

HC can't review orders of SetCom; powers are confined to reviewing its decision making process rather decision itself

Summary – The High court of Kerala in a recent case of Settlement Commission (IT & WT)., (the Assessee) held that High Court cannot assume the role of an appellate authority to review orders passed by the SetCom -Its role is confined to judicial review of the decision making process adopted by the SetCom and not the decision itself

The High Court held as under:

- (1) The High Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, cannot assume the role of an appellate authority to conduct a review of orders passed by the Settlement Commission ('SetCom').
- (2) Its role is confined to reviewing decision making process adopted by the SetCom and not the decision itself.
- (3) The scope of enquiry of the Court, in matters involving a challenge to orders passed by the SetCom, is only to see whether its order complied with the statutory provisions of Chapter XIX-A of the I-T Act.
- (4) The Karnataka High Court in *N.Krishnan v. Settlement Commission* [1989] 47 Taxman 294 (KAR.)observed that a decision of the SetCom could be interfered with only:
 - (i) If grave procedural defects, such as violation of the mandatory procedural requirements of the provisions in Chapter XIXA of the Income-tax Act, 1961, and/or violation of the rules of natural justice were made out; or
 - (ii) If it was found that there was no nexus between the reasons given and the decision taken by the SetCom.
- (5) The Supreme Court in *Union of India v. Ind-Swift Laboratories Limited* [2011] 4 SCC 635 held that an order passed by the SetCom could be interfered with only if the said order was found to be contrary to any provisions of the Act. So far as the findings of fact recorded by the SetCom or question of facts were concerned, the same were not open for examination either by the High Court or by the Supreme Court.

- (6) Hence, it was well-settled that the power of judicial review was not to be exercised to decide the issue on facts or on an interpretation of the documents available before the Court. Thus, in the instant case, the enquiry by Court could only be whether or not the SetCom had exercised a jurisdiction that it did not have or, alternatively, if it did have the jurisdiction, whether it had erred in the exercise of that jurisdiction. In the latter event, the Court would also have to bear in mind the nature of the jurisdiction exercised by the SetCom, which was akin to a statutory arbitration.