

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**Civil Appeal No 1590 of 2020  
(Arising out of SLP(C) No 9978 of 2019)**

**Principal Commissioner of Income Tax Central 4**

**.... Appellant(s)**

**Versus**

**Income Tax Settlement Commission & Anr**

**....Respondent(s)**

**ORDER**

1 Delay condoned.

2 Leave granted.

3 The High Court of Judicature at Bombay, by an order dated 3 August 2018, dismissed the writ petition<sup>1</sup> filed by the appellant under Article 226 of the Constitution, challenging an order of the Income Tax Settlement Commission<sup>2</sup> dated 23 April 2015. The order of the Settlement Commission was received on 20 May 2015. The writ petition was filed on 16 November 2015. The Division Bench of the High Court dismissed the petition on the ground of delay.

1 Writ Petition No 1062 of 2018

2 "Settlement Commission"

4 Assailing the judgment of the High Court, Mr Zoheb Hussain, learned counsel appearing on behalf of the appellant, relied on the judgment of a two-Judge Bench of this Court in **State of Nagaland v Lipok AO**<sup>3</sup>. That apart, it has been submitted that, on merits, a serious issue requires consideration by the High Court having regard to the principles which have been enunciated by this Court in **Ajmera Housing Corporation v Commissioner of Income Tax**<sup>4</sup>. Mr Zoheb Hussain submitted that, in the course of the search, an amount of Rs 74.55 crores was offered as additional income, including a sum of Rs 6.03 crores, pertaining to AY 2006-2007. Learned counsel then adverted to the fact that during the pendency of the proceedings, at the hearing before the Settlement Commission on 9 April 2015, the counsel for the second respondent offered an additional income from a TNEB contract of Rs 4.32 crores and a disallowance under Section 14A of the Income Tax Act 1961 computed at Rs 95 lakhs. On the date of the pronouncement of the judgment, a further amount of Rs 5 crores was offered by a letter of offer. Accordingly, a total amount of Rs 10.18 crores came to be offered by way of additional income. Relying on the observations contained in paragraphs 35 and 41 of the decision in **Ajmera Housing Corporation** (supra), it has been urged that the above facts would indicate that the disclosure which was originally made was not true, full and complete as a result of which the Settlement Commission had no jurisdiction to arrive at a settlement.

3 (2005) 3 SCC 752

4 (2010) 8 SCC 739

5 Opposing these submissions, Mr Percy Pardiwala, learned Senior Counsel appearing on behalf of the second respondent, submitted that the order of the Settlement Commission was given effect to in June 2015 on the receipt of a copy in May 2015. The second respondent, it has been submitted, paid up the entire amount, which was due and payable towards taxes and interest. The writ petition in the High Court was lying in objections for long. In this background, Mr Pardiwala submitted that it would be unfair to condone the delay on the part of the Revenue in seeking recourse to the jurisdiction under Article 226 of the Constitution. In the event that the writ petition were to be allowed for any reason, the assessee would be liable to pay interest for the previous period of nearly three years on assessment. Mr Pardiwala justified the order of the Settlement Commission on merits saying that the additional income, which was disclosed during the course of the hearing, was in the course of the discussion which took place before the Settlement Commission.

6 Having considered the rival submissions, the nature and extent of delay and the issues involved, we are of the view that it would be appropriate and proper, in the interests of justice, for the writ petition to be heard on merits by the High Court, subject to payment of costs, which would be a condition precedent. The High Court ought not to have dismissed the petition on the ground of delay. The appellant raises issues which are worthy of consideration on merits. We accordingly order and direct that conditional on the appellant paying a sum quantified at Rs 3,00,000 to the second respondent, by way of costs, within a period of six weeks from today, the judgment and order of the High Court dated 3

August 2018 shall stand set aside and the writ petition shall stand restored to the file of the High Court for disposal on merits. In the event that the appellant fails to pay the costs, as directed, the benefit of this order shall not be available.

7 The appeal is allowed in the above terms.

.....J.  
[Dr Dhananjaya Y Chandrachud]

.....J.  
[K M Joseph]

New Delhi;  
February 14 , 2020

ITEM NO.37

COURT NO.7

SECTION IX

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).9978/2019

(Arising out of impugned final judgment and order dated 03-08-2018 in WP No. 1062/2018 passed by the High Court of Judicature at Bombay)

PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL 4                      Petitioner(s)

VERSUS

INCOME TAX SETTLEMENT COMMISSION & ANR.                      Respondent(s)

Date : 14-02-2020 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD  
HON'BLE MR. JUSTICE K.M. JOSEPH

For Petitioner(s)      Mr. Zoheb Hussain, Adv.  
                                 Mr. Kanu Agrawal, Adv.  
                                 Ms. Shraddha Deshmukh, Adv.  
                                 Mrs. Anil Katiyar, AOR  
                                 Mr. Sanjeev Menon, Adv.  
                                 Mr. Piyush Goyal, Adv.

For Respondent(s)      Mr. Percy Pardiwala, Sr. Adv.  
                                 Ms. Vasanti B. Patel, Adv.  
                                 Ms. Praveena Gautam, AOR  
                                 Mr. Pawan Shukla, Adv.  
                                 Mr. Raja Ram, Adv.  
                                 Ms. Sweety Pandey, Adv.

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

Delay condoned.

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)

AR-CUM-PS

(Signed order is placed on the file)

(SAROJ KUMARI GAUR)

COURT MASTER