

Appeal filed before ITAT to be restored when proceedings before SetCom is abated

Summary – The High Court of Gujarat in a recent case of Grahshilpa Construction (P.) Ltd., (the Assessee) held that where assessee had not paid requisite amount of taxes and interest on revised undisclosed income on or before specified date, settlement application filed by assessee stood abated

Where assessee had withdrawn appeal filed before Tribunal in view of fact that Settlement Commission had allowed settlement application in light of abatement of settlement application, appeal was to be restored to Tribunal

Facts

- The petitioner filed a settlement application under section 245C declaring undisclosed income. Subsequently, the petitioner revised the application by substituting the undisclosed income at a higher amount.
- During the pendency of the application under section 245C, the Assessing Officer passed an order under section 158BC. The petitioner filed an appeal against the said order before the Tribunal. Thereafter, the Settlement Commission passed an order whereby it permitted the petitioner to proceed with the application under section 245D(1) directed the petitioner to pay the additional amount of income tax payable on the income disclosed in the application. The petitioner filed a letter before the Tribunal stating that in view of the admission of the matter of the petitioner by the Commission, the petitioner did not want to pursue the appeal before the Tribunal. Accordingly, the appeal was allowed to be withdrawn.
- Before the Settlement Commission, the department pointed out that the petitioner had not paid the requisite amount of taxes and interest on the revised undisclosed income. Hence, the application could not be further proceeded with and should be abated. On behalf of the petitioner, it was pointed out to the Commission that though the petitioner had not made any payment of tax and interest after the order under section 245D(1) was passed, the amount which was already seized and adjusted prior to that order should be treated as tax paid and, accordingly, the application need not be abated.
- The Commission by the impugned order made under section 245D(2D) read with section 245HA(1)(ii) held that the Assessing Officer had already adjusted the seized cash and in the absence of any further payment, consequent to the order under section 245D(1), there had been a distinct failure on the part of the petitioner to pay the taxes and interest. That the petitioner ought to have taken due care to pay the required taxes and interest on or before specified date. The Commission further observed that the submission of the petitioner that he was still ready to make the payment to make good the deficit is of no avail as the act of making payment now could not take away the restriction imposed under law. The Commission, accordingly, held that there has been a violation of section 245D(2D) and in view of the non-compliance with the provisions of section 245D(2D) the proceedings in the case abate as per the provisions of section 245HA(1)(ii).

- On writ petition:

Held

- It is apparent that it was not permissible for the petitioner to revise the application made by it under section 245C(1). Under the circumstances, it was incumbent upon the petitioner to pay the additional tax in terms of the original application made by him under section 245C, whereby he had declared the undisclosed income at Rs. 5 lakhs. However, the petitioner instead of paying the amount of taxes and interest in terms of the order under section 245D(1), wrote a letter to the Assessing Officer and the Commission that the amount of cash seized during the search has been adjusted against the demand under the said order. As noticed earlier, the amount had already been adjusted by the department against the demand under the order made under section 158BC and hence, no amount remained to be adjusted against the amount payable under the order made by the Commission under section 245D(1). Evidently, therefore, the petitioner has not duly complied with the order made by the Commission under section 245D(1) till the Commission fixed the matter for hearing.
- In the light of the provisions of sub-section (2D) of section 245D, it is not permissible for the Settlement Commission to proceed with an application made under section 245C(1) on which an order under the provisions of sub-section (1) thereof had been passed before unless the additional tax on the income disclosed in such application and the interest thereon, is, notwithstanding any extension of time already granted by the Settlement Commission, paid before specified date. Thus, in case where an order under sub-section (1) of section 245C has been made on an application made under that sub-section before the statute bars payment of the additional tax with interest thereon after. The last date for payment of the additional tax with interest thereon, therefore, was 31-7-2007. The petitioner, having failed to pay the same before the time limit prescribed by the statute, the Settlement Commission had no power to allow the application to be proceeded with.
- On a plain reading of the clause (ii) of sub-section (1) of section 245HA, it is manifest that in case where an application under section 245C has not been allowed to be further proceeded with under sub-section (2D) of section 245D, the proceedings before the Settlement Commission shall abate on the specified date. "Specified date" in respect of an application referred to in clause (ii) is 31-7-2007. Clearly, therefore, by virtue of operation of law, that is, in view of the provisions of clause (ii) of sub-section (1) of section 245HA read with clause (b) to the Explanation thereto, the application made by the petitioner under section 245C stood abated on the specified date. The Settlement Commission, therefore, committed no error in holding that the application made by the petitioner under section 245C stands abated.
- In the light of the fact that the petitioner had challenged the order made under section 158BC before the Tribunal, which proceedings came to be withdrawn in view of the fact that the Commission had allowed the application made by the petitioner under section 245C to be proceeded with, if the appeal is not restored to the file of the Tribunal, the same would cause

immense prejudice to the petitioner, inasmuch as, the assessment order made under section 158BC would attain finality and would be binding upon the petitioner. Under the circumstances, this Court is of the view that in the light of abatement of the proceedings before the Settlement Commission by operation of the provisions of section 245HA, the interest of justice requires that the appeal preferred by the petitioner before the Tribunal be restored. The petitioner is, therefore, entitled to the alternate relief prayed for in the petition, namely, for restitution of its appeal before the tribunal.