

KAKADIA BUILDERS PVT. LTD. & ANR.

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v.

INCOME TAX OFFICER WARD 1(3) & ANR.

(Civil Appeal Nos.2491-2492 of 2019)

MARCH 05, 2019

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**[ABHAY MANOHAR SAPRE AND
DINESH MAHESHWARI, JJ.]**

Income Tax Act, 1961 – ss. 154, 234A, 234B and 234C, Chapter XIXA – The appellants-assessee filed settlement applications before the Settlement Commission during the pendency of the assessment proceedings for determination of the tax liability – On 11.08.2000, the Settlement Commission passed an order and made certain additions and waived interest chargeable u/s. 234A, 234B and 234C of the Act – Aggrieved, both appellant and Revenue filed rectification applications – Consequent to which, Settlement Commission by order dated 11.10.2002 rectified its order dated 11.08.2000 u/s.154 of the Act insofar as it pertained to waiver of interest, which was granted to the appellant-assessee – However, High Court set aside the Settlement Commission's order dated 11.10.2002 – Thereafter, Revenue filed petitions against order dated 11.08.2000 in the High Court – High Court modified order of the Settlement Commission dated 11.08.2000 by reversing the waiver of interest in terms of Settlement Commission's directions contained in its order dated 11.10.2002 – On appeal, held: The approach of the High Court was without jurisdiction – The High Court failed to see that the order dated 11.10.2002 of the Settlement Commission was already set aside by the High Court itself in the first round passed in the light of the law laid down by the Supreme Court in Brijlal case wherein it held that the Settlement Commission had no power to pass orders u/s. 154 of the Act – Therefore, keeping in view the law laid down in Ghaswala case and Brijlal case, the impugned order of the High Court and order dated 11.08.2000 passed by the Settlement Commission to the extent it decided the issue in relation to waiver of interest set aside – Case remanded to the Settlement Commission to decide the issue relating to waiver of interest payable by the assessee afresh.

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A **Allowing the appeals, the Court**

- HELD:** 1. In a situation like the one arising in the case, the High Court instead of going into the merits of the issue, should have set aside the order dated 11.08.2000 passed by the Settlement Commission and remanded the case to the Settlement Commission for deciding the issue relating to waiver of interest payable under Sections 234A, 234B, and 234C of the Act afresh keeping in view the scope and the extent of powers of the Settlement Commissioner in relation to waiver of interest as laid down in the Commissioner of Income Tax, Mumbai vs. Anjum M.H. Ghaswala & Ors., (2002) 1 SCC 633 and the other was rendered on 21.10.2010 in Brij Lal & Ors. vs. Commissioner of Income Tax, Jalandhar, (2011) 1 SCC 1. [Para 22] [285-E]
2. The High Court, however, committed a jurisdictional error when it observed that they (High Court) adopt the directions contained in the order of the Settlement Commission dated 11.10.2002 and then went on to make the said directions as a part of the impugned order in relation to waiver of interest. This approach of the High Court is wholly without jurisdiction. [Para 23] [285-F-G]
3. The High Court failed to see that the order dated 11.10.2002 of the Settlement Commission was already set aside by the High Court itself in the first round vide order dated 03.03.2014 passed in S.C.A. Nos. 15097 & 15101 of 2004 in the light of law laid down by this Court in Brijlal wherein it is laid down that the Settlement Commission has no power to pass orders under Section 154 of the Act. [Para 24] [285-G-H]
4. Since the order dated 11.10.2002 of the Settlement Commission was already held bad in law on the ground that it was passed under Section 154 of the Act, the same was neither in existence for any purpose and nor it could be relied upon by the High Court much less for making it a part of their order for issuing a writ. [Para 25] [286-A-B]
5. Therefore, the impugned order and the order dated 11.08.2000 passed by Settlement Commission are set aside to the extent it decided the issue in relation to waiver of interest

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and remand the case to the Settlement Commission to decide the issue relating to waiver of interest payable by the assessee (appellants herein) afresh keeping in view the law laid down by this Court in Ghaswala and Brijlal after affording an opportunity to the parties concerned. [Para 26] [286-B-C] A

Commissioner of Income Tax, Mumbai v. Anjum M.H. Ghaswala & Ors. (2002) 1 SCC 633 : [2001] 4 Suppl. SCR 303 ; Brij Lal & Ors. v. Commissioner of Income Tax, Jalandhar (2011) 1 SCC 1 : [2010] 11 SCR 1167 – relied on. B

<u>Case Law Reference</u>		
[2001] 4 Suppl. SCR 303	relied on	Para 16
[2010] 11 SCR 1167	relied on	Para 16

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.2491-2492 of 2019 D

From the Judgment and Order dated 28.07.2016 of the High Court of Gujarat at Ahmedabad in Special Civil Application Nos. 7814 and 7820 of 2014.

R. P. Bhatt, Sr. Adv., S. Sukumaran, Anand Sukumar, Bhupesh Kumar Pathak, Ms. Meera Mathur, Advs. for the Appellants. E

K. Radhakrishnan, Sr. Adv., Ms. Purnima Bhat Kak, Zoheb Hossain (for Mrs. Anil Katiyar), Advs. for the Respondents.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. Leave granted. F

2. These appeals are directed against the final judgment and order dated 28.07.2016 passed by the High Court of Gujarat at Ahmedabad in SCA Nos. 7814 & 7820 of 2014 whereby the High Court disposed of the petitions(SCAs) filed by the respondents.

3. In order to appreciate the issue involved in these appeals, it is necessary to set out a few relevant facts *infra*. G

4. The appellants herein are the respondents (assessee) and the respondents (Revenue) herein are the petitioners in the petitions(SCAs) before the High Court out of which these appeals arise.

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- A 5. The appellant in S.L.P. No.21139/2017 is a Private Limited Company and the appellant in SLP No.21140/2017 is the promoter Director of the said Company. On 19.01.1994, a search and seizure operation was carried out in the premises of the appellants (assessee) under the Income Tax Act, 1961 (hereinafter referred to as "the Act").
- B 6. During pendency of the assessment proceedings, which were initiated for determination of the tax liability as a result of search and seizure operation, the appellants on 12.03.1996 and 03.09.1996 filed the settlement applications before the Settlement Commission and offered to settle their tax matter in accordance with the procedure provided under Chapter XIXA of the Act.
- C 7. On 11.08.2000, the Settlement Commission passed an order under Section 245D(4) of the Act. By the said order, the Settlement Commission made certain additions and waived interest chargeable under Sections 234A, 234 B and 234C of the Act.
- D 8. The appellants (assessee) felt aggrieved and filed rectification applications before the Settlement Commission on 29.12.2000 for amending its order dated 11.08.2000. The Revenue (Commissioner of Income Tax) also felt aggrieved by the order dated 11.08.2000 and filed a rectification application under Section 154 of the Act before the Settlement Commission on 26.07.2002.
- E 9. By order dated 11.10.2002, the Settlement Commission dismissed the applications filed by the appellants(assessee) and partly allowed the application filed by the respondents(Revenue) rectifying its order dated 11.08.2000 insofar as it pertained to waiver of interest, which was granted to the appellants (assessee). The appellants(assessee) felt aggrieved by the order dated 11.10.2002 passed by the Settlement Commission and filed two separate petitions (SCA Nos.15097 and 15101 of 2004) in the High Court of Gujarat.
- G 10. The High Court, by order dated 03.03.2014 allowed the petitions(SCAs) and set aside the order dated 11.10.2002 passed by the Settlement Commission and granted liberty to the Revenue to follow the remedies as may be available to them against the order passed by the Settlement Commission dated 11.08.2000.
- H 11. The Revenue, therefore, felt aggrieved and filed two petitions (SCA Nos.7814 of 2014 and 7820 of 2014) against the order dated

11.08.2000 questioning its legality. The High Court though in concluding paragraph observed that the petitions are disposed of yet in substance allowed the petitions(SCAs) and modified the order dated 11.08.2000 of the Settlement Commission by passing the following directions in paragraph 13 which reads as under:

“Under the circumstances, we direct modification of the order of Settlement Commission dated 11.08.2000 by reversing the waiver of interest in terms of Settlement Commission’s directions contained in its order dated 11.10.2002. In other words, we adopt the same directions for modification of the Settlement Commissioner’s original order dated 11.08.2000.”

12. It is against this order, the appellants(assessee) felt aggrieved and have filed the present appeals by way of special leave in this Court.

13. So, the short question which arises for consideration in these appeals, is whether the High Court was justified in allowing the petitions(SCAs) and thereby was justified in modifying the order dated 11.08.2000 passed by the Settlement Commission.

14. Heard Mr. R.P. Bhatt, learned senior counsel for the appellants and Mr. K. Radhakrishnan, learned senior counsel for the respondents.

15. Having heard the learned counsel for the parties and on perusal of the record of the case including the written submissions filed by the parties, we are inclined to allow the appeals and remand the case to the Settlement Commission for deciding the matter in question afresh on merits keeping in view the observations made *infra*.

16. At the outset, we consider it apposite to mention that the issue involved in these appeals is governed by the law laid down by the decision of two Constitution Benches of this Court. One was rendered on 18.10.2001 in **Commissioner of Income Tax, Mumbai vs. Anjum M.H. Ghaswala & Ors.**, (2002) 1 SCC 633 and the other was rendered on 21.10.2010 in **Brij Lal & Ors. vs. Commissioner of Income Tax, Jalandhar**, (2011) 1 SCC 1.

17. So far as the decision rendered in **Ghaswala** (supra) is concerned, the question involved therein was whether the Settlement Commission constituted under Section 245B of the Act has the jurisdiction to reduce or waive the interest chargeable under Sections 234A, 234B

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A and 234C of the Act while passing the order of settlement under Section 245D of the Act. After examining the scheme of the Act in the context of the powers of the Settlement Commission, Justice Santosh Hegde speaking for the Bench held as under:

B **“35. For the reasons stated above, we hold that the Commission in exercise of its power under Sections 245-D(4) and (6) does not have the power to reduce or waive interest statutorily payable under Sections 234-A, 234-B and 234-C except to the extent of granting relief under the circulars issued by the Board under Section 119 of the Act.”**

C 18. So far as the decision rendered in **Brijlal** (supra) is concerned, this Court examined the following three questions:

“(I) Whether Section 234-B applies to proceedings of the Settlement Commission under Chapter XIX-A of the said Act?

D **(II) If answer to the above question is in the affirmative, what is the terminal point for levy of such interest — whether such interest should be computed up to the date of the order under Section 245-D(1) or up to the date of the order of the Commission under Section 245-D(4)?**

E **(III) Whether the Settlement Commission could reopen its concluded proceedings by invoking Section 154 of the said Act so as to levy interest under Section 234-B, though it was not so done in the original proceedings?”**

F 19. After examining these questions, this Court speaking through Justice S.H. Kapadia, the then learned CJI, answered the questions as under :

G **“(1) Sections 234-A, 234-B and 234-C are applicable to the proceedings of the Settlement Commission under Chapter XIX-A of the Act to the extent indicated hereinabove.**

(2) Consequent upon Conclusion (1), the terminal point for the levy of interest under Section 234-B would be up to the date of the order under Section 245-D(1) and not up to the date of the order of settlement under Section 245-D(4).

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(3) The Settlement Commission cannot reopen its concluded proceedings by invoking Section 154 of the Act so as to levy interest under Section 234-B, particularly, in view of Section 245-I.”

20. Keeping in view the law laid down by this Court in the aforementioned two decisions, the question arises for consideration in these appeals is whether the High Court was justified in allowing the petitions(SCAs) filed by the Revenue.

21. It is not in dispute that when the Settlement Commission passed the first order on 11.08.2000 disposing of the application of the appellants(aseesee), the issue with regard to the powers of the Settlement Commission was not settled by any decision of this Court. These two decisions were rendered after the Settlement Commission passed the order in this case. Therefore, the Settlement Commission had no occasion to examine the issue in question in the context of law laid down by this Court in these two decisions. However, the issue in question was, at that time, pending before the High Court in the petitions(SCAs).

22. In a situation like the one arising in the case, the High Court instead of going into the merits of the issue, should have set aside the order dated 11.08.2000 passed by the Settlement Commission and remanded the case to the Settlement Commission for deciding the issue relating to waiver of interest payable under Sections 234A , 234B, and 234C of the Act afresh keeping in view the scope and the extent of powers of the Settlement Commissioner in relation to waiver of interest as laid down in the said two decisions.

23. The High Court, however, committed a jurisdictional error when it observed in Para 13 (quoted above) that they (High Court) adopt the directions contained in the order of the Settlement Commission dated 11.10.2002 and then went on to make the said directions as a part of the impugned order in relation to waiver of interest. This approach of the High Court is wholly without jurisdiction.

24. The High Court failed to see that the order dated 11.10.2002 of the Settlement Commission was already set aside by the High Court itself in the first round vide order dated 03.03.2014 passed in S.C.A. Nos. 15097 & 15101 of 2004 in the light of law laid down by this Court in **Brijlal** (supra) wherein it is laid down that the Settlement Commission has no power to pass orders under Section 154 (see conclusion III).

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- A 25. Since the order dated 11.10.2002 of the Settlement Commission was already held bad in law on the ground that it was passed under Section 154 of the Act, the same was neither in existence for any purpose and nor it could be relied upon by the High Court much less for making it a part of their order for issuing a writ.
- B 26. In the light of what we have held above, we consider it apposite to set aside the impugned order and the order dated 11.08.2000 passed by Settlement Commission to the extent it decided the issue in relation to waiver of interest and remand the case to the Settlement Commission to decide the issue relating to waiver of interest payable by the assessee (appellants herein) afresh keeping in view the law laid down by this Court in **Ghaswala** (supra) and **Brijlal** (supra) after affording an opportunity to the parties concerned.
- C 27. The appeals are accordingly allowed. The impugned order passed by the High Court and the order dated 11.08.2000 passed by the Settlement Commission in Settlement Application Nos.10/S/095/95-96/IT & 10/S/029/95-96/IT are set aside.
- D 28. We, however, make it clear that we have not expressed any opinion on the merits of the issue while having formed an opinion to remand the case to the Settlement Commission. The Settlement Commission will accordingly decide the matter uninfluenced by any observations made by this Court. Let the matter be decided by the Settlement Commission within six months from the date of this order.

Ankit Gyan

Appeals allowed.