

SetCom application not allowable as assessee clubbed diff. shareholdings to demonstrate substantial interest;

Summary – The High Court of Rajasthan in a recent case of Bhatia Colonizers (P.) Ltd., (the Assessee) held that For purpose of filing settlement application in case of company, clubbing of shareholding of shareholders to make collective shareholding of 20 per cent is not permissible to determine their substantial interest in company so as to admit settlement application

Facts

- The Income-tax authorities carried search and seizure at the premise of the petitioner-company and its Directors and other related concerns.
- The petitioner-company had pleaded that it had filed an application under section 245C(1) seeking settlement with the Income-tax Department for the assessment years 2010-11 to 2017-18 declaring additional income of Rs.30.90 Lakhs. The petitioner-company declared tax payable on declared income as Rs.10.02 Lakhs. The Directors of the petitioner-company also declared additional income in personal hands on which tax payable was above Rs.50 Lakhs each.
- As per section 245C(1), it is sine qua non for a valid application before the Settlement Commission that the income tax payable on the additional income disclosed in the application exceeds the amount of Rs. 50 Lakhs and the said applicant would be termed as 'specified person' for the other applicants who were related to the 'specified person' for whom the condition of tax payable on additional income disclosed in the application is minimum of Rs.10 Lakhs.
- The petitioner-company had pleaded in the petition that it qualified the definition of relation with the 'specified person' within the meaning of *Explanation (a)* to section 245C(1) as covered under clause (v) of *Explanation (a)* to section 245C and was thus, competent to maintain settlement application declaring tax payable at Rs.10.02 Lakhs.
- The petitioner-company had pleaded that the Settlement Commission had erroneously dismissed the application by holding that the petitioner was not covered in the definition of 'related person' to the 'specified person' within the meaning of explanation to section 245C(1) and, thus, the impugned order was legally not sustainable. The submission of the petitioner was that collective stake of all three specified persons exceeds 20 per cent in the petitioner-company and alternatively it gets covered under clause (vi)(B) of *Explanation (a)* of section 245C(1)

Held

- The submission of the petitioner was that collective stake of all three specified persons exceeds 20 per cent in the petitioner-company and alternatively it gets covered under clause (vi)(B) of *Explanation (a)* of section 245C(1).
- It is noted that individual share percentage of three shareholders is 7.3 per cent, 11per cent and 11per cent respectively.

- The bare perusal of definition of 'substantial interest, as per clause (a) of clause (vi) of *Explanation* to section 245(1) clearly reveals that a shareholder should carry not less than 20 per cent of the voting power of a company and clubbing of shareholding by different shareholders to make it 20 per cent of having substantial interest, is not permissible under the law.
- Thus, there is no illegality in the impugned order passed by the Income-tax Settlement Commission and as such the present writ petition is dismissed.