

Order rejecting SetCom application couldn't be interfered with if declared income didn't belong to assessee: HC

Summary – The High Court of Delhi in a recent case of Vishwa Nath Gupta, (the Assessee) held that where income declared by assessee for settlement did not belong to him but were unaccounted money collected by another entity, assessee's application for settlement was to be rejected

Facts

- The assessee was an associate and key person behind the Dolphin group of firm. A search operation was carried out against one 'R' and DDL which were group companies of Dolphin group. The search was conducted at the business premises of those companies and their directors, associates, etc. An assessment order under section 148/143(3) was made by the Assistant Commissioner in the case of DDG. Notices under section 153A were issued to the companies as well as individuals directors/partners. Returns in response to the said notices were filed by the respective parties. However, the assessee filed an application under section 245C before the Settlement Commission.
- The Settlement Commission allowed the settlement application. During the proceedings, a report was submitted by Principal Commissioner under section 245D(2B). This report suggested that amount declared by assessee had never belonged to him but rather to DDL who had accepted cash but not declared it. The Commission considered the submission of Principal Commissioner and rejected the assessee's application. The Commission found that the key person behind the whole group was assessee. It was also a fact that a number of companies, belonging to the group, were promoted for the purposes of acquisition, development and sale of real-estate as their main objective. These companies were separate legal entities who have undertaken 23 projects towards the furtherance of the objectives of real-estate development. The cash components paid by the investors had only gone towards the cost of the individual flats and was a part of the total cost of the flat. As this money related to a particular project/property of a particular company it should form part of its accounts as each company is a separate taxable entity for income tax purposes. The accounts of such receipts might have been kept at single place for convenience of the main person handling the affairs of these companies. Keeping all such accounts at one place for the sake of convenience cannot by any stretch of imagination, be considered as relating to, and belonging to the person maintaining it. Therefore, rejection of application settlement of assessee was justified.
- On writ:

Held

- Under section 245C, any assessee can, at any stage of an assessment, apply for settlement in a prescribed form which would require a full and true disclosure to be made by him of his income which has not been disclosed before the Assessing Officer and the manner in which such income has

been derived. While processing such application under section 245-D it would be open for the Settlement Commission to reject an application for settlement, if it is found that the applicant has not made true and full disclosure of his income in the application for settlement.

- The petitioner is aggrieved by the rejection of his application. He contends that the total unaccounted amount declared should have been accepted. The revenue had successfully opposed the application, contending that the assessee had not made full disclosure and that the amount declared had never belonged to him, but rather to DDL who had accepted cash but not declared it. This was accepted by Income Tax Settlement Commission. The petitioner has given his explanation and version as to why such rejection was unjustified and how such amount belonged to him. However, this court is of the opinion that the petitioner's contentions are entirely factual. Unless there is a manifest unreasonableness or perversity in the Settlement Commission's order, the court cannot substitute its reasoning with that of the said body. The Income Tax Settlement Commission's findings here are based upon an analysis of the facts such as that the identity of frontal entity was unknown and that there was a certain degree of amorphousness in its functioning. Furthermore, the clear linkages between the amounts disclosed before the Income Tax Settlement Commission's and the amounts declared by DDL was discernable.
- Furthermore, this Court cannot review or second guess the findings of fact as would an appellate court. Given these parameters, the inference of facts having regard to the totality of circumstances, this Court is of the opinion that the findings of fact which the Income Tax Settlement Commission rendered cannot be set aside or interfered with.