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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.02.2021

PRONOUNCED ON : 11.06.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.34638 of 2013

The Commissioner of Income Tax,
Central - II,
No.46, Mahathma Gandh Road,
Chennai 600 034.

...Petitioner

vs.

1.Income Tax Settlement Commission
Additional Bench,
640, Anna Salai, Nandanam,
Chennai 600 035.

2.Kamala Selvaraj

...Respondents

Prayer:Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari to call for the records on the file of the first respondent in TN/CN.52/2012-13/10-IT dated 05.08.2013 and quash the same.

For Petitioner : Mr.A.P.Srinivas
Senior Standing Counsel

For R2 : M/s.S.Sridhar

O R D E R

The Commissioner of Income Tax has filed this writ petition to quash the impugned order dated 5.8.2013 passed by the 1st respondentSettlement Commission under Section 245D(4) of the Income Tax Act, 196 settling the case of the 2nd respondent under Chapter XIX A in Section 245D(4) of the Income Tax Act, 1961.

2. By the impugned order, the 1st respondent Settlement Commission has allowed the application filed under Section 245C of the Income Tax Act, 1961by the 2nd respondent assessee by adding a further sum of Rs.11,44,97,620/- to the additional income of Rs.15,88,70,598/-offered by the 2nd respondent income taxes assessee for the assessment years 2006-07 to 2011-12 for



settling the dispute under Chapter XIX A of the Income Tax Act, 1961.

3. For the assessment year 2012-13, the 1st respondent has added a further sum of Rs.5,20,92,283/- though no additional amount was offered over and the amount declared as the taxable income in the return filed by the 2nd respondent. It is submitted that the 2nd respondent failed to make true and full declaration for the assessment years 2006-07 to 2011-12 and had not offered any amount for the assessment year 2012-13. It is therefore submitted that the 1st respondent ought to have dismissed the application filed by the 2nd respondent assessee before it under Chapter XIX A of the Income Tax Act, 1961.

4. The operative portion of the impugned order reads as:-

7.2 We find that it is true that no evidence was found during the search to indicate that the applicant had incurred any expenditure over and above what was recorded in the books. The applicant has stated that, in the books, only that expenditure is reflected which has been incurred for the day to day running of the Hospital. Since she is the sole proprietrix, all the daily receipts are handed over to her and this fact is supported by the handwritten diary, which was seized from her possession. She has stated there are certain expenses which are directly incurred by her and for which no records are kept by the accounting staff. She has explained the nature of such expenses. We find that the explanation given by her is acceptable. We find it to be a fact that it is a normal practice that the specialist doctor gives a 'cut' to the general practitioner or any other doctor who has referred the patient. Such practice may be unethical or unprofessional but it cannot be denied that a specialist would stand; to lose substantial clientele if he or she refuses to be a part of the system. We therefore, agree that the Applicant would have incurred some expenditure towards, what is euphemistically termed as 'referral fees'. We also find that it is common practice amongst employers that, in order to avoid PF, ESI etc., many of the employees are not shown in the official payrolls. Such employees are paid in cash. We are of the opinion that the Applicant would have also incurred some expenditure of this nature.



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Similarly, as is the prevalent (though not legal or desirable) practice, a part of the salary might have been paid in cash to the doctors employed by her. Having accepted the fact that some expenditure in cash was incurred out of the unaccounted receipts, the next question which arises is as to how much could have been the quantum of such unaccounted expenditure. The Applicant has claimed 55% of the total unaccounted receipts as expenditure towards the heads discussed above. We find this claim to be excessive. After a careful consideration of all aspects, we are of the view that such expenditure could at best be 7% of the total turnover. By total turnover, we mean the disclosed receipts as well as the suppressed receipts. We, therefore, find that 7% of the total turnover should be reduced from the suppressed receipts to arrive at the undisclosed income for A.Ys.2006-07 to 2011-12. The position which will emerge as a result of our directions would be as under:-

Assessment Year	Total Actual Receipts (Rs.)	Disclosed Receipts (Rs.)	Suppressed Receipts (Rs.)	Expenses allowed at 7% of total actual receipts (Rs.)	Additional Income to be disclosed (Rs.)
2006-07	11,70,49,144	8,16,84,035	3,53,65,109	81,93,440	27,171,669
2007-08	14,46,58,217	9,90,25,981	4,56,32,236	1,01,26,075	3,55,06,161
2008-09	11,83,80,570	10,20,69,017	1,63,11,553	82,86,640	80,24,913
2009-10	22,65,58,005	14,09,46,233	8,56,11,772	1,58,59,060	6,97,52,712
2010-11	24,95,94,640	16,29,51,020	8,66,43,620	1,74,71,625	6,97,52,712



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Assessment Year	Total Actual Receipts (Rs.)	Disclosed Receipts (Rs.)	Suppressed Receipts (Rs.)	Expenses allowed at 7% of total actual receipts (Rs.)	Additional Income to be disclosed (Rs.)
2011-12	28,21,49,930	19,86,50,666	8,34,99,264	1,97,50,495	6,37,48,769
Total	113,83,90,506	78,53,26,952	35,30,63,554	7,96,87,335	27,33,76,219

In other words, as against the additional income amounting to Rs.15,88,78,599/- offered in the Settlement Application, the Applicant is required to offer further additional income amounting to Rs.11,44,97,620/- (i.e. Rs.27,33,76,219/- - Rs.15,88,78,599/-)

Suppression of Pharmacy sales:

7.3. The facts and submissions in this respect have already been summarised by us in para 6.1 above. For the reasons given therein, we find that there was no under disclosure of pharmacy sales. The confusion might have arisen because the medicines and surgical/non-surgical items supplied under the 'package scheme' had been considered as direct sales to customers. As the issue stands reconciled, no further action in this respect is necessary.

Quantum of undisclosed income for A.Y.2012-13 :

7.4. We find that the correct figure of disallowance u/s.40A(3) for A.Y.2012-13 would be Rs.3,44,65,606/- (as quantified by the Tax Auditor) as against Rs.5,23,795/- shown in the Settlement Application. We also find that the journal entry for the amount of Rs.31,50,472/- made on 31.03.2012 vide Voucher No.1296 has not been explained properly. Hence further additional income to this extent is also required to be made. The Department has also pointed out a number of items which seem to indicate certain deficiencies and defects.

In order to cover such deficiencies and defects, we are of the opinion that it will be reasonable to make a further adhoc disallowance of Rs.1.50



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7. The search had also revealed that the 2nd respondent assessee had not disclosed an income of Rs.35,30,63,554/- for the assessment years 2006-07 to 2011-12. During the course of the investigation/search, the 2nd respondent had undertaken to pay income tax on the aforesaid amount.

8. During the search, it was also found that for the reassessment year 2012-13, the 2nd respondent had not disclosed additional amount of Rs.8,94,84,051/- being the income from pharmacy sale and professional income from profession.

9. Apart from the above, the investigation/search also revealed non-disclosure of income from pharmacy sale for a sum of Rs.7,39,49,995/- during the assessment years 2009-10 to 2012-13 which was based on the difference in the value of inventory between the billing software maintained by the 2nd respondent and the inventory at the pharmacy of the hospitals of the 2nd respondent/Income tax Assessee.

10. The 1st respondent Settlement Commission by the impugned order has added a sum of Rs.11,44,97,620/- to the additional income of Rs.15,88,78,599/- offered by the 2nd Respondent Income Tax Assessee for the assessment year 2006-07 to 2011-12.

11. The aforesaid additional income of Rs.15,88,78,599/- was arrived by the 2nd respondent assessee out of Rs.35,30,63,554/- by claiming 56% deduction towards expenditure allegedly incurred out of the aforesaid amount of Rs.35,30,63,554/-.

12. In the application filed under Section 245C of the Income Tax Act, 1961 before the 1st respondent, the 2nd respondent had offered tax on 44% of the aforesaid undisclosed gross receipt of Rs.35,30,63,554/- as additional income and thus agreed to pay tax and interest on Rs.15,88,78,599/- for settling the case under Chapter XIX A of the Income Tax Act, 1961.

13. By the impugned order, the 1st respondent Settlement Commission has restricted the deduction on expenses to a mere 7% of Rs.35,30,63,554/- and thereby added a sum of Rs.11,44,97,620/- to the additional income offered by the 2nd respondent. By the impugned order, the 1st respondent, has determined the total additional income as Rs.27,33,76,219/- (Rs.11,44,97,620/- + Rs.15,88,78,599/-) for the Assessment Year



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2006-07 to 2011-1. In other words, the additional income on which tax was payable was enhanced to 72% from mere 44% offered before the 1st respondent Settlement Commission for the Assessment Year 2006-07 to 2011-12 by the 2nd respondent assessee. For the Assessment year, a sum of Rs.5,20,92,283/- was added to additional income.

14. The impugned order of the 1st respondent Settlement Commission is assailed primarily on the ground that no additional income was offered by the 2nd respondent for the assessment year 2012-13 over and above the income disclosed in the returns filed under Section 139/142 (1) of the Income Tax Act, 1961.

15. It is submitted that income tax was also payable on a sum of Rs.8,94,84,051/- for the said Assessment Year being the income from pharmacy sale and professional income which was not offered by the 2nd respondent assessee .

16. It is therefore submitted that application filed by the 2nd respondent assessee ought to have been rejected by the 1st respondent Settlement Commission. It is submitted that failure on the part of the 2nd respondent assessee to declare correctly the additional income above the income already declared in the returns filed for the assessment years 2012-13 also made it clear that the application for settling the case for the aforesaid assessment year was to be disallowed as there was no true and full disclosure.

17. It is further submitted the fact that the 1st respondent Settlement Commission had restricted the expense to 7% from 56% claimed by the 2nd respondent assessee demonstrated that there was no true and full disclosure of additional income before the 1st respondent Settlement Commission by the 2nd respondent assessee in her application under Section 245C of the Income Tax Act, 1961.

18. Learned counsel for the petitioner relied on the following decision :

i) Commissioner of Income Tax vs. Express Newspaper Ltd., (1994) 72 Taxman 428 (SC)



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ii) Ajmera Housing Corpn. Vs. Commissioner of Income Tax, (2010) 193 Taxman 193(SC)

iii) V.M.Shaik Mohammed Rowther vs. Settlement Commission, (1999) 102 Taxman 546 (Madras)

iv) ACE Investments Ltd., vs. Settlement Commission, (2003) 264 ITR 571 (Madras)

v) Commissioner of Income Tax vs. Income Tax Settlement Commission, (2008) 170 Taxman 172 (Madras)

vi) Canara Jewellers vs. Settlement Commission, (2009) 184 Taxman 491 (Madras)

vii) G.Jayaraman vs. Settlement Commission (Additional Bench) Chennai, (2011) 196 Taxman 552 (Mad.)

viii) Maddi Venkataraman & Co., (P) Ltd., vs. Commissioner of Income Tax, (1998) 2 SCC 95

19. Defending the impugned order passed by the 1st respondent Settlement Commission, learned counsel for the 2nd respondent Income Tax assessee submits that the said order of the 1st respondent Settlement Commission was well reasoned and requires no interference under article 226 of the Constitution of India.

20. Learned counsel for the 2nd respondent income tax assessee submits that the 1st respondent Settlement Commission is the ultimate fact-finding authority and therefore, the order passed under Section 245D(4) of the Income Tax Act, 1961 attains finality under Section 245 I of the Income Tax Act, 1961.

21. It is submitted that unless the petitioner was able to demonstrate any material irregularity in the procedure followed by the 1st respondent Settlement Commission while passing the impugned order, or that the order was vitiated on account of fraud or arbitrariness, there is no scope for interference.

22. It is submitted that an application for settlement in Form No.34B can be filed incorporating the pending assessments initiated in consequence of search under section 132 of the Income Tax Act, 1961.



23. It is submitted that as per the scheme of the Act, the assessments proceedings can be initiated by the Jurisdictional Assessing Officer for six assessment years immediately prior to the search assessment year and therefore the Jurisdictional Assessing Officer is also statutorily bound to start the process of search assessment even for the search assessment year, namely, the seventh assessment year.

24. Therefore, the application for settlement was filed for seven assessment years in view of the provisions prescribed in Chapter XIXA of the Income Tax Act, 1961. It is further submitted that Section 245A(b) defines the expression "case".

25. It is submitted that Sub-clause (iiia) to Section 245A(b) incorporates the search assessment proceedings as part of the said definition of the case in the context of initiation and conduct of a settlement proceedings before the 1st Respondent Settlement Commission.

26. It was also submitted that in sub-clause (iiia) to Section 245A(b) the proceedings under Section 153A of the Act has been referred. Since Section 153A of the Act envisages issuance of notice for six assessment years immediately prior to the search assessment year the application field for all the assessment years were maintainable.

27. In so far as the search assessment year is concerned, it is submitted that the Jurisdictional Assessing Officer gets jurisdiction to initiate and complete the assessment under normal provisions of the Act, by issuing a notice u/s 143(2) of the Act.

28. It is submitted that while initiating the proceedings for the search assessment year, the Jurisdictional Assessing Officer has power to complete the said assessment along with the other six assessment years based on the search materials and other materials/information available in the records as well as information obtained during the assessment proceedings.

29. It is therefore submitted that the 2nd respondent Income Tax Assessee was entitled to club and file a composite application under Chapter XIX A of the Income Tax Act, 1961.

30. It was further submitted that it is procedural back ground, the 2nd Respondent opted for settlement after the search was completed by initiating the process as per Chapter XIX-A of the Act and the search assessment year being the assessment year 2012-13 and six other assessment years, namely 2006-07 to 2011-12 immediately preceding the search assessment year were covered in the settlement application filed by the 2nd Respondent on 19.2.2013 (the search was conducted by the Income Tax Department on 24.11.2011).



31. It is further submitted that the objection to the settlement application filed covering seven assessment years on the validity of the proceedings initiated before the 1st Respondent on the ground of non inclusion of income including the suppressed income pertaining to the assessment year 2012-13 for settlement cannot be countenanced. The submission that the 2nd Respondent violated the primary condition of the requirement to disclose full and true income is untrue.

32. The learned counsel for the 2nd respondent assessee submitted that the 2nd respondent was entitled to disclose additional income before the 1st Respondent, Settlement Commission for grant of waiver of penalty and immunity from prosecution for the pending search assessment proceedings covering seven assessment years which was based on the search results.

33. The learned counsel for the 2nd respondent assessee submitted that the 2nd respondent assessee was expected to disclose the full and true income based on the analysis of the search materials which was made. In this regard, the disclosure of income was made fully and truly and need not necessarily be for all the seven assessment years. It is submitted that the surrender of the income for any particular assessment year will depend on the income reported in the returns of income filed for those seven assessment years in response to the proceedings initiated after the search, namely, by issuance of a notice u/s 153A of the Act for the six assessment years immediately preceding the search assessment year and by issuance of a notice u/s 143(2) of the Act for the search assessment year. What is disclosed in the returns of income filed, the same would not form part of the settlement application for the reason of eliminating double taxation.

34. In the absence of search materials to quantify the suppressed income for any of the assessment years initiated in consequence to the search conducted, there will not be any legal necessity for the applicant to add additional income over and above the reported income in the return of income filed either in the normal course or in consequence to the notice(s) issued after the date of search.

35. It is submitted that the stand of the Income Tax Departments for for the assessment year 2012-13 being the seventh assessment year covered in the settlement application is completely misdirected was account of erroneous interpretation of the Act.

36. It is submitted that for the assessment year 2012-13, the 2nd Respondent assessee recorded a gross receipts from various sources upto the date of search aggregating to



Rs.18,88,64,840/- and the gross receipts from the date of search to the end of the previous year relevant to the assessment year 2012-13 amounted to Rs.11,21,46,498/-.

37. It is therefore submitted that conclusion of the Income Tax Department/the writ petitioner that there was suppression of actual receipts to the extent of Rs.8,94,84,022/- was omitted to be declared in the settlement application filed before the 1st Respondent cannot be countenanced.

38. It is submitted that for the first eight months of the previous year i.e. 2011-12 corresponding to the assessment year 2012-13, the actual gross receipts was determined by the search party at Rs.18,88,47,118/- as against the recorded gross receipts of Rs.9,89,63,096/- despite the seized materials in the form of tally ledger account incorporated a total gross receipts upto the date of search as Rs.13,14,63,096/-.

39. The search was conducted in the middle of the financial year i.e on 24.11.2011. Therefore, the balance four months in the assessment year 2012-13 after the date of search generated actual receipts Rs.11,15,82,665/- inasmuch as the 2nd Respondent Income Tax Assessee prepared the books after search based on the actual receipts, thereby showing the total gross receipts at Rs.30,10,11,338/- and incorporated the receipts which were considered as not accounted at the time of search.

40. It is submitted that the entire receipts were duly accounted in the revised regular books itself and the Income tax return for the said assessment year was filed after the date of search accordingly, there is no question of suppression of Income at all by the 2nd respondent Income Tax Assessee.

41. The breakup of the actual receipts as per the Income Tax Department is as follows:-

Actual Receipts till date of Search - as per Search Materials		18,84,47,118
Accounted Receipts at the time of Search	13,14,63,096	
Accounted Receipts as at 01/09/2011 - excluded	-2,50,00,000	
Accounted Receipts as at 01/10/2011 - excluded	-75,00,000	9,89,63,096
Undisclosed Receipts at the time of Search		8,94,84,022



of 2nd Respondent's income tax assessee for non inclusion of additional income for the assessment year 2012-13 in the settlement application filed before the 1st Respondent.

46. It is submitted that while filing the return of income for the assessment year 2012-13, the 2nd Respondent Income Tax Assessee had paid the taxes on the income computed from the gross receipts reported at Rs.30,10,11,338/-.

47. It is therefore submitted that there was no reason for the Income Tax Department to question the factual aspect in the present writ petition in view of section 245 I of the Act.

48. As far as the second objection raised of the petitioner Income Tax Department that there was no full and true disclosure of income for availing the settlement mechanism provided in the Act as the gross receipts as per the seized materials amounted to Rs.113,83,90,506/- for the six assessment years and Rs.18,84,47,147/- for the first eight months/up to the date of search for the assessment year 2012-13 should have been incorporated for the purpose of computation of taxable total income for imposing tax cannot be countenanced.

49. The learned counsel further submitted that the 2nd Respondent assessee submitted that the receipts from the profession for the six assessment years in the regular returns of income filed for those six assessment years to the extent of Rs.78,53,26,952/- and further had shown Rs.30,10,11,338/- for the assessment year 2012-13 (12 months) incorporating the actual gross receipts of the eight months/up to the date of search.

50. It is submitted that out of Rs.35,30,63,554/- being the receipts not accounted in the books of accounts for the first six assessment years, the 2nd respondent Income Tax Assessee had disclosed Rs.15,88,78,599/, while not showing any additional income for the assessment year 2012-13 in view of disclosing/accounting the entire gross receipts of Rs.30,10,11,338/- in the return of income filed on 5.2.2013 prior to the filing of the settlement application, thereby not necessitating for making any disclosure for the said assessment year 2012-13 for the purpose of settlement.

51. The disclosure of Rs.35,30,63,554/- for the first six assessment years and the disclosure of Rs.30,10,11,338/- for the search assessment year 2012-13 before the settlement commission can be traced from the settlement application filed on 19.2.2013, thereby establishing the compliance of the main condition of full and true disclosure of income for availing the benefits of settlement process envisaged in Chapter XIXA of the Act.



52. The details of disclosure are submitted below:

Sl.No.	Particulars	Amount
1	Total actual Gross Receipts for Asst year 2006-07 to 2011-12	1,13,83,90,506
2	Less: Gross Receipts already accounted in the respective years returns	78,53,26,952
3	Total Suppressed Receipts	35,30,63,554
4	Income offered before the Settlement Commission	15,88,78,599
5	Income added by the Settlement Commission in the final order	11,44,97,619
6	Balance allowed towards expenses @ 7% of the Total Gross Receipts in the final order	7,96,87,335
7	Expenses Claimed by the 2nd Respondent in the settlement application	19,41,84,955

53. It is therefore submitted that the argument of the writ petitioner on the failure to disclose fully and truly is not correct and after admitting the actual receipts the 2nd Respondent assessee proceeded to compute the taxable income for all the assessment years covered. As per charging provisions of the Act the net income would alone get taxed and not the gross receipts. Hence the stand of the writ petitioner may be rejected as factual and not sustainable in law.

54. Regarding the claim of expenses for earning additional income and according to the writ petitioner, there was no need for the 1st Respondent to consider deduction of expenses for earning such income especially in view of accounting of all the expenses in the regular books of accounts maintained and further in the absence of search materials indicating incurring of expenses not recorded in the regular books of accounts.

55. It is submitted that having noticed the fact of earning of receipts over and above the accounted receipts, there is no scope for the Income Tax Department to contend that the entire unaccounted receipts should be taxed in its entirety. It is to be noted that for earning such receipts there is in built cost/expenses and hence the 1st Respondent using their powers



vested for settlement of the dispute estimated the expenses at 7% of the total turnover/gross receipts after rejecting the claim for expenses at 55% on the suppressed receipts.

56. It is submitted that there is no scope for the Income Tax Department to challenge the method of settlement arrived at by the 1st Respondent especially in the absence of appeal mechanism prescribed in the statute and in the light of the specific provision in Section 245 I of the Act declaring the final order of the 1st Respondent as conclusive.

57. The action of the writ petitioner/Income Tax Department invoking the extra ordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India is only to circumvent the provisions of Section 245 I of the Act and the absence of the appellate remedy in relation thereto.

58. The stand of the writ petitioner/Income Tax Department is accordingly pleaded to be rejected as devoid of merits in the interest of justice.

59. The exercise of the Writ Petitioner/Income Tax Department in this present writ proceedings centered around the facts and not pointing out any substantial questions of law emanating from the impugned order passed and the purpose of the settlement mechanism incorporated in Chapter XIXA of the Act is completely lost sight of while the said mechanism being one time opportunity for the tax payers to come out clean by disclosing full and true income for the assessment years covered in the settlement application. Having not pointed out any error of law in passing the impugned order, the entire attempt of the Writ Petitioner/Income Tax Department should be reckoned as unsustainable in law for invoking the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India, keeping in mind the provisions of Section 245 I of the Income Tax Act, 1961.

60. In any event, the 1st Respondent noticed the fact of the professional necessity to pay part of the fees to the doctors and para medical staff incash/not recorded in the regular books of accounts and accordingly estimated conservatively at 7% of the total receipts as acceptable outflow for the purpose of settling the dispute between the parties upon rejecting the claim for 55% of expenses for earning such income.

61. The claim of 55% of expenses for earning additional income disclosed before the 1st Respondent in the settlement application is based on the sworn statement recorded by the search team and according to the Writ Petitioner/Income Tax Department, the sworn statement recorded u/s 132(4) of the Act



should be reckoned as valid piece of evidence

62. In the answer to Question No.15 forming part of the sworn statement recorded on the date of search 24.11.2011, the 2nd Respondent stated as follows:-

"out of the total consultancy receipts and charges for various treatment, I would say after expending about 75% for electricity, gas, oxygen, nitrate oxide, inhalation anesthesia, medication, consultant fees, equipment, annual maintenance, sterilization of theatres, staff salary, purchase of equipment etc. The remaining 30% approximately will be left in my hand."

63. The above answer was given by the 2nd Respondent to the pointed question raised by the search team and the same is extracted herein after:

"15. Please tell me the percentage of expenditure out of the total receipts and how much of the consultancy receipts would remain in my hand?"

64. Therefore, the argument of the Writ Petitioner/Income Tax Department is completely misdirected and the stand of the 2nd Respondent on the contrary is completely in accordance with the consistent stand on the incurring of expenses for earning the income right from the date of search. The above answer is also part of the sworn statement recorded u/s 132(4) of the Act which is considered to be a crucial piece of evidence by the Writ Petitioner/Income Tax Department and accordingly the answer given should be taken to its logical end/conclusion.

65. There is absolutely no scope for the Writ Petitioner/Income Tax Department to question the incurring of expenses for earning the additional income and in any event the 1st Respondent embarked upon a conservative approach of estimating such expenses as 7% of the total turnover and not on the suppressed/additional turnover.

66. It is therefore submitted that on the above factual scenario, there is no room for insisting on the production of evidence for incurring of such expenses and in any event the expenses were admittedly incurred for cash payments to the referral doctors, doctors and para-medical forming part of the 2nd Respondent's team for which it is impossible for maintaining any records. Further, the questioning conservative estimate of



expenses for deduction from the additional income as explained in the preceding paragraphs is completely erroneous and in the event of acceptance of their stand, the income computable as a result would distort the actual financial picture of the 2nd Respondent and completely go against the sworn statement recorded as referred to herein before. For all these grounds, the stand of the Writ Petitioner/Income Tax Department on this issue may be rejected in the interest of justice.

67. Regarding the third objection of suppression of pharmacy sales, the 2nd Respondent consistently took a stand that the presumption of suppression of sales is completely devoid of merits and proving non application of mind on their part on the decision rendered by the 1st Respondent in the impugned order.

68. It is submitted that two types of patients are treated namely in-patients and the out-patients. While the out-patients invariably purchase medicines as prescribed for which there is absolutely no dispute in so far as the bills raised/reflected in the books of accounts, in so far as the in-patients, opting for the package for treatment, the package charges would admittedly include the cost of medicines for which the bills are generated inasmuch as the said portion of the bills generated for the medicines consumed for the packaged patients is erroneously considered as suppressed pharmacy sales.

69. The above aspect was in fact considered in the proceedings for settlement and incorporated in para 6.1 of the impugned order and the said fact was accepted after thorough verification of voluminous records in relation thereto.

70. The verification process was conducted by the 1st Respondent in the presence of the CIT and the Writ Petitioner/Assessing Officer. Therefore it is too late in the day for them to question the accepted factual position in arguing the suppression of pharmacy sales.

71. The bills raised by the pharmacy division are only for reducing the stock and for reporting to the sales tax department and hence there cannot be any presumption of suppression of pharmacy sales. The portion of the sales considered as suppression was included in the package charges received and offered for taxation. On these facts, the objections of the Writ Petitioner/Income Tax Department may be rejected as untenable in the interest of justice.

72. The last objection is on the failure of the 1st Respondent for making separate addition for the unaccounted jewellery to the extent of Rs.12,07,40,183/- and in para 7.5, the 1st Respondent concluded that there was no warrant for



separate addition in view of assessment of additional income to the tune of Rs.27.32 crores. The said additional income was considered to be represented by unaccounted jewellery, thereby applied the theory of telescoping especially in the absence of any other unaccounted outflow in the form of investments or expenses.

73. The said approach of the 1st Respondent is reasonable and based on the powers of settlement as well widely accepted by the Income Tax Department itself in the normal course of assessment proceedings.

74. The issue being factual need not be subjected to this proceeding of invoking extraordinary jurisdiction of this Hon'ble Court especially in the absence of any substantial questions of law emanating from the order passed by the 1st Respondent which order by operation of law in section 245 I of the Act is not appealable and considered to be conclusive and final. It is therefore submitted that the contentions of the Writ Petitioner/Income Tax Department may be rejected as devoid of merits in the interest of justice.

75. It is further submitted that the provisions of Section 245 I of the Act which is in the said Chapter XIXA of the Act envisage that the order of the 1st Respondent should be considered as conclusive as to the matters stated therein and question of reopening of the said proceedings is completely prohibited and there is no statutory prescription for filing appeal against the said final order in the Act.

76. It is submitted that in the attempt to circumvent the provisions of section 245 I of the Act, the Writ Petitioner has wrongly invoked the extra ordinary jurisdiction namely, jurisdiction under Article 226 of the Constitution of India pleading for the interference of this Court showing irrelevant consideration and grounds.

77. The manner and method of the settlement could not be challenged in the present writ proceedings unless there was complete omission of referring to seized materials and other documents which formed part of the search records indicating/proving suppression of additional income over and above the amount shown and declared by the assessee in the settlement application.

78. Unless and otherwise, the factual aspect of the declaration by the assessee on the financial affairs concerning the assessment years in the settlement application filed as not true and full disclosure, there is absolutely no right vested to challenge the powers of settlement vested on the 1st Respondent under Chapter XIXA of the Act.



79. According to the 2nd Respondent assessee there was complete disclosure of financial results pertaining to the first six assessment years especially in reporting the gross receipts at 113.84 Crores which sum was not altered/enhanced at any stage both by the 1st Respondent or by the Writ Petitioner. Hence, the presumption of the failure on the part of the 2nd Respondent in reporting full and true disclosure of the financial affairs/the income in the settlement application is wholly unjustified proving perversity in the submissions of the Writ Petitioner.

80. In so far as the reliance of the decision of the Ajmera Housing Corporation case by the Revenue, the said decision is not applicable to the facts of the case inasmuch as in the said decision the multiple revised applications for enhancing the disclosed income before the settlement commission by the assessee was considered as not full and true disclosure for the purpose of completing the proceedings of settlement.

81. Further the decision of the Express Newspaper case relied on by the Revenue is not applicable to the facts of the case and in fact the said decision is cited out of context. In the said case, the assessee did not disclose any income which was not disclosed before the Assessing Officer as well as not provided the manner in which such additional income was earned/derived.

82. The decision of the Madras High Court relied upon by the Revenue is not applicable to the facts of the case and in the said case after reaching the conclusion on the disclosure of income made by the assessee in his application as not true, the settlement commission erroneously proceeded to settle the dispute in determining the taxable total income which was interfered with by this Hon'ble Court.

83. It is submitted that in the case of Canara Jewellers, this Hon'ble Court had correctly interfered with the order of the settlement commission in view of the failure of the assessee in not disclosing full and true income for the purpose of settlement and in fact the settlement commission determined the additional income after Revenue pointing out evidence for enhancing the income disclosed. On the facts of the case, the gross receipts of Rs.113.84 Crores was accepted at all stages as the true and full disclosure of the income/gross receipts earned for the first six assessment years.

84. On the cumulative consideration of the facts, the attempt of the Revenue in the present Writ Proceedings should be considered as excessive and the method and manner of settlement, according to the 2nd Respondent is outside the purview of the



writ jurisdiction and hence the 2nd Respondent prays for the rejection of the writ petition filed by the Revenue in the interest of justice.

85. Another issue of the validity of the present proceedings initiated by the Income Tax Department is to be tested in view of the proposed law of scrapping of the income tax settlement commission with effect from 01.02.2021. The Income Tax Department having not disputed so far the jurisdiction of the income tax settlement commission for settling the disputes pertaining to the search proceedings of the 2nd Respondent in initiating the said settlement process from 19.02.2013 cannot plead for setting aside their order on the stated factual grounds which according to the 2nd Respondent should be considered as infructuous in the light of the above referred proposed law.

86. The pleading for setting aside the order of the income tax settlement commission for the stated factual grounds by circumventing section 245 I of the Act for remanding the entire matter to the file of the Jurisdictional Assessing Officer is completely invalid in view of the ousting of the jurisdiction of the Jurisdictional Assessing Officer on the date of filing of the settlement application by vesting of such jurisdiction with the income tax settlement commission exclusively as per Section 245F(2) of the Act.

87. Finally, it is submitted that in the light of the scrapping of the income tax settlement commission with effect from 01.02.2021 as per the proposed law forming part of the Finance Bill, 2021, the present writ petition may be dismissed as infructuous especially in the absence of the challenge of their jurisdiction at all stages which jurisdiction was assumed by the 1st Respondent by operation of law. The Income Tax Department participated in the settlement proceedings through out and assisted the income tax settlement commission in arriving at a settlement based on the search materials, there is no scope for the challenge of their decision making process being their exclusive jurisdiction in this present writ petition on various facets including the latest development as mentioned herein before.

88. I have considered the arguments advanced by the learned counsel for the Petitioner Income Tax Department and the learned counsel for the 2nd respondent assessee. Though elaborate submissions have been made on behalf of the petitioner and the 2nd respondent assessee by their respective counsel, it will suffice to state that finding of facts arrived by the 1st Respondent Settlement Commission cannot be disturbed as per well settled principle of law Union of India and Others vs. Ind Swift laboratories Ltd., (2011) 4 SCC 635.



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89. The power of review of an order of a quasi-judicial authority under article 226 of the Constitution of India is very limited. The court is not really concerned with the decision per se but the decision-making process. The following decisions of the Hon'ble Supreme Court which reads as under:-

- i) Sadhna chaudhary vs. State of Uttar Pradesh and another, (2020) 11 SCC 760.
- ii) Jayarajbhai Jayantibhai Patel vs. Anilbhai Nathubhai Patel and Another (2006) 8 SCC 200,
- iii) H.B.Gandhi, Excise and Taxation Officer - cum-Assessing Authority, Karnal & Others vs. M/s.Gopinath & Sons & Others, 1992 Supp (2) SCC 312

If there is any regularity committed by the authority while passing the order impugned, a writ court in the exercise of its power under article 226 of the Constitution of India would be justified in interfering with the order impugned before it.

90. The 1st respondent Settlement Commission by the impugned order has added a sum of Rs.11,44,97,626/- to the additional income of Rs.15,88,78,598/- offered by the 2nd Respondent Income Tax Assessee for the assessment year 2006-07 to 2011-12.

91. The aforesaid additional income of Rs.15,88,78,598/- was arrived by the 2nd respondent assessee out of Rs.35,30,63,554/- by claiming 56% deduction towards expenditure allegedly incurred out of the aforesaid amount of Rs.35,30,63,554/-.

92. In the application filed under Section 245C of the Income Tax Act, 1961 before the 1st respondent, the 2nd respondent had offered tax on 44% of the aforesaid undisclosed gross receipt of Rs.35,30,63,554/- as additional income and thus agreed to pay tax and interest on Rs.15,88,78,598/- for settling the case under Chapter XIX A of the Income Tax Act, 1961.

93. By the impugned order, the 1st respondent Settlement Commission has restricted the deduction on expenses to a mere 7% of Rs.35,30,63,554/- and thereby added a sum of Rs.11,44,97,626/- to the additional income offered by the 2nd respondent.



94. By the impugned order, the 1st respondent, has determined the total additional income as Rs.27,33,76,219/- (Rs.11,44,97,620/- + Rs.15,88,78,599/-) for the Assessment Year 2006-07 to 2011-12. In other words, the additional income on which tax was payable was enhanced to 72% from mere 44% offered before the 1st respondent Settlement Commission for the Assessment Year 2006-07 to 2011-12 by the 2nd respondent assessee. For the Assessment year, a sum of Rs.5,20,92,283/- was added to additional income.

95. In this case, I find that the 1st respondent Settlement Commission has erred in allowing the application filed by the 2nd respondent assessee under chapter XIXA of the Income Tax Act, 1961.

96. The sine qua non or the essential/mandatory requirement in an application under section 245 C in chapter XIXA of the Income Tax Act, 1961, is the full and true disclosure of the income which was not been disclosed before the assessing officer in the regular returns filed under Section 139 of the Income Tax Act, 1961. This is the touch stone which cannot be breached at any cost, by a person/assessee desiring to settle a case under chapter XIXA of the Income Tax Act, 1961. It is a duty which cannot be breached by an assessee as its failure will attract disqualification.

97. In this case, a search was, conducted under section 132 of the Income Tax Act, 1961 on 24/25.11.2011 at the premises of the 2nd respondent assessee. The search revealed suppression of income by the 2nd respondent assessee not only during the previous 6 assessment years but also improper maintenance of accounts during the search year. The search revealed that the 2nd respondent had suppressed an amount of Rs.35,30,63,554/- during the assessment years commencing from 2006-07 to 2011-12.

98. The search, also revealed that till the date of search, the 2nd respondent had a gross receipt of Rs.8,94,84,051/- for the assessment year 2012-13 which was also not properly accounted.

99. It has to be underlined that this Court is not concerned with the manner and method of accounting adopted by the 2nd respondent assessee which which led to the search operations under Section 132 of the Income Tax Act, 1961. The court is not really concerned with the previous conduct of the 2nd respondent.



100. This court only concerned as to whether the 1st respondent was justified in allowing the application filed by the 2nd respondent assessee to be proceeded particularly in the light of damning conclusions arrived by it in the course of proceedings before passing the impugned order settling the case of the 2nd respondent.

101. Though, the 2nd respondent had offered to pay tax on the entire amount of Rs.35,30,63,554/- which was unearthed during the course of the search proceedings by giving statement to that effect the additional amount that was offered as income for settling the case before the 1st respondent settlement commission was confined to only 44% of the aforesaid amount amounting to Rs.15,88,78,598/-. There was an apparent change of heart to pay lesser tax by offering lesser amount as additional income.

102. The 2nd respondent assessee thus to claimed a deduction of 56% from the aforesaid amount of Rs.35,30,63,554/-. This was towards expenses incurred by the 2nd respondent while generating the aforesaid gross receipt. Even in the course of normal assessment, even if such a claim for deduction was made, it would not have been allowed by an Assessing Officer scrutinising the returns.

103. Ultimately, the deduction was confined to a mere 7% by the 1st respondent, Settlement Commission from the aforesaid amount of Rs.35,30,63,554/-. The 2nd respondent was asked to offer another sum of Rs.11,44,97,626/- to settle the case for the Assessment Year 2006-07 to 2011-12.

104. Thus, the additional amount on which tax was payable by the 2nd respondent was enhanced to Rs. 27,33,76,619. [15,88,78,599+Rs. 11,44,97,620] for the Assessment Year 2006-07 to 2011-12. In other words, the 2nd respondent assessee was asked to pay tax on 93% of the undisclosed gross receipt.

105. It is therefore that clear the attempt of the 2nd respondent was not bona fide and there was no true and full disclosure in the application filed under Section 245C (1) of the Income Tax Act, 1961. On this limited score itself, the 1st respondent Settlement Commission ought to have dismissed the application.

106. The 1st respondent Settlement Commission failed to note that it is not obliged to settle every case which comes up for being settled before it, if on facts, it finds that the attempt of and income tax, assessee- applicant was not bona fide



before it and there was no true and full disclosure in the application filed under section 245C (1) of the Income Tax Act, 1961.

107. The olive branch extended to an assessee under the provisions of Chapter XIXA of the Income Tax Act, 1961 is intended to give a one-time chance to such defaulters who show remorse and make amendments by filing an application to settle the case with bona fides and sincerity by making a true and full disclosure of additional income which was not disclosed in the returns filed under section 139 of the Income Tax Act, 1961.

108. In this case, the 2nd respondent has been ill advised to not to make true and full disclosure and to take a chance considering the fact that the scope of enquiry before the 1st respondent Settlement Commission is a summary proceeding and proceeds on the principle of trust and assumption that an applicant has made a bona fide disclosure for settling the case. The 1st respondent merely relies on the inputs given by the departments to verify the claim of an income tax assessee.

109. It is also noticed that even for the search year no additional amount of income was offered over and above the amount disclosed in the returns filed under section 139 of the Income Tax Act, 1961. On this score also, the application was liable to be rejected for the aforesaid search assessment year. The Hon'ble Supreme Court in Ajmera Housing Corporation and another Vs Commissioner of Income Tax (2010) 8 SCC 739 has held as under:-

"27. 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.



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39. Before addressing the other issues, at the outset, we record our disapproval with the view of the High Court that it would not be proper to set aside the proceedings before the Settlement Commission even though it was convinced that the assessee had not made full and true disclosure of their income while making application under Section 245-C of the Act. As stated above, in its earlier order dated 28-7-2000 while declaring the order dated 17-11-1994 as ab initio void and setting aside the order dated 29-1-1999, the High Court had remitted the case to the Settlement Commission to decide the entire matter afresh, including the question of maintainability of the application under Section 245-C(1) of the Act. The said order of the High Court was put in issue before this Court and was set aside vide order dated 11-7-2006 and the case was remanded back to the High Court for fresh consideration. Nevertheless, all points raised by the parties, including the plea of the Revenue that the application filed by the assessee before the Settlement Commission was not maintainable as the assessee had not made a full and true disclosure of their undisclosed income were kept open. The High Court addressed itself on the said issue and found that the assessee had not made a full and true disclosure of their income while making the application under Section 245-C(1) of the Act, yet did not find it proper to set aside the proceedings on that ground. Having recorded the said adverse finding on the very basic requirement of a valid application under Section 245-C(1) of the Act, the High Court's opinion that it would not be proper to set aside the proceedings is clearly erroneous. The High Court appears to have not appreciated the object and scope of the scheme of settlement under Chapter XIX-A of the Act."

49. It is true that details of the "full and true" disclosure of income and "the manner" in which such income is derived is to be given in the form of an annexure to the application, which is treated as confidential and is not to be forwarded to the Commissioner for the purpose of his report under sub-section (1) of Section 245-D of the Act and therefore, apparently there



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is substance in the contention. But when the argument is tested on the anvil of the scheme of Chapter XIX-A, the revision of the annexure by itself was prejudicial to the interest of the Revenue. Apart from the fact, as explained above, revision of the annexure is tantamount to revision of the application, not contemplated in the scheme, withholding of the information regarding filing of revised annexure, disclosing undisclosed income of Rs. 11.41 crores as against the income of Rs. 1.94 crores disclosed in the annexure forming part of the application, deprived the Commissioner of his right to object to the maintainability of the assessee's application on the ground that the assessee had not made true and full disclosure of their income in the previous application, the foundational requirement of a valid application under Section 245-C(1) of the Act. Accordingly, we have no hesitation in rejecting the argument".

110. I therefore do not find any reasons to sustain the impugned order of the 1st respondent Settlement Commission as the 2nd respondent had not made true and full disclosure as was required under the provisions of the Income Tax Act, 1961. The 2nd respondent had a golden opportunity to settle the case under Chapter XIX A of the Income Tax Act, 1961 which was squandered by the 2nd respondent.

111. Though, the 2nd respondent has eventually accepted the additional amounts determined by the 1st respondent Settlement Commission, the 1st respondent Settlement Commission ought to have dismissed the application filed by the 2nd respondent assessee, as the 2nd respondent took a calculated risk by not offering the correct amount as additional income which was not disclosed in the regular returns for the respective assessment years. The fact that the provisions of the Income Tax Act, 1961, pertaining to the settling a cases have been scrapped with effect from 1.4.2021 is of no consequence. Even if the provisions of the Income Tax Act, 1961 pertaining to settling of the case under Chapter XIXA were in the statute book, it would have made no difference.

112. In the light of the above discussion, the impugned order is set aside. The case is remitted back to the



jurisdictional assessing officer to complete the assessments for the respective assessment years preferably within a period of three months from date of receipt of this order in accordance with law on merits. Needless to state, while completing the assessment, the jurisdictional assessing officer will comply with the principles of natural justice by affording an opportunity of being heard.

113. The writ petition stands allowed with the above observation. No cost.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkd
To

The Income Tax Settlement Commission
Additional Bench,
640, Anna Salai, Nandanam,
Chennai 600 035.

W.P.No.34638 of 2013

LN[co]
NSK 19/08/2021