

[1999] 102 TAXMAN 546 (MAD.)
HIGH COURT OF MADRAS
V.M. Shaik Mohammed Rowther

v.

Settlement Commission

JAYASIMHA BABU, J.
W.P. NO. 14635 OF 1995 AND W.M.P. NOS. 23284 AND 23285 OF 1995
NOVEMBER 20, 1998

Section 245C of the Income-tax Act, 1961 - Settlement Commission - Application for settlement of cases - Assessment years 1976-77 to 1986-87 - Whether assessee has no right to approach Commission without disclosing or making a full and true disclosure of his income as such disclosure is a necessary precondition for invoking Commission's jurisdiction under section 245C - Held, yes - Whether, therefore, assessee's failure to make a full and true disclosure being patent in instant case, Commission's order rejecting assessee's application for settlement did not suffer from any infirmity - Held, yes

FACTS

The petitioner had promoted a private limited company for setting up a factory with the total investment of Rs. 75.5 lakhs, and claimed that the only source of investment made was income derived from agriculture and dairy farming by himself, his wife and daughter. However, both the Assessing Officer and the Commissioner had rejected such claim holding that the entire investment could not be attributable to that source above and was unexplained.

The petitioner thereupon applied to the Settlement Commission offering to pay tax on a part of the investments willing to be treated as from his own resources but subject to certain conditions. The Settlement Commission rejected the application after finding that the assessee had failed to make a full and true disclosure of his income before the Assessing Officer.

On writ, the assessee contended that an application could be rejected only on the ground of non-co-operation by the assessee or on the ground that the complexity of the investigation involved warranted such rejection.

HELD

No assessee has a right to approach the Commission without disclosing or making a full and true disclosure of his income as such disclosure is a necessary precondition for invoking the Commission's jurisdiction under section 245C. An application to the Commission is not intended to enable the dishonest assessee to continue his dishonest conduct and still claim the benefits which can be conferred by the Commission if the Commission were to ultimately make an order for settlement.

The Settlement Commission is not meant to be an optional forum chosen at the option of the assessee for the settlement of the tax liability of the assessee as also his liability for further proceedings or prosecution under this Act or other Acts, even while the assessee continues to be dishonest and deliberately fails to make a true and full disclosure of the extent of the income which he had not disclosed before the Assessing Officer. The machinery of the Settlement Commission is available to the assessee who after exhibiting his dishonest conduct by filing a return in which true income has not been disclosed, has availed of the chance to correct himself by making true and full disclosure before the Commission. There is no right in the assessee to invoke the Commission's jurisdiction even while he continues with his dishonest conduct.

Section 245D enables the Commission, inter alia, having regard to the nature and circumstances of the case to allow the application to be proceeded with or reject the application. The circumstances of the instant case had been considered by the Commission after calling for a report of the Commissioner. It was on such consideration the Commission had rejected the application. The reasons given for such rejection were reasons which were clearly relevant. The assessee's failure to make a full and true disclosure being patent, it was not necessary for the Commission to proceed with further consideration of the application only to pass an order of rejection at the end of such further proceeding. Hence, the impugned order did not suffer from any infirmity and the writ petition was dismissed accordingly.

V. Ramachandran and **K. Mani** for the Petitioner. **C.V. Rajan** for the Respondent.

ORDER

1. A right to be dishonest is the right that is asserted by the petitioner herein. It is his contention that the Settlement Commission has a duty to entertain the offer made by the petitioner even if found to be falling far short of full and true disclosure required of an applicant under section 245C of the Income-tax Act, 1961 ('the Act') and not to reject the same under section 245D(1).

2. The petitioner set up a factory near Coimbatore for the manufacture of synthetic gems. He promoted a private limited company for that purpose. The shares of that company are held by the petitioner, his wife and daughter. The total investment made is Rs. 75.5 lakhs. The only source from which that investment was made was claimed by the assessee to be the income derived from agriculture and dairy farming by himself, his wife and daughter. He claimed that besides 15 acres of agricultural land owned by his wife, she had taken on lease 100 acres of land and had derived substantial income therefrom. It is not in dispute that the petitioner, his wife and his daughter are not assesseees under the Agricultural Income-tax Act of State and there was also no evidence of their having compounded their liability, if any, for tax under the Tamil Nadu Agricultural Income-tax Act. The Assessing Officer as also the Commissioner had rejected the claim of the petitioner that the entire investment came from that source and had held that well over Rs. 50 lakhs out of that investment was not attributable to that source at all and was unexplained.

3. The petitioner applied to the Settlement Commission in that background seeking settlement in respect of the assessment years 1976-77 to 1986-87 offering to pay tax on the sum of Rs.30 lakhs which sum he was willing to have treated as investments made by the applicant from his own resources and not as investment made by his wife and daughter. The offer so made was subject to several conditions. The conditions as enumerated by him in this application were :

(i) Tax shall be levied on the aforesaid income for the assessment years 1976-77 to 1986-87.

(ii) No interest under any of the provisions of the Income-tax Act or the Wealth-tax Act shall be levied.

(iii) No penalty under any of the provisions of the Act shall be levied.

(iv) No penal action including prosecution shall be initiated against the applicant in respect of the aforesaid assessments under the Income-tax Act or the Wealth-tax Act.

(v) The applicant, his wife and daughter shall be assessed to wealth-tax in respect of the investments. The investments in the respective names shall be treated as belonging to each of them.

(vi) The applicant is willing to pay the tax remaining due after adjusting the payment already made within a reasonable time as may be allowed by the Settlement Commission.

4. When that application came up before the Settlement Commission, the Commission rejected the same after finding that the assessee had failed to make a full and true disclosure of his income which had not been disclosed before the Assessing Officer. Such rejection was supported by the Settlement Commission for the reasons stated by it in paragraph 4 of its order reads as under :

"We further find that the Assessing Officer has already made elaborate enquiries which reveal that the applicant and his wife would not have derived any substantial agricultural income. The applicant himself does not own any agricultural lands. His wife owns only 15 acres of land. It is claimed by the applicant that he had taken on lease from his brother-in-law, agricultural land of 100 acres by paying lease rent of Rs. 20,000 per annum. The Assessing Officer, however, found that the applicant's brother-in-law owned only 33 acres of land and, therefore, could not have possibly leased agricultural lands to the extent of 100 acres. It is further seen that the lessor was held to be not liable to Agricultural Income-tax since the income was below the taxable limit. Similarly, the applicant's wife has also been held not liable to Agricultural Income-tax. After a careful perusal of the evidence collected by the Assessing Officer with regard to the claim of the applicant in this regard, we are of the firm opinion that the extent of agricultural income taken into account by the applicant in the statement of facts is grossly exaggerated. Sri V. Ramachandran was unable to convince us that the applicant could have earned agricultural income to the extent claimed in the SOF. In our opinion, therefore, the offer made by the applicant is inadequate to cover even the admitted investments."

5. The learned senior counsel for the petitioner submitted that the Commission has acted illegally in rejecting the application at the threshold. The counsel submitted that the Commission has no power to do so. It was submitted that an application could be rejected only on the ground of non-co-operation by the assessee or on the ground that the complexity of the investigation involved warranted rejection of the application. It was the contention of the learned counsel that if the Commission were to insist upon full and true disclosure by an applicant, the existence of the Commission would be without any purpose and that it is the duty of the Commission to determine the extent of the income in every case where the application is made and it cannot be dismissed on any ground other than non-co-operation by the assessee or on the ground that the complexity of the investigation required warranting rejection. The counsel in this context referred to section 245D(1) which is set out below :

"245D *Procedure on receipt of an application under section 245C.*—(1) On receipt of an application under section 245C, the Settlement Commission shall call for a report from the Commissioner and on the basis of the materials contained in such

report and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, the Settlement Commission may, by order, allow the application to be proceeded with or reject the application :

Provided that an application shall not be rejected under this sub-section unless an opportunity has been given to the applicant of being heard :

Provided further that the Commissioner shall furnish the report within a period of forty-five days of the receipt of communication from the Settlement Commission in case of all applications made under section 245C on or after the 1st day of July, 1995 and if the Commissioner fails to furnish the report within the said period, the Settlement Commission may make the order without such report."

The counsel also referred to section 245HA(1) which reads as under :

"245HA. *Power of Settlement Commission to send a case back to the Assessing Officer if the assessee does not co-operate.*—(1) The Settlement Commission may, if it is of opinion that any person who made an application for settlement under section 245C has not co-operated with the Settlement Commission in the proceedings before it, send the case back to the Assessing Officer who shall thereupon dispose of the case in accordance with the provisions of this Act as if no application under section 245C had been made."

6. The submissions so made for the petitioner cannot be accepted. No assessee has a right to approach the Commission without disclosing or making a full and true disclosure of his income as such disclosure is a necessary precondition for invoking the Commission's jurisdiction under section 245C. An application to the Commission is not intended to enable the dishonest assessee to continue his dishonest conduct and still claim the benefits which can be conferred by the Commission if the Commission were to ultimately make an order for settlement.

The Settlement Commission is not meant to be an optional forum chosen at the option of the assessee for the settlement of the tax liability of the assessee as also his liability for further proceedings or prosecution under this Act or other Acts, even while the assessee continues to be dishonest and deliberately fails to make a true and full disclosure of the extent of the income which he had not disclosed before the Assessing Officer. The machinery of the Settlement Commission is available to the assessee who after exhibiting his dishonest conduct by filing a return in which true income has not been disclosed, has availed of the chance to correct himself by making true and full disclosure before the Commission. There is no right in the assessee to invoke the Commission's jurisdiction even while he continues with his dishonest conduct.

7. Section 245C(1) which deals with an application for settlement of case, in unambiguous terms, *inter alia*, prescribes 'full and true disclosure' as an essential condition to be satisfied in any application presented before the Commission. Section 245C(1) reads as under :

"245C. *Application for settlement of cases.*—(1) An assessee may, at any stage of a case relating to him, make an application in such form and in such manner as may be prescribed, and containing a full and true disclosure of his income which has not been disclosed before the Assessing Officer, the manner in which such income has been derived, the additional amount of income-tax payable on such income and such other particulars as may be prescribed, to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided:"

Proviso and other part of the section not being relevant for the present purpose, the same are not extracted and set out here. Section 245H(1) which deals with the power of the Settlement Commission to grant immunity from prosecution and penalty also refers to the requirement that the assessee should make before the Commission a true and full disclosure of his income and the manner in which such income had been derived.

8. Section 245D deals with the procedure on receipt of an application under section 245C. It enables the Commission, *inter alia*, having regard to the nature and circumstances of the case to allow the application to be proceeded with or reject the application. The circumstances of the case have been considered by the Commission after calling for a report of the Commissioner. It is on such consideration the Commission has rejected the application. The reasons given for such rejection are reasons which are clearly relevant. The assessee's failure to make a full and true disclosure being patent, it was not necessary for the Commission to proceed with the further consideration of the application only to pass an order of rejection at the end of such further proceeding.

9. The impugned order does not suffer from any infirmity calling for interference in exercise of the discretionary power of this Court. The writ petition is, dismissed with costs of Rs. 1,500. Consequently, W.M.P. Nos. 23284 and 23285 of 1995 are also dismissed.