

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP No.5307 of 2019 (O&M)

Date of decision : 22.10.2019

M/s M3M India Holdings Pvt. Ltd.

..... Petitioner

versus

Income Tax Settlement Commission (IT/WT)
& ors.

..... Respondents

**CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
HON'BLE MR.JUSTICE HARNARESH SINGH GILL**

Present : Mr. Ved Kumar Jain, Advocate and
Mr. Sunish Bindlinsh, Advocate
for the petitioner.

Mr. Tajender K.Joshi, Advocate
for respondent No.1.

AJAY TEWARI, J. (Oral)

1. This petition has been filed against the order of the Settlement Commission rejecting an application for settlement filed by the petitioner primarily on the ground that no proceedings were pending on the day.

2. Brief facts are that while the assessment proceedings were pending the petitioner sent a mail to the Assessing Officer on 26.12.2018 indicating that assessment proceedings should be deferred because the petitioner intended to move the Settlement Commission. On 27.12.2018 the Assessing Officer finalized the assessment, passed the order and despatched it through post. Admittedly, before it was received or even delivered by the postal authorities the petitioner moved the application

before the Settlement Commission on 28.12.2018. The Commission by the impugned order accepted the stand of the revenue that on the date of the application the assessment proceedings having been concluded, the application did not lie. These facts are undisputed.

3. The precise contention of the counsel for the petitioner is that the assessment proceedings could not have been said to be concluded till such time as the assessment order was not served upon the Assessee. In this connection, he has relied upon *CIT Vs. ITSC (2015)58 taxmann.com 264* followed by *Yashovardhan Birla Vs. Deputy Commissioner of Income Tax, Central Circle (2016)73 taxmann.com 5*. In both these cases, (where also the issue was similar as in the present case), the Bombay High Court had held that the proceedings could not be said to have been concluded merely because an order had been passed or even despatched, but could be said to be concluded only when the order was served. He has further argued that the revenue has accepted this proposition of law in these cases and has allowed these judgments to become final.

4. Counsel for the revenue has also relied upon a decision of this Court in *V.R.A. Cotton Mills (P) Ltd. Vs. Union of India (2013) 33 taxmann.com 675* wherein the petitioner had filed its income tax return on 29.09.2009 for the assessment year 2009-2010 for the year ending 31.03.2009. Earlier a notice under Section 142(1) of the Income Tax Act, 1961 (for short the Act) was issued seeking certain information. Subsequently, notice under Section 143(2) was issued on 30.09.2010 and the limitation to serve that notice in that case was upto 30.09.2010. The issue before this Court was whether the date of the notice would be taken

as per its service or as per its issuance. It was in those circumstances that the Court had held that for the purposes of computing the limitation of 30 days for service of notice under Section 143(2) of the Act the determinative date could be the date of issue and not the date of service. In our view, this judgment is not applicable. Because there the question which had to be determined was whether the Assessing Officer had acted with due despatch within the period of limitation and this Court had held that since he had despatched the notice within the date of limitation the service thereof would be redundant. In the present case, the matter has to be viewed from the perspective of the Assessee i.e. to say when the Assessee is bound to act. It cannot be said that before the notice was even sought to be served upon the Assessee the proceedings qua him could not be said to have concluded.

5. Counsel for the revenue at the very outset states that he has no knowledge whether the Bombay High Court cases have been allowed to become final but he has relied upon the Gujrat High Court judgment titled as *M/s Shlibhadra Developers Vs. Secretary and 2 ors. 2016(10) TMI 778* where it was held to the contrary.

6. Counsel for the petitioner has refuted this argument by asserting that one of the factors which weighed with the Gujrat High Court in the case of *Shlibhadra (supra)* was that the order was sought to be personally served upon the Assessee but the Assessee refused to accept the order, and apart therefrom, in an appeal filed by that Assessee to the Supreme Court leave has been granted.

7. In our considered opinion, the petition must succeed. Apart from the fact that the judgment passed in *Shlibhadra (supra)* could be

distinguished (since in that case the Assessee had refused service), what we find in the present case is that the petitioner had communicated to the Assessing Officer on 26.12.2018 itself that it was intending to move an application before the Settlement Commission.

8. Counsel for the revenue asserts that the Assessing Officer was working against a time constraint since limitation was to expire on 31.12.2018.

9. Be that as it may, in the totality of circumstances, we are inclined to follow the view of the Bombay High Court passed in ***Yashovardhan Birla (supra)*** wherein it was held as follows :-

“12. In any event, the Rule of Law requires like cases to be decided alike. Therefore, the law of precedents. This Court in Income Tax Settlement Commission (supra) has declared that for purposes of making an application for settlement, a case i.e. An assessment would be pending till such time as the assessment order is served upon the assessee. The declaration of law by this Court is binding on all authorities within the State including the Commission. The petitioner was entitled to proceed on the basis that till the service of the assessment order, the case continues to be pending with the Assessing Officer. Therefore, it was open to him to invoke the provisions of Chapter XIXA of the Act on 30th March, 2016 as till that date the assessment order was not served upon him.

16. However, we need not dilate on the above two decisions cited at the Bar as the controversy before this Court stands concluded by a binding decision of a co-ordinate bench of this Court in Income Tax Settlement Commission (supra) which holds that the assessment order for purposes of Chapter XIX A of the Act can be said to have been made when it is served upon assessee concerned. This

considered view of a co-ordinate bench was rendered keeping in view the object and purpose of introducing Chapter XIX A into the Act i.e. Settlement provisions. We see no reason to differ from the above view.

17. Therefore, the impugned order dated 12th April, 2016 of the Commission being Exh.G. to the petition is quashed and set aside. The application for settlement is restored to the file of the Commission at the stage of 245D(1) of the Act. The period of 14 days as provided in Section 245D(1) of the Act, will run from the date this order is first communicated by either of the parties to the Commission.”

10. Consequently, order dated 14.02.2019 is set aside. Petition stands disposed of.

11. Since the main case has been decided, the pending C.M. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

22.10.2019

pooja sharma-I

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No