

## HC affirms rejection of settlement application for not disclosing correct info about income and its source

**Summary – The High Court of Gujarat in a recent case of Maheshbhai Shantilal Patel, (the Assessee) held that where Settlement Commission rejected assessee's application for settlement on ground that he shifted his stand number of times either on quantum of undisclosed income or its source, order so passed did not require any interference**

### Facts

- In course of search proceedings, the assessee was found to be engaged in various land deals, from which he had earned sizable unaccounted income. Thus, block assessment was completed in which various additions were made to assessee's income.
- The assessee applied for settlement of the cases before the Settlement Commission. In course of settlement proceedings, the Settlement Commission found that assessee claimed to have invested certain amount in AOP but there was no documentary evidence regarding holding of the lands or any other property in the name of the AOP. Moreover, assessee had shifted his stand number of times either on the quantum of undisclosed income or its source.
- The Settlement Commission, thus, taking a view that assessee had not made true and full disclosure, rejected assessee's application.
- On petition:

### Held

- The limited jurisdiction of judicial review while examining the correctness of the order of the Settlement Commission is a well settled principle. In brief, the Supreme Court as well as this Court has reiterated that the order of Settlement Commission would be subject to interference only if it suffers from any *mala fides* or is opposed to the principles of natural justice or is passed against the provisions of the Act.
- In this background, it is necessary to revert back to the order of the Settlement Commission. Perusal of the order would show that the assessee was found to be engaged in various land deals, from which he had earned sizable unaccounted income. In the settlement application, the assessee had stated that he would negotiate with agriculturists, who are landowners or those who are *Banakhat* right holders for purchase of agricultural lands, which would have commercial potential. After getting such agricultural lands converted into non-agricultural use by obtaining necessary permissions and approvals from the Government authorities, buyers for the lands would be identified. The landowners would directly transfer the lands to such buyers. If there are any *Banakhat* right holders or other intermediaries, they would be shown as confirming parties. In this background, the assessee had made the disclosures in the settlement application and had offered

different amounts to tax for the said four Assessment Years, *i.e.*, Assessment years 1991-92 to 1994-95.

- The Settlement Commission noted that during the search action, the assessee had disclosed an amount of Rs. 43.00 lakhs having been invested in the AOP. As against that the petitioner had filed the settlement application disclosing additional income of Rs. 32.97 lakhs. The Department had all along opposed the theory of existence of the AOP. In this context, the Settlement Commission recorded that there was no documentary evidence regarding holding of the lands or any other property in the name of the AOP. The reference made by the petitioner in his statement under section 132(4) of the Act to such AOP was not backed by any other evidence or information. The Settlement Commission, therefore, agreed with the suggestion of the Department that there was no AOP in existence. In this background, the Settlement Commission recorded that the assessee had not made true and full disclosures in his application for settlement made to the Settlement Commission.
- Additionally, the Settlement Commission also noted that the assessee had, from time to time, made several disclosures for two out of the four Assessment Years, namely, assessment years 1991-92 and 1992-93. The Settlement Commission noted that against the total additional income of Rs. 84.76 lakhs (rounded off) for the assessment years 1991-92 to 1994-95 disclosed in the application for settlement, the assessee revised the disclosure under letter dated 27-01-2017 to Rs. 1.20 crores (rounded off). This additional disclosure of Rs. 84.76 lakhs (rounded off) comprised of Rs. 7.70 lakhs for assessment year 1991-92 and Rs. 77.06 lakhs for assessment year 1992-93. Subsequently, under letter dated 16-03-2017, the assessee made further disclosure of additional income of Rs. 13.25 lakhs for Assessment year 1992-93 on account of unexplained expenses in the purchase of land. This was pursuant to the Department pointing out the discrepancies in the investments and expenditures. The petitioner came up with yet another revised disclosure under letter dated 17-05-2017, which was based on the cash flow chart prepared on the basis of seized documents. The assessee owned up the entire amount of Rs. 3,05,500 for assessment years 1991-92 and Rs. 24.81 lakhs for assessment year 1992-93. The petitioner filed yet another letter dated 01-06-2017 before the Settlement Commission and sought to distance himself from the income of the AOP, which he had earlier agreed to show proportionately on the ground that the other member of the AOP, *i.e.*, had not agreed to that modality. Under the said letter dated 01-06-2017, therefore, the petitioner made final offer of additional income of Rs. 68.02 lakhs by way of settlement for the said four assessment Years.
- The Settlement Commission, therefore, recorded that all throughout the settlement proceedings, the petitioner had made a flip-flop in his stand and also in the disclosures made from time to time. These are the main grounds which persuaded the Settlement Commission to dismiss the application.
- There is no reason to interfere. As noted, the order of Settlement Commission is founded on primary facts; (i) that the AOP was found to be non-existent and the petitioner had, therefore, not made true disclosure in this respect and (ii) that all throughout the petitioner shifted his stand on his

correct undisclosed income. The existence or otherwise of AOP is a question of fact, in which, one would not interfere, in absence of any perversity in the Settlement Commission's findings. If this be so, the question of true and full disclosure in the settlement application would assume significance. The petitioner had tried to divert a part of his income in the hands of the AOP, which attempt failed. This had correlation to all the assessment years and was not only confined to two of them. Further, the multiple disclosures made by the petitioner during the settlement proceedings, as noted by the Settlement Commission and referred to in the earlier portion of this judgment, would clearly show that the petitioner had scant regard for truth.

- Several revised settlement offers were made by the petitioner. Each time the petitioner shifted his stand, either on the quantum of undisclosed income or its source. On certain occasions, the Department brought out discrepancies in the disclosures, which forced the petitioner to make further revised offers for settlement. After making such revised offers on multiple attempts, the assessee took a complete 'U'-turn and sought to delete certain income from his disclosures on the ground that, till then, he had taken into account his share of the AOP in question. However, the other member of the AOP refused to accept such a formula.
- The petitioner would, therefore also, downwardly revise his income offered through settlement, which was impermissible. Irrespective of the stand of the other member of the AOP, the assessee had made conscious disclosures, which proceeded on two footings; (i) that the AOP did not exist and the petitioner's share of the AOP in question would now be disclosed by him and (ii) that the petitioner agreed that in the name of AOP, certain unaccounted income was generated, which was not offered to tax.
- Further, in the present case, the Settlement Commission has held that there was lack of true and full disclosure and total flip-flop on the part of the assessee while making multiple disclosures.
- In the result, the petition is dismissed.