

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.16788 of 2008

Commissioner of Wealth Tax
Chennai III
121, M.G.Road,
Nungambakkam,
Chennai - 600 034.

...Petitioner

vs

1.The Income Tax Settlement Commission,
Additional Bench,
488-489 Anna Salai,
Chennai - 35.

2.M/s.Sri Krishna Tiles and
Potteries (Madras) Pvt Ltd.,
Flat No.A-1, Kumaravijayam,
No.99, Royapettah High Road,
Mylapore, Chennai - 600 004.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, call for the records of the 1st respondent in Application No.TN/CN3/06-07/1/WT filed by the 2nd respondent and quash the order dated 13.03.2008, as being beyond the scope of its jurisdiction, and outside the provisions of Chapter VA of the Wealth Tax Act read with Chapter XIX of the Income Tax Act.

For Petitioner : Mr.A.P.Srinivas

For Respondents : R1 - Settlement Commission
R2 - Mr.AR.L.Sundaresan
Senior counsel
For Mr.R.Sivaraman

ORDER

The order passed by the Settlement Commission is under challenge in the present writ petition.

2. The writ petitioner is Commissioner of Wealth Tax and the order passed by the Settlement Commission is mainly challenged on the ground that there was no true and full disclosure by the 2nd respondent/assessee at the time of filing of an application

under Section 245(C) of the Income Tax Act. Even during adjudication, the petitioner/Department could not establish that the assessee has not approached the Settlement Commission with true and full facts. In spite of the fact that the 2nd respondent/assessee approached the Settlement Commission with unclean hands, the Settlement Commission entertained the application in violation of the provisions of the Act and further, passed an order, which is not in consonance with the powers conferred to the Settlement Commission under the Income Tax Act.

3. The learned Senior standing counsel appearing on behalf of the petitioner Income Tax Department made a submission that the 2nd respondent/M/s.Sri Krishna Tiles and Potteries (Madras) Private Limited was the owner of 34.04 acres of immovable property situated at Anna Nagar, Chennai, out of which, 2 acres were sold on 11.09.2002 and 32.04 acres were sold on 02.03.2006. The 2nd respondent was assessed to tax by the Assessing Officer working under the petitioner both under the Income Tax Act and Wealth Tax Act. The 2nd respondent sold 2 acres of its property in the financial year 2002-2003 and the balance 32.04 acres of property in the financial year 2005-06 for a total consideration of Rs.4.68 crores and Rs.206.34 crores respectively. It had neither filed a return under the Wealth Tax Act nor paid any tax under the Wealth Tax Act in respect of the land, for the period prior to its sale. Hence, a notice under Section 17 of the Wealth Tax Act was issued for the assessment years 1999-2000 to 2005-06. The assessee filed the returns for all the assessment years mentioned above. Since the land belonging to the 2nd respondent was sold for an amount of Rs.206 crores in the year 2005-06, the assessing officer proposed to take the market value of the land progressively from Rs.100 crores onwards for the period 1999-00 to 2005-06. The assessee filed belated returns in response to the notice showing the value of the property at a very much lower rate. The 2nd respondent did not appear when the Assessing Officer fixed a hearing, but approached the 1st respondent / Settlement Commission by filing an application.

4. The learned Senior Standing counsel reiterated that they have raised strong objections before the Settlement Commission, stating that the basic jurisdictional fact of "full and true disclosure" was absent in the application. Thus, the Settlement Commission did not have the jurisdiction to take up the application or grant relief and further, filed W.P.No.5498 of 2008, challenging the order of admission by the 1st respondent. When the said writ petition was taken up for hearing on 19.03.2008, the Vice Chairman of the first respondent Settlement Commission appeared in person and stated before this Hon'ble Court that the Revenue's objections would be taken into account at the time of passing the final order.

5. The learned Senior Standing counsel appearing on behalf of the writ petitioner reiterated that the impugned order, it is seen that the order is dated 13.03.2008. If it were passed prior to the hearing of the writ petition, there was no need for Vice Chairman to state that all the objections of the revenue would be taken into account, while passing of the order, and the fact that the order being already passed was not brought to the notice of this Hon'ble Court at all by the respondents. It would give rise to a presumption that either there was misrepresentation before this Hon'ble Court or that the order was ante dated. In either case, the validity of the order stands vitiated.

6. The second respondent filed a counter affidavit, stating that the writ petition is nothing but abuse of process of law. The writ petition under Article 226 of the Constitution of India, is not maintainable as the orders passed by the Settlement Commission under Section 22D(iv) of the Wealth Tax Act cannot be interfered in a routine manner and except on exceptional circumstances. It is contended that the Court cannot substitute its views in the place of the first respondent/Settlement Commission, particularly on the question of full and true disclosure and complexity of the case. It is contended that the petitioner has never stated about the complexity involved in the present case and the question of law warranting interference of the Hon'ble High Court under Article 226 of the Constitution of India. Thus, the writ petition is liable to be dismissed on the ground of maintainability.

7. The second respondent states that he is the owner of 34.04 acres of immovable property situated at Anna Nagar and further admitted that the 2nd respondent sold two acres of the property during the financial year 2002-03 and the remaining 32.04 acres of land was sold during the financial year 2005-06 for Rs.206.34 crores. The property was sold after obtaining prior permission for sale under Section 281 of the Income Tax Act from the Department. On a notice being served under Section 17 of the Wealth Tax Act for the Assessment years 1999-2000 to 2005-06, the 2nd respondent has filed return of wealth, taking into consideration the valuation of the property and the various litigations pending at the time of valuation of the property. The only dispute is with regard to the valuation of the property on the respective valuation dates from the Assessment Years 1999-2000 to 2005-06. It is contended that the 2nd respondent had filed return of wealth taking into consideration the value of the property on various valuation dates and also taking into consideration several litigations and disputes, which were pending against the said property of their respective valuation dates.

8. Taking into account these aspects, the 2nd respondent had arrived at a fair market value of the property and filed its wealth tax return in pursuant to the notice under Section 17 of the Act. However, the Assessing Officer issued a notice to the respondent under Section 17 of the Act, primarily based on the value at which the property was sold in 2006 and started to value the property as if the property was sold from the year 1999-2000 onwards or in other words, the sale value in March 2006 (206.34 crores) should be the basis for determining the market value of the property on various valuation dates pertaining from the Assessment year 1999-2000 till 2005-06.

9. The second respondent mainly contended that the writ petition is filed by Income Tax Department on the ground that there was no full and true disclosure and there is no complexity in the above case. The 2nd respondent states that the application was properly scrutinized based on the informations, details and documents submitted by the 2nd respondent and accordingly, the Settlement Commission proceeded. The 2nd respondent has offered an additional amount of Rs.60 crores pertaining to the Assessment Years 2004-05 and 2005-06. The additional amount of Rs.60 crores was offered to buy peace and to avoid litigations. The 2nd respondent agreed to enhance the value of Rs.25 crores for the Assessment Year 2004-05 and Rs.35 crores for the Assessment Year 2005-06 over and above the additional amounts disclosed in the statement of facts filed in those Assessment Years. It is contended on behalf of the 2nd respondent that offering additional amounts does not mean that the respondent had not fully and truly disclosed at the time of filing the application. It is contended that the Settlement Commission after verifying these basic factors, proceeded with an adjudication and based on the adjudication, the order was passed on merits and therefore, the writ petition is liable to be dismissed.

10. The learned counsel for the petitioner mainly contended that in the eventuality of identifying the fact that the assessee has not disclosed true and full income in the application filed under Section 245(C) of the Act, jurisdiction of the Settlement Commission stands ousted and they are estopped from entertaining any such application. Even after admission of the application at any stage of the proceedings on account of the objections raised or on identification of facts, if the Settlement Commission is able to identify that there was no true and full disclosure of income or any additional income has been submitted by way of filing an additional statement etc., then it is to be construed that the application filed at the initial stage under Section 245(C) of the Act was not with full and true disclosure and accordingly, it is liable to be dismissed in

limini. Even regarding the point of maintainability raised by the respondent/assessee, through the learned Senior counsel that facts recorded by the Settlement Commission cannot be disputed and no writ petition can be entertained against the order passed by the Settlement Commission, the judgment of the Hon'ble Supreme Court of India in the case of Commissioner of Income Tax Vs. Express Newspaper Limited, reported in [1994] 72 Taxman 438 (SC) is relied upon and paragraph 10 is extracted hereunder:

"10. Section 245-D prescribes the procedure to be followed by the Commission on receipt of an application under Section 245-C. Sub-section (1) is relevant for our purpose. As originally enacted, the sub-section read as follows:

"245D. Procedure of receipt as an application under Section 245-C--(1) On receipt of an application under Section 245-C, the Settlement Commission shall call for a report from the Commissioner and on the basis of the materials contained in such report and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, the Settlement Commission may, by order, allow the application to be proceeded with or reject the application:

Provided that an application shall not be rejected under this sub-section unless an opportunity has been given to the applicant of being heard:

Provided further that an application shall not be proceeded with under this sub-section if the Commissioner objects to the application being proceeded with on the ground that concealment of particulars of income on the part of the applicant or perpetration of fraud by him for evading any tax or other sum chargeable or imposable under the Indian Income Tax Act, 1922 (XI of 1922) or under this Act has been established or is likely to be established by any income tax authority in relation to the case."

11. In the case of Ajmera Housing Corporation Vs. Commissioner of Income Tax, reported in [2010] 193 Taxman 193 (SC)], the Hon'ble Supreme Court of India ruled about the entertainability of the writ petition filed by the Income Tax Department, challenging the Settlement Commission and further, decided about the manner in which an application to be filed under Section 245(C) of the Act. Thus, the issues raised in the present case also discussed in the above judgment and the relevant paragraphs are extracted hereunder:

"8. Dissatisfied with the order passed by the Settlement Commission, the Commissioner challenged it by preferring a writ petition in the High Court of

Bombay. Holding that the Settlement Commission had not given any finding as to whether there was full and true disclosure of the income by the assessee, by a strongly worded order, dated 28-7-2000, the High Court allowed the writ petition and set aside the order.

14. Next, it was urged by the learned Senior Counsel for the assessee that the High Court erred in entertaining the writ petition filed by the Commissioner under Article 226 of the Constitution against the order passed by the Settlement Commission because: (i) in terms of Section 245-D(1) of the Act, the order made by the Settlement Commission under sub-section (4) of the said section is conclusive as to the matters stated therein and no matter covered by such order can be reopened in any proceedings under the Act or under any other law for the time being in force; and (ii) in the absence of any illegality in the procedure followed by the Settlement Commission, the power of judicial review could not be exercised by the High Court to interfere with the findings of fact recorded by the Settlement Commission. To buttress his proposition that judicial review is concerned only with the decision-making process and not with the final decision, learned counsel referred us to the decisions of this Court in *Jyotendrasinhji v. S.I. Tripathi* [1993 Supp (3) SCC 389], *R.B. Shreeram Durga Prasad v. Settlement Commission (IT & WT)* [(1989) 1 SCC 628 : 1989 SCC (Tax) 124] and *Shriyans Prasad Jain v. ITO* [1993 Supp (4) SCC 727].

16. *Shri Raval*, on the other hand, supporting the impugned judgment, submitted that the scheme of Chapter XIX-A does not envisage revision of the application filed by the assessee under Section 245-C(1) of the Act and, therefore, the Settlement Commission committed serious procedural irregularity in permitting the assessee to file revised annexure, declaring higher undisclosed income. Additionally, the learned counsel argued that acceptance of such annexure, after the conclusion of hearing on 12-9-1994, behind the back of the departmental representative and after the Settlement Commission had reserved its order under Section 245-D(1), was improper and clearly in breach of principles of natural justice and, therefore, the order passed by the Settlement Commission on 17-11-1994, deciding to proceed with the application deserves to be set aside.

22. It is clear that disclosure of "full and true" particulars of undisclosed income and "the manner" in which such income had been derived are the prerequisites for a valid application under Section

245-C(1) of the Act. Additionally, the amount of income tax payable on such undisclosed income is to be computed and mentioned in the application. It needs little emphasis that Section 245-C(1) of the Act mandates "full and true" disclosure of the particulars of undisclosed income and "the manner" in which such income was derived and, therefore, unless the Settlement Commission records its satisfaction on this aspect, it will not have the jurisdiction to pass any order on the matter covered by the application.

27. It is trite law that a taxing statute is to be construed strictly. In a taxing Act one has to look merely at what is said in the relevant provision. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. There is no room for any intendment. There is no equity about a tax. (See *Cape Brandy Syndicate v. IRC* [(1921) 1 KB 64] and *Federation of A.P. Chambers of Commerce & Industry v. State of A.P.* [(2000) 6 SCC 550]) In interpreting a taxing statute, the court must look squarely at the words of the statute and interpret them. Considerations of hardship, injustice and equity are entirely out of place in interpreting a taxing statute.

28. As aforesaid, in the scheme of Chapter XIX-A, there is no stipulation for revision of an application filed under Section 245-C(1) of the Act and thus the natural corollary is that determination of income by the Settlement Commission has necessarily to be with reference to the income disclosed in the application filed under the said section in the prescribed form.

31. We are convinced that, in the instant case, the disclosure of Rs. 11.41 crores as additional undisclosed income in the revised annexure, filed on 19-9-1994 alone was sufficient to establish that the application made by the assessee on 30-9-1993 under Section 245-C(1) of the Act could not be entertained as it did not contain a "true and full" disclosure of their undisclosed income and "the manner" in which such income had been derived. However, we say nothing more on this aspect of the matter as the Commissioner, for reasons best known to him, has chosen not to challenge this part of the impugned order."

12. The learned Senior standing counsel appearing on behalf of the petitioner solicited the attention of this Court with reference to the application filed by the second respondent under Section 22(D)(1) of Wealth Tax Act, 1957.

13. Based on the information provided that the property measuring 32.04 acres in Anna Nagar was sold for a sum of Rs.206.34 crores, the Income Tax Department initiated action under Section 133A of the Income Tax Act and a survey was conducted on 08.03.2006. The survey conducted in the premises of the 2nd respondent at Flat No.A1, Kumaravijayam 99, Royapettah High Road, Mylapore, Chennai-600 004 and several documents were impounded and statements from one of its directors were recorded. Copies of these statements and documents impounded are yet to be provided by the Department. In this context, the learned Senior standing counsel contended that amount of wealth, which has not been disclosed before the Assessing Officer and the additional amount of Wealth Tax payable to such wealth is also elaborated.

14. The order dated 28.12.2006 passed by the Additional Bench of the Income Tax Settlement Commission made a finding as hereunder:

"4. Explaining further it was submitted by the learned Authorised Representative that decision on the part of the applicant was primarily motivated by a serious apprehension of high pitched assessments in respect of the reopened assessments. The entire land in question was ultimately sold for Rs.206.34 crores on 02.03.2006 to M/s.Ozone Projects Private Limited, a company which is in real estate business and was funded by H.D.F.C and partly by Anil Ambani and Mukesh Ambani Group. In order to determine the market value for wealth tax purposes, the value of the property on various valuation dates was the sole consideration. Since the value of the property in question was subjected to various litigations, value of the property has to be suitably adjusted as the litigations would depress the value of the property on different valuation dates."

15. The Commissioner of Income Tax in proceedings dated 12.04.2007 submitted a report under Rule 9 of the Settlement Commission Procedural Rules with reference to the Assessment Years 1999-2000 to 2005-06. The Commissioner in the said report categorically stated with reference to the disclosure made by the 2nd respondent, whether full and true in Paragraph 3.1, which reads as under:

"3.1 The value of the flats at Royapettah as mentioned in Para 6 of the Assessing officer's report have completely been omitted by the assessee from the computation of net wealth in the settlement application. Since the flats were not held by the assessee as stock in trade, the value of the flats is includable in the net wealth. The market value of the flats on hand has been worked out by the AO on the

basis of sales near the respective valuation dates and the value is given in page 8 of AO's report. The applicant has no justification for omitting the market value of the said flats from the net wealth and this fact alone militates against one of the prerequisite of the Settlement Application (i.e.) full and true disclosure. It is requested that in the order under Section 22D(4), the market value of the flats as worked out by the department may be included in the assessee's net wealth on the various valuation dates."

16. Without considering the additional wealth offered by the second respondent, which has been disclosed before the Assessing Officer, the Settlement Commission proceeded with the Settlement in violation of the provisions of the Income Tax Act and beyond the jurisdiction of the Settlement Commission. The revised statement of facts filed by the 2nd respondent on 22.02.2008 would be sufficient to arrive a conclusion that the 2nd respondent has not filed an application under Section 245(C) of the Act with true and full disclosure. The additional statement of facts given during the adjudication of the application before the Settlement Commission, raises a doubt regarding the true and full disclosure and further, the reasonings given by the petitioner/Income Tax Department in the matter of true and full disclosure were not considered by the 2nd respondent.

17. The Settlement Commission without adhering to the provisions of the Income Tax Act and more specifically, in violation of the mandatory requirement for entertaining an application for settlement, passed the impugned order of settlement, knowing fully well that the 2nd respondent has not made true and full disclosure as mandated under Section 245(C) of the Income Tax Act.

18. The learned Standing counsel solicited the attention of this Court with reference to the findings of the Settlement Commission in the impugned order. The petitioner / Commissioner of Income Tax in his written submission dated 20.02.2008, specifically made certain points, which would reveal that the non-disclosure of wealth by the 2nd respondent came to notice as soon as the application for NOC under Section 281 of the I.T.Act was made. Thus, there is nothing new disclosed by the 2nd respondent before the Settlement Commission. The 2nd respondent has come forward to offer additional wealth at the time of admission, which further reinforces the position that the disclosure made in the application is neither true nor full. The 2nd respondent has totally omitted to include another immovable property namely the plot at Royapettah in the statement of taxable wealth. Thus, the 2nd respondent failed to include this property in the return of wealth on the relevant valuation

dates. Thus, omission of this property has also resulted in establishing that the disclosure made is neither true nor full.

19. The Settlement Commission made the following observations in Paragraph 5.2 of the impugned order, which reads as under:

"5.2 At the admission stage, it was submitted before us that the applicant was primarily motivated by a serious apprehension of high pitched assessment in respect of the reopened assessments. The entire land in question was ultimately sold for Rs.206.34 crores on 02.03.2008 to M/s.Ozone Projects Private Limited. In order to determine the market value for W.T.Purposes, the value of the property on various valuation dates was the sole consideration. Since the value of the property in question is subjected to various litigations, it has to be suitably adjusted as the litigations would depress the value of the property on different valuation dates. In para 5,6,7,8 and 9 of the order Under Section 22D(1) the A.R. pointed out various impediments which had the result of depressing the value of the property on various dates. In para 11 and 12 of the 22D(1) order the arguments and objections of the CIT(DR) were narrated. In para 13 of the said order, the rejoinder of the A.R. is given. Other issues such as validity of the application were discussed and dealt with. In para 15 of the said order, the confidential part heard by the Settlement Commission was discussed and in para 16,17 and 18 the objections of the CIT(DR) were dealt with. Also in para 18 the Commission came to a prima facie view that enhancement of valuation for the A.Y.2004-05 at Rs.25 crores and Rs.35 crores for A.Y.2005-06 over and above the additional wealth disclosed in the SOF filed for these respective assessment years was adequate."

20. Pertinently, the Settlement Commission made a finding that the 2nd respondent had under stated its wealth by not declaring the flats at Royapettah. It was argued by the A.R that the reasons why these flats were not included in the disclosure at the first instance was that the applicant was under a belief that these flats would not form part of net wealth. It was submitted that with a view to give quietus to the matter and arrive at comprehensive settlement the 2nd respondent is offering the value of these flats as per Schedule 3 of Rule 3 of W.T.Rules and accordingly, filed a revised Statement of Facts dated 22.02.2008 as per annexure reproduced in Paragraph 6.4. The Settlement Commission made an observation that the 2nd

respondent in the spirit of the settlement, offering a sum of Rs.3,59,000/- as an addition to the value to bring the value of Rs.18,59,000/-, which will be the value fixed for acquisition under ULCRA. Pertinently, the Settlement Commission concluded by stating that "Considering the Co-operation extended by the second respondent in the completion of the present settlement proceedings and the true and full disclosure made, we grant immunity under Section 245H(1) from the imposition of penalty and prosecution under the Income Tax Act and relevant sections of IPC, relating to the matters covered in the present order."

21. This Court is of the considered opinion that the true and full disclosure must be with reference to the application submitted by the assessee at the first instance. Submission of additional statement of facts providing further disclosure would invalidate the application as the assessee has not filed the application with true and full disclosure. Section 245(C) of the Income tax is clear that the application filed under Section 245 (C) must contain true and full disclosure of income. During the course of adjudication, if the Income Tax Department is able to establish that certain details and the properties and documents were not filed along with the application filed by the assessee or if the assessee files an additional statement of facts for the purpose of settlement, then it is to be construed that the application under Section 245(C) of the Income Tax Act was not filed with true and full disclosure, and the disclosures made cannot be trusted upon. Thus, the Revenue must be allowed to proceed with the assessment.

22. In view of the fact that the petitioner could able to establish that the 2nd respondent has not approached the 1st respondent / Settlement Commission with true and full disclosure of income and during the course of proceedings, offering additional income and findings of the Settlement Commission would also confirm the same, the said offerings of the additional income would be sufficient for the purpose of arriving a conclusion that the 2nd respondent filed an application under Section 245(C) of the Income Tax Act without disclosing true and full income. Thus, to comply with the requirements of the provisions of Section 245(C), there is every reason to believe that the 2nd respondent / assessee has not approached the Settlement Commission with clean hands and thus, the Department is empowered to go for further adjudication. This being the very purpose and object of the condition imposed under Section 245(C) of the Act, there is no reason for the Settlement Commission to get along with the application, which were not filed with true and full disclosure. Thus, the Settlement Commission has committed an error apparent and allowed the application filed by the 2nd respondent in violation of the provisions of the Income Tax Act.

23. Accordingly, the order impugned passed by the 1st respondent in proceedings in Application No.TN/CN3/06-07/1/WT dated 13.03.2008 is quashed and the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

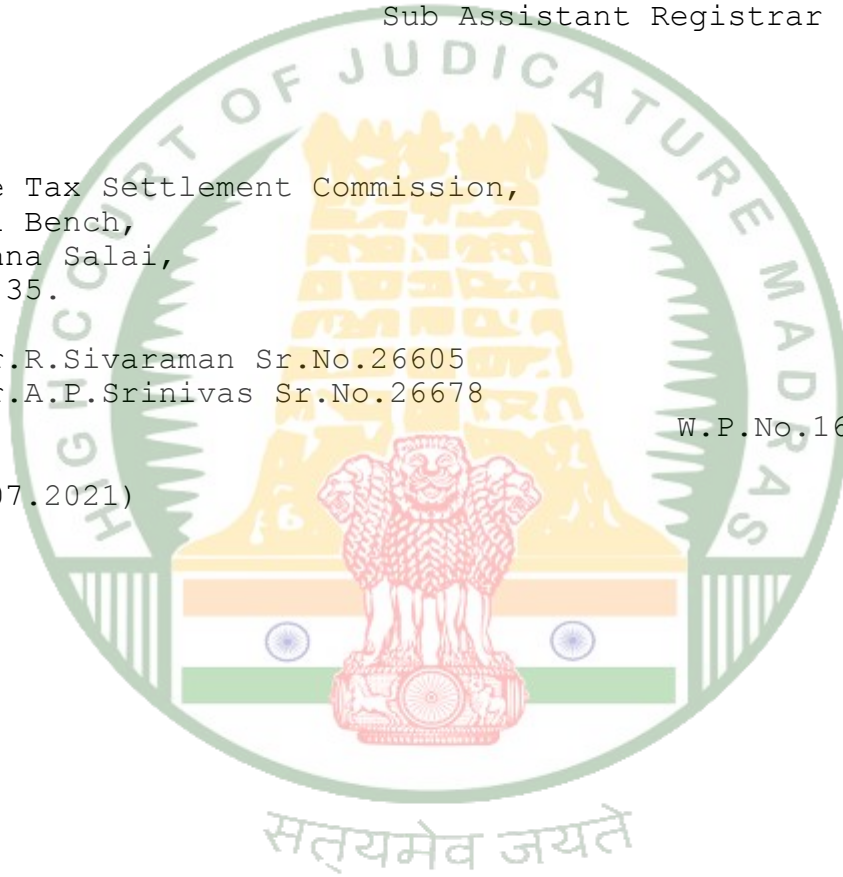
Kak

To
The Income Tax Settlement Commission,
Additional Bench,
488-489 Anna Salai,
Chennai - 35.

+1CC to Mr.R.Sivaraman Sr.No.26605
+1CC to Mr.A.P.Srinivas Sr.No.26678

W.P.No.16788 of 2008

LN (CO)
A.SK (12.07.2021)



WEB COPY