IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.09.2021

CORAM:

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

WP.Nos.25871 to 25873 of 2004

1. M/s.Mayura Radio & Cycle Mart
Rep. By its Managing Partner,
585, Trichy Road, Singanallur,
Coimbatore. .. Petitioner in WP No.25871/04

2. Smt.S.Vasanthakumari,
Proprietress Mayura Corporation,
Rep. By Power of Attorney,
Sri.P.Sampath Kumar,
586, Trichy Road, Singanallur,
Coimbatore. .. Petitioner in WP No.25872/04

3. Smt.S.Vijayalakshmi,
Proprietress Vasantha Agencies,
587, Trichy Road, Singanallur,
Coimbatore. .. Petitioner in WP No.25873/04

Vs

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

2. The Union of India
Rep. By The Chairman,
Central Board of Direct Taxes, North Block, New Delhi.

3. The Commissioner of Income Tax I,
Coimbatore.

4. The Income Tax Officer,
Ward-III (3),
Coimbatore. .. Respondents in all WPs.

PRAYER in WP No.25871 of 2004: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records of the first respondent Income Tax Settlement Commission, Additional Bench, Chennai in its file Settlement Applications Nos.21/CBE/27/96-IT and 21/CBE/61/96-IT and quash the impugned order dated 28.05.2004.

PRAYER in WP No.25872 of 2004: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records of the first respondent Income Tax Settlement Commission, Additional Bench, Chennai in its file Settlement Applications Nos.21/CBE/28/96-IT and 21/CBE/62/96-IT and quash the impugned order dated 28.05.2004.

PRAYER in WP No.25873 of 2004: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records of the first respondent Income Tax Settlement Commission, Additional Bench, Chennai in its file Settlement Applications Nos.21/CBE/29/96-IT and 21/CBE/63/96-IT and quash the impugned order dated 28.05.2004.

For Petitioner : Mr.R.Kumar
in all WPs.

For Respondents : Mr.A.P.Srinivas (for R2 to R4)
in all WPs. Sr. Standing Counsel for Income Tax

COMMON ORDER

All these writ petitions are filed challenging the orders passed by the Income Tax Settlement Commission, Additional Bench, Chennai dated 28.05.2004.

2. The petitioners' firm deals in consumer durables like mixies, grinders, refrigerators, television, washing machines, steel and wooden furnitures and other household articles. Admittedly, the petitioners filed applications under Section 245C of the Income Tax Act, 1961 before the Settlement Commission. Applications were admitted under Section 245(D)(1) of the Act and adjudicated.

3. The grievances of the writ petitioners in a nut shell is that the order passed by the Settlement Commission with reference to para No.2 alone is objectionable. As far as para No.1 of the order, the petitioners have no serious dispute and they have not raised any grievance.

4. Thus, this Court has to consider the legality of the order passed in para No.2 by the Settlement Commission. Para No.2 of the order states that following the decision of the Apex Court in the case of CIT Vs. Hindustan Bulk Carriers [(2003) 259 ITR 449 (SC)] and CIT Vs. Damani Brothers [(2003) 259 ITR 475 (SC)], interest under Section 234B has to be charged up to the date of the order under Section 245(D)(4) i.e. 25.03.1999.

5. The learned counsel for the petitioner made a submission that as per the subsequent judgment of the Hon'ble Supreme Court of India, the charging of interest under Section 234B up to the date of the order passed under Section 245(D)(4), is improper and is in violation of the principles laid down by the Apex Court of India.

6. In this context, the learned senior standing counsel disputed the said contention by stating that no doubt, the amount of interest is to be calculated up to the date on which the Section 245(D)(1) order is passed, however, the interest should be charged on the amount determined in the order passed under Section 245(D)(4) of the Income Tax Act.

7. Further, it is brought to the notice of the Court that the Hon'ble Division Bench of this Court considered a similar issue in W.A.Nos.2208 & 2209 of 2021 and an order was passed on 06.09.2021 holding that the amount of interest under Section 234B is to be charged up to the date of the order passed under Section 245(D)(1) on the amount determined in the order passed under Section 245(D)(4) of the Income Tax Act.

8. In view of the said submission, the case of the petitioners is also to be considered with reference to the principles laid down by the Hon'ble Division Bench of this Court in W.A.No.2208 and 2209 of 2021 dated 06.09.2021, with reference to the charging of interest under Section 234(B) of the Income Tax Act.

9. Accordingly, the competent Assessing Officer is directed to compute the amount payable by the petitioners and communicate the same as expeditiously as possible enabling the petitioners to pay the tax without causing any further delay.

10. With the above direction, all these writ petitions stand disposed of. No Costs.

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-Sd/-
Assistant Registrar

TRUE COPY

Sub-Assistant Registrar

To

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

2. The Chairman,
Union of India
Central Board of Direct Taxes,
North Block, New Delhi.

3. The Commissioner of Income Tax I,
Coimbatore.

4. The Income Tax Officer,
Ward-III (3),Coimbatore.

+3 CCs to Mr.A.P.Srinivas, Senior Standing Counsel(Income Tax)
SR.No.45332/2021

WP Nos.25871 to 25873 of 2004

SML(CO)
GS(21/10/2021)