

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 434 OF 2017

SHREE NILKANTH DEVELOPERS

APPELLANT (S)

VERSUS

PRINCIPAL COMMISSIONER OF INCOME TAX

RESPONDENT(S)

O R D E R

This Civil Appeal has been filed assailing the judgment of the High Court of Gujarat dated 23.08.2016 passed in SCA No.14239/2015, whereby the High Court has allowed the writ petition filed by the respondent (Principal Commissioner of Income Tax) and has consequently set aside the order of the Settlement Commission.

In substance, the High Court has stated that disclosures revised by the Assessee during the course of settlement proceedings were substantial and, in fact, greater than the initial disclosure made, which aspect the Settlement Commission completely ignored and since there was difficulty in ascertaining the accuracy of the undisclosed income on the basis of the impounded documents, the order of the Settlement Commission was flawed.

The facts in brief are that the appellant herein being a partnership firm constituted w.e.f. 01.05.2009 is in the business of real estate. The Department conducted a survey under Section 133A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act' for

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the sake of brevity) at the project site of the appellant and found incriminating material during the course of survey. It was the case of the respondent/Department that the appellant had not disclosed certain income to the Assessing Officer. During the course of survey a Diary-BR1, (being incriminating material) was impounded and thereafter a statement of one of the partners of the firm was recorded. It appears that he had stated that there was a practice of receiving undisclosed amounts but they had been offered as additional income to an extent of Rs.3 crores for taxation over and above the disclosed income/normal income as such; that it was only a case of a tentative disclosure or non-disclosure and took time to make a complete disclosure.

The survey was conducted on 11.01.2013. Thereafter, on 21.01.2014, the appellant moved the Settlement Commission in respect of Assessment years 2011-12, 2012-13 and 2013-14 by way of an application seeking settlement of its case. The appellant estimated the additional income for the AY 2011-12 at Rs.10 lacs, AY 2012-13 at Rs.13 lacs and AY 2013-14 at Rs.11 lacs totalling Rs.34 lacs, which was offered for taxation and additional amount of income tax payable on the said amount was stated to be Rs.10,65,600/- and interest at Rs.2,85,935/-.

The Settlement Commission passed an order under Section 245(D) (1) of the Act allowing the case to proceed further. Subsequently, order was passed under Section 245D(2C) of the Act. In response to the application filed by the appellant herein, the Department sent its report under Rule 9 of the Income Tax Settlement Commission

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(Procedure) Rules, 1997 on 16.06.2014. The Department objected to the offer of settlement of Rs,.34 lacs being offered as additional income and contended that there was no full disclosure of the material particulars. The Department sought for closure and dismissal of the settlement application.

The Settlement Commission, however, considered the contentions of the respective parties at length and ultimately the representative of the appellant offered Rs.56 lacs as additional income, which has been recorded during the course of the order of the Settlement Commission. Accepting the said amount as additional income, over and above the declared income of Rs.34 lacs, the Settlement Commission passed its order on 04.02.2015.

Being aggrieved by the said order, the respondent/Department preferred the aforesaid writ petition. The Division Bench of the High Court of Gujarat by its reasoning given in para 17 of the impugned order, concluded that the Settlement Commission had not passed a just and proper order; that this was not a case which was acceptable for settlement at all and, therefore, set aside the order of the Settlement Commission.

Being aggrieved by the order of the High Court of Gujarat, the Assessee has preferred this appeal.

We have heard Shri Ramesh P. Bhatt, learned senior counsel for the appellant and Ms. Aishwarya Bhati, learned ASG for the respondent and perused the material on record.

During the course of submission, our attention was drawn to the proceedings of the Settlement Commission, the report submitted

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by the Department as well as the order of the Settlement Commission. It was submitted by learned senior counsel appearing for the appellant that having regard to the submissions made by the Department as well as the authorised representative of the Assessee, the additional amount of Rs.56 lacs was offered for taxation and a settlement was arrived at on that basis but the High Court has by setting aside the order of the Settlement Commission denied the benefit of settlement to the Assessee. It was contended that the subsequent re-assessment made after setting aside the order of the Settlement Commission is not just and proper and that if this Court is to set aside the order of the High Court, consequentially the re-assessment proceedings and the demand made would also have to be quashed.

Per contra, learned ASG appearing for the Department while drawing our attention to the relevant portions of the order of the Statement Commission contended that what was initially disclosed was only Rs.34 lacs but subsequently the authorised representative of the appellant/Assessee offered Rs. 56 lacs as additional income for taxation, the same is well above 100% of the initial disclosure. Therefore, the High Court was justified in not accepting the additional amount of Rs.56 lacs only inasmuch as there was no complete determination of the income as such of the undisclosed income with accuracy and, therefore, the order of the Division Bench of the High Court would not call for any interference in this matter. She further submitted that the order of the High Court may not be interfered with and consequentially, the re-assessment and

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the demand made thereafter may be carried forward.

We have given our consideration of the rival contentions and perused the order of the Settlement Commission as well as the order of the High Court in light of the submissions made by the learned senior counsel and learned ASG for the respective parties.

It is noted that initially only Rs.34 lacs was offered as the disclosed income spread over a period of three Assessment years. But, pursuant to the conduct of survey and recovery of incriminating documents during the course of settlement proceedings, ultimately, the authorised representative of the appellant/Assessee offered Rs.56 lacs as additional income for the purpose of taxation which is evident on a reading of paragraphs 7 and 7.1 of the order of the Settlement Commission. The said income of Rs.56 lacs is over and above of what was initially disclosed, which was only Rs.34 lacs. In the circumstances, we find substance in the argument of learned ASG appearing for the respondent/Department to the effect that there is no real determination of the undisclosed income. However, the High Court while setting aside the order of the Settlement Commission could have remanded the matter to the Settlement Commission for re-determination of undisclosed income and granted the benefit of any of the settlement to the appellant/Assessee, if it could have been so granted. That has not been done so in the impugned order of the High Court. The order of the Settlement Commission has been set aside and no further orders have been passed thereon. It is in the above context that the Department has moved forward to make re-assessment and further demand notices have been

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issued to the Assessee.

We find that there is a real object and purpose of setting up of the Settlement Commission as an Assessee, who is given an opportunity to disclose the undisclosed income in order to seek benefit in the form of immunity from penalty and prosecution. Therefore, when the High Court set aside the order of the Settlement Commission, the matter had to be remanded to the Settlement Commission for re-consideration and re-determination of the undisclosed income, after giving an opportunity to both sides. Consequentially, we set aside the order of the High Court as well as the order of the Settlement Commission and remand the matter to the Settlement Commission, which is now substituted by Interim Board for Settlement-V (IBS-V), Mumbai or Interim Board for Settlement - VI (IBS-VI), Mumbai, as the case may be, vide Office Order dated 31.01.2022, issued by the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, Government of India.

In view of the remand being made to the said Interim Board, the subsequent re-assessment and demand made by the Department to the Assessee shall be kept in abeyance and subject to the order to be made by the Interim Board for settlement. The concerned Interim Board shall issue notice to the Assessee/Appellant, preferably within a period of four weeks, to appear before it and dispose of the application filed by the Assessee seeking settlement, in accordance with law and after giving an opportunity to both sides.

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All contentions on both sides are kept open.

The Civil Appeal is allowed and disposed of in the aforesaid terms.

Pending application(s) shall stand disposed of.

.....J.
[B.V. NAGARATHNA]

.....J.
[UJJAL BHUYAN]

NEW DELHI
AUGUST 09, 2023

ITEM NO.106

COURT NO.12

SECTION III

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 434/2017

SHREE NILKANTH DEVELOPERS

Appellant(s)

VERSUS

PRINCIPAL COMMISSIONER OF INCOME TAX

Respondent(s)

(IA No. 3957/2019 - STAY APPLICATION)

Date : 09-08-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE UJJAL BHUYAN

For Appellant(s) Mr. Ramesh P. Bhatt, Sr. Adv.
Mr. Malak Manish Bhatt, AOR
Mr. Siddharth Kumar, Adv.

For Respondent(s) Mrs. Aishwarya Bhati, A.S.G.
Mr. Raj Bahadur Yadav, AOR
Mr. Prashant Singh Ii, Adv.
Mrs. Sunita Sharma, Adv.
Mrs. Rekha Pandey, Adv.
Mr. Ishaan Sharma, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The Appeal is allowed and disposed of in terms of the
signed order.

Pending application (s) shall stand disposed of.

(NEETU SACHDEVA)
ASTT. REGISTRAR-cum-PS

(RENU BALA GAMBHIR)
COURT MASTER (NSH)

(signed order is placed on the file)