IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition No.1221 of 2020

and WMP. Nos.8282, 1482 & 1483 of 2020

M/s. Foster Wheeler (G.B.) Ltd.,
6th Floor Zenith Building,
Ascendas IT park, CSIR Road,
Taramani, Chennai -600 113, Tamil Nadu. … Petitioner

Vs

1 Income Tax Settlement Commission,
Additional Bench, Chennai Ministry of
Finance Department of Revenue,
640 Anna Salai, Nandanam, Chennai - 600 035.

2 Commissioner of Income Tax (International Taxation),
Chennai 4th Floor BSNL Building, Tower-I,
Greams Road, Chennai -600 006.

3 Deputy Commissioner of Income Tax,
International Taxation-1(1),
4th Floor, BSNL Building Tower-I,
Greams Road, Chennai -600 006. … 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 in TN/CN-INTL.TAX/ 2019-20/14/IT passing the Impugned order dated 11.07.2019 under section 245D(2C) of the Act and to quash the same as arbitrary unjust and illegal and to consequently direct the 1st Respondent to pass a fresh order under Section 245D(2C) of the Act admitting the application filed by the Petitioner and proceed to settle the case in accordance with law.

For Petitioner : Mr.N.V.Balaji

For Respondents : Mrs.Hema Muralikrishnana,
Senior Standing Counsel

ORDER

The petitioner challenges an order of the Settlement Commission (SC)/Commissioner dated 15.05.2019 passed under Section 245D(2C) of the Income Tax Act, 1961 (in short Act) wherein the SC did not permit the petitioner to proceed with the application filed treating the same as invalid and rejecting the same in limine.

2. The brief facts are that the petitioner, incorporated under the laws of the United Kingdom, is a consultant engineer for cutting-edge processing facilities and related infrastructure for various industries. It had entered into contracts with Foster Wheeler Energy Limited (FWEL) during the period 2006 to 2019 for rendering Engineering, Project Management Consultant Services (PMC) and Engineering Procurement and Construction management Consultant Services (EPCm). As per the terms inter se the parties, sub-contracting of the contracts to third parties was permitted.

3. Surveys were conducted under Section 133A of the Act and materials found in the course thereof led to the re-opening of assessments for assessment years (AY) 2011-12, 2014-15 and 2015-16 under Section 147 of the Act. The petitioner filed a settlement application under Section 245 C of the Act and an order of admission passed under Section 245D(1) on 23.05.2019. After exchange of reports by the Commissioner of Income Tax and reply by the petitioner, the matter was posted for hearing in terms of Section 245D(2C).

4. The Commissioner in the impugned order has gone into the question of whether there has been a full and true disclosure of income by the petitioner. In doing so, the Commissioner has dealt in detail with the nature of documentation entered into by the parties and the bifurcation of the scope of work. This, in fact, touches upon the issues raised in the settlement application. In my view the cart has been put before the horse by the Commissioner in dealing with these issues even at the stage of 245D(2C).

5. I have had occasion to consider the same issue in the case of Hitachi Power Europe GmbH V. Income Tax Settlement Commission and others (order dated 17.02.2020 in W.P.No.3706 of 2020) and in very similar circumstances, have held that a discussion on the merits of the taxability of income at the stage 245D(2C) would be beyond the scope of what that provision envisaged. The decision has been confirmed by the Division Bench on 04.09.2020 in W.A.No.581 of 2020. No serious contest is laid to this position by the revenue.

6. However, revenue points out that the petitioner has been lethargic in approaching this Court and there are laches on its part insofar as the writ petition is filed only after six months from the date of the impugned order and that too after the petitioner has participated in the proceedings for assessment initiated by the Assessing Authority. The petitioner explains the interregnum as administrative delay since some of the approvals necessary for the initiation of litigation had to be received from abroad. I accept this submission and reject the argument of the Revenue.

7. In view of the discussion as aforesaid, I am of the view that the writ petition is liable to be allowed and I do so. The impugned order is set aside. The petitioner may be heard by the Settlement Commission on merits on a date to be fixed after issuing notice and a final order passed as expeditiously as possible. Connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Ska/s
To

1 The Income Tax Settlement Commission,
Additional Bench, Chennai Ministry of
Finance Department of Revenue,
640 Anna Salai, Nandanam, Chennai - 600 035.

2 The Commissioner of Income Tax (International Taxation),
Chennai 4th Floor BSNL Building, Tower-I,
Greams Road, Chennai -600 006.

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International Taxation-1(1),
4th Floor, BSNL Building Tower-I,
Greams Road, Chennai -600 006.

+1cc to Mr.N.V.Balaji, Advocate Sr.440
+1cc to M/s.Hemamuralikrishnan, Advocate Sr.333

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sra[co]
srg 22/02/2021