

## **Order by SetCom was conclusive in nature & couldn't be reopened in any proceedings under any law**

**Summary – The Amritsar ITAT in a recent case of Shree Ganpati Synthetics (P.) Ltd., (the Assessee) held that Every order passed by Settlement Commission under section 245D(4) shall be conclusive as to matter covered therein and no matter covered by such order shall be reopened in any proceeding under Income tax Act or under any other law for time being in force**

### **Facts**

- The assessee was engaged in business of processing of clothes. The assessee filed its return of income declaring total income of certain amount. The case was processed under section 143(1). The Assessing Officer worked out the total income at higher amount against income declared by the assessee.
- The assessee filed an appeal against said addition before the Commissioner (Appeals). During pendency of said appeal, there was search under section 132 at all the premises of the assessee group *i.e.* business premises of the company and the business premises of the sister concerns and the residential premises of its directors/partners and family members wherein some loose documents, unaccounted purchase bills, unaccounted stocks and jewellery etc. were found. The assessee group had gone into settlement before the Settlement Commissioner and ultimately, the undeclared income was settled for all the cases of the group including assessee company, sister concerns and individual members of the group for various assessment years as per the order passed by the Settlement Commission. The original order was passed which was amended by second later. In respect of the assessee company the order passed by the Settlement Commission covered the period for assessment years 2001-02 to 2007-08. In view of the facts and circumstances of the case and the order passed by the settlement commission, it was respectfully submitted before Commissioner (Appeals) that the addition called for assessment year 2004-05, if any, was already made and covered by the orders passed by the Settlement Commission and, therefore, no separate addition was called for. The Commissioner (Appeals) while going through with the submission of the assessee, not only confirmed the assessment order but also enhanced the assessed income and dismissed the appeal of the assessee.
- In instant appeal, the assessee contended that the order of the Settlement Commission squarely covered the period of the assessee from assessment years 2001-02 to 2007-08 and thereafter, the reassessment under section 153A with effect from section 245D had been made by the Dy. Commissioner and the assessment order under section 153A superseded the original assessment order for which the appeal was pending before the Commissioner (Appeals). Further, the order under section 245 (I) passed by the Settlement Commission was conclusive in nature and no further addition could be made for any assessment year which was covered by the order passed by the settlement commission. Further the assessee submitted that without prejudice to the above submissions, even on facts the addition was wrongly made by the Assessing Officer. The assessee company was engaged in the business and printing in which grey cloths were purchased and sold

after dying and printing process. All sales and purchases were duly vouched and stock tallies are maintained and same were furnished before the Assessing Officer. No defect was found either in purchases or sales or in the stock tallies and the addition was made on the basis of guess work. The books were wrongly rejected and the addition as well uncalled for. Although, the above facts had been brought to the knowledge of the Commissioner (Appeals), however, he had not paid any heed to the same and dismissed the appeal of the assessee, therefore, the order passed by the Commissioner (Appeals) was not only contrary to the law but also improper in the facts and circumstances of the case and liable to be set aside.

#### **Held**

- As it is not in controversy that the assessment relevant to the Asst. Year: 2004-05 was made by the Assessing Officer and thereafter, the same was challenged before the Commissioner (Appeals) and thereafter during the pendency of appeal itself, the search was conducted at the business and residential premises of the assessee and its sister concerns and an application for settlement was filed before Settlement Commission.
- Three new sections 153A, 153B and 153C have been inserted in the Income-tax Act to provide for assessment in case of search or making requisition. The new section 153A provides the procedure for completion of assessment where a search is initiated under section 132 or books of account, or other documents or any assets are requisitioned under section 132A after 31-5-2003. In such cases, the Assessing Officer shall issue notice to such person requiring him to furnish, within such period as may be specified in the notice, return of income in respect of six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted under section 132 or requisition was made under section 132A.
- The Assessing Officer shall assess or reassess the total income of each of these six assessment years. Assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under section 132 or requisition under section 132A, as the case may be, shall abate. It is clarified that the appeal, revision or rectification proceedings pending on the date of initiation of search under section 132 or requisition shall not abate. Save as otherwise provided in the proposed section 153A, section 153B and section 153C, all other provisions of this Act shall apply to the assessment or reassessment made under section 153A. It is also clarified that assessment or reassessment made under section 153A shall be subject to interest, penalty and prosecution, if applicable. In the assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.
- The new section 153B provides for the time limit for completion of search assessments. It provides that the Assessing Officer shall make an order of assessment or reassessment in respect of each assessment year, falling within six assessment years under section 153A within a period of two years from the end of the financial year in which the last of the authorizations for search under section 132 or for requisition under section 132A was executed.

- While coming to the instant case, the assessee *vide* its application filed before the Settlement Commission subjected the assessment orders for assessment years 2001-02 to 2007-08 without mentioning the fact that assessment of the assessment year 2004-05 had already been completed. Settlement Commissioner while computing the income under section 245D(4) of the assessee for the assessment year 2004-05, determined at higher amount instead of lesser amount which was shown by the assessee in its return of income and the Dy. Commissioner while giving effect to the order of the Settlement Commission, assessed the income at higher amount lakhs as finally settled by the Settlement Commission and passed an consequential order under section 153A read with section 245D(iv).
- From simple reading of Section 245C it can easily be construed that the assessee may at any stage of case relating to him make an application in such form as prescribed under the Act, meaning thereby the Settlement Commission can be approached at any stage of case by an assessee and further section 245A prescribes that every order of Settlement Commission passed by the Settlement Commission under sub-section 4 of Section 245D shall be conclusive as to the matter stated therein and no matter covered by such order shall save as otherwise provided in this chapter be reopened in any proceeding under this Act or under any law for the time being in force, which goes to show that order of settlement to be considered as conclusive and in ordinary circumstances cannot be reopened in any proceeding under the Act and under any other law for the time being in force.
- Further Section 245E prescribes powers of Settlement Commission to reopen the completed proceedings which clarifies that in the opinion of the settlement commission (the reasons for such opinion to be recorded by it in writing), that, for the proper disposal of the case pending before it is necessary or expedient to reopen any completed proceeding connected with the case, it may, with the concurrence of the applicant, reopen such proceeding and pass such order thereon as it thinks fit. Further provided certain limitation of nine years in reopening of proceeding and no proceeding shall be reopened by the Settlement Commission under this section in a case wherein application under section 245C is made on or after 1-6-2007. While coming to the instant case, no doubt that the assessment proceeding relevant to the assessment Year 2004 related to the assessee was completed and not specifically reopened by the Settlement Commission by giving any reason, however, according to section 245E, before 1-6-2007, the Settlement Commission was fully empowered to reopen the completed proceedings, as in the instant case the assessment proceeding was completed only on 18-12-2006 which was clearly before the 1-6-2007 and therefore could be subjected to the power of the settlement commission.
- Although no specific reasons have been given and the proceeding relevant to assessment year 2004-05 was not reopened, however, the same was taken into consideration by the settlement commission and order dated 26-9-2013 was passed, which was supplemented by order dated 7-3-2014 the covering the assessment order under appeal *qua* assessment year 2004-05 and while giving effect to the said order passed by the Settlement Commission, the Dy. Commissioner had already passed an order under section 153A read with section 245D(iv), therefore, keeping in view

of the mandates of the sections 245-C, 245E and 245-I and in order to end the litigation, impugned order under challenge passed by the Commissioner (Appeals) was liable to be set aside.

- In overall consideration the other issues and grounds raised by the assessee does not requires any specific adjudication.