IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2019

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.29442 to 29446 of 2008
and
W.M.P.Nos. 1 to 1 of 2008

G.Subramaniam ... Petitioner in W.P.No.29442 of 2008
S.Sampoornam ... Petitioner in W.P.No.29443 of 2008
C.Balasubramaniam ... Petitioner in W.P.No.29444 of 2008
S.Shankaran ... Petitioner in W.P.No.29445 of 2008
N.Rajeswari ... Petitioner in W.P.No.29446 of 2008

vs.

1.The Income Tax Settlement Commission,
Additional Bench,
488-489, Anna Salai,
Chennai 600 035.

2.The Deputy Commissioner of Income Tax,
Central Circle - III,
Office of the Commissioner of Income Tax,
67-A, Race Course Road,
Coimbatore 641 018.

3.The Commissioner of Income Tax,
67-A, Race Course Road,
Coimbatore 641 018.
... Respondents in W.P.Nos.29442 and 29444 of 2008

1.The Income Tax Settlement Commission,
Additional Bench,
488-489, Anna Salai,
Chennai 600 035.
2.The Deputy Commissioner of Income Tax,
Company Circle,
3, Gandhi Road,
Salem.

3.The Commissioner of Income Tax,
3, Gandhi Road,
Salem. .. Respondents in W.P.Nos.29443& 29445,29446 of 2008

COMMON PRAYER : Writ Petitions are filed under Article 226 of the Constitution of India, for the issuance of Certiorarified Mandamus, calling for the records of the first respondent in S.A.No.641/CBE/76/99-IT, S.A.No.641/CBE/77/99-IT, S.A.No.641/CBE/79/99-IT,S.A.No.641/CBE/78/99-IT and S.A.No.641/CBE/81/99-IT and quash the order dated 28.06.2006 insofar as it relates to computation of tax alone for the block period from 01.04.1988 to 05.01.1999 and computation of tax for Assessment year 1999-2000 in Annexure – II and consequential direct the respondents to give credit of the amount of Rs.74,73,383.88/-, the amount seized during the course of search, against the additional income tax payable by the petitioner as early as on 09.02.2001.

For Petitioners (in all W.Ps.) : Mr.R.Sivaraman

For Respondents (in all W.Ps.) : Mr.A.P.Srinivas
Addl.Govt.Pleader

COMMON ORDER

Heard the learned counsel for the petitioners and the learned counsel for the respondents Income Tax Department.

2. On 05.01.1999, a search was conducted in the premises of the petitioners. This search led to seizure of unaccounted cash and fixed deposits for an amount of Rs.74.4 lakhs. Under these circumstances, the petitioners who are members of the same family opted to settle their income tax dispute before the 1st respondent Settlement Commission under the Provisions of the Income Tax Act, 1961 for the period covering the block assessment and assessment year 1999-2000.

3. On 09.08.2000, the applications to settle the dispute under section 245 D(1) of the said Act were admitted and allowed to be proceeded. In these proceedings, the petitioners prayed for payment of the admitted tax liability in two installments which was also granted by the 1st Respondent Settlement Commission.

4. The amounts were to be paid on 30.9.2000 and 31.12.2000 by the petitioners. Under these circumstances, by a communication dated 26.09.2000, a request was made to the 2nd respondent to adjust the seized cash and bank balance towards 1st installment. By another communication dated 19.12.2000, a similar request was made for adjustment of the additional tax amount from the balance.

5. The Administrative Officer of the 1st respondent Settlement Commission also sent in communication through the

3rd respondent on 23.02.2001 to make such adjustments conveying the decision of the 1st respondent Settlement Commission. Relevant portion of the communication of the Administrative Officer of the 1st respondent Settlement Commission reads as under:-

> " A copy of the applicant' s letter cited above along with Annexure-A and B enclosed there to, showing the details of the additional tax payable by the applicants of the above group of amount seized during the course of the search is enclosed. In this connection, I am directed to convey that the Settlement Commission has directed that the seized cash in the above group cases shall be adjusted against additional tax payable by the above applicants."
>
> It is, therefore requested that the Assessing Officer may be directed to direct the above adjustments and report the amount so adjusted to the Settlement Commission."

6. According to the 2nd and 3rd respondents, the adjustment was also made on 14.03.2001. However, this aspect appears to have not been communicated to the 1st respondent Settlement Commission. The 1st respondent in its order dated 28.7.2006 also directed the Assessing Officer to verify the position and adjust the seized amount towards tax and interest payable by the applicant for the block period and remaining amount towards the tax/interest payable for the assessment year 1999-2000. It is further noted that in case any demand is bound payable by the petitioners after adjustment of the seized amount, the same should be paid within 35 days of receipt of the order as stipulated under section 245D (6A) of the Act. In the annexures appended to the order, there are calculations of interest payable under Section 245 D (2C) at 1.25% per month for some of the petitioners.

7. It is the contention of the petitioners that if the amounts were adjusted then and there as per the directions of the 1st respondent Settlement Commission and reported to the 1st Respondent Settlement Commission, the interest in Annexures would not have been payable by the petitioners. There appears to be some merit in the contention of the petitioners. At the same time, the fact remains that the petitioners have approached the Settlement Commission for rectification of mistake on 18.08.2006. However, no orders have been passed in those applications filed for rectification of mistake and has approached this Court.

8. Since the 1st respondent Settlement Commission is seized of the aforesaid applications for rectification of mistake , I am of the view that the writ petitions were premature. These applications should be decided by the 1st respondent Settlement Commission.

9. Under these circumstances, I am of the view that the 2nd and 3rd respondents are directed to take steps to liquidate the fixed deposits which were also seized and to appropriate amount towards the balance of admitted tax liability and interest of the petitioners and file a report before the 1st respondent Settlement Commission within a period of 4 weeks from the date of receipt of a copy of this Order.

10. The 1st respondent Settlement Commission shall thereafter dispose the applications filed for rectification of mistake by the petitioners within a period of 6 months thereafter. Liberty is given to the petitioners and the respondents to make appropriate submissions before the 1st respondent Settlement Commission and in case there is any excess amounts after such adjustment, the same may be directed to be refunded to the petitioners. In case of any deficit, petitioners may be directed to pay the aforesaid amount together with interest in accordance with law.

11. These writ petitions stand disposed with the above directions. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

kkn/kkd
To

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5.The Commissioner of Income Tax,
3, Gandhi Road,
Salem.

+1cc to Mr.A.P.Srinivas , Advocate SR.No. 101908

W.P.Nos.29442 to 29446 of 2008
and
W.M.P.Nos.1 to 1 of 2008

A.SK(20/02/2020)