

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.06.2016

C O R A M

THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.Nos.22216 to 22219 of 2015
and
M.P.Nos.1 to 1 and 2 to 2 of 2015

Arun Mammen ... Petitioner in WP.No.22216 & 22217/2015
Kandathil M.Mammen ... Petitioner in WP.No.22218 & 22219/2015

Vs.

1.Union of India,
Ministry of Finance,
North Block, New Delhi,
Represented by its Secretary

2.Income Tax Settlement Commission,
Additional Branch, Chennai
Ministry of Finance,
Department of Revenue,
488-489, Anna Salai,
Chennai - 600 035.

3.Deputy Commissioner of Income Tax,
Central Circle 1(1),
Investigation Wing, Room No.320,
New No.46, Mahatma Gandhi Road,
Chennai - 600 034.

... Respondents in all WPs.

Prayer in WP.22216/2016: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for records of the 2nd respondent contained in its impugned order bearing No.TN/CN51/2015-16/22/IT dated 30.06.2015 and to quash the same, and consequently direct the 2nd respondent to accept the application of the petitioner bearing No.TN/CN-51/2015-16/22/IT, dated 02.06.2015, filed under Section 245C of the Income Tax Act, 1961 and to dispose of the same on merits, in accordance with law.

Prayer in WP.22217/2016: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for records of the 2nd respondent contained in its impugned order bearing No.TN/CN51/2015-16/35/IT dated 15.07.2015 and to quash the same,

and consequently direct the 2nd respondent to accept the application of the petitioner bearing No.TN/CN-51/2015-16/35/IT, dated 09.07.2015, filed under Section 245C of the Income Tax Act, 1961 and to dispose of the same on merits, in accordance with law.

Prayer in WP.22218/2016: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for records of the 2nd respondent contained in its impugned order bearing No.TN/CN51/2015-16/21/IT dated 30.06.2015 and to quash the same, and consequently direct the 2nd respondent to accept the application of the petitioner bearing No.TN/CN-51/2015-16/21/IT, dated 02.06.2015, filed under Section 245C of the Income Tax Act, 1961 and to dispose of the same on merits, in accordance with law.

Prayer in WP.22219/2016: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for records of the 2nd respondent contained in its impugned order bearing No.TN/CN511/2015-16/34/IT dated 15.07.2015 and to quash the same, and consequently direct the 2nd respondent to accept the application of the petitioner bearing No.TN/CN-51/2015-16/34/IT, dated 09.07.2015, filed under Section 245C of the Income Tax Act, 1961 and to dispose of the same on merits, in accordance with law.

For Petitioners Mr.V.T.Gopalan, Senior Counsel
(In all WPs.) For Mr.Suhrith Parthasarathy

For Respondents ... Mr.T.Promod Kumar Chopda
(In all WPs.)

ORDER

Heard Mr.V.T.Gopalan, learned Senior Counsel assisted by Mr.Suhrith Parthasarathy, learned counsel for the petitioner and Mr.T.Promod Kumar Chopda, learned Standing Counsel appearing for the respondents.

2.In the light of the stand taken by the respondents in their counter affidavit, it may not be necessary to go into the factual averments nor test the correctness of the impugned proceedings on the merits of the case. It would suffice to take note of the following facts for the purpose of disposal of the writ petitions.

3.The petitioners have filed these four writ petitions challenging the orders passed by the Income Tax Settlement Commission, Additional Bench, Chennai dated 30.06.2015 and 15.07.2015. The petitioners have filed applications before the

Settlement Commission in respect of the assessment years 2005 - 2006 to 2014 - 2015. The applications came to be rejected, by order dated 30.06.2015, on the following ground:

"11.10 Therefore after going through the applications, the arguments by the A.R. and papers filed during the course of hearing, we are of the view that the Commission does not have jurisdiction to entertain these applications offering undisclosed foreign income and assets. Since the Commission does not have the jurisdiction, we have not gone into the further question as to whether the Applicants have fulfilled the conditions u/s.245C. The order was pronounced in the court on 30.06.2015.

11.11 For the reasons discussed above, we do not allow the above Settlement Applications to be proceeded with and reject the same."

4. Thereafter, the petitioners filed another application on 10.07.2015 for the same assessment years requesting the Commission to take up the matter and consider the same and this application was rejected by order dated 15.07.2015 and the Commission has stated that the petitioners have re-submitted their applications along with circulars issued by the CBDT. The Commission after considering the submissions made by the petitioners by order dated 15.07.2015 rejected the applications for the following reasons:

"14.7 After going through the Applications, the arguments by the A.R. and papers filed during the course of hearing, we find no reason to interfere in our earlier order dated 30.06.2015 in respect of the above two Applicants and we reiterate our findings given in the said order dated 30.06.2015 that since a resident's total undisclosed foreign income and asset will be dealt under the provisions of the New Act and not under the existing Income Tax Act (which will deal with disclosed foreign income of a resident which is part of the total Income Tax Act), the New Act imposes an implied repeal of the provisions of the Income Tax Act conferring such rights to such assesseees to approach the Income Tax Settlement Commission.

14.8 Therefore, we are of the view that the Commission does not have jurisdiction to entertain these Applications offering undisclosed foreign income and assets. Since the Commission does not have the jurisdiction, we have not gone into the further question as to whether the Applicants have fulfilled the conditions u/s.245C.

14.9 For the reasons discussed above, we do not allow the above Settlement Applications to be proceeded with and reject the same."

5.Challenging these orders, the writ petitions have been filed.

6.In the counter affidavit filed in all these four writ petitions, the respondents have taken the following stand:

"The First Respondent by order dated 01.07.2015 followed by Explanatory notes dated 2.07.2015 issued in Circular No.12 of 2015 have clarified that the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 comes into effect from 1.07.2015. It is submitted that the Petitioner had filed Return of Income on 21.05.2015. Notice u/s.148 was issued by the Assessing Officer on 29.05.2015 which is, before coming into effect the provisions of The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015."

7.In the light of the above stand taken which is based on the Explanatory note dated 02.07.2015 issued in Circular No.12 of 2015, as the Black Money (Undisclosed Foreign Income Tax and Assets) and Imposition of Tax Act, 2015 comes into effect from 01.07.2015 and the petitioners had filed their Return of Income on 21.05.2015 and notice was issued under Section 148 of the Income Tax Act by the Assessing Officer on 29.05.2015 which is before coming into effect of the provisions of the Black Money Act, 2015, the applications submitted by the petitioners before the Commission are maintainable.

8.Accordingly, the Writ Petitions are allowed and the impugned orders are set aside and the petitioners are directed to file an application before the Income Tax Settlement Commission, which shall be considered by the Commission in

accordance with the provisions of the Act. No costs.
Consequently, connected Miscellaneous Petitions are closed.

Sgl

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Secretary, Union of India,
Ministry of Finance,
North Block, New Delhi.
 2. Income Tax Settlement Commission,
Additional Branch, Chennai
Ministry of Finance, Department of Revenue,
488-489, Anna Salai, Chennai - 600 035.
 3. Deputy Commissioner of Income Tax,
Central Circle 1(1),
Investigation Wing, Room No.320,
New No.46, Mahatma Gandhi Road,
Chennai - 600 034.
- + 2 ccs to Mr.Suhrith Parthasarathy, Advocate Sr 34211
+ 1 cc to Mr.T.Promod Kumar Chopda, Advocate Sr 34048

KR/14/7/16

W.P.Nos.22216 to 22219 of 2015

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