

**THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 16.05.2014

+ **W.P.(C) 1208/2013 & CM No.2299/2013**

**COMMISSIONER OF INCOME TAX (C)-III** ... Petitioner

versus

**SH. GOPAL GUPTA** ... Respondent

**Advocates who appeared in this case:**

For the Petitioner : Mr N.P. Sahni with Mr Nitin Gulati  
For the Respondent No.1 : Mr Parag Tripathi, Sr Advocate with  
Mr Vivek Kohli, Mr Shwetank Tripathi,  
Mr Kunal Bahri and Ms Shivambika Sinha.

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE SIDDHARTH MRIDUL**

**JUDGMENT**

**BADAR DURREZ AHMED, J (ORAL)**

1. This writ petition, which has been filed by the Commissioner of Income Tax, impugns the order dated 21.05.2012 passed by the Income Tax Settlement Commission under Section 245D(4) of the Income Tax Act, 1961. It is also directed against the order dated 20.11.2012 passed by the Settlement Commission. The respondent No.1 had approached the Settlement Commission by way of a



settlement application in respect of assessment years 2003-2004 to 2009-2010.

2. Two points have been urged in this writ petition in the context of the contention of the Revenue that the respondent No.1 had not made a full and true disclosure and therefore the impugned orders were liable to be quashed and set aside. The first point pertains to the transaction concerning the property at Motia Khan, Karol Bagh in respect of which the respondent No.1 alongwith his wife Smt. Vineeta Gupta had declared a sum of Rs.7.6 crores as undisclosed investment. Insofar as that issue concerning the property at Motia Khan is concerned, it has been dealt with by us in a recent decision in the case of the respondent No.1's wife Smt. Vineeta Gupta in WP(C) 829/2013 (*Commissioner of Income Tax v. Vineeta Gupta*) decided on 06.05.2014. That decision would cover the point taken in the present petition with regard to the transaction concerning the property at Motia Khan even insofar as the respondent No.1 herein is concerned. The other issue which has been raised by the Revenue/petitioner is with regard to five receipts of cash totalling to Rs.6.00 crores which were found during the search operation which took place on



15.01.2009 at the premises of respondent No.1. The five receipts are of Rs.2.00 crores and four others of Rs.1.00 crore each. The said receipts were photocopies. The respondent No.1 has stated that although the said receipts representing Rs.6.00 crores were receipts of loans received by the respondent No.1, the same had been disclosed as income before the Settlement Commission. The stand taken by the Revenue that the said sum of Rs.6.00 crores is not the principal amount of loans received by respondent no.1 but only the interest received by respondent No.1 on much larger loans extended by respondent No.1 to five persons on 07.11.2008. As per the Revenue, the receipts disclosed the rate of interest @1.25%. Since the Revenue has taken the stand that the amounts received by respondent No.1 constituted interest payments, the total principal amount would amount to Rs.80.00 crores. The Revenue has contended that while the receipt of Rs.6.00 crores by way of interest has been disclosed to the Settlement Commission, the principal amount of Rs.80.00 crores by way of investment has not been disclosed and therefore the respondent No.1 has not made a full and true disclosure of his income even before the Settlement Commission which is a mandatory requirement under



Section 245C of the Income Tax Act, 1961. Consequently, the impugned order was liable to be set aside on this ground alone.

3. One of the receipts dated 07.11.2008 which has been reproduced in the impugned order dated 21.05.2012 is also set out herein below:-

“Dated 07.11.2008

RECEIPT

I, Sri Gopal Gupta, owner of M/s. Flakes 'N' Flavourz here by confirm the Receipt of Rs.20000000/- (Rupees Two Crore only) from Mr.Ankit Agarwal, Delhi on 07.11.08 A/c Account of interest payable @1.25% for six months through Mr.Suresh Bansal.

1  
Rupee  
revenue  
stamp

Sd/-

(Sr. Gopal Gupta)”

4. The entire controversy in this case centers around the interpretation given to the receipt. As per the Revenue, the receipt indicates an amount by way of interest whereas as per the respondent No.1 it was not received by way of interest and was the principal amount of loan which was received by the respondent No.1 which he



has disclosed as his income before the Settlement Commission because the lender would not come forward to confirm the cash loans. Before the Settlement Commission, the Revenue raised the following contentions on this issue:-

“11. During the hearing the learned CIT(DR) has raised the contentions on this issue as under:-

i. During the search, the documents were seized which showed that Shri Gopal Gupta received interest of Rs. 6 crore on the loans given for six months. These documents, are acknowledgement receipts signed by Shri Gopal Gupta having received the amount. If the reverse calculation is done, it indicates that Shri Gopal Gupta advanced cash loan of Rs. 80 crores to five persons on 7.11.2008 for a period of six months. CIT(DR) further contended that the counsel of the applicant could not produce any evidence to show that loans were received by Sri Gopal Gupta. No confirmation from the persons who are mentioned in the documents have been submitted.

CIT(DR) also drew attention to the statement of the applicant which was recorded under section 132(4) of the Income Tax Act, 1961, and specially his answer to Q. No. 33 which is reproduced below :-

*"I have gone through the pages shown by you. I am unable to recollect right now the exact nature of these receipts. I will have to go through my records and consult the concerned accountants to furnish the required details asked by you. I shall*



*submit the same as and when required in due course of time"*

From the above' CIT(DR) has contended that the applicant was giving evasive replies. Considering that the transaction was executed on 07.11.2008 and search took place on 15.01.2009, this was an afterthought. However only in the statement recorded in the month of June, 2009 he submitted that it was actually a loan received by him for a period of six months. It is important to note that the word "loan" has not been mentioned on the documents seized during the search. As such, the explanation given by the applicant is clearly an afterthought. Even during the statement under section 132(4) of the Act, the applicant had given the evasive reply.

(iii) The applicant has not disowned the documents and the contents. The presumption u/s. 132(4A) of the Income Tax Act, 1961 has not been rebutted by him. The reference is placed on the decision of the Hon'ble Delhi High Court in the case of Smt. Urmila Gambhir.”

5. On behalf of the respondent No.1, the submissions made before the Settlement Commission were as under:-

“12. During the course of hearing the learned AR has submitted as under:-

i) The receipts represent the money borrowed by the applicant, Mr. Sri Gopal Gupta from different persons through a common broker Shri Suresh Bansal.



ii) The language of the receipts is cryptic and gives an impression that the receipts were on account of receipt of interest on some loan given.

Whereas in actuality the receipts are in respect of money received as a loan totaling to Rs. six crores at an interest of 1.25 p.m. taken for 6 months.

iii) The residential house, all the business premises and all the lockers of the applicant have been covered by the Income Tax Department and nothing has been found to indicate that any sum was advanced to the persons mentioned on the receipts on interest. Had it been so the applicant would have also preserved such papers (documents on strength of which normally a loan is given to secure it) along with these receipts. It is very unnatural that the applicant is preserving the photocopy receipts (of interest received) issue by him and does not preserve the original documents on the strength of which he could secure the repayment without which he could not have recovered the amount advanced, if any. It is submitted that no addition can be made merely by presuming or by assuming that the applicant would have advanced the sum without there being any document to show the same and the document being relied upon is only a photocopy and the language of which is cryptic.

v) The wording of the photocopy of the receipts is such which is as in the case of a person taking a loan i.e. identification of the borrower, his business particulars, amount of loan, period for which the loan is taken and the rate of interest and name of person from whom loan is taken is mentioned on such a receipt.



vi) The Department has option to make necessary enquiries from the broker Mr. Suresh Bansal whose address has been given and approach to the Commission in case of any misrepresentation of facts to make the settlement void.

13. It is claimed by the applicant that he has offered additional income of Rs.6 crores on account of such receipts as he cannot get confirmation of such loans from Shri Ankit Agarwal and other lenders as the transactions are unaccounted from both sides. It is argued that the persons who advanced loans will not confirm the unaccounted transactions on the basis of papers seized at the premises of the applicant as such confirmation would make him liable to tax.”

6. The conclusions of the Settlement Commission on the above issue are as under:-

“15. It is observed that there is no dispute that the amount of Rs. six crores has been received by the applicant on 07.11.2008. The dispute between the applicant and the Department is that whether the five receipts of total amount of Rs. 6 crores are on account of loans taken by Shri Sri Gopal Gupta from the persons mentioned in the receipts or whether the amount of Rs. 6 crores are on account of interest received by Shri Sri Gopal Gupta on loans given by him to the said persons.

16. In our view, the words "A/c Account of interest payable @1.25% for six months" are very important and has to be interpreted considering the totality of circumstances. The words used are "interest payable" and not "interest receivable". The words "interest payable" will be applicable to the person who has signed the receipt



and not to the person for whom the receipt is signed. It is seen that the five receipts are the photocopies and not the original receipts. Logically the original receipts will be kept by the person who may need it to use it as a safety in case of any default. The photocopy will be kept by the person who wants to keep it as a matter of record and no original record needed. In case of default, the photocopy of the receipts will not have any legal force. In such situation only original receipts will have legal validity. It is a wide practice that even in cases of unaccounted transactions, proper documents are executed in order to put pressure of legal action on borrower so that he may not default. Such a receipt also acts as a deterrent as any default would seriously affect the borrower's credibility in the market and nobody would do any business with him in future. Therefore, if Rs.6 crores is the interest, in that case, Shri Sri Gopal Gupta should have with him original copy of the receipts as well as necessary documents/ papers to support his claim in respect of amounts given as loan. Similarly, if Rs.6 crores are loans taken by Shri Sri Gopal Gupta on interest in that case the original receipts as well as original papers/documents in respect of such loans would be kept by lenders. In our view the fact that original copy of the receipts as well as other papers/documents in respect of Rs.6 crores were not found from the premises of the applicant, supports the case of the applicant as when he was keeping photocopy of the receipt, there was no reason why he would not have kept original copy of receipts and other papers/documents of loans with him.

After taking into account all the facts in entirety, we are of the considered view that the amount of Rs. 6 crores as mentioned in the receipts are loans taken by Shri Sri Gopal Gupta payable @ 1.25% interest for the period of six months. As the applicant has already offered Rs.6 crores as additional income, no further action is required on this issue.”



7. From the above it is evident that the Settlement Commission has taken the view that the amount of Rs.6.00 crores as mentioned in the said receipts were loans taken by respondent No.1 payable @1.25% for the period of six months. The Settlement Commission also took the view that, as the respondent No.1 has already offered Rs.6.00 crores as additional income, no further action was required on the issue.

8. We have examined the submissions made by the learned counsel for the Revenue as well as by the learned counsel for respondent No.1. It is evident that the Revenue seeks to interpret the said receipts in such a way as to indicate that the amount of Rs.6.00 crores had been received by way of interest whereas the learned counsel for respondent No.1 has relied on the interpretation placed by the Settlement Commission that the said sum was received by way of loans. In our view, both interpretations are possible.

9. In this backdrop, the question that arises is as to what degree, if at all, can this Court interfere when two possible interpretations are placed before it with regard to a document which is of vital importance and when one of the interpretations has been accepted by



the Settlement Commission. In this context, Mr. Tripathi, the learned senior counsel appearing on behalf of respondent No.1 placed reliance on the following four decisions of the Supreme Court:-

1. **R.B. Shreeram Durga Prasad v. Settlement Commission & Another: (1989) 1 SCC 628;**
2. **Jyotendrasinhji v. S.I. Tripathi & Ors.: 1993 Supp (3) SCC 38;**
3. **Shriyans Prasad Jain v. Income Tax Officer & Ors.: 1993 Supp (4) SCC 727; and**
4. **Union of India & Others v. Ind-Swift Laboratories: (2011) 4 SCC 635.**

10. In *R.B. Shreeram Durga Prasad (supra)* the Supreme Court observed that in the exercise of power of judicial review of a decision of the Settlement Commission, the Court is concerned with the legality of procedure followed and not with the validity of the order. The Supreme Court also placed reliance on the English decision in the case of **Chief Constable of the North Wales Police v. Evans: (1982) 1 WLR 1155**. The Supreme Court observed that judicial review is not concerned with the decision but with the decision making process.



11. In *Jyotendrasinhji (supra)* the Supreme Court placed reliance on its decision in the case of *R.B. Shreeram Durga Prasad (supra)* and observed that the scope of enquiry, whether by the High Court under Article 226 or by the Supreme Court under Article 136 remains the same and the question to be examined is whether the order of the Commission is contrary to any of the provisions of the Act and if so, has it prejudiced the petitioner/appellant apart from the ground of bias, fraud and malice, which of course, constitute a separate and independent category. The Supreme Court was concerned with the question of interpretation which had been placed by the Commission in respect of trust deeds which were the subject matter before the Settlement Commission. The Supreme Court observed that the Commission had interpreted the trust deeds in a particular manner and even if the interpretation placed by the Commission on the said deeds was not correct, it would not be a ground for interference since a wrong interpretation cannot be regarded as a violation of the provisions of the Income Tax Act. The exact words used by the Supreme Court were as under:

“16. It is true that the finality clause contained in Section 245-I does not and cannot bar the jurisdiction of



the High Court under Article 226 or the jurisdiction of this Court under Article 32 or under Article 136, as the case may be. But that does not mean that the jurisdiction of this Court in the appeal preferred directly in this Court is any different than what it would be if the assessee had first approached the High Court under Article 226 and then come up in appeal to this Court under Article 136. A party does not and cannot gain any advantage by approaching this Court directly under Article 136, instead of approaching the High Court under Article 226. This is not a limitation inherent in Article 136; it is a limitation which this Court imposes on itself having regard to the nature of the function performed by the Commission and keeping in view the principles of judicial review. Maybe, there is also some force in what Dr Gauri Shankar says viz., that the order of the Commission is in the nature of a package deal and that it may not be possible, ordinarily speaking, to dissect its order and that the assessee should not be permitted to accept what is favourable to him and reject what is not. According to learned counsel, the Commission is not even required or obligated to pass a reasoned order. Be that as it may, the fact remains that it is open to the Commission to accept an amount of tax by way of settlement and to prescribe the manner in which the said amount shall be paid. It may condone the defaults and lapses on the part of the assessee and may waive interest, penalties or prosecution, where it thinks appropriate. Indeed, it would be difficult to predicate the reasons and considerations which induce the Commission to make a particular order, unless of course the Commission itself chooses to give reasons for its order. Even if it gives reasons in a given case, the scope of enquiry in the appeal remains the same as indicated above viz., whether it is contrary to any of the provisions of the Act. In this context, it is relevant to note that the principle of natural justice (*audi alteram partem*) has been incorporated in Section 245-D itself. The sole overall limitation upon the Commission thus appears to be that it



should act in accordance with the provisions of the Act. The scope of enquiry, whether by High Court under Article 226 or by this Court under Article 136 is also the same — whether the order of the Commission is contrary to any of the provisions of the Act and if so, has it prejudiced the petitioner/appellant apart from ground of bias, fraud and malice which, of course, constitute a separate and independent category. Reference in this behalf may be had to the decision of this Court in *R.B. Shreeram Durga Prasad and Fatechand Nursing Das v. Settlement Commission (IT and WT)* [(1989) 1 SCC 628 : 1989 SCC (Tax) 124 : (1989) 176 ITR 169] which too was an appeal against the orders of the Settlement Commission. Sabyasachi Mukharji, J., speaking for the Bench comprising himself and S.R. Pandian, J. observed that in such a case this Court is “concerned with the legality of procedure followed and not with the validity of the order”. The learned Judge added “judicial review is concerned not with the decision but with the decision-making process”. Reliance was placed upon the decision of the House of Lords in *Chief Constable of the N.W. Police v. Evans* [(1982) 1 WLR 1155 : (1982) 3 All ER 141] . Thus, the appellate power under Article 136 was equated to power of judicial review, where the appeal is directed against the orders of the Settlement Commission. For all the above reasons, we are of the opinion that the only ground upon which this Court can interfere in these appeals is that the order of the Commission is contrary to the provisions of the Act and that such contravention has prejudiced the appellant. The main controversy in these appeals relates to the interpretation of the settlement deeds — though it is true, some contentions of law are also raised. The Commission has interpreted the trust deeds in a particular manner. Even if the interpretation placed by the Commission on the said deeds is not correct, it would not be a ground for interference in these appeals, since a wrong interpretation of a deed of trust cannot be a violation of the provisions of the Income Tax Act. It is



equally clear that the interpretation placed upon the said deeds by the Commission does not bind the authorities under the Act in proceedings relating to other assessment years.

17. In view of the above, though it is not necessary, strictly speaking, to go into the correctness of the interpretation placed upon the said deeds by the Commission, and it is enough if we confine ourselves to the question whether the order of the Commission is contrary to the provisions of the Act, we propose to, for the sake of completeness, examine also whether the order of the Commission is vitiated by any such wrong interpretation?”

(underlining added)

12. The next decision which was relied upon by Mr. Tripathi was that of *Shriyans Prasad Jain (supra)* wherein the Supreme Court again placed reliance on *R.B. Shreeram Durga Prasad (supra)* and *Jyotendrasinhji (supra)* and observed as under:-

“19. Mr Poti, learned counsel for the Revenue, is right in submitting that in this appeal this Court would not go into questions of the fact or review the findings of fact recorded by the Commission. As pointed out by this Court in *Jyotendrasinhji v. S.I. Tripathi* [1993 Supp (3) SCC 389: (1993) 201 ITR 611] this Court can interfere with the Commission's order only if it is found to be “contrary to any of the provisions of the Act”. To the same effect is the earlier decision of this Court in *R.B. Shreeram Durga Prasad and Fatehchand Nursing Das v. Settlement Commission* [(1989) 1 SCC 628 : 1989 SCC (Tax) 124 : (1989) 176 ITR 169].”

(underlining added)



13. It is apparent that the power of interference under Article 226 is limited. It is evident that this Court under Article 226 can only interfere with the Settlement Commission if it is found to be contrary to the provisions of the Act and that even if the Court disagrees with an interpretation placed by the Settlement Commission on a document, it cannot substitute its view in place of that of the Settlement Commission unless and until the interpretation given by the Settlement Commission is clearly arbitrary and perverse.

14. The last decision relied upon by Mr. Tripathi was that of *Union of India & Others v. Ind-Swift Laboratories Limited* (*supra*) in which the Supreme Court observed as under:-

“22. An order passed by the Settlement Commission could be interfered with only if the said order is found to be contrary to any provisions of the Act. So far as the findings of fact recorded by the Commission or question of facts are concerned, the same is not open for examination either by the High Court or by the Supreme Court. In the present case the order of the Settlement Commission clearly indicates that the said order, particularly, with regard to the imposition of simple interest @ 10% per annum was passed in accordance with the provisions of Rule 14 but the High Court wrongly interpreted the said Rule and thereby arrived at an erroneous finding. So far as the second issue with respect to interest on Rs. 50 lakhs is concerned, the same being a factual issue should not have been gone into by the High



Court exercising the writ jurisdiction and the High Court should not have substituted its own opinion against the opinion of the Settlement Commission when the same was not challenged on merits.”

(underlining added)

15. From the above it is evident that the Supreme Court observed that the High Court ought not to go into a factual issue while exercising writ jurisdiction and should not have substituted its opinion against the opinion of the Settlement Commission. From all these decisions it is abundantly clear that the scope of review under Article 226 of the Constitution insofar as an order passed by the Settlement Commission under Section 245 D (4) of the Income Tax Act is concerned, is a very limited one. This Court certainly cannot substitute its view in place of the Settlement Commission particularly on point of interpretation of a particular document. Interference can only be made if there is a fault in the decision making process and not with the decision itself. Even if this Court feels that it would have arrived at a different decision, it cannot interfere with the conclusion arrived at by the Settlement Commission because this Court does not sit in appeal over the decision of the Settlement Commission.



16. In this context, it is to be seen that the only point urged by the learned counsel for the Revenue is that the interpretation placed on the receipts was erroneous. The interpretation which has been placed by the Settlement Commission on the documents in question, first of all, results in a finding of fact which, as we have seen, cannot be interfered with. And, secondly, the interpretation is not so outlandish to be categorized as arbitrary or perverse so as to call for interference. We make it clear that the interpretation sought to be placed by the Revenue may be a possible interpretation but, so, too, would be the interpretation placed by the Settlement Commission which has also been espoused by the learned counsel for respondent No.1. In such a situation no interference with the Settlement Commission's order is warranted.

17. Mr. Sahni, the learned counsel appearing for the Revenue, referred to a decision of this Court in **Omaxe Limited & Another v. Deputy Commissioner, Income Tax**, WP (C) 1451/2013, decided on 15.04.2014. In particular, he placed reliance on the observations of a Division Bench of this Court in para 16 thereof which deals with the issue of misrepresentation which, according to the said decision,



would mean failure to disclose material or facts which are germane and relevant. We do not see as to how that decision would advance the cause of the Revenue inasmuch as there are no foundational facts in the present case to establish misrepresentation on the part of respondent No.1. In this context, it may be pointed out that the case of the Revenue that there was misrepresentation or that the respondent No.1 had not given a full and true disclosure is based on an interpretation of the said receipts. Its case is that since the said receipts were of the amounts representing interest and not of the principal amount, the respondent No.1 had not disclosed the principal amount and thereby had indulged in suppression and non-disclosure. The question of misrepresentation or suppression or concealment is premised on the interpretation that the receipts were of amounts representing interest payments and not of the loans taken by respondent No.1. That interpretation has not been accepted by the Settlement Commission and therefore the entire foundation of the argument that the respondent No.1 had indulged in misrepresentation and not made a full and true disclosure falls to the ground.



18. Lastly, Mr. Sahni submitted that although it had not been specifically raised in the writ petition that the respondent No.1 had not submitted information as required by the assessing officer at the time of assessment proceedings, he referred to the statement of facts (SOF) and the Rule 9 report submitted by the Commissioner of Income Tax and in particular to serial No.9 thereof wherein this aspect has been mentioned. It has been pointed out that the Commissioner of Income Tax had referred to various questionnaires issued by the assessing officer to the respondent No.1 during the assessment proceeding and that the Commissioner of Income Tax had stated that the respondent had not submitted information as asked for in such questionnaires. The response of the respondent No.1 is also indicated and as per the respondent No.1 he had appended copies of the replies to all the questionnaires raised by the assessing officer. In this context, we may also note the submission of the respondent No. 1 before the Settlement Commission, which we have already reproduced above, to the effect that the Department had the option to make necessary enquiries from the broker Mr. Suresh Bansal, whose address had already been given and, in case any misrepresentation of facts was found it could request



the Commissioner to make the settlement void. In the wake of this submission, there was no contrary finding or contrary argument raised before the Settlement Commissioner on behalf of the Revenue. Consequently, the submission of Mr. Sahni on this aspect of the matter is also not tenable. In any event, it is not sufficient to warrant any interference with the orders of the Settlement Commission.

19. In view of the foregoing discussion, the writ petition is dismissed. There shall be no order as to costs.

**BADAR DURREZ AHMED, J**

**SIDDHARTH MRIDUL, J**

**MAY 16, 2014**  
**ns**