

C.A. Abraham and ors. Vs. Assistant Commissioner of Income-tax and ors.

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Court : Chennai

Decided On : Dec-21-1999

Reported in : [2002]255ITR540(Mad)

Judge : K. Govindarajan, J.

Acts : [Income Tax Act, 1961](#) - Sections 158BC, 245D and 245D(4); [Constitution of India](#) - Article 226

Appeal No. : Writ Petition Nos. 15853, 17150, 17151, 17160, 17462, 18472, 18558, 18751, 18756, 18757, 18764 and 1

Appellant : C.A. Abraham and ors.

Respondent : Assistant Commissioner of Income-tax and ors.

Advocate for Def. : C.V. Rajan, Adv.

Advocate for Pet/Ap. : K. Ramagopal, Adv.

Disposition : Writ petitions dismissed

Judgement :

K. Govindarajan J.

1. A search was conducted on the residential premises of Sri C. A. Abraham (SR) on December 14,1995. During the course of search, the officials had seized

certain incriminating documents revealing the investments made by him in movable and immovable properties. It was also revealed, the assessee was doing business in benami names. So a notice under Section 158BC of the Income-tax Act, 1961, was issued to him on June 13, 1996. In response to the notice the said Abraham filed a return, declaring his undisclosed income at Rs. 1,50,000 on August 29, 1996. The Assistant Commissioner of Income-tax, Investigation Circle-1, Trichur, after hearing the assessee's representative found that the assessee did not explain the sources of investment in properties and he did not adduce any reason for not filing the return in conformity with the declaration made under Section 132(4) of the Income-tax Act. Though the assessee requested to keep the proceedings abide till the petition filed by the assessee is disposed of, the Assistant Commissioner of Income-tax did not accede to the same, as the assessment would become time barred by December 31, 1996. So he computed the income on the basis of the materials available on record and he passed the order determining the undisclosed income at Rs. 66,58,300 in his proceedings dated December 23, 1996. Thereafter, the said Abraham, his wife, his three sons who are associated with Mr. Abraham as partners in the firms of Shoranur Road Transport, Mayilvahanan Roadlines and Mayilvahanan Industries have also joined with the above said persons to file applications before the Settlement Commission. Since the issues involved are connected, the Settlement Commission considered the applications jointly and passed orders on December 21, 1998. Thereafter, the petitioner and his wife, Annama Abraham, and his three sons filed miscellaneous applications to direct that the undisclosed income be recomputed on the basis of the findings under the provisions of Chapter XIV-B of the Income-tax Act. In the proceedings dated May 14, 1999, the Settlement Commission rejected the applications filed by the assessee stating that the applications in effect seeking review of the order under Section 245D(4) of the Income-tax Act cannot be entertained as the order passed under Section 245D(4) has become final and conclusive as to the matters stated therein in view of Section 245D(1) of the Income-tax Act.

2. The petitioners filed W. P. Nos. 15853, 17462, 18472, 18558, 18751, 18757, 18764 and 18932 of 1999 challenging the order of the Settlement Commission dated December 21, 1998, and seeking a direction to the Settlement Commission

to pass orders in accordance with Chapter XIV-B of the Income-tax Act, 1961.

3. In W. P. Nos. 17150, 17151, 17160 and 18756 of 1999, the petitioners have challenged the order dated May 14, 1999, in which the Settlement Commission rejected the miscellaneous petitions and reviewed its own order.

4. The main ground raised in these writ petitions as stated in the affidavit and as submitted by learned counsel are, the block assessment which has been made by the first respondent, Assistant Commissioner of Income-tax, should be confined only to the income detected or discovered from the records and documents as a result of search and in respect of other income, the authorities have to assess in the regular assessment under Section 143 of the Act. It is also stated that the income which is not detected due to the search cannot be construed as 'undisclosed income' for the purpose of assessing the petitioners' income under Chapter XIV-B of the Income-tax Act.

5. Learned counsel for the petitioners has stressed the point stating that only the undisclosed income alone can be taken into consideration for the purpose of assessment under Chapter XIV-B of the Income-tax Act. With respect to the other income the authorities should assess on regular basis under section 143(2) of the Income-tax Act and if the petitioners are aggrieved, they can always challenge the same by way of appeal or revision. Moreover, with respect to such income, the petitioners should not be made liable to pay 60 per cent, tax as contemplated under Section 113 of the Income-tax Act.

6. While replying to the said submission of learned counsel appearing for the petitioners, Mr. Rajan, standing counsel for the Department, has submitted that the Assistant Commissioner has taken into consideration only the undisclosed income arrived at pursuant to the search and not other income as alleged by learned counsel for the petitioners. Relying on the judgments reported in R.B. Shreeram Durga Prasad and Fatechand Nursing Das v. Settlement Commission (I. T. and W. T.) : [1989]176ITR169(SC) and in Jyotendra sinhji v. S. I. Tripathi : [1993]201ITR611(SC) , he has submitted that the judicial review with respect to the orders of Settlement Commission is very restricted. Learned counsel also has submitted that a review application cannot be maintained and so the rejection of

the miscellaneous applications was only in accordance with law.

7. Though learned counsel appearing for the petitioners took me through various provisions of the Income-tax Act, in support of his submission that the Assistant Commissioner has taken into consideration all the income which cannot be construed as undisclosed income as defined under Section 158B(b) of the Income-tax Act, the Settlement Commission failed to appreciate the same by rejecting the miscellaneous petitions, I am not inclined to deal with the same elaborately in view of the scope of dispute in this case. The only dispute in this case is, according to the petitioners, the Assistant Commissioner while making assessment of undisclosed income of the block period, has taken into consideration all the income which cannot be construed as undisclosed income.

8. So, it has to be decided whether the undisclosed income has been taken into consideration for the purpose of assessment under Chapter XIV-B of the Income-tax Act and even if it is, whether this court can go into that question at this stage.

9. Chapter XIV-B, consisting of sections 158B to 158BH was inserted by the Finance Act, 1995, and it came into force with effect from July 1, 1995. Under the said Chapter, a special procedure for assessment of undisclosed income has been contemplated as a result of search. Section 132 of the Income-tax Act gives power for certain seizure. The said procedure is for assessment of undisclosed income as defined under Section 158B(b) of the Income-tax Act. For convenience, the said provision is extracted hereunder.

'158B. In this Chapter, unless the context otherwise requires,--

(a) 'block period' means the previous years relevant to ten assessment years preceding the previous year in which the search was conducted under Section 132 or any requisition was made under Section 132A and includes, in the previous year in which such search was conducted or requisition made, the period up to the date of the commencement of such search or, as the case may be, the date of such requisition :

(b) 'undisclosed income' includes any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of account or other documents or transactions, where such money, bullion, jewellery, valuable article, thing, entry in the books of account or other document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of this Act.'

10. Under Section 158BA(1) the Assessing Officer can proceed to assess the undisclosed income only if a search is initiated under Section 132 of the Income-tax Act by the concerned officer. As specified under Section 113 of the Income-tax Act, the total undisclosed income relating to the block period has to be charged to tax at the rate of 60 per cent, after making assessment of undisclosed income in accordance with the provisions of Chapter XIV-B by the Assessing Officer. The said assessment has to be made irrespective of the previous year or years to which such income relates and irrespective of the fact whether regular assessment for any one or more of the relevant assessment years is pending or not. Section 158BB of the Income-tax Act deals with the computation of undisclosed income of the block period. According to the said provision the undisclosed income of the block period shall be the aggregate of the total income of the previous years falling within the block period computed. Section 158BC contemplates procedure for block assessment. From the above provisions, it is very clear that the first respondent is empowered to assess the petitioners' undisclosed income under Chapter XIV-B of the Income-tax Act.

11. There cannot be any doubt that the procedure contemplated under Chapter XIV-B of the Act is different and independent from the regular assessment under Section 143 of the Income-tax Act, to decide the present issue raised before me. I have to find out whether the petitioners are correct in saying that even the income other than undisclosed income has been taken into consideration for the purpose of assessment under Chapter XIV-B of the Income-tax Act.

12. The first respondent passed an order under Chapter XIV-B of the Income-tax Act on December 23, 1996. The petitioners made an application invoking the jurisdiction of the Settlement Commission under Section 245D of the Income-tax

Act to settle the dispute. So the Settlement Commission only on the basis of the applications filed by the petitioners under Section 245C of the Act, passed the order. It is relevant to mention here that the order passed by the first respondent dated December 23, 1996, has become final subject to the modification of the Settlement Commission. The petitioners have not challenged the said order of the Assistant Commissioner. Even before the Settlement Commission originally the petitioners did not raise the issue saying that the income which is not undisclosed on the basis of the search, has been taken into consideration for the purpose of assessment under Chapter XIV-B of the Income-tax Act. Only by way of miscellaneous petitions, the petitioners have taken the said issue before the Settlement Commission. The Settlement Commission has rightly rejected the same as the order passed by the Settlement Commission has become final and there is no ground to review the matter. Now, by filing these writ petitions, the petitioners are challenging the order of the first respondent indirectly.

13. When the petitioners have not raised the issue in question before the Settlement Commission, the petitioners cannot expect the Commission to decide about the same. Moreover, the Settlement Commission has decided the issue on the basis of the petitioners' application disclosing full and true income which were not disclosed before the Assessing Officer and the materials placed by the petitioners by way of annexure.

14. As submitted by learned standing counsel, the court's power of judicial review on the decision of the Settlement Commission is very restricted. In *R.B. Shreeram Durga Prasad and Fatechand Nursing Das v. Settlement Commission (I. T. and W. T.)* : [1989]176ITR169(SC) , the apex court has held as follows (page 175) :

'In exercise of our power of judicial review of the decision of the Settlement Commission, we are concerned with the legality of procedure followed and not with the validity of the order. See the observations of Lord Hailsham in *Chief Constable of the North Wales Police v. Evans* [1982] 1 WLR 1155. Judicial review is concerned not with the decision, but with the decision-making process.'

15. Even in *Jyotendrasinghi v. S. I. Tripathi* : [1993]201ITR611(SC) , the apex court while dealing with the power of judicial review of the order of the Settlement

Commission has held as follows (page 623) :

'The scope of enquiry, whether by the 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, apart from ground of bias, fraud and malice which, of course, constitute a separate and independent category, has it prejudiced the petitioner/appellant. Reference in this behalf may be had to the decision of the court in *R.B. Shreeram Durga Prasad and Fatechand Nursing Das v. Settlement Commission (I. T. and W. T.)* : [1989]176ITR169(SC) , 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 the 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 North Wales Police v. Evans* [1982] 1 WLR1155. Thus, the appellate power under Article 136 was equated with the 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.'

16. In the present case, the first respondent and the Settlement Commission proceeded on the basis the income dealt with in the orders are only undisclosed income and they have been taken into consideration for the purpose of assessment of block period. So this court now while exercising jurisdiction under Article 226 of the [Constitution of India](#) cannot go into the facts whether those incomes are undisclosed income or the income other than undisclosed income. So it cannot be said that the Settlement Commission has followed an illegal procedure so as to enable this court to interfere with the order of the Commission. No argument was made how the order rejecting the miscellaneous petition is wrong. Moreover, the issue raised in the writ petition was raised only by way of review applications. This view is supported by the following portion of the order of the

Settlement Commission.

'These applicants have claimed that the aforesaid benami concerns were being regularly assessed to income-tax in the status of firm and they had also paid the tax demands raised for the various assessment years forming part of the block period. It is pointed out that there will be double taxation if the same incomes are being assessed once again in the hands of the present appellants unless credit is given in their hands for the taxes already paid by these firms. Accordingly, the applicants pray for a direction for adjusting all the tax payments already made by the benami concerns, against the demands arising in their cases, as per the present order under Section 245D(4) of the Income-tax Act.

Though there may be some force in the applicant's contentions, strictly according to law, we cannot direct the Assessing Officer to adjust the tax payments made by the benami concerns, against the payments arising as a result of our present order. There is no provision in this regard in Chapter XIX-A of the Income-tax Act. However, it is open to the above benami firms to file applications under Section 264 of the Income-tax Act before the Commissioner of Income-tax requesting him to pass such order thereon not being an order prejudicial to the assessment, so that their assessed returned incomes for the relevant assessment years, which have been included in the hands of the present applicants, are excluded from their assessments. Considering the principles of natural justice, we hope that the Commissioner would condone the delay in filing the revision applications as per the proviso of Section 264(3) of the Income-tax Act.'

17. The Settlement Commission has computed the income of the petitioners only on the basis of the annexures to the order. In the order, it is specifically stated that the petitioners offered the unaccounted incomes of the concerns of their own in the respective settlement applications.

18. Hence, I do not find any merit in the writ petitions and the same are dismissed. Consequently, the connected miscellaneous petitions are also dismissed. No costs.