

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. 2251 OF 2001

Chhotalal S. Aajmera (HUF) Karta & Anr.

Appellant(s)

Versus

Commissioner of Income Tax, Mumbai & Anr.

Respondent(s)

(With appl(s) for permission to file further affidavit and with office report)  
With  
Civil Appeal Nos. 2272-2291/2001(With appl(s) for permission to file further  
affidavit and rejoinder with office report),  
2292 of 2001 (With appl(s) for permission to file further affidavit and with  
office report)  
2252-2271 of 2001(With appl(s) for permission to file further affidavit and  
with office report)

Date: 11/07/2006 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN  
HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s)/  
Assessee(s) Mr. F.S. Nariman, Sr. Adv.  
Mr. Anil B. Divan, Sr. Adv.  
Mr. Ravindra K. Srivastava, Sr. Adv.  
Mr. P.H. Parekh, Adv.  
Mr. E.R. Kumar, Adv.  
Mr. Amit Sibal, Adv.  
Mr. Sandeep Parekh, Adv.  
Mr. Kunal Verma, Adv.  
Ms.Ranjeeta Rohatgi, Adv. for  
M/s. P.H. Parekh & Co.

For Respondent(s)/ Mr. M.L. Varma, Sr. Adv.  
Department Mr. Preetish Kapur, Adv.  
Mr. Arijit Prasad, Adv. for  
Mrs. Sushma Suri, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The appeals are disposed of in terms of the signed order.

(J.S. Rawat)

(Rajesh Dham)

AR-cum-PS

Court Master

[Signed order is placed on the file.]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2251 OF 2001

Chhotalal S. Ajmera (HUF) Karta & Anr.

Appellant(s)

Versus

Commissioner of Income Tax, Mumbai & Anr.

Respondent(s)

With

Civil Appeal Nos. 2272-2291/01, 2292/01 and 2252-2271/01.

O R D E R

This order shall dispose of Civil Appeal No. 2251/2001 and 2272-2291/2001 filed by the assessee-appellants [for short "the assessee"] and Civil Appeal Nos. 2292/2001 and 2252-2271/2001 filed by the Commissioner of Income Tax [for short "the revenue"] against a common judgment and order dated 28th July, 2000 passed by the Division Bench of the High Court of Judicature at Bombay in W.P. No. 2191/1999 and other connected writ petitions.

For the sake of convenience, the facts are taken from C.A. No. 2251/2001. The facts giving rise to the present appeal are :

Search of various premises of the assessee and its group w  
as  
conducted (date not mentioned) followed by another one on 19th

November, 1992. Voluminous books of accounts, Rs. 25,000/- in cash and a computer disk were seized.

On 12th March, 1993 an order of provisional assessment under Section 132(5) of the Income Tax Act, 1961 [for short "the Act"] , as it then stood on the Statute, was passed estimating the undisclosed income of the assessee at 200.60 crores for the Assessment Years 1989-90 to 1993-94. The application filed by the assessee under Section 132(12) of the Act, as we are given to understand, is still pending.

On 30th of September, 1993 the assessee filed an application under Chapter XIX-A of the Act for settlement of the dispute before the Settlement Commission for settlement of the dispute for the Assessment Years 1989-90 to 1993-94. This application for settlement was filed under Section 245C in Form 34B set out in Appendix II to the Income Tax Rules, 1962, which is in two parts. While Part- I deals with nature and complexity and circumstances of the case, Part-II deals with statement of facts which must contain the amount of income which had not been disclosed before the Assessing Officer, additional amount of income tax payable on the said income, full and true statement of facts regarding the issues to be settled including the terms of settlement sought for by the applicant, and the manner in which the undisclosed income has been derived, as a confidential document which is not disclosed to the Commissioner of Income Tax until the Settlement Commission admits the application for being proceeded with.

A notice was issued to the concerned Commissioner of Income Tax (the Revenue) who submitted his report under Section 245C(1) of the Act read with Rule 6 of the Income Tax Settlement Commission (Procedure) Rules, 1987 [for short "the Rules"]. The revenue submitted its reply on 21st of January, 1994 to the effect that there was no complexity in the case and the same was not fit for settlement.

Hearings took place in July and August, 1994. Initially, the assessee had approached the Settlement Commission disclosing its undisclosed income at Rs.1.94 crores. At the time of making the disclosure the assessee was not in possession of the seized documents as the same had not been supplied and, on the documents being made available to the assessee and, on the documents being made available to the assessee, at the instance of the Settlement Commission, the assessee filed its revised confidential annexure in form 34B on 19th of September, 1994 and raised the undisclosed income to Rs.11.41 crores (according to the revenue, the undisclosed income was raised by and not to Rs.11.41 crores). It may be mentioned that in the impugned order the High Court (at page 24 of the paper-book) has recorded that after the filing of the revised confidential annexure on 19th September, 1994 under Section 245D(1), the assessee had further raised the undisclosed income by Rs.2.76 crores and Rs.7 crores which, according to the Revenue, was a disclosure whereas, according to the assessee, it was conceded with a view to settle the matter and buy peace with the department.

The total disclosure of the group was raised to Rs.17.03 crores from Rs.3.59 crores.

On 17th November, 1994, the Settlement Commission admitted the application for settlement and passed an order under Section 245-D(1) of the Act. The said order was not challenged by the revenue by filing a petition under Article 226 of the Constitution of India. Pursuant to the direction given by the Settlement Commission, the concerned Commissioner of Income Tax filed his report under Section 245D(4) read with Rule 8 on 30th of August, 1994, assessing the undisclosed income at Rs.187.20 crores which, in turn, was raised on the basis of the order of summary assessment dated 12th of March, 1993 passed under Section 132 (5) of the Act.

The revenue submitted a further report on 20th of October, 1997 and estimated the undisclosed income at Rs.42.5 crores.

The Settlement Commission heard the matter finally in October, 1998 and passed the final order on 29th of January, 1999 determining the undisclosed income at Rs.21.17 crores and another sum of Rs.20.36 crores towards the incomplete works which were to be adjusted in due course, as and when the remaining phases of the work were accomplished. In addition to this, the assessee was made liable to pay statutory interest. Penalty of Rs.50 lakhs was also imposed on the assessee. However, the assessee was granted immunity from prosecution.

The revenue filed a batch of 21 writ petitions before the Hig

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Court of Judicature at Bombay out of which CWP No. 2191/99 was treated as the main Writ Petition, challenging the maintainability of the application filed by the assessee before the Settlement Commission. These writ petitions of the revenue have been allowed by the impugned common order dated 28th July, 2000.

Aggrieved against the order of the High Court, the assessee and its group have filed 21 appeals by grant of special leave. Similarly, the revenue being aggrieved against a part of the order, i.e., remission of the case to the Settlement Commission, has also filed equal number of appeals before this Court by grant of special leave. All these appeals are being disposed of by this common order.

Mr. Fali S. Nariman, the learned senior counsel appearing for the assessee, at the outset, before making his submissions on merits, stated that the second report submitted by the Commissioner on 20th of October, 1997 estimating the undisclosed income at Rs.42.5 crores which approximately coincides and equals to the figure arrived at by the Settlement Commission in the final order, has not been taken into consideration by the High Court which is vital for determination of the dispute between the parties. He prayed that the appeals filed by the assessee should be accepted and the case remitted back to the High Court for a fresh decision on all points including a finding on the second report dated 20th October, 1997 as well.

Mr. M.L. Varma, the learned senior counsel appearing for the revenue, fairly concedes to the submission put forth by Mr. Nariman that the High Court has not taken into consideration the second report dated 20th October, 1997 submitted by the Commissioner of Income Tax and states that the same may be of some importance for determination of the dispute between the parties.

Without expressing any opinion on the merits of the dispute, the findings recorded on the first report or the effect of not recording a finding on the second report, we set aside the impugned order and remit the case back to the High Court for a fresh decision, leaving the parties to raise all points including the point raised before us on behalf of the assessee that the High Court should not have entertained the revenue's writ petitions in exercise of its discretionary jurisdiction under Article 226 of the Constitution of India, and the stand taken by the revenue that the application filed by the assessee for settlement before the Settlement Commission was not entertainable as the assessee had not made, inter alia, true and complete disclosure of its undisclosed income, as provided under the law. All contentions of the parties are left open to be agitated before the High Court.

Since it is an old matter, we would request the Hon'ble Chief Justice of the High Court to list the writ petitions for disposal as expeditiously as possible.

The appeals stand disposed of accordingly. However, there shall

be no order as to costs.

Needless to mention that after the writ petitions are disposed of, if any of the of the parties is aggrieved against the findings recorded or a part thereof, would be at liberty to approach this Court.

.....J.

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(ASHOK BHAN)

New Delhi;  
.....J.  
July 11, 2006.

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(MARKANDEY KATJU)