

HC rebukes SetCom for accepting additional income offered by taxpayer in revised declaration

Summary – The High Court of Gujarat in a recent case of Shree Nilkanth Developers, (the Assessee) held that assessee applied for settlement of cases and declared a sum of Rs. 34 lakhs as undisclosed income and later on it with permission of Settlement Commission declared additional income of Rs. 56 lakhs and Settlement Commission accepted it on ground that it was difficult to ascertain exact undisclosed income on basis of impounded documents, said ground was not a valid ground to accept declaration of additional income

Facts

- The Competent Authority conducted a survey under section 133A upon the assessee-firm.
- Thereupon the assessee filed an application before the Settlement Commission requesting for settlement of cases for the assessment years 2011-12 to 2013-14 and declared a sum of Rs. 34 lakhs as undisclosed income.
- Later on, the assessee, at the stage of hearing of the application under section 245D(4), with the permission of the Settlement Commission, declared additional income of Rs. 56 lakhs, over and above what was already declared in the application for settlement.
- The Settlement Commission *vide* order dated 4-2-2015 passed under section 245D(4) accepted the declaration of additional income and permitted the assessee to make payment of the tax on such income in instalments.
- On writ filed by revenue, it was contended that the assessee having disclosed income of Rs. 34 lakhs while filing the application for settlement, could not have revised such income by a further declaration of Rs. 56 lakhs, which would go to show that the initial disclosure of income itself was not accurate.

Held

- Chapter XIX-A introduced in the Act with effect from 1-4-1976 pertains to settlement of cases. An assessee, at any stage of the case relating to him could make an application for settlement as provided under sub-section (1) of section 245C containing 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. Section 245D lays down the procedure to be followed on receipt of an application under section 245C. After crossing various stages provided under section 245D, the Settlement Commission would pass a final order under sub-section (4) of section 245D, which provides that the Settlement Commission, after examination of the records and the report of the Principal Commissioner or Commissioner, if any, received and after giving an opportunity to the applicant and to the Commissioner to be heard, and after examining such further evidence as may

be placed before it or obtained by it, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Principal Commissioner or the Commissioner.

- In the instant case, during the course of hearing of the settlement application, at the stage of section 245D(4), the assessee had made an offer of additional income.
- As recorded by the Settlement Commission in the impugned order, the effect of this proposal translated into the further declaration of income.
- The Settlement Commission, in the impugned order, noted that keeping in view of the submissions made by the revenue as well as the discussions made in the course of hearing, the assessee had come forward with the further offer to bring quietus to the issue in the spirit of settlement. The assessee had thus voluntarily admitted an additional income of Rs. 56 lakhs and requested for grant of immunity from penalty and prosecution as the amount has been surrendered in the spirit of settlement.
- The Settlement Commission, in the impugned order, accepted such an offer observing that the Commission would agree with the assessee's view point that arriving at the exact undisclosed income from the impounded documents is very difficult and estimation has to be resorted to.
- It can thus be seen that the Settlement Commission permitted the assessee to revise its disclosure of income previously not disclosed during the course of hearing of the application under section 245D(4) primarily on two grounds. Firstly, such revision was offered keeping in mind the discussions during the course of hearing and in spirit of settlement. Secondly, it was difficult to arrive at an exact undisclosed income from the impounded documents. The initial disclosure of undisclosed income of the assessee along with the application for settlement was total of Rs. 34 lakhs. The assessee, later on, at the stage of hearing of application under section 245D(4), made what can be categorized as substantial revision, by offering an additional income of Rs. 56 lakhs to tax. This is not a case where, during the course of the settlement, to put an end to the dispute, the assessee made minor adjustments in the disclosure already made. When one compares the initial disclosure of income with the further disclosure, it would reveal that the further declaration was more than 150 per cent of the initial disclosure.
- One of the prime requirements for settlement is of filing an application under sub-section (1) of section 245C by the assessee which would contain a full and true disclosure of his income which has not been disclosed before and the manner, in which, such income has been derived. If the assessee fails in this requirement, the application would have to be rejected.
- In the instant case, the disclosure revised by the assessee during the course of the settlement proceedings was substantial and, in fact, far greater than the initial disclosure made. The Settlement Commission in the order passed under section 245D(4) completely ignored the opposition of the revenue in this respect on the ground that it is difficult to ascertain with degree of accuracy the undisclosed income on the basis of impounded documents, a ground which is not valid.
- In the result, the order of Settlement Commission was liable to be set aside only on this ground.