

## **SetCom has power to reject application at submission stage if disclosure by assessee isn't full & true: Madras HC**

**Summary – The High Court of Madras in a recent case of Anbuezhian., (the Assessee) held that First and foremost condition for an assessee to fulfil before Settlement Commission is to satisfy Commission that his disclosure was full and true and if this basic ingredient is not satisfied, Commission can reject application at very threshold**

### **Facts**

- The assessee was an individual carrying on business of distribution of films produced by third parties.
- A search proceeding under section 132 was conducted in the offices and residential premises of the assessee in Chennai and Madurai during which, materials were seized/impounded as well as cash and notices under section 153A was issued. The assessee had admitted undisclosed income under section 132(4).
- Thereafter, it preferred an application before the Settlement Commission, to settle the issues. The said application was rejected for the reason that the assessee had reduced the quantum of transactions as per the seized material from Rs. 357 crores to Rs. 175 crores.
- Pursuant thereto, the assessee preferred the second settlement application.
- The second application for settlement was also rejected on the ground that he failed to make full and true disclosure and also the manner of earning such income, which were the requisite conditions laid down in section 245C(1).
- On writ :

### **Held**

- The first and foremost condition for an assessee to fulfil before the Settlement Commission is to satisfy the Commission that his disclosure was full and true. If this basic ingredient is not satisfied, the Commission can reject the application at the very threshold, as has been done by the impugned order at the stage of section 245D(1). Thus, the impugned order has to be tested on the anvil of the parameters pointed out above and this Court cannot convert itself as an appellate authority over the findings recorded by the Settlement Commission. Undoubtedly, this Court is exercising jurisdiction under article 226 of the Constitution of India and cannot convert itself into that of an appellate authority over and above the order passed by the Settlement Commission to consider the correctness of the same by re-appreciating the documents placed before the Commission.
- Admittedly, the assessee does not allege that the impugned order suffers from errors apparent on the face of the record. The endeavour of the assessee is to show to the Court that proper

appreciation of the documents filed by the assessee was not done by the Settlement Commission, especially when the assessee had made good whatever was pointed out by the Settlement Commission while rejecting the first application.

- The assessee's case before the Settlement Commission was that he could not maintain proper bank accounts, as he was focusing his time on his business and the returns of income for various years were filed only on estimate basis. It claimed that the seized materials are only notes containing the details of enquiry relating to distribution advances made with producers, theatre owners etc., and not actual transactions and sought to sustain this submission by relying on paper book IV. Further, the assessee admitted that he had opened multiple Bank accounts in various Banks in the names of different persons/entities and the advances were made through Bank account by way of RTGS, cheques and cash withdrawals.
- The Settlement Commission has recorded that it considered the application filed by the assessee, the paper books filed, the submission of assessee and the available records. After considering the same, the Settlement Commission pointed out that the assessee was not able to cogently explain any of the entries relating to his claim on 'not done' transaction. Therefore, it is opined that trueness and fullness of the disclosure is lacking in the application. The Settlement Commission took into consideration the written submissions filed by the assessee during the course of hearing which contain the co-relation statement of diary notings with actual transaction and list of 'not done' transaction as claimed by the assessee. The Settlement Commission pointed out that the assessee was unable to clarify the notings in diary and the quantum of transaction.
- The Settlement Commission appears to have pointed out certain deficiencies with regard to full and true disclosure of the assessee's income and the manner of earning the same, including further disclosure of additional income of Rs. 5 crores. It is recorded by the Settlement Commission that when these deficiencies were pointed out, the assessee relied on seized documents. However, on perusal of the same, the Settlement Commission found that the entries appearing in the seized documents did not match with the explanations and certain entries were pointed out such as the entries appearing in the name of Gnanavel, being part of the seized material. To the specific query made to the assessee to explain 'not done' transaction, it was observed that he was not able to explain and match the transactions with the entries appearing in the paper books.
- Further, the Settlement Commission observed that the explanation of the manner of earning the further additional disclosure of Rs.5 crores made in the second application did not form part of the SOF nor assessee was able to explain about the nature of details of the disclosure.
- Further, it appears that the Settlement Commission pointed out these deficiencies to the assessee during the course of hearing, who was unable to give any clarification and therefore it came to the conclusion that there has been no full and true disclosure. On the above grounds, the application has been rejected. Thus, the case on hand is not one where the Settlement Commission brushed aside the documents filed by the assessee. In fact an exercise has been done by the Settlement Commission to examine the stand taken by the assessee, giving liberty to the assessee to explain

from the documents filed in the paper book. It needs to be pointed out that vital aspects, which were queried by the Commission, the assessee was unable to explain or clarify or match the transactions. An argument was put forth that the Settlement Commission ought to have utilized the machinery available with it to cause clarification or to call for a report under rule 9 or to call for a report under section 245D(3).

- The application is at the stage of admission and the assessee should satisfy the Settlement Commission that there has been full and true disclosure. At that stage of the matter, the Settlement Commission cannot be expected to or cannot be compelled to utilize the machinery available with it or to invoke rule 9 or section 245C. It is for the Settlement Commission to regulate its business. The manner in which the Settlement Commission proceeded cannot be stated to be either arbitrary or unreasonable. The Court cannot dictate the procedure that the Settlement Commission has to follow at the stage of Section 245D(1) unless there is a palpable error or violation of any procedures under the Act. In other words, broad parameters required to satisfy a *prima facie* case before a Court of law is what is required at the stage of section 245D(1). The degree of proof for a *prima facie* case is on higher pedestal before a judicial forum. It is no doubt true that section 245 was inserted into the provisions of the Income-tax Act for an early resolution of complicated tax disputes, where the assessee gets relief, more particularly from penalty and prosecution. However, to be entitled for such a remedy, the conduct of the assessee is primordial. The conduct of the assessee definitely leads to the irresistible conclusion that there has been no full or true disclosure.