Education, Government of U.P and the Vice Chancellor of King George Medical University, Lucknow by the Senior Registrar of this Court for compliance.

(Alok Mathur)
Judge

(Rajesh Bindal)
Chief Justice

Lucknow

February 6, 2023

RKM

Whether the order is speaking : Yes/No

Whether the order is reportable: Yes/No