

Om Metals and Minerals Pvt. Ltd. : in Re.

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Court : Delhi

Decided On : Jun-13-1991

Reported in : [1992]193ITR57(Delhi)

Appeal No. : Application No. 20/1/57/88-IT

Appellant : Om Metals and Minerals Pvt. Ltd. : in Re.

Judgement :

ORDER

Facts in brief giving rise to the issue to be decided by the Special Bench. - The applicant presented an application under section 245C(1) on June 20, 1988, requesting the Settlement Commission to have its 'case' settled for the assessment years 1980-81 to 1988-89. The said petition was admitted by the Commission by its order under section 245D(1) dated November 9, 1989. After the presentation of the petition but before the name was admitted by the Commission, the Assessing Officer completed the assessment for the assessment year 1986-87 on March 29, 1989, and raised a demand. We were told by Shri G. C. Sharma, Advocate, that, by an order dated March 30, 1989, the Assessing Officer had stayed the collection of this demand till December 31, 1989, without calling upon the applicant to furnish any security/guarantee. We have further been told that, in view of the order passed by the Commission under section 245D(1), the applicant had paid the additional amount of income-tax payable on the income disclosed in the application. The Commissioner of Income-tax, Jaipur, has made a petition dated January 16, 1991, to the Commission, wherein it has been stated by him that the demand raised by the Assessing Officer in respect of the assessment year 1986-87 including interest under section 220(2) up to December 31, 1990, comes to a sizeable sum. Thereafter, he goes on to say as under in his petition :

'As per Departments information, the assessed has not made any efforts to set apart such large funds to meet the demand in case of any eventuality. It is also feared that, with the passage of time, the likelihood of recovery in the case is bound to decline.

Therefore, in view of the entire circumstances, kind indulgence of the Settlement Commission is required. It is requested that the Settlement Commission may pass appropriate orders to enable the department to recover the demand so created, fully or partly. In the alternative, the assessed may kindly be directed to furnish security/guarantees of the equivalent amount.'

2.1 Issues arising for the consideration of the Special Bench. - On the above facts, the issue arising for our consideration is whether the assessment made by the Assessing Officer for the assessment year 1986-87 on March 29, 1989, and the demand created thereby subsists even after the petition made by the applicant under section 245C(1) has been admitted and allowed to be proceeded with ?

2.2 With regard to the petition made by the Commissioner of Income-tax, Jaipur, the applicant has raised a preliminary objection. According to the applicant, the Commissioner of Income-tax has no locus standi to make a petition to the Commission and that the petition made by the Commissioner of Income-tax, Jaipur,

deserves to be rejected as misconceived. We will firstly deal with the preliminary objection raised by the applicant and thereafter deal with the issue mentioned in para 2.1 above.

3.1 Hearing with regard to the preliminary objection. - On behalf of the applicant, it was submitted by Shri G. C. Sharma, Advocate, that the Commissioner of Income-tax had no locus standi to make the petition. In this connection, reference was made by Shri G. C. Sharma, Advocate, to the provisions of sub-sections (1) and (2) of section 245F, which read as under :

'245F. Powers and procedure of Settlement Commission. -(1) 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.

(2) 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.'

It was submitted by Shri G. C. Sharma, Advocate, that, as the Commission had the 'exclusive jurisdiction to exercise the powers and perform the functions of an income-tax authority in relation to the case' and it had been clothed with 'all the powers which are vested in an income-tax authority under' the Income-tax Act, the Commissioner of Income-tax could not have made a petition to the Commission requesting the Commission 'to pass appropriate orders to enable the Department to recover the demand fully or partly' and, in the alternative, to direct the applicant 'to furnish security/guarantees of an equivalent amount'. According to Shri G. C. Sharma, Advocate, the Commissioner of Income-tax was neither a party before the Settlement Commission nor was there any provision in Chapter XIX-A of the Income-tax Act which gave him authority to make a petition to the Commission. It was also submitted by Shri G. C. Sharma, Advocate that, even under section 245DD, the Commission could act suo motu and not at the instance of the Income-tax Department/Commissioner of Income-tax. The petition made by the Commissioner of Income-tax being without any authority, the same, it was submitted, deserved to be rejected as 'ill-conceived and misdirected'.

3.2 On behalf of the Department, it was submitted by Shri Rajendra, Advocate, that, before the settlement petition made by the applicant had been admitted by the Commission, the assessing Officer had created a legal and valid demand and as the applicant had not 'set apart' any funds for meeting the demand created by the Assessing Officer, the Commissioner of Income-tax had approached the Commission with a very fair and reasonable request to safeguard the interests of the Revenue. It was submitted by him that the Income-tax Department was an interested party before the Commission and that the Commissioner of Income-tax had an inherent right to approach the Commission with a view to safeguard the interests of the Revenue. In this connection, it was submitted by Shri Rajendra, Advocate, that the Assessing Officer had authority to make the assessment and create a demand till the petition made by the applicant was admitted by the Commission. In the circumstances, the Assessing Officer, it was stated, had created a demand which was legal and valid. The demand created by the Assessing Officer being legal and valid and as the said demand subsisted even after the settlement petition was admitted, the Commissioner of Income-tax, in view of the provisions of section 245F, had approached the Commission with a very fair and reasonable request. The Commissioner of Income-tax, it was submitted, was not debarred from making a petition to the Commission. In the circumstances, it was submitted by him that the preliminary objection raised by the applicant be overruled.

4. Commissions decision on the preliminary objection. -Having very carefully considered the preliminary objection raised by the applicant as also the submissions of Shri G. C. Sharma, Advocate, and Shri Rajendra Advocate, we are of the considered opinion that the preliminary objection raised by the applicant deserves to be overruled. Before the settlement petition was admitted by the Commission, the Assessing Officer had the authority to make assessment(s) and raise demand(s). After the petition was admitted, the Commission had 'exclusive jurisdiction to exercise the powers and perform the functions of an income-tax authority in

relation to the case'. And it is precisely for this reason that the Commissioner of Income-tax has requested the Commission to 'pass appropriate orders to enable the Department to recover the demand ... fully or partly' or, in the alternative, to direct the applicant 'to furnish security/guarantee' so that the interests of the revenue are properly safeguarded. We are of opinion that the Income-tax Department is an interested party in the proceedings before the Settlement Commission and there is no provision in Chapter XIX-A of the Income-tax Act which debars the Commissioner of Income-tax from making a petition of the type he has made to us. In the circumstances, the preliminary objection raised by the applicant is overruled.

5.1 Hearing with regard to the principal issue (vide para 2.1 above). - In support of the petition dated January 16, 1991 made by the Commissioner of Income-tax, Jaipur, it was stated by Shri Rajendra, Advocate, that the order of the Commissioner under section 245D(4) could be likened to an order of the Income-tax Appellate Tribunal and, in this connection, he relied on the decision of the Delhi High Court in the case of Bharat Commerce and Industries Ltd. v. Union of India : [1991]188ITR277(Delhi) . Secondly, Shri Rajendra, Advocate, invited our attention to the proviso to section 220(2) which reads as under :-

'If the amount specified in any notice of demand under section 156 is not paid within the period limited under sub-section (1), the assessed shall be liable to pay simple interest at one and one-half per cent. for every month or part of the month comprised in the period commencing from the day immediately following the end of the period mentioned in sub-section (1) and ending with the day on which the amount is paid :

Provided that, where as a result of an order under section 154, or section 155, or section 250, or section 254, or section 260, or section 262, or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under this section had been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded.'

The language of the proviso to section 220(2), it was submitted, very clearly indicated that the assessment made before the admission of the settlement application subsisted even after the admission of the settlement application. Thirdly, Shri Rajendra, Advocate, invited our attention to the decision of the Karnataka High Court in the case of N. Krishnan v. Settlement Commission 0065/1989 : [1989]180ITR585(KAR) , wherein, at page 596, it has been observed as under :

'Thus, the Settlement Commission is held to be a Tribunal ... It is a forum for self-surrender and seeking relief and not a forum for challenging the legality of assessment order or orders passed in any other proceedings ... The provision for settlement would show that it is in the nature of statutory arbitration to which a person may submit himself voluntarily.'

These observations, it was submitted, very clearly indicated that it was not open to the applicant to challenge the 'legality of assessment orders or orders passed in any proceedings'. It was the contention of Shri Rajendra, Advocate, that there was nothing in Chapter XIX-A which supported the view that the assessment orders passed before the admission of the settlement petition did not subsist after the petition was admitted. The orders passed before the admission of the settlement petition were legal and valid and they continued to be so even after the admission of the settlement petition. It was stated that the same were amenable to change by orders passed under section 245D(4) of the Act. Such being the position in law, it was urged by Shri Rajendra, Advocate, that the Commission may pass appropriate orders on the petition made by the Commissioner of Income-tax, Jaipur.

5.2 On behalf of the applicant, it was submitted by Shri G. C. Sharma, Advocate, that the proceedings before the Settlement Commission were neither proceedings for assessment nor continuation of any assessment proceedings though they were proceedings of quasi-judicial nature regulated by statute for the settlement of the terms stated in the application including determination of tax, penalty or interest payable, if any, by the applicant. It was submitted by him that Chapter XIX-A entitled 'Settlement of Cases' was a complete code in itself for settling cases and its provisions were not subject to any procedures or rules laid down in the Income-tax Act for the purposes of making assessments of total income. It was his submission that, while making the

order under section 245D(4), the Settlement Commission did not pass an assessment order but only passed an order as it thought fit on matters covered by the application and any other matter relating to the case not covered by the application but referred to by the Commissioner of Income-tax in his report under section 245D. It was submitted by Shri G. C. Sharma, Advocate, that the Settlement Commission had to pass an order determining the sum due to be paid by the applicant and the manner of payment. After offering these preliminary remarks. Shri G. C. Sharma, Advocate, invited our attention to the provisions of sub-sections (6) and (7) of section 245D. It was submitted by him that according to the provisions of section 245D(6) 'every order passed under sub-section (4) . . . shall be void if it is subsequently found by the Settlement Commission that it had been obtained by fraud or misrepresentation of facts'. According to section 245D(7), 'where a settlement becomes void as provided under sub-section (6), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the state at which the application was allowed to be proceeded with by the Settlement Commission and the income-tax authority concerned may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the end of the financial year in which the settlement became void'. And, according to Shri G. C. Sharma, Advocate, the scheme of Chapter XIX-A and sub-sections (6) and (7) of section 245D very clearly indicate that the assessments made before the admission of the settlement petition have to be 'regarded as dead or at least dormant'. According to him, the definition of 'case' (vide clause (b) of section 245A) suggests that all pending proceedings come to an end automatically when the Commission allows the case to be proceeded with under section 245D(1). therefore, the Settlement Commission alone has 'exclusive jurisdiction to exercise the powers and perform the functions of an income-tax authority . . . in relation to the case'. It was submitted by him that no income-tax authority could exercise any powers conferred on him by the Income-tax Act once the settlement petition was admitted by the Commission. Consequently, it was submitted that the Commissioner of Income-tax (Appeals) cannot hear the appeal, the Assessing Officer cannot follow up the assessment order and, therefore, for all practical purposes, the proceedings before them become 'dead or at least dormant'. It was contended by him that, if one proceeded on the basis that the assessment order subsisted even after the admission of the settlement petition, the applicant would be required to pay tax twice, once in terms of the demand notice issued by the Assessing Officer under section 156 and again as provided in section 245D(2A) on the amount disclosed in the application. Further, it was stated by him that, in case the amount of income-tax payable under section 245D(2A) was not paid within the time allowed by the statute and if the assessment order passed before the admission of the petition subsisted even after the admission of the settlement petition, the applicant would have to pay interest under section 220(2) as also under section 245D(2C). The payment of double tax and interest, it was submitted, could never have been intended by the Legislature. therefore, it was submitted by Shri G. C. Sharma, Advocate, that it would be but fair and proper to regard the assessments made before the admission of the settlement petition 'as dead or at least dormant'. It was stated that since the Settlement Commission had exclusive jurisdiction to exercise the powers and perform the functions of an income-tax authority after the admission of the petition, the demands payable by the applicant after the admission would only be those arising as a result of the orders passed by the Commission under section 245D(1)/4. It was also the contention of Shri G. C. Sharma, Advocate, that the Commissioner of Income-tax (Appeals) or the Deputy Commissioner of Income-tax (Appeals) cannot dispose of an appeal against the order of assessment after a settlement petition has been admitted by the Commission. This was so because the assessment order did not survive. The pending proceedings, it was contended by him, gave birth to a 'case', which would have to be disposed of by the Settlement Commission. According to Shri G. C. Sharma, Advocate, the assessment order passed before the admission of the settlement application became 'dead' as soon as the settlement application was admitted. The Legislature could not have thought of leaving the applicant without any remedy by way of appeal, if the assessment was to stand. It was contended by him that such a position would be unconstitutional. therefore, it was submitted by him that it be held that the assessments made by the Assessing Officer before the admission of the settlement petition became 'dead' once the petition was admitted by the Settlement Commission. It was also the contention of Shri G. C. Sharma, Advocate, that the Commission was in the nature of a court of original jurisdiction. It was not, it was stated by him, a tribunal/court of appeal or revision. Lastly,

it was submitted by Shri G. C. Sharma, Advocate, that the language of section 245HA(1) was significant and that, in view thereof, the assessment orders made before the admission of the petition had to be deemed to be 'deed'. In any case, it was contended by him that such orders would remain 'dormant' and unenforceable till the Commission passed orders under section 245D(4). It was submitted by him that, according to the language of section 245HA(1), the Assessing Officer had to dispose of the case in accordance with the provisions of the Income-tax Act as if no application under section 245C had been made after the Settlement Commission sent the case back to the Assessing Officer. It was submitted that the language of section 245HA(1) supported the applicants contention that the assessment orders passed before the admission of the settlement application were 'dead' as soon as the settlement application was admitted. Without prejudice to the above contentions, it was submitted by Shri G. C. Sharma, Advocate, that, after the settlement application was admitted under section 245D(1), the Commission had the authority and power to stay the operation of any order including an assessment order if it related to a matter covered by the 'case'. In this connection, Shri G. C. Sharma relied on the following observations of their Lordships of the Delhi High Court in the case of Deen Dayal Didwania v. Union of India : [1986]160ITR12(Delhi) :

'We are of the view that in case the Settlement Commission does proceed with the application, then the Settlement Commission will have full power to pass any order it deems fit regarding the settlement. The assessment order or orders if passed will be no impediment to the Settlement Commission in exercising its powers if it decides to exercise them.'

5.3 When asked as to what he had to say with regard to the argument of Shri Rajendra, Advocate, based on the language of the proviso to section 220(2), it was submitted by Shri G. C. Sharma, Advocate, that the language of the proviso to section 220(2) was ambiguous and that the same was inconsistent with the scheme of Chapter XIX-A. It was contended by him that the theory of merger did not apply to orders passed by the Commissioner under section 245D (4). In this connection, Shri G. C. Sharma relied on the provisions of sub-sections (2D) and (6A) of section 245D.

5.4 In reply, it was submitted by Shri Rajendra, Advocate, that up to the time the Settlement Commission assumed jurisdiction, the Income-tax authorities had jurisdiction to deal with all the aspects of the case before them. After the admission, the Settlement Commission assumed exclusive jurisdiction to exercise the powers and perform the functions of an income-tax authority under the Income-tax Act 'in relation to the case.' Only because the Commission acquired exclusive jurisdiction to exercise the powers and perform the functions of an income-tax authority under the Income-tax Act, 'in relation to the case', it would not be correct to say that valid and legal orders passed or actions taken by the Income-tax authorities before the admission of the settlement petition became non-est and that the same had no effect in law. It was submitted by him that the orders passed and the demands raised by the Assessing Officer before the admission of the settlement petition subsisted even thereafter (i.e., after the admission of the settlement petition) and that they would stand modified to the extent indicated in the orders passed by the Commission under section 245D(4). It was the contention of Shri Rajendra, Advocate, that the language of sections 245D(7) and 220(2) fully supported his contention that the assessment orders passed before the admission of the settlement petition subsisted even after the settlement petition was admitted by the Settlement Commission. It was also his contention that the Settlement Commission would, while passing orders under section 245D(4), take care of any anomalous situation arising such as payment of double tax and interest. It was submitted by Shri Rajendra, Advocate, that there was nothing in section 245HA which renders invalid the valid orders passed by Income-tax authorities before the admission of the settlement petition. In the circumstances, it was urged by him that the Commission may pass appropriate orders on the petition made by the Commissioner of Income-tax, Jaipur.

5.4 At this stage, it was stated by Shri G. C. Sharma, Advocate, that the Special Bench may express its opinion on the legal issue and that, thereafter, the Principal Bench of the Settlement Commission at Delhi could pass appropriate orders on the petition of the Commissioner of Income-tax, Jaipur.

6. Special Benches conclusions. - We have very carefully considered the contentions of the applicants counsel as also the Departmental counsel. Shri G. C. Sharma, Advocate, has rightly conceded before us that the Assessing Officer had jurisdiction to deal with the case and pass assessment orders according to law before the admission of the settlement petition. The only question that arises for our consideration is whether the assessment order passed by the Assessing Officer before the admission of the settlement petition subsists even after the admission of the settlement petition. According to us, the assumption of 'exclusive jurisdiction (by the Settlement Commission) to exercise the powers and perform the functions of an income-tax authority . . . in relation to the case' on the admission of a settlement application does not render invalid the valid and legal orders passed and actions taken by the income-tax authorities before the admissions of the settlement petition. The language of sub-sections (6) and (7) of section 245D supports the view that orders passed and actions taken by the income-tax authorities before the settlement application is allowed to be proceeded with by the Settlement Commission are valid and have to be continued from the stage at which the application was allowed to be proceeded with by the Settlement Commission 'if it is subsequently (i.e., after the order under section 245D(4) is passed) found by the Settlement Commission that it (the order under sub-section (4) of section 245D) has been obtained by fraud or misrepresentation of facts'. If the contention of the applicant is accepted, it would mean that, though, according to the language of section 245D(7), the income-tax authorities are required to proceed from the stage at which the proceedings were allowed to be proceeded with by the Settlement Commission, the income-tax authorities would have to ignore all the proceedings prior to the admission of the settlement petition and make orders/take actions over again. This would not be in consonance with the language of section 245D(7). Secondly, the provisions of section 220(2) also very clearly envisage the levy of interest even in cases where the Settlement Commission passes an order under section 245D(4) from the date of passing of the assessment order. Thus, implicit in the language of section 220(2) is the continued existence of the assessment order even after the settlement petition has been admitted. The amount of interest chargeable under section 220(2) gets reduced to the extent indicated in the proviso to the said section. The provisions of sections 245D(6)/(7) and 220(2), in our opinion, clearly support the contention of the Income-tax Department that the assessment orders passed by the Assessing Officer before the settlement petition is admitted subsist even after the settlement petition is admitted by the Settlement Commission. The provisions of section 245DD empower the Settlement Commission to order provisional attachment of any property belonging to the applicant 'during the pendency of any proceeding before it' to safeguard the interests of the Revenue. One is inclined to think that such a provision was not necessary in view of the powers conferred on the Commission by section 245F(1). However, section 245DD appears to have been inserted to put the issue beyond any doubt and debate. It indicates the anxiety of the Legislature to safeguard the legitimate interests of the Revenue. If the Legislature wants to safeguard the legitimate interests of the Revenue so zealously even in cases where orders of assessment or orders under section 245D(4) have not been passed, it could simply not have been the intention of the Legislature to ignore valid and legal demands raised and to treat such demands as 'dead'. We think that accepting the argument of the applicant would be contrary to the legislative intent. Further, in our opinion, there is nothing in the language of section 245HA(1) which renders invalid the valid and legal orders passed by the income-tax authorities/Income-tax Appellate Tribunal/High Court/Supreme Court before the admission of the settlement petition under section 245D(1). Section 245HA(1) empowers the Commission to send back the case to the Department if the applicant 'has not co-operated with the Settlement Commission in the proceedings before it'. Secondly, it says that when the Settlement Commission sends back the case to the Assessing Officer, he 'shall thereupon dispose of the case in accordance with the provisions of this Act as if no application under section 245C has been made'. Thirdly, according to the provisions of section 245HA(2), the Assessing Officer is 'entitled to use all the materials and other information produced by the assessed before the Settlement Commission or the results of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it as if such materials, information, inquiry and evidence had been produced before the Assessing Officer or held or recorded by him in the course of the proceedings before him'. Lastly, sub-section (3) of section 245HA provides for exclusion of 'the period commission under section 245C and ending with the date of receipt by the Assessing Officer of the order of the Settlement Commission sending

the case back to the Assessing Officer' for the purposes of the time limit under certain sections in a case where the matter has been sent back by the Commission to the Department under section 245HA(1). When section 245HA says that the Assessing Officer, on receipt of the case from the Settlement Commission under section 245HA(1), 'shall . . . dispose of the case in accordance with the provisions of' the Income-tax Act 'as if no application under section 245C had been made', all that it means is that the Assessing Officer shall take such further proceedings in the case as the mean that whatever valid and legal orders have been passed before the admission of the settlement petition have to be ignored. The proceedings are to be continued from the stage where the Assessing Officer/income-tax authority was divested of his jurisdiction on admission of the settlement petition and he has to proceed with the further proceedings and dispose of the case. We are of the opinion that the word 'case' in section 245HA(1) cannot be given the restricted meaning assigned to it under section 245A(b). It would mean 'the case' in a very wide sense and would encompass all proceedings which can be taken in respect of the case of the applicant. If 'case' in section 245HA(1) is given the restricted meaning assigned to it in section 245A(b), and suppose the applicant has approached the Commission when appeal or revision proceedings were pending in his case, how can the Assessing Officer 'dispose of the case' when he receives back the same from the Settlement Commission. The scheme of section 245HA is that the Income-tax authorities get back the jurisdiction which they had lost on the admission of the settlement petition and can continue the proceedings from the stage where they were divested of the jurisdiction. Any other interpretation of section 245HA will not be in consonance with the other provisions such as sections 245D(6), (7), 220(2), etc. And however, to hold that valid actions taken by the Income-tax Department are rendered invalid would amount to rewarding a recalcitrant assessed when the purpose of section 245HA is otherwise. As regards the contention of Shri G. C. Sharma, Advocate, that, if one proceeded on the basis that the assessment order subsisted even after the admission of the settlement petition, there would be double payment of tax and interest and that the Legislature could not have intended payment of double tax and interest, we are inclined to accept the contention of Shri Rajendra, Advocate, that in cases where injustice is likely to be caused to the applicant, the Settlement Commission would pass appropriate orders under section 245D(4) as the circumstances of the case warrant.

6.2 For the above-stated reasons, we hold that the Commissioner of Income-tax had locus standi to approach the Commission with a petition of the type made by the Commissioner of Income-tax, Jaipur, and that the assessment made by the Assessing Officer before the admission of the settlement petition under section 245D(1) subsists even after the petition made under section 245C(1) has been admitted and allowed to be proceeded with.

7. Having regard to the aforesaid discussion, the Principal Bench of the Settlement Commission at Delhi may pass appropriate orders on the petition dated January 16, 1991, made by the Commissioner of Income-tax, Jaipur.