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Commissioner of Income Tax, Kolkata Xx Vs. Income Tax Settlement Commission and anr.

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Court : Kolkata

Decided On : Sep-02-2014

Judge : I. P. Mukerji

Appellant : Commissioner of Income Tax, Kolkata Xx

Respondent : income Tax Settlement Commission and anr.

Judgement :

ORDER

SHEET IN THE HIGH COURT AT CALCUTTA Constitutional Writ Jurisdiction ORIGINAL SIDE WP No.496 of 2014 COMMISSIONER OF INCOME TAX, KOLKATA - XX Versus INCOME TAX SETTLEMENT COMMISSION AND ANR.

BEFORE: The Hon'ble JUSTICE I.P.MUKERJ.Date : 2nd September, 2014.

For Petitioner : For Respondent No.2 : Ms.A.G.

Gutgutia, Advocate Mr.S.K.

Bagaria with Ms.Sweta Ghatak and Mr.G.S.

Gupta, Advocates The Court : In this case, a writ application has been filed challenging the order of the Settlement Commission (IT & WT) dated 14th August,

2013.

By this order the application for the assessment years 2007-08, 08-09 and 10-11 were declared invalid.

With regard to the assessment years 2011-12, 12-13 and 13-14, the assessments were allowed to be proceeded with as a notice under Section 143(2) of the Income Tax Act, 1961 had been issued.

Although for the assessment years 2012-13 and 2013-14, no return had been filed by the assessee, the Settlement Commission held on an interpretation of Section 245A(b) of the said Act and the decision of a Special Bench of the Tribunal in the case of Rescuewear Corporation that an application could be made before the commission irrespective of filing a return for these two assessment years. On that basis the commission held that assessments were pending for those two assessment years. This is challenged by the Revenue.

Apart from the special Bench decision of the tribunal, I find that there is a judgment of Indira Banerjee, J., dated 1st August, 2011 (WP No.341 of 2011 - Director of Income Tax (International Taxation). Kolkata versus Income Tax Settlement Commissioner, Additional Bench, Kolkata & Anr.

with analogous matters). inter alia, holding the following : If the time period to make an assessment had not expired on the date on which the settlement application was made, the commission might entertain and proceed with the same, irrespective of whether income tax returns had been filed or not.

However, where the period of twenty one months from the end of the assessment year expired on the date of making of the application, the settlement application cannot be proceeded with.

The writ applications are disposed of accordingly. I am bound by this judgment although it is contended on behalf of the Revenue that the decision does not reflect the correct view of the law.

The petitioner is at liberty to challenge this decision in a higher Court.

The writ application is, accordingly, dismissed.

Certified photocopy of this order be supplied to the parties, if applied for, upon compliance with the all requisite formalities.

(I.P.MUKERJI, J.) sm

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