

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.663 to 665 of 2018
and
W.M.P.Nos.830 to 835 of 2018

Mr.Sridhar Anand

Represented by his Legal Heir

Late Dr.P.Anand

1B, A Block, Anugraha Apartments

19, Nungambakkam High Road,

Nungambakkam,

Chennai - 600 034.

..Petitioner in W.P.No.663 of 2018

M/s.Anand Granite Exports Private Limited

Represented by its Director,

Mr.Sridhar Anand

1B, A Block, Anugraha Apartments

19, Nungambakkam High Road,

Chennai - 600 034.

..Petitioner in W.P.No.664 of 2018

M/s.Global Exports

Represented by its Partner,

Mr.Sridhar Anand

1B, A Block, Anugraha Apartments

19, Nungambakkam High Road,

Chennai - 600 034.

..Petitioner in W.P.No.665 of 2018

Vs.

1.Income Tax Settlement Commission,

Additional Bench, Chennai,

Ministry of Finance,

Department of Revenue,

640, Anna Salai, Nandanam,

Chennai - 600 035.

2.Deputy Commissioner of Income Tax,

Central Circle 1(1), Chennai,

New No.46, Mahatma Gandhi Road,

Chennai - 600 034.

..Respondents in all W.Ps

Prayer in W.P.No.663 of 2018 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of

Certiorarified Mandamus, calling for the records of the 1st respondent contained in its impugned order bearing No.TN/CN/51/2016-17/3-IT dated 16.11.2017 and to quash the same as arbitrary, unjust and illegal, and to consequently, direct the 1st respondent to reconsider the application filed by the petitioner bearing No.TN/CN/51/2016-17/3-IT and pass a fresh order under Section 245D(4) of the Income Tax Act, 1961 after affording the petitioner a sufficient opportunity of being heard, in accordance with law.

Prayer in W.P.No.664 of 2018 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent contained in its impugned order bearing No.TN/CN/51/2016-17/2-IT dated 16.11.2017 and to quash the same as arbitrary, unjust and illegal, and to consequently, direct the 1st respondent to reconsider the application filed by the petitioner bearing No.TN/CN/51/2016-17/2-IT and pass a fresh order under Section 245D(4) of the Income Tax Act, 1961 after affording the petitioner a sufficient opportunity of being heard, in accordance with law.

Prayer in W.P.No.665 of 2018 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent contained in its impugned order bearing No.TN/CN/51/2016-17/44-IT dated 16.11.2017 and to quash the same as arbitrary, unjust and illegal, and to consequently, direct the 1st respondent to reconsider the application filed by the petitioner bearing No.TN/CN/51/2016-17/44-IT and pass a fresh order under Section 245D(4) of the Income Tax Act, 1961 after affording the petitioner a sufficient opportunity of being heard, in accordance with law.

For Petitioner : Mr.R.Sivaraman
[in all W.Ps]

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel
[For Income Tax]
[in all W.Ps]

COMMON ORDER

The orders of the Settlement Commission dated 16.11.2017 are under challenge in the present writ petitions.

2. Admittedly, the petitioner filed applications under Section 245(C) of the Income Tax Act before the Settlement Commission to resolve the disputes with the Income Tax Department. The said applications were adjudicated by the

Settlement Commission and the learned counsel for the petitioner reiterated that the Settlement Commission has misunderstood the facts and circumstances and formed an erroneous opinion and dismissed the applications. Thus, the petitioner must be provided with an opportunity to re-adjudicate the issues before the Settlement Commission and to clarify the facts, enabling the Settlement Commission to decide the issues afresh.

3. The learned Senior Standing counsel appearing on behalf of the respondents/Department made a submission that it is a pre-condition that an assessee filing an application under Section 245(C) must come with full and true disclosure and with clean hands. Once it is established that true and full disclosure are not made and the facts are controverted, then the application itself is to be rejected in limini, in view of the pre-requisite condition contemplated under Section 245(C) of the Income Tax Act.

4. The complete facts and circumstances as narrated in the writ petitions become unnecessary, in view of the fact that an assessee filing an application under Section 245(C) of the Income Tax Act must establish at the first instance that true and full disclosure of income is made before the Settlement Commission. In the event of controversy or discrepancy in the matter of true and full disclosure of income, then the Settlement Commission is empowered to reject the application in limini.

5. The decisions arrived by the Settlement Commission with reference to the applications submitted by the petitioner, which reads as under:

"[TN/CN/51/2016-17/3-IT]

7.1 We have considered the submissions made by the learned CIT (DR) and learned AR and the reports of the Pr.CIT including information received from FT & TR Division and the relevant records. On the fresh submissions relating to foreign bank accounts and documents also further opportunity was given to the learned AR. As regard the foreign bank accounts or deposits or investments and income from M/s.Universal Construction Supplies, FZE, Sharjah, UAE and flat at Dubai Marina, UAE of the applicant (Late) Dr.P.Anand, it is found that there is no disclosure of these facts in the SOF or in the returns. The Learned AR could not explain anything about these aspects during the course of hearing. Further, the business activities of the applicant and the company M/s.Anand Granite Exports Pvt Ltd., (represented by the applicant as Director) in Dubai have also not been disclosed in the SOF of the respective applications or in their returns of Income

filed. Thus, the disclosure / statements made is not full and true. The Commission is of the view that there is concealment of facts which require deeper investigation into the case of the applicant particularly with reference to foreign accounts/assets. The AR's stand that the applicant's legal heir who signed the settlement application is not aware of applicant's dealings is not acceptable as the evidences in the documents received from UAE Authorities revealed that the legal heir Sri Sridhar Anand is also involved in these dealings/transactions. Further, in the absence of full and true facts in the SOF to the settlement application, the Commission feels that justice will be done only by making further detailed investigation for proper assessment by the Department. Any adhoc settlement may not serve the purposes of provisions of the I.T. Act.

7.2. In the case of applicant various foreign bank accounts in Dubai, China and U.K have been found and that the enquiry in relation to these accounts are in progress. As Late Dr.P.Anand was the Managing Director of Anand Granite Exports Private Ltd., during the period covered in the settlement application, it is likely that the affairs of the company may be found interlinked with these bank accounts.

7.3 Further, regarding the disclosure made in the SOF, the applicant has failed to give the details of manner in which the income was earned. The learned AR pleaded ignorance of the manner of earning the income on the ground that Late Dr.P.Anand alone could give these details. Hence, the manner in which the income earned is also stands unexplained.

7.4 As the disclosures is not full and true and the manner in which the income derived is not explained, the application is not maintainable. Reliance is placed in the cases of CIT Vs ITSC 310 ITR 10, ACE Investments [2003] 264 ITR 571 (Mad) and Ajmeera Housing [2010] 193 TAXMAN 193(SC).

7.5 Thus, on the grounds that the disclosure is not full and true and that there is deficiency in explaining the facts gathered by the Department from UAE and the manner in which the income earned, the terms of settlement are not provided for. The application is thus rejected. Hence the proceedings before the Settlement Commission shall abate on the specified date as defined in Explanation (ca) to sub-section(1) of Section 245HA of the I.T.Act. The Department may take further course of action in accordance with law."

[TN/CN/51/2016-17/2-IT]

7.1 We have considered the submissions made by the learned CIT (DR) and learned AR and the reports of the Pr.CIT including information received from FT & TR Division and the relevant records. On the fresh submissions relating to foreign bank accounts and documents also further opportunity was given to the learned AR. As regard the foreign bank accounts of Late Dr.P.Anand, Director of the applicant company (i.e., A/c.No.127591 in Commercial Bank of Dubai), it is found that these foreign bank accounts were not disclosed by the applicants in their SOF or in the return of income filed before the Department. The Learned AR also could not explain these transactions during the course of hearing. Further, as per the evidence furnished by UAE Authority, the applicant company obtained license on 28.10.2013 to do trading of building and constructions materials. But the business activities of the applicant company in Dubai and any income derived there from is also not disclosed in the SOF or in the returns of income filed before the Department. Thus, the disclosure made is not full and true. Further, the names of the maistries given for verification, do not tally with that of the names given in the sworn statements, SOF and further, submissions made during the course of hearing. The Commission is of the view that there is concealment of facts which require deeper investigation into the case of the Company and the Director also, as the transactions are interlinked. In the absence of full and true facts in the SOF filed with the settlement application, the Commission also feels that justice will be done only by making further detailed investigation for proper assessment of correct income by the Department. Any adhoc settlement may not serve the purposes of provisions of the I.T.Act. Further, the applicant failed to extend full co-operation to furnish and explain the true nature of entries / transactions with Bannari Amman Sugars Ltd.

7.2. In the case of Late Dr.P.Anand, the Director of the applicant company also various foreign bank accounts in Dubai, China and U.K have been found and that the enquiry in relation to these accounts are in progress. As Late Dr.P.Anand was the Managing Director of the company during the period covered in the settlement application, it is likely that the affairs of the company may be found interlinked with these bank accounts.

7.3 Further, regarding the disclosure made in the SOF, the applicant has failed to give the details of manner in which the income was earned. The learned

AR pleaded ignorance of the manner of earning the income on the ground that Late Dr.P.Anand alone could give these details.

7.4 Accordingly, we find that disclosures is not full and true and the manner in which the income derived was not explained. Hence, the application is not maintainable. Reliance is placed in the cases of CIT Vs ITSC 310 ITR 10, ACE Investments [2003] 264 ITR 571 (Mad) and Ajmeera Housing [2010] 193 TAXMAN 193 (SC).

7.5 Thus, on the grounds that the disclosure is not full and true and that there is deficiency in explaining the facts gathered by the Department from UAE and the manner in which the income earned, the terms of settlement are not provided for. The settlement application is thus rejected. Hence the proceedings before the Settlement Commission shall abate on the specified date as defined in Explanation (ca) to sub-section(1) of Section 245HA of the I.T.Act. The Department may take further course of action in accordance with law."

TN/CN51/2016-17/44-IT

6.1 When the application of the present applicant was allowed to be proceeded with vide order u/s 245D(1) dated 12.07.2016, vide para 4.2 of the said order it was clearly mentioned as under:

".....the Applicant firm has paid the additional tax and interest thereon for the A.Ys.covered in the Settlement Application and such payments of tax exceeds the prescribed limit as per explanation (vi)(B) under proviso (ia) of Section 245C(1), since the partner of the Applicant firm, Dr.P.Anand is a Director having substantial interest in the company, Anand Granite Exports Pvt.Ltd., specified person. The A.R.further submitted that they are also covered as per explanation (v) under proviso (ia) of Section 245C(1). Mr.Sridhar Anand has substantial interest both in the Applicant firm as well as in the company, Anand Granite Exports Pvt. Ltd.,....."

6.2 Whereas, the applications in respect of Late Dr.P.Anand and M/s.Anand Granite Exports Pvt. Ltd., have been rejected by the Commission u/s 245(D) vide orders dated 16.11.2017 on the grounds that the applications are not maintainable as the disclosure is not full and true and there is deficiency in explaining the manner in which the income has been

earned. Further, the applicant has suppressed the export sales receipts amounting to Rs.1.32 crores for the AY 2008-09, which was admitted only at the time of final hearing after verification. Hence, the details disclosed in the application and SOF is also not full and true to this extent. As all these three applications are inter connected and linked, the terms of settlement are not provided for in the case of the applicant firm also. The settlement application in the case of M/s.Global Exports is thus rejected. Hence the proceedings before the Settlement Commission shall abate on the specified date as defined in Explanation (ca) to sub-section (1) of Section 245HA of the I.T.Act. The Department may take further course of action in accordance with law."

6. As far as the above factual findings are concerned, High Court cannot re-appreciate the evidences or otherwise. The findings of the Settlement Commission reveals that true and full disclosure of income had not been made by the petitioner and the facts, which were not stated along with the applications were also considered by the Settlement Commission.

7. Perusal of the reasons given by the Settlement Commission reveals that the petitioner had not approached the Settlement Commission with true and full disclosure and such a finding cannot be interfered with, in view of the fact that the scope of Section 245(C) of the Income Tax Act is limited and only in the event of approaching the Settlement Commission with clean hands, the settlement can be arrived and not otherwise.

8. Relying on the categorical findings of the Settlement Commission, the learned Senior Standing counsel appearing on behalf of the respondents cited the judgment of the High Court of Madras in the case of S.V.Shankar Vs. Settlement Commission, reported in [2007] 292 ITR 633 (Madras). The High Court made the following observations:

"6. It may be noted that the jurisdiction of this court under article 226 of the Constitution of India is not that of the appellate court. The provision for settlement under Chapter XIX-A is in the nature of a statutory arbitration to which a person may submit himself voluntarily. Hence, the power to review that may be exercised under article 226 of the Constitution of India could only be in cases where there are mistakes apparent on the face of the record, but may not be exercised on the ground that the decision is erroneous on merits. The decisions of the Supreme Court reported in [1993] 201 ITR 611 (Jyotendrasinhji v. S.I. Tripathi) and [1997] 223 ITR

840(Kuldeep Industrial Corporation v. ITO) clearly lays down the parameters of the scope of the enquiry by the High Court under article 226 or by the Supreme Court under article 136 of the Constitution of India. In the circumstances, where the Commission has, on the basis of materials on record, come to a decision, it would not be open to the High Court to substitute its view on the materials disclosed in preference to that of the Settlement Commission. In [1993] 204 ITR 616 (Shriyans Prasad Jain v. ITO), the apex court held that the court could not go into the questions of fact recorded by the Commission.

Considering the limited jurisdiction and the fact that after due appreciation of the facts, the Settlement Commission had arrived at its finding, we do not find any merit to accept the plea of the petitioner herein. Consequently, the writ petition stands dismissed. There will be no order as to costs."

9. In the case of Abdul rahim Vs. Income Tax Settlement Commission, Chennai, reported in [2018] 96 taxmann.com 571 (Madras), the High Court made the following observations:

"16. It is to be noted at this juncture that the Settlement Commission is vested with power to reject the Settlement Application at three stages, as provided under Section 245D of the said Act. Rejection at the threshold is contemplated under Section 245D(1). Rejection after notice to the Revenue and on perusing the report filed by the Revenue could be made under Section 245D(2). While rejection under Section 245D(1) is a dismissal at the admission stage, rejection under Section 245D(2) is after notice to the revenue and on being satisfied with non disclosure of true and full undisclosed income. The third stage of rejection is contemplated under Section 245D(4), after directing the Revenue to furnish records and thereafter to conduct an investigation or enquiry. In all these stages, the satisfaction of the Commission with regard to true and full disclosure of income must continue to exist so as to carry over the proceedings from one stage to another and finally, to pass an order determining the terms of settlement as provided under Section 245D (6). In other words, true and full disclosure is the life line, satisfaction of the same should remain to live in the mind of the Commission till the final order is passed. On the other hand, if the Commission finds, at any stage of the proceedings under Section 245D that the applicant has not come before the Commission with clean hands and by disclosing true

and full income, it is empowered to reject the application, thereby driving the applicant to face the regular assessment proceedings. The applicant cannot, as a matter of right, seek the Commission to carry over the application from one stage to another, notwithstanding the fact as to whether true and full disclosure of income was made or not. In other words, the applicant who approaches the Commission, bypassing the regular assessment proceedings, must provide material facts without any suppression and establish that the disclosure of income in the application is true and full in its strict sense. Otherwise, the applicant cannot find fault with the Commission in showing him the door to face the regular assessment proceedings. The term "true and full disclosure" does not mean that whatever the amount shown by the applicant, which according to him is undisclosed income, is in fact, the true and full disclosure. It may be the disclosure of undisclosed income in the view of the applicant. But whether such disclosure is "true and full", in its strict sense, is a question that should fetch an answer in favour of the petitioner/applicant at all stages even after hearing the revenue. In other words, such disclosure should not give room for deduction of concealed fact with regard to any other income either after getting a report from the Revenue or conducting an investigation or enquiry at the instance of the Commission."

10. Relying on the above judgments, the learned Senior Standing counsel is of an opinion that the writ petitions are not entertainable as the findings of the Settlement Commissioner are unambiguous regarding the true and full disclosure of income by the writ petitioner. When the pre-requisite condition for filing an application under Section 245(C) of the Income Tax Act has not been fulfilled, then there is no reason to entertain the writ petitions under Article 226 of the Constitution of India.

11. Section 245(C) of the Income Tax Act contemplates 'Application for Settlement of cases'. Sub clause 1 enumerates that 'An assessee may, at any stage of a case relating to him, make an application in such form and in such manner as may be prescribed, and containing a full and true disclosure of his income which has not been disclosed before the Assessing Officer, the manner in which such income has been derived, the additional amount of income-tax payable on such income and such other particulars as may be prescribed, to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided."

12. Section 245(D) contemplates 'Procedure on receipt of an application under section 245C'. Therefore, to entertain an application for settlement, these preliminary factors are to be considered by the Settlement Commission. Once on facts, Settlement Commission made a finding that the petitioner has not approached the Commission with full and true disclosure, then there is no reason to proceed further to settle the disputes between the parties.

13. The learned counsel appearing on behalf of the writ petitioner mainly contended that on 09.11.2017, copies of the Bank statement and other documents were handed over to the petitioner for his comments and the cases were adjourned to 10.11.2017. Thus, no opportunity was provided to the petitioner, enabling him to explain about the statements and the documents furnished to him. Such an opportunity of one day provided is insufficient to verify the documents as well as the statements and therefore, further opportunity is to be given to the petitioner, enabling him to clarify certain factual aspects with reference to the report of the Commissioner.

14. The learned counsel for the petitioner is of an opinion that the Settlement Commission made an erroneous finding regarding the facts and circumstances and regarding the involvement of the writ petitioner along with his father, who was maintaining a Bank account in UAE. In this context, the learned counsel for the petitioner solicited the attention of this Court regarding the procedures as contemplated under Section 245 (D) of the Income Tax Act. Relying on the procedures, the learned counsel for the petitioner is of an opinion that an opportunity is mandatory and such a valuable opportunity is to be granted in full, enabling the assessee to clarify or explain such factual matrix. The applications submitted by the petitioner were not made invalid under Section 245(D)(2C) of the Act. While so, under Sub Clause 4 to Section 245(D), an opportunity is to be provided to the petitioner and an adjudication is also required. When the Settlement Commission is empowered to adjudicate the issues with reference to the provisions of the Income Tax Act, then regarding additional informations or additional income are also to be adjudicated and the correctness of such disclosures are also to be considered. However, in the present cases, no such findings are arrived nor an adjudication undertook with reference to Section 245(D)(4) of the Act. Thus, the orders of the Settlement Commission are perverse and liable to be set aside and further, opportunity is to be provided to the petitioner, enabling him to clarify and explain the factual aspects for the purpose of settling the disputes.

15. The learned counsel for the petitioner contended that

even the report of the Commissioner did not speak about the involvement of the petitioner, who is the son of Dr.P.Anand, in whose name, the Foreign Account was found. In this regard, the report of the Commissioner reveals that the petitioner Mr.Sridhar Anand along with his father, Dr.P.Anand, purchased an apartment at No.403, La Residencia Del Mar, Dubai Marina, Plot 6L, District 6. Based on the report of the Commissioner, the Settlement Commission formed an opinion that the documents received from UAE Authorities revealed that the legal heir Sri Sridhar Anand is also involved in these dealings/transactions. Such factual findings made by the Settlement Commission cannot be further adjudicated by the High Court under Article 226 of the Constitution of India. Such disputed facts can be adjudicated by the parties with reference to the documents and evidences before the authorities competent at the time of regular assessment to be made by the authority. Thus, the said contention deserves to be rejected.

16. This Court is of the considered opinion that Section 245(D) cannot be read in isolation. Section 245(D) is to be read along with 245(C). Both the provisions are to be read together to form an opinion and to cull out the spirit involved in the matter of receiving an application for settlement of cases. Section 245(C) contemplates 'Application for Settlement of cases'. Once an application is filed, it is to be verified, whether the application is filed with reference to the ingredients contemplated under Section 245(C). Once all such ingredients are fulfilled, then the Settlement Commission should follow the procedures as contemplated under Section 245(D). Under Section 245(D), various stages are provided. At any stage, if the Settlement Commission formed an opinion that there was no full and true disclosure with reference to the facts narrated in the application, then the Settlement Commission is empowered to reject the application filed under Section 245(C). Thus, the procedural aspects enumerated under Section 245(D) is to conduct the enquiry for the purpose of settlement and such a procedural aspects are to be read along with the spirit of the provision as contemplated under Section 245(C) of the Act.

17. Conjoint reading of these provisions would reveal that the report of the Commissioner of Income Tax, opportunity for the petitioner to convert the materials and all such aspects are provided, enabling the petitioner to establish his cases with reference to the applications filed and not in respect of the other income or other materials.

18. It is to be understood that the procedures as contemplated under Section 245(D) cannot travel beyond the scope of the applications filed under Section 245(C) of the Income Tax Act. If Section 245(D), the procedures as contemplated are allowed to go beyond the scope of Section 245(C), then

undoubtedly, the very spirit of Section 245(C) for settlement of cases are diluted and further, it will result in usurping the powers of the Assessing Officer and other competent authorities for initiation of actions under the other provisions of the Income Tax Act. Every authority is empowered to exercise his power within the parameters and within the ambit of the provisions of the Act. As far as the settlement cases are concerned, the application filed under Section 245(C) is to be entertained and to be dealt with in accordance with the procedures as contemplated under Section 245(D) and the procedures as contemplated under Section 245(D) would not provide powers to the Settlement Commission to travel beyond the scope of the provisions and with reference to Section 245(C). Procedures are contemplated in order to cull out the truth regarding the true and full disclosure to be made along with the application filed under Section 245(C) and therefore, at any stage of the enquiry, the Settlement Commission, if able to form an opinion that an application is not filed with true and full disclosure, then such an application shall be rejected. The very legislative intention of the procedures formulated under Section 245(D) is to ensure that the application for settlement of cases are considered in accordance with Section 245(C) and therefore, the powers of the Settlement Commission is limited to the extent of the scope of Section 245(C) and the other provisions of the Act can be exercised only in order to formulate an opinion and not to make a regular assessment under the Act, which is the power to be exercised by the competent authority and certainly not by the Settlement Commission.

19. In this regard, it is relevant to consider the judgment of the Hon'ble Division Bench of the Madras High Court in the case of Canara Jewellers Vs. Settlement Commission, reported in [2009] 184 Taxman 491 (Madras), and the relevant paragraphs are extracted hereunder:

"8. The provision of Section 245C of the Income Tax Act, 1961 fell for consideration before the Supreme Court and High Courts from time to time. In C.I.T. vs. Express Newspapers Ltd., (1994) 206 I.T.R. 443 (SC), the Supreme Court held that in an application under Section 245C of the Act, for settlement of applicant's income-tax case, there should be disclosure of income not earlier disclosed before the Assessing Officer. If the Assessing Officer or the income-tax authority has already discovered it and either has gathered the material to establish the particulars of such income or fraud fully or is at a stage of investigation/enquiries, then the disclosure cannot be said to be voluntary or in good faith and the assessee cannot be allowed to take advantage of the comparatively easy course of settlement. The scope

of Section 245C of the Income Tax Act, 1961 was also noticed by this Court in *Ace Investments Ltd. vs. Settlement Commission*, (2003) 264 I.T.R. 571 (Mad), wherein a learned single Judge of this Court held that full and true disclosure of income by the assessee is a condition precedent for settlement of cases and for grant of immunity from penalty and prosecution. Sections 245C and 245H of the Income Tax Act, 1961 contemplate full and true disclosure by the applicant of income and the manner in which such income has been derived. When once it is held that an application filed for settlement of cases is not maintainable on the ground that the applicant has not made full and true disclosure of the income, proceeding with such application and deciding the issue would be outside the power of the Settlement Commission, as the application itself is not in conformity with Section 245C(1) of the Act. A similar view was expressed by a Division Bench of this Court in *Dr. C.M.K. Reddy vs. Settlement Commission*, (2008) 306 I.T.R. 403 (Mad).

11. So far as Section 245F is concerned, though the Settlement Commission is empowered to have all powers which are vested in an Income Tax Authority under the Act, in addition to the power conferred under Chapter XIXA, but such power can be exercised for the purpose of procedure of settlement of application under Section 245C and not for re-assessment of tax of a particular year which is vested with the Assessing Authority."

20. The High Court of Delhi in the case of *Rohit Kumar Gupta Vs. Principal Commissioner of Income Tax, Central-II*, reported in [2019] 109 taxmann.com 257(Delhi), held as follows:

"45. The above decision interprets Section 245D (4) as a substantive provision from where the powers of the ITSC to pass 'such order as if it thinks fit' arises. The next question that arises is whether the expression 'such orders if it thinks fit' would include the power to pass an order rejecting an application. If the interpretation placed by the Petitioners on this provision is accepted it would mean that after having allowed the applications to be proceeded with in terms of its order passed under Section 245D (1) of the Act, the ITSC cannot at this stage, after the report of the Commissioner has been submitted to it pursuant to an order under Section 245D (2C) of the Act, dismiss the application at all and that it would necessarily have

to pass an order providing for the terms of settlement. However, this does not appear to be a correct understanding of the ambit of the expression 'such orders it deems fit.'

47. The Court is unable to understand how the above decision helps the Petitioners in support of their contention that the ITSC cannot at the stage of passing of final order under Section 245D(4) of the Act, reject an application for failure of the Applicant to make a full and true disclosure and the manner in which the undisclosed income was derived."

21. In the present cases, the findings of the Settlement Commission are unambiguous and specific facts and circumstances were also relied on by the Settlement Commission to arrive a decision regarding true and full disclosure by the petitioner. Such a finding of fact need not be interfered with by the High Court under Article 226 of the Constitution of India, unless such facts are found to be error apparent. When there was an adjudication of facts and the Settlement Commission arrived a finding that factually the petitioner has not established that he filed applications under Section 245(C) with true and full disclosure, then the High Court is expected to exercise restraint in entertaining a writ proceedings under Article 226 of the Constitution of India.

22. In the present cases, the petitioner could not able to establish that he approached the Settlement Commission with clean hands and the element of true and full disclosure as contemplated under Section 245(C) had not been established before the Settlement Commission and therefore, there is no perversity or infirmity as such in respect of the findings arrived.

23. It is brought to the notice of this Court that the Settlement Commission has already been abolished with effect from 01.02.2021. This being the factum established, the writ petitions fail and accordingly, all the three writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

Kak

To

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

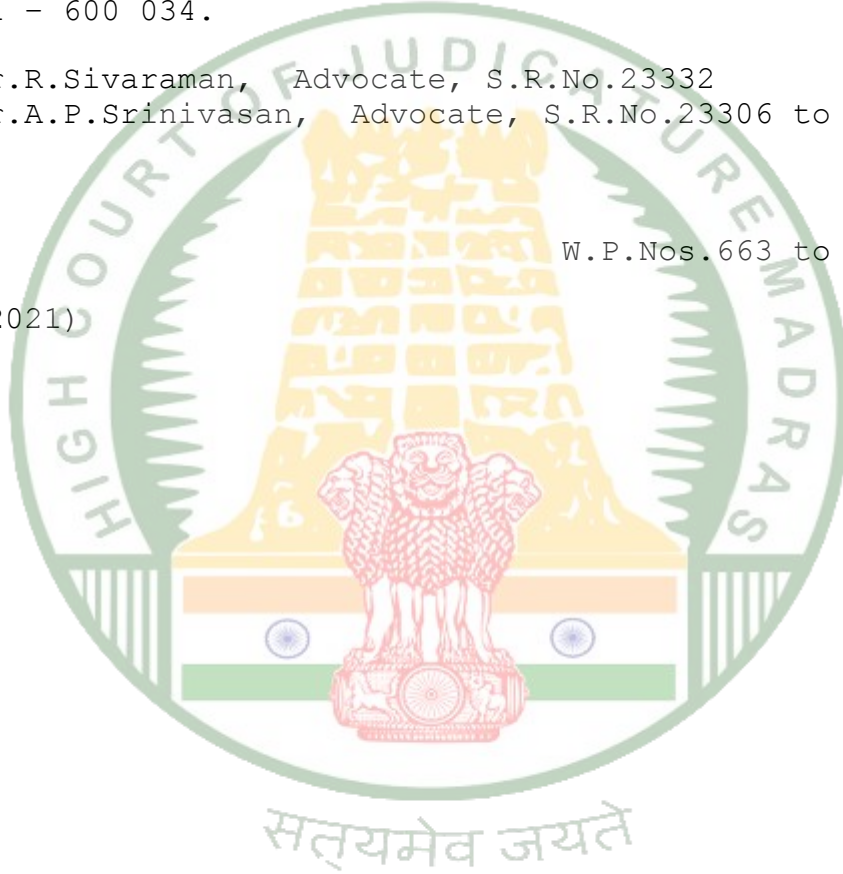
2.Deputy Commissioner of Income Tax,
Central Circle 1(1), Chennai,
New No.46, Mahatma Gandhi Road,
Chennai - 600 034.

+3cc to Mr.R.Sivaraman, Advocate, S.R.No.23332

+3cc to Mr.A.P.Srinivasan, Advocate, S.R.No.23306 to 23308

SKY(CO)
GN(07/06/2021)

W.P.Nos.663 to 665 of 2018



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