

IN THE HIGH COURT OF JUDICATURE OF MADRAS

RESERVED ON : 23.09.2020
PRONOUNCED ON : 29.10.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.5236 of 2015
and
M.P.No.1 of 2015

M/s.Adhiparasakthi Charitable, Medical,
Educational & Cultural Trust
rep. by its Executive Trustee/Vice President
V.Lakshmi,
Melmaruvathur, Kancheepuram,
Tamil Nadu-603 319. ...Petitioner

Vs.

The Director General of Income Tax
(Investigation),
Tamil Nadu and Pondicherry,
Income Tax Investigation Wing,
No.46, Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India, praying to issue a Writ of Certiorari,
praying to quash the impugned proceedings in F.No.2097 (16)/
2014-15 dated 09.02.2015.

For Petitioner : Mr.R.Sivaraman

For Respondent : Mr.A.P.Srinivas, Sr. S.Counsel

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O R D E R

With the consent of both parties, the present Writ Petition
is heard through Video Conferencing on 23.09.2020.

2. The brief facts of the case are as follows:

2.1) The petitioner-Trust, (hereinafter referred to as the
'Trust'), being a charitable Trust, was granted approval under

Section 10(23C)(iv) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") from the AYs 2006-07 to 2008-09 through a Notification dated 19.04.2005 and from AYs 2009-10 on 25.06.2008.

2.2) On 02.07.2010, search and seizure operations under Section 132 of the Income Tax Act (hereinafter referred to as the 'Act') were carried out by the Income Tax Department in the offices and residential premises of various members of the Trust group and during the operations, cash amounting to Rs.13,17,00,000/-and jewelery weighing 11339.160 grams, along with incriminating documents were seized. Subsequent to the search, the Trust was issued with notices under Sections 153A/153C/142(1) of the Act for the Assessment Years (AYs) 2005-06 to 2011-12.

2.3) In pursuance of the said notices, the Trust filed a Settlement Application under Section 245C of the Act on 25.01.2012 before the Income Tax Settlement Commission (ITSC) disclosing additional income of Rs.11,50,09,902/- crores for the AYs 2007-08 to 2011-12. On 07.02.2012, the ITSC rejected the said application under Section 245D(1) of the Act for non-payment of taxes on the additional income disclosed in the Settlement Application and did not allow the same to be proceeded with. Thereafter, on 30.04.2012, the Trust filed its returns of income for the AYs 2007-08 to 2011-12.

2.4) Subsequently, on 26.11.2012, the Trust filed another Settlement Application under Section 245C of the Act before the ITSC, disclosing an additional income of Rs.9,65,10,102/- for the AYs 2007-08 to 2011-12. By an order dated 10.12.2012, the ITSC allowed the Settlement Application to be proceeded with under Section 245D(1) of the Act. The reports under Section 245D(2B) were then called for from the Department and on being satisfied with the conditions stipulated in Section 245D(2C) of the Act, the ITSC held that the Settlement Application covering AYs 2005-06 to 2011-12 cannot be said to be invalid. On receipt of the report under Rule 9 of the ITSC (Procedure Rules), the following issues were taken up by ITSC, for consideration:

- i) Suppression in income admitted before Settlement Commission;
- ii) Anonymous donations taxable u/s.115 BBC;
- iii) Collection of unaccounted capitation fee;
- iv) Diversion of capitation fee to relatives of founder;
- v) Payment of salary in cash;
- vi) Bogus employment of doctors;
- vii) Application of accounted income of trust to benefit the relatives of founder; and
- viii) Violations of conditions of Sec.11/Sec.10(23C).

2.5) Based on the above materials, the Director General of

Income Tax (Investigation) (hereinafter referred to as the DGIT) issued a show cause notice (SCN) to the Trust on 22.04.2013 proposing for withdrawal of the approval granted under Section 10(23C)(iv) of the Act, for the period Ays 2006-07 to 2011-12. While denying the averments in the SCN, the Authorised Representatives of the Trust questioned the jurisdiction of the DGIT to issue the notice, since the jurisdiction vests with the ITSC before which, the application under Section 245C(1) of the Act was pending and therefore requested to keep the issue under the SCN, in abeyance. It was also brought to the notice of the DGIT that the ITSC had passed its final Award on 28.03.2014, answering all the issues before it and settling the Trust's income and that the Department had challenged the award of ITSC before the Madras High Court in Writ Petition No. 34040 of 2014, which was pending and therefore requested to keep the proceedings in abeyance. However, the DGIT was of the view that all the incriminating materials recovered from the search, as well the award of the ITSC was available with them and therefore proceeded to pass the impugned order dated 09.02.2015, effecting retrospective withdrawal of the approval under Section 10(23C)(iv) of the Act, with effect from AY 2006-07 onwards. The Trust is aggrieved against the said order in the present writ petition.

3. Heard Mr. R. Sivaraman, learned counsel appearing for the Trust and Mr. A.P. Srinivas, learned Senior Standing Counsel appearing on behalf of the DGIT.

4. The substance of the submission of the Counsel for the Petitioner-Trust are as follows:

a. When the application under Section 245C of the Act is pending before the ITSC, the DGIT has no jurisdiction to issue the SCN in view of the bar under Section 245F(2) of the Act.

b. In view of Section 245-I of the Act, the award of the ITSC is conclusive as to the matters stated therein and cannot be reopened by the DGIT.

c. The proposal for withdrawal of the approval in the SCN was for the period from Ays 2006-07 to 2011-12, whereas the impugned order is for retrospective withdrawal from 2006-07 onwards, which is beyond the scope of the SCN and therefore the order is bad in law.

d. Retrospective withdrawal of approval is impermissible and contrary to law.

e. The DGIT has no suo-motu powers to initiate proceedings without intimation to the prescribed Authorities under Section 143(3) of the Act and therefore lacks jurisdiction per se.

f. The conditions referred to in the SCN and the impugned order are not the conditions prescribed under Section 10(23C)(iv) of the Act and therefore the DGIT exceeded his jurisdiction

while passing the impugned order. Even otherwise, all the issues raised therein have been dealt threadbare by the ITSC and the DGIT had no authority to reappraise these issues.

5. Per contra, Mr. A.P. Srinivas. learned Senior Standing Counsel representing the DGIT submitted that the issues raised in the SCN were not answered by ITSC in its final award and hence there is no illegality in passing the impugned order. He placed reliance a decision of the Hon'ble Division Bench of this Court in Tax Case (Appeal) No. 674 of 2013 in the case of M/s. Sri Vidya Mandir Trust Vs CIT, Salem and submitted that retrospective withdrawal of approval is permissible.

6. I have given my careful consideration to the submissions made on both sides.

7. A perusal of the entire impugned order reveals that the DGIT had taken up the issues involved in the present case for consideration from the order of the ITSC dated 28.03.2014 and the materials placed before the Commission. Apart from the reliance placed by the DGIT on the proceedings of the ITSC, no other independent material was available for arriving at a conclusion to effect retrospective withdrawal of the approval under Section 10(23C) (iv) of the Act.

8. At the outset, it requires to be mentioned that when the Department had challenged the award of the ITSC dated 28.03.2014, before this Court in W.P.No.34040 of 2014, the Writ Petition came to be dismissed today (i.e.,) 29.10.2020. While dismissing the Writ Petition, this Court had upheld the findings of the ITSC and had come to the conclusion that the Trust had made a full and true disclosure of its income and also explained the manner in which the income has been derived. As such, the present impugned order, which places reliance on the findings of the ITSC, cannot be sustained.

9. Even otherwise, among the various grounds raised by the learned counsel for the Trust, two crucial grounds may have a direct bearing on the impugned order, with regard to its maintainability. These issues pertain to the jurisdiction of the DGIT to issue show cause notice (SCN), in view of the bar under Section 245F(2) of the Act and the powers of the DGIT to reopen the matters covered under the award of the ITSC, since such matters would become conclusive in view of Section 245-I of the Act.

10. For the sake of convenience, Section 245F(2) and Section 245 I of the Income Tax Act, are extracted below:-

"Section 245F(2) in The Income- Tax Act,
1995:- (2) Where an application made under
section 245C has been allowed to be proceeded

with under section 245D, the Settlement Commission shall, until an order is passed under sub-section (4) of section 245D, have, subject to the provisions of sub-section (3) of that section, exclusive jurisdiction to exercise the powers and perform the functions of an income-tax authority under this Act in relation to the case.

Section 245-I. Order of settlement to be conclusive.- Every order of settlement passed under sub-section (4) of section 245D shall be conclusive as to the matter stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force."

11. The DGIT is deemed to be an 'Income Tax Authority' under Section 116 (b) of the Act. When the application under Section 245C made by the Trust has been allowed to be proceeded with, the ITSC alone would have exclusive jurisdiction to perform the functions of the Income Tax Authority, as provided under Section 245F.

12. The Trust had filed an application under Section 245C of the Act on 26.11.2012 and the same was allowed to be proceeded with under Section 245D(1) of the Act through an order dated 10.12.2012. At this stage, the DGIT had issued the SCN on 22.04.2013 proposing for withdrawal of the approval granted under Section 10(23C)(iv) of the Act, for the period Ays 2006-07 to 2011-12. By virtue of Section 245F(2), the DGIT was not empowered to step into the shoes of the ITSC and issue the show cause notice. As a matter of fact, one of the issues which was pending before the ITSC at that point of time against the Trust, was for violation of the conditions of Section 11/Section 10 (23C). While that being so, when the DGIT was clearly without jurisdiction to issue the SCN, there is no justification on his part to proceed further on the SCN and pass the impugned order. When the foundation to the entire proceedings culminating to the impugned order itself is illegal, the impugned order cannot be legally sustained.

13. Insofar as the bar under Section 245-I is concerned, the order of Settlement passed under Section 245D(4) would be conclusive as to the matters stated therein and no matter covered by the order of the ITSC, could be reopened. The order of the ITSC dated 28.03.2014, passed under Section 245D(4) provides for the terms of settlement and had taken into account the report of the Commissioner under Section 245D(2B). The ITSC

had extensively dealt with the issues before it and had concluded the settlement proceedings. While concluding, the ITSC had dealt with the issues pertaining to suppression of income and anonymous donations, collection of unaccounted capitation fee, diversion of unaccounted capitation fee to relatives of founder and application of accounted income of trust to benefit the relatives of founder. When such issues have already been dealt and had become conclusive, Section 245I of the Act prohibits the DGIT to reopen the issues in any proceeding under the Act. On this ground also, the impugned order cannot be sustained.

14. The learned counsel for the Trust, placed reliance on certain decisions to establish that the impugned order had exceeded beyond the scope of the SCN and even otherwise, retrospective withdrawal of approval is impermissible. It is no doubt true that the scope of the order which culminates from the SCN should be well within the proposal made therein. Likewise, retrospective withdrawal of approval may not be permissible. However, since this Court had already found that the DGIT did not possess the jurisdiction to issue the SCN at the inception itself, the impugned order which emanated from the SCN, cannot be sustained and therefore, no useful purpose would be served by addressing these issues. When the SCN, which forms the foundation falls, the entire proceedings culminating to the impugned order, has to necessarily fall, since illegality strikes at the root of the order. This position is akin to the legal maxim 'sublato fundamento cadit opus', which implies that when the foundation is removed, the structure falls.

15. Thus, when the DGIT is wholly without jurisdiction to initiate proceedings for withdrawal of the approval under Section 10(23C) (iv) of the Act, the entire proceedings, culminating to the impugned order is illegal and therefore deserves to be quashed. Having found so, this Court is of the view that the other grounds raised by the Trust need not be addressed.

16. Apart from lacking jurisdiction, the DGIT had grossly exceeded his powers while passing the impugned order by overruling the findings of the ITSC and rendering his opinion based on the materials which were available before the ITSC. In other words, the DGIT had attempted to sit on appeal against the order of ITSC. While the DGIT is deemed to be an 'Income Tax Authority' for the purposes of the Act, by virtue of Section 116, the ITSC is a statutory body created under Section 245B of the Act. It is rather unfortunate that a high ranking official as that of DGIT, was ignorant to understand the basic powers vested on him. On this aspect also, the DGIT had shockingly exceeded its powers and therefore, the impugned order cannot be

sustained.

17. For all the foregoing reasons, the impugned order in F.No.2097 (16)/2014-15 dated 09.02.2015 is quashed. The Writ Petition stands allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

DP

To

The Director General of Income Tax
(Investigation),
Tamil Nadu and Pondicherry,
Income Tax Investigation Wing,
No.46, Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034.

+1 cc to M/s.A.P.Srinivas, Advocate Sr.No. 35009

W.P.No.5236 of 2015
and
M.P.No.1 of 2015

SSD (CO)
RMP (09/12/2020)

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