IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.7251 of 2003

Nirmal and Wavin Ltd.,
a Company incorporated under the
Companies Act, 1956,
having its Registered Office,
at Flat No:3B,
Neelkunth, Third Floor,
26 B, Camac St,
Calcutta-700 016. ...Petitioner

Vs.

1.Income Tax Settlement Commission,
Additional Bench having its Office at
SADGURU COMPLEX 488 - 489,
Anna Salai, Nandanam,
Chennai - 600 035.

2.Commissioner of Income Tax,
West Bengal,IV, Calcutta,
having his office at P-7,
Chowringhee Square,
Calcutta - 700 069.

3.Joint Commissioner of Income Tax,
Special Range - 4, Calcutta,
having his office at P-7,
Chowringhee Square,
Calcutta - 700 069. ...Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records in F.No.23/4/453/88 IT dated 29.01.2003 of the first respondent and issue a writ of Certiorarified Mandamus quashing the same and directing the first respondent to allow the miscellaneous petition dated 26.12.2002.

For Petitioner : Mr. G.Ashokapathy
for M/s.Pathy & Pathy

For Respondents : Mr.T.Pramod kumar Chopda
Senior Standing Counsel

ORDER

Heard Mr.G.Ashokapathy, learned counsel for the petitioner and Mr.T.Pramod kumar Chopda, learned Senior Counsel appearing for the revenue/respondents.

2. The order impugned in this Writ Petition is the order passed by the Income Tax Settlement Commission, Additional Bench dated 29.01.2003 rejecting the petitioner's application filed for rectification with a request to the Commission to re-open the assessment for the year 1985-1986 by exercising power u/s.245 (E) Taxes Act, 1961. It is not in dispute that a similar prayer was made by the petitioner before the Settlement Commission which was rejected and such a rejection order was not put to challenge by the petitioner, subsequently by way of filing application for rectification seeks for the same relief.

3. The petitioner now seeks for the same relief, which was rejected by the first respondent. One more factor which has to be taken into consideration is that the power u/s.245E Income Tax Act, 1961, could be exercised by the Settlement Commission to re-open the completed proceedings only when the application is pending before the Commission. Admittedly, on the date when the petitioner filed the Miscellaneous Petition dated 26.12.2002, there was no application pending before the Settlement Commission. Therefore, the impugned order suffers from no illegality.

In the result, the Writ Petition fails and accordingly, the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gv/jbm

To

1.Income Tax Settlement Commission,
Additional Bench having its Office at
SADGURU COMPLEX 488 - 489,
Anna Salai, Nandanam, Chennai - 600 035.

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Chowringhee Square, Calcutta - 700 069.

+1cc to Mr.T. Pramodkumar Chopda, Advocate, S.R.No.52008
+1cc to Mr.Pass Associates, Advocate, S.R.No.52111

CNR(CO)
EU(21/10/2016)

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