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Court : Chennai

Decided On : Mar-14-2007

Reported in : [2008]302ITR139(Mad)

Judge : P.D. Dinakaran and ;Chitra Venkataraman, JJ.

Acts : Income Tax Act, 1961 - Sections 245C, 245C(1) and 264

Appeal No. : W.P. Nos. 29573 and 41014 of 2002

Appellant : M. Loganathan

Respondent : Government of India Represented by Commissioner of Income-tax and ors.

Advocate for Def. : Pushya Sitaraman, Adv.

Judgement :

Chitra Venkataraman, J.

1. W.P. No. 29573 of 2002 is against the order of the Commissioner of Income-tax-II, Coimbatore, seeking a writ of certiorari to quash the order dated April 10, 2002. W.P. No. 41014 of 2002 is filed by the very same petitioner against the order of the Settlement Commission, the first respondent therein, wherein the

petitioner seeks a writ of certiorari to quash the order dated September 19, 2000.

2. It is seen that the petitioner, an assessee on the file of the second respondent, filed a petition for settlement of his case under Section 245C(1) of the Income-tax Act, 1961, before the Settlement Commission, the first respondent in W.P. No. 41014 of 2002, on September 19,1999. It is stated by the petitioner herein that he had preferred appeals in respect of the assessment years 1992-93, 1993-94 and 1996-97. By letter dated March 23, 2000, the chartered accountant representing the petitioner herein, filed a petition before the Commissioner of Income-tax (Appeals) for withdrawal of the above appeals. Accordingly, the Commissioner of Income-tax (Appeals) the second respondent in W.P. No. 41014 of 2002, by order dated March 30, 2000, dismissed the appeals as infructuous. When the matter was taken up by the Settlement Commission, the first respondent herein noted that the petitioner had withdrawn the appeals, which would relate back to the date of filing of the application dated July 19, 1999. Once the appeals were withdrawn, it would mean that no appeals were filed at all and pending as on the date of the filing of the application under Section 245C(1); as such, the application before the first respondent itself is not maintainable. In the circumstances, the conditions necessary for entertaining the application for settlement itself not existing, the application for settlement itself was liable to be rejected. Thus, by order dated September 19, 2000, the application relating to the assessment years 1992-93, 1993-94 and 1996-97 stood was rejected by the first respondent in limine.

3. Thereupon, the chartered accountant filed an application before the second respondent by swearing to an affidavit, stating that on the misunderstanding and misconstruction of the relevant provisions of the Act, the appeals were withdrawn. He further submitted that since the maintainability of the application before the first respondent itself is dependent on the pendency of proceedings before the tax authorities, he prayed that the order passed on March 30, 2000, be withdrawn and the appeals restored.

4. It is stated that the petitioner preferred a petition before the Commissioner of Income-tax-II, Coimbatore, under Section 264 of the Income-tax Act, seeking admission of his revision. He also filed an application for condonation of delay of

19 months in preferring the application. He stated therein that the authorised representative had not obtained any consent before withdrawing the appeal and that he came to know about the withdrawal only long thereafter. He also referred to the major fire accident that took place on December 8, 1999, causing heavy damage to his business. Hence, he prayed for the condonation of delay.

5. By order dated April 10, 2002, the Commissioner of Income-tax-II, Coimbatore, rejected this petition on the view that the assessee had not explained satisfactorily as to why it took 19 months for the petitioner to prefer an application under Section 264 of the Income-tax Act and that his contention that he was prevented from filing a petition under Section 264 in view of the fire accident bore no substance. Considering the fact that the assessee had not proved the delay with sufficient cause, the petition was dismissed.

6. The writ petitioner has preferred the writ petition challenging the order of the Commissioner of Income-tax-II, Coimbatore, in W.P. No. 29573 of 2002, wherein, the Commissioner of Income-tax-II is the first respondent.

7. Aggrieved by the order of the Settlement Commission dated September 19, 2000, W.P. No. 41014 of 2002 has been preferred by the petitioner seeking the prayer of a writ of certiorari to quash the order.

8. Learned Counsel appearing for the petitioner submitted that the mistake committed in withdrawing the appeal was bona fide, and hence, the Settlement Commission should have taken up the case for consideration on the merits.

9. We do not agree with the submission made by learned Counsel for the petitioner. One of the requirements for entertaining the application for settlement under Section 245C is the pendency of the proceedings before the tax authorities. Since admittedly the withdrawal of the appeal means no pendency of the proceedings before the tax authorities, rightly the Settlement Commission rejected the prayer for settlement as regards the assessment years 1992-93, 1993-94 and 1996-97. However, as regards the assessment year 1997-98 considering the pendency of the proceedings for the said assessment year, the Settlement Commission took up the matter for consideration. Considering the legal

requirement for the maintainability of the application before the Settlement Commission, we do not find any infirmity in the view taken by the Settlement Commission. Consequently, W.P. No. 41014 of 2002 is dismissed.

As regards W.P. No. 29572 of 2002 seeking a writ of certiorari to quash the order of the Commissioner of Income-tax-II dated April 10, 2002, dismissing the petition to condone the delay, we do not find any ground to reject the reasons stated therein for rejecting the application for condonation of delay in preferring the revision. Consequently, W.P. No. 29572 of 2002 also stands dismissed. No costs. Connected W.P.M.P. No. 48001 of 2002 is closed.

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