IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2020

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition No.13370 of 2019
W.M.P.No.13485 of 2019

A.Muthukumar ...Petitioner

--Vs--

1.Income Tax Settlement Commission
Additional, Bench,
Rep.by it Secretary
640, Anna Salai, Nandanam,
Chennai-600 035

2.The Principal Commissioner of Income Tax,
Central Circle 2.
Chennai

3.A.Veeraputhiren ...Respondents

PRAYER: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, calling for the records of the 1st respondent dated 09.04.2019 in connection to the settlement application No.TN/CN-52-2016-2017/124-90 and to quash the same consequently, direct the 1st respondent to provide reasonable opportunity to the petitioner to comply with the Settlement Commission order dated 22.05.2018.

For Petitioner : Mr.A.Jenasenan
Mr.Moiiana Sundara Rajan S.

For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel
for R1 & R2

O R D E R

The petitioner has challenged an order of the Income Tax Settlement Commission (in short 'ITSC') dated 09.04.2019, withdrawing immunity granted against penalty and prosecution on account of the admitted default in remittance of taxes.

2. The petitioner had approached the ITSC for settlement of his case and an order had been passed on 22.05.2018 by the ITSC in terms of Section 245(D)(4). The petitioner had requested time to remit the tax and interest as computed by the Settlement Commission in six monthly installments and this prayer was accepted. Thus, the petitioner was directed to remit the tax and interest computed in six equal monthly installments starting from 01.06.2018 and ending on 30.11.2018. Admittedly, the scheme of payment has not been adhered to on account of, as stated by the petitioner, various difficulties in business and personal life to which I find no necessity to advert in detail. This resulted in a communication being issued by the Principal Commissioner of Income Tax (PCIT)/R2 dated 13.03.2019, addressed to the ITSC, requesting that the immunity from penalty and transaction, already granted, be withdrawn. The request of the PCIT was converted into a miscellaneous petition by the ITSC and after hearing the parties thereupon, the impugned order has come to be passed, assailed in this writ petition.

3. During the pendency of this writ petition, this Court had passed an order on 29.04.2019 permitting the petitioner to remit taxes and interest for the delay in remittance thereupon. The matter had come up on 29.04.2019 and has been adjourned several times. On 03.10.2019, the learned Single Judge has recorded that the entire tax and interest due, as directed by the ITSC, has been remitted and the same has been received by the revenue. The Standing Counsel was directed to verify and file an affidavit to that effect. An affidavit dated 12.02.2020 has been filed wherein, though the respondent admits remittance of the entire amount, a claim is raised stating that interest under Section 220(2) has not been remitted on the belated payments of tax. Though such demand for interest under Section 220(2) was initially raised, it was not pursued by the revenue and the learned Standing Counsel, upon instructions, confirms that the provisions of Section 220(2) would not be applicable in a case such as the present that attracts only the provisions of Section 245(D)(6-A). The provision reads as follows:

> '[(6A) Where any tax payable in pursuance of an order under sub-section (4) is not paid by the assessee within thirty-five days of the receipt of a copy of the order by him, then, whether or not the Settlement Commission has extended the time for payment of such tax or has allowed payment thereof by instalments, the assessee shall be liable to pay simple interest at (one and one fourth percent for

every month or part of a month) on the amount remaining unpaid from the date of expiry of the period of thirty-five days aforesaid.]'

4. A computation of interest has been furnished by way of an additional counter dated 12.02.2020 to the following effect:

Assessment year	Demand due	Interest u/s 245D (6A) till tax payment on date in col.4	Tax paid on	Tax paid	Tax and interest due
(1)	(2)	(3)	(4)	(5)	(6)
2012-13	17,96,218	1,79,622	04/06/2019	5,70,000	1,84,330
	14,05,840	17,573	25/06/2019	8,65,000	
	5,58,413	6,980	08/07/2019	3,61,218	
	2,04,175	5,104	17/09/2019	35,792	
	1,73,487	10,843			
2013-14	2,74,473	24,016	14/05/2019	2,74,473	26,718
	24,016	2,702			
2015-16	11,140	975	14/05/2019	11,140	1,085
	975	110			

5. The amounts as above of a sum of Rs.1,84,330/- for the AY 2012-13, 26,718/-for AY 2013-14 & 11,140/- for AY 2015-16 have been remitted and challans placed on file. In the light of the aforesaid, the liability has been remitted in full.

6. As regards whether the waiver of immunity granted from prosecution and penalty should thus stand reinstated, I draw support from the judgment of the Supreme Court in the case of Sandeep Singh Vs. Union of India and others (2017) 5 SCC 241], a case similar to the present where the petitioner/assessee had not adhered to the scheme of installment granted by the Settlement Commission. However, it appears that the amounts were

remitted by the assessee therein when the matter was pending in SLP before the Supreme Court. Recording this and also referring to the provision of Section 245H(1A), whereunder the ITSC was vested with the power to extend the time for remittance of tax and interest as finally determined, the Supreme Court concludes that the order of the ITSC had been complied with within the time granted by the ITSC originally.

7. The judgment of the Supreme Court is extracted below:

> Leave granted. The surviving grievance is only with regard to the immunity from prosecution under Section 245H (1A) of the Income Tax Act, 1961 (for short, 'the said Act'), which reads as follows:
>
> > 245H (1A) An immunity granted to a person under sub-section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of settlement passed under sub-section (4) of Section 245D within the time specified in such order or
> >
> > within such further time as may be allowed by the Settlement Commission, or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.
>
> 2. In case the payments are not made within the time granted by the Settlement Commissioner or in case the person fails to comply with any other conditions, subject to which the immunity was granted, the immunity shall stand withdrawn. In the case of the appellant it is not in dispute that the payments have not been made within the time originally granted by the Settlement Commissioner. But at the same time, it is not in dispute that all payments have been made before the appellant approached this Court and filed this appeal by way of special leave petition on 20.01.2016, though the time originally granted by the Settlement Commissioner was only up to 31.07.2015.
>
> 3. However, we find from the provision that the Settlement Commissioner is free to grant further time for payment, under Section 245H(1A) of the said Act.

4. Having heard the learned senior counsel for the appellant and learned Additional Solicitor General appearing for the respondents, we are of the view that in the facts and circumstances of this case, it is not necessary to relegate the appellant to he Settlement Commissioner for enlargement of time, since the payments have already been made.

5. Therefore, for all intents and purposes it shall be taken that the appellant has made the payments within the time granted under Section 245H (1A) of the said Act.

6. The appeal is allowed, as above.7. There shall be no order as to costs. Pending application (s), if any, shall stand disposed of.

8. In the present case, the facts available on record indicate that the petitioner was going through mental and personal stress and had been engaged in litigation with family members, also contributing to health issues. That apart, the entire amount of tax and interest has been remitted even during the pendency of the writ petition before this Court, which places this petitioner on a better pedestal than the petitioner before the Supreme Court, who remitted the amounts only at the stage when the matter had travelled to, and was pending before the Supreme Court.

9. Thus, in the light of the discussion as aforesaid and taking a cue from the judgment of the Supreme Court (supra), the impugned order is set aside.

10. This writ petition is allowed in the aforesaid terms. Consequently, connected miscellaneous petition is closed with no order as to costs.

Sd/-
Assistant Registrar(ADI-MDU)

//True Copy//

Sub Assistant Registrar

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To

1.Income Tax Settlement Commission
Additional, Bench,
Rep.by it Secretary
640, Anna Salai, Nandanam,
Chennai-600 035.

2.The Principal Commissioner of Income Tax,
Central Circle 2.
Chennai.

+1cc to Mr.S.Mohanasundara Rajan, Advocate Sr.18468
+1cc to Mr.A.P.Srinivas, Advocate Sr.18073

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