

IT: Where material was available before Settlement Commission which was considered for determining undisclosed income on basis of gross profit rate, such addition was just



[2013] 35 taxmann.com 588 (Punjab & Haryana)

HIGH COURT OF PUNJAB AND HARYANA

Supreme Agro Foods (P.) Ltd.

v.

Income-tax Settlement Commission*

HEMANT GUPTA AND RITU BAHRI, JJ.

CWP NO. 531 OF 2013

JANUARY 14, 2013

Section 245C of the Income-tax Act, 1961, read with rule 9 of Income-tax (Settlement Commission) Rules, 1997 - Settlement Commission - Application for settlement of cases [Conditions precedent] - Assessee resisted application of 12% gross profit rate by Settlement Commission on ground that such gross profit rate could be applied only during course of assessment and it could not be made part of settlement, when same was not an issue raised by Commissioner in his report submitted in terms of rule 9 - Commissioner in his report under rule 9 had not referred to gross profit rate applied by assessee as an objection for settlement but fact remained that Settlement Commission had found that rate of profit adopted by assessee was in fact leading to undisclosed income and, thus, made an addition on basis of information submitted by assessee - Whether since material was available before Settlement Commission and such material had been taken into consideration for returning a finding which was relevant for determining undisclosed income of assessee, addition made on basis of gross profit rate was just - Held, yes [Para 7] [In favour of revenue]

CASE REVIEW

Brij Lal v. CIT [2010] 328 ITR 477/194 Taxman 566 (SC) (para 6) and *CIT v. Godwin Steels (P.) Ltd.* [2012] 206 Taxman 96/19 taxmann.com 16 (para 6) distinguished.

CASES REFERRED TO

Brij Lal v. CIT [2010] 328 ITR 477/194 Taxman 566 (SC) (para 4), *CIT v. Godwin Steels (P.) Ltd.* [2012] 206 Taxman 96/19 taxman.com 16 (para 4).

Radhika Suri for the Petitioner.

ORDER

1. Challenge in the present writ petition is to an order passed by the Income Tax Settlement Commission (for short the 'Commission') dated 30.10.2012, deciding the request of the petitioner for settlement in terms of the provisions of Section 245C of the Income Tax Act, 1961 (for short the 'Act').
2. The grievance of the petitioner is in respect of application of 12% gross profit rate on the ground that

such gross profit rate could be applied during the course of the assessment and cannot be made part of settlement, when the same was not an issue raised by the Commissioner of Income Tax in his report submitted in terms of Rule 9 of the Income Tax Settlement Commission (Procedure) Rules, 1997 (for short the 'Rules')

3. We have heard learned counsel for the petitioner at some length and find no merit in the present petition. A perusal of the order shows that the Commission has taken into consideration the following facts at the time of passing of the order:-

Assessment year	Gross profit rate applied by petitioner	Amount of Profit as per petitioner	Income found to undisclosed by Commission	Difference
1998-1999	7.26%	1,11,04,486	1,83,48,418	72,43,932
1999-2000	8.32%	1,73,17,216	2,49,90,576	76,73,360

4. Learned counsel for the petitioner argued that the issue before the Commission was in respect of cash credit entries amounting to Rs. 3,13,89,655/- and not the income derived from its business. An issue which was not raised by the Commissioner in his report nor such an issue was arising for consideration before the Commission, therefore, the same cannot be taken into consideration to return a finding that there was an undisclosed income only for the reason that the less gross profit rate was applied. It is contended that the proceedings before the Commission and proceedings for assessment are distinct and that the factors which may be relevant for assessment, are not relevant and cannot be taken into consideration for the purpose of settlement. In support of arguments, learned counsel for the petitioner relied upon a judgment of Hon'ble the Supreme Court reported as *Brij Lal v. CIT* [2010] 328 ITR 477/194 Taxman 566 in respect of scope of powers of the Commission under Section 245C of the Act. Reliance is also placed upon an order of Delhi High Court in *CIT v. Godwin Steels (P.) Ltd.* [2012] 206 Taxman 96/19 taxmann.com 16.

5. No doubt, the Commissioner of Income Tax in his report under Rule 9 of the Rules, has not referred to gross profit rate applied by the petitioner as an objection for the settlement but the fact remains that the Commission has found that the rate of profit adopted by the assessee was in fact leading to undisclosed income and thus made an addition on the basis of the information submitted by the assessee. In fact the order passed by Delhi High Court in *Godwin Steels P. Ltd. (supra)* negates the arguments raised by the petitioner. The court held that the Commission has to consider the material brought on record before it and that consideration means independent examination of the evidence and the material on record. The relevant extract is as under:-

"The aforesaid sub-section requires that the materials brought on record before ITSC shall be 'considered' by the members before passing any final order under sub-section (4). The word 'consideration' means an independent examination of the evidence and materials brought on record before the ITSC by the members and application of mind thereto with a view to independently assess the materials and evidence, whether adduced by the assessee-applicant or by the CIT and come to a conclusion by themselves."

6. The judgment in *Brij Lal's* case (*supra*) has no applicability to the facts of the present case. In the aforesaid judgment, Hon'ble the Supreme Court has discussed the scope of Section 245-C of the Act. There is no finding that the gross profit ratio can be applied only during the assessment proceedings and not in the proceedings under Section 245C of the Act.

7. Since, the material was available before the Commission and such material has been taken into consideration for returning a finding which is relevant for determining undisclosed income of the petitioner. We do not find such order warrants interference in exercise of the writ jurisdiction of this Court as a part of the process of judicial review.

Dismissed.

Pooja

*In favour of revenue.