

Karnataka High Court V.B. Desai And Anr. (L/Rs. Of Late ... vs Administrative Officer, ... on 14 November, 2002 Equivalent citations: (2003) 181 CTR Kar 279, 2003 260 ITR 277 KAR, 2003 260 ITR 277 Karn Author: K Rajaratnam Bench: K Rajaratnam, K Bhakthavatsala JUDGMENT Kumar Rajaratnam, J. 1. Writ appeals are taken up with the consent of parties. 2. The appellants are partners of a firm under the name and style B. J. Desai and Sons, Belgaum, Karnataka, assessed to tax. The firm is a registered firm under the provisions of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). The firm filed an application before the Settlement Commission under Section 245C(1) for the assessment years 1970-71 to 1975-76 for determination of its tax dues. 3. It is common ground that the firm was a registered firm for these assessment years under the provisions of the Act. 4. The Settlement Commission determined the total income and the tax liability of the firm by its order dated June 15, 1984 (annexure A). 5. The Settlement Commission after passing appropriate orders made the following observations in paragraph 25 at annexure A : "The Income-tax Officer will issue a demand notice and will also revise the assessment of partners so far as it covers the share income from the applicant firm." 6. It is also common ground that it was only the firm that was the applicant before the Settlement Commission. 7. Needless to say the registered firm and its partners are considered as separate entities under the provisions of the Act. Since the rights of individual partners was determined in the Settlement Commission's order the partners moved the Settlement Commission for deletion of the impugned observation of the Settlement Commission with respect to liability on the individual partners. The Settlement Commission by an order dated January 22, 1991, rejected the plea of the partners. 8. Aggrieved by the order of the Settlement Commission the partners in their individual capacity filed W. P. Nos. 22001-22002 of 1991. (V.B. Desai v. Administrative Officer, Settlement Commission for I.T. and W. T (No. 1) . 9. The learned single judge (see ), upheld the contention of the appellants that the Settlement Commission has no jurisdiction to issue any directions in respect of the appellants when they were not before the Settlement Commission. However, the learned single judge erroneously while remanding the matter to the Settlement Commission directed the Settlement Commission to determine the liability afresh depending upon whether the firm is liable for registration or not. 10. The only question that arises for consideration is : Whether when the registered firm alone is before the Settlement Commission any adverse order can be passed against individual partners without hearing the individual partners ? 11. Before we advert to the factual position, it would be necessary to deal with the sanctity of orders passed by the Settlement Commission. 12. The Division Bench of this court in N. Krishnan v. Settlement Commission [1989] 180 ITR 585 pronounced that the sanctity of the order of the Settlement Commission cannot be interfered with under Article 226 of the Constitution unless there is total violation of the principles of natural justice on an error apparent in the order. 13. The scheme for the settlement under Chapter XIX-A of the Act was inserted by the Taxation Laws (Amendment) Bill, 1973, which later became the Taxation Laws (Amendment) Act, 1975, and has been examined by this court

in *N. Krishnan v. Settlement Commission* [1989] 180 ITR 585. 14. This court in *N. Krishnan v. Settlement Commission* [1989] 180 ITR 585 pronounced as follows (page 594) : “Any proceeding pending under the provisions of the Act has been defined as falling within the meaning of the word ‘case’ used in the Chapter (Section 245A). An Income-tax Settlement Commission consisting of not less than three members is to be constituted by the Board (Section 245B). An assessee is at liberty to apply to the Settlement Commission to have his case settled, but once he has made an application, he would not be entitled to withdraw the same (Section 245C). Full power is conferred on the Settlement Commission to call for a report from any of the income-tax authorities and to pass orders allowing the application filed by an assessee fully or partly or to reject the application, but the application could not be proceeded with by the Settlement Commission if it forms the opinion that there has been concealment of particulars of income or perpetration of fraud by the applicant. No order could be passed adverse to the applicant without giving an opportunity of hearing (Section 245D). Every order made by the Settlement Commission has to be complied with and it is also subject to the condition that the settlement shall be void if it is subsequently found by the Commission that it had been obtained by fraud or misrepresentation of facts (Section 245D(6)). The Settlement Commission has got the power to reopen the completed proceedings of assessment also if eight years had not elapsed from the end of the assessment year concerned (Section 245E). The Settlement Commission is conferred with all the powers vested in any income-tax authority (Section 245F). No person is permitted to inspect or obtain copies of any reports made by any income-tax authority to the Settlement Commission, but the Settlement Commission has the discretion to furnish copies thereof on an application made to it. However, if the person whose case is under consideration before any Settlement Commission wants any document to rebut any evidence against him, the Settlement Commission has to furnish copies of the documents sought for (Section 245G). The Settlement Commission is invested with the power to give immunity against prosecution and/or imposition of penalty on being satisfied that the applicant had made full and true disclosure of his income (Section 245H). Any amount specified in an order of settlement passed under Section 245D could be recovered and penalty for default in paying such sum, could be imposed and recovered in accordance with the provisions of Chapter XVII (Section 245J). Lastly, Section 245-I, which provides that the decision of the Settlement Commission is final and conclusive reads : ‘245-I. Order of settlement to be conclusive.—Every order of settlement passed under Sub-section (4) of Section 245D shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force’. The scheme of the provisions discloses that they are intended to give an opportunity to a defaulter to seek pecuniary settlement of all the violations of the tax laws by him and to seek exemption from penalty both under the Act and under the penal law of the land. It is for an assessee to voluntarily submit to its jurisdiction after giving up his right to the ordinary remedies under the Act. In other words, it is an opportunity to sur-

render and to have the matter settled through the Settlement Commission. The decision of the Settlement Commission is made final and conclusive by Section 245-I of the Act.” 15. The power of the Settlement Commission as it can be seen from the Scheme of the provisions of the Income-tax Act is so wide that it gives immunity against prosecution or for imposing penalty. The relevant provisions of the Act would indicate that it is in the nature of a statutory arbitration to which a person may submit himself voluntarily. 16. It is clear that the scope of the court to interfere with the order of the Settlement Commission is restricted. An order passed by the Settlement Commission cannot be interfered with under Article 226 of the Constitution of India unless it can be shown : (i) if grave procedural defects such as violation of the mandatory procedural requirements of the provisions of Chapter XIX-A and/or violation of the rules of natural justice is made out; (ii) if it is found that there is no nexus between the reasons given and the decision taken by the Settlement Commission ; 17. However, this court cannot interfere either with an error of fact or error of law alleged to have been committed by the Settlement Commission except as above. 18. The learned single judge (see ) fell in error in reopening the order of the Settlement Commission with respect to the firm at the instance of the partners. The partners only wanted certain observations made by the Settlement Commission against the partners in their individual capacity to be deleted, since they were not parties before the Settlement Commission. 19. The learned single judge (see ) either ought to have dismissed the writ petition filed by the partners or deleted those observations of the Settlement Commission as against the partners, since they were made against the persons who were not parties before the Settlement Commission. Instead the order of the Settlement Commission was set aside and remanded for fresh disposal without such a prayer. 20. In that view of the matter we feel it is the Revenue that ought to have filed this appeal against the order of the learned single judge (see ) with regard to the substantial issue of the court setting aside the order of the Settlement Commission. 21. This is a curious case where the registered firm did not file the writ petition. It is the individual partners who filed the writ petition in their individual capacity being aggrieved by certain directions given against the partners in so far as it covers the share of income of the partners. 22. The partners were never parties before the Settlement Commission. 23. It was submitted by Mr. Indra Kumar, learned counsel for the Revenue, that the Settlement Commission while passing the order had specifically dealt with the issue of registration of the firm and in consequence gave directions at paragraph 25 of the order. It was submitted that the Settlement Commission has also dealt with the allocation of income to the partners. It was further submitted that the Settlement Commission in totality under the power available under Section 245D(6) gave the directions and such directions are binding on the partners. 24. What was the legal position with regard to individual partners when only the registered firm makes an application before the Settlement Commission. The position was that there was a lacuna with respect to partners’ income as a consequence of a settlement made by the Settlement Commission with respect to the registered firm. 25. There was no provision under the Act to make the partners liable individually. It is

precisely to overcome this lacuna Section 155(1)(c) of the Income-tax Act was introduced. We are extracting below only the relevant portion which matters. Section 155(1)(c) of the Act reads as follows : “155. (1)(c) on any order passed under Sub-section (4) of Section 245D on the application made by the firm, that the share of the partner in the income of the firm has not been included in the assessment of the partner or, if included, is not correct, the Assessing Officer may amend the order of assessment of the partner with a view to the inclusion of the share in the assessment or the correction thereof, as the case may be ; and the provisions of Section 154 shall, so far as may be, apply thereto, the period of four years specified in Sub-section (7) of that section being reckoned from the end of the financial year in which the final order was passed in the case of the firm.” 26. From this it is clear that it is permissible for the Revenue to rectify the assessment under Section 155(1)(c) of the Act consequent to the enhancement of the firm’s income on account of an order made pursuant to the Settlement Commission. This lacuna has now been plugged by introduction of Section 155(1)(c) of the Act, which came into force on October 1, 1984. 27. This very question arose before the Division Bench of this court in I. T. R. C. Nos. 137-142 of 1994, dated June 14, 1996. This court was required to determine whether Section 155(1)(c) of the Act is prospective or retrospective. The Division Bench of this court in I. T. R. C. Nos. 137-142 of 1994 (CIT v. Shri A. V. Venkateshava Setty) pronounced as follows : “The assessee is a partner in a firm. The firm made an application for settlement of the matter before the Commission constituted for the purpose in terms of Section 245D(4) and the Settlement Commission made an order on September 13, 1982, for the assessment years 1975-76 to 1980-81 pursuant to which assessments of the firm were revised and the total income of the firm for each of the assessment years was enhanced. As a consequence of the enhancement of the firm’s income, the share of the assessee was determined higher than what was assessed earlier. The Income-tax Officer initiated proceedings under Section 155 of the Income-tax Act and revised the assessment for the assessment years in question. The matter was carried in appeal and the appellate authority agreed with the contentions raised on behalf of the assessee that the Income-tax Officer cannot rectify the assessment under Section 155 consequent to the enhancement of the firm’s income on account of the order made pursuant to the settlement which was prior to the insertion of Section 155(1)(c) inasmuch as the same was not given retrospective effect. When the matter was carried in further appeal to the Tribunal, the Tribunal agreed with the view of the first appellate authority and dismissed the appeal. Hence, the present reference at the instance of the Revenue. The question of law referred for our opinion is as follows : ‘Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in upholding the order of the Appellate Assistant Commissioner who held that the provisions of Section 155(1)(c) has come into effect from October 1, 1984, and did not become applicable even to the cases where the order passed by the Settlement Commission was prior to October 1, 1984, and the period of four years for rectification has not expired on October 1, 1984 ?’ The view taken by the Tribunal and the first appellate authority is in accordance with the de-

cisions of the Supreme Court in the cases of ITO v. S. K. Habibullah and ITO v, T. S. Devinatha Nadar [1968] 68 ITR 252. Therefore, we find no reason to disagree with the view taken by the Tribunal. Hence, we answer the question referred for our opinion in the affirmative and against the Revenue. Reference is answered accordingly.” (see also I. T. R. C. Nos. 148 to 153 of 1994, dated January 15, 1997). 28. In the present case which is before us the legal position is the same as was considered by the Division Bench of this court in I. T. R. C. Nos. 137-142 of 1994. 29. The matter before the Settlement Commission related to the periods 1970-71 to 1975-76 and even the order of the Settlement Commission was passed on June 15, 1984, prior to the introduction of Section 155(1)(c) of the Act which came into force on October 1, 1984. Accordingly, no retrospective effect to Section 155(1)(c) of the Act can be given in view of the Division Bench judgment rendered by this court in I. T. R. C. Nos. 137-142 of 1994. 30. In that view of the matter the order of the learned single judge is set aside. Consequently, the order of the Settlement Commission at annexure A is restored, but paragraph 25 in the impugned order of the Settlement Commission at annexure A and the consequent order at annexure C are set aside and if any payment has been made by the partners individually to the Revenue pursuant to the impugned order towards assessment as per annexures I, II, III, IV, V and VI it is directed to be adjusted or refunded by the Revenue to the partners in accordance with law. Accordingly, these writ appeals are disposed of. No order as to costs.