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In the High Court of Judicature at Madras

Dated : 18.8.2021

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The Honourable Mr. Justice T.S. SIVAGNANAM
and

The Honourable Mr. Justice SATHI KUMAR SUKUMARA KURUP

Writ Appeal No.2005 of 2021 & CMP.No.12867 of 2021

Smt.P.Suman, M/s.Suman
Jewellery, Coimbatore

...Appellant/2nd Respondent

Vs

1.The Commissioner of Income

Tax, Central II, Chennai-34.

.. 1st Respondent/Petitioner

2.The Income Tax Settlement

Commission (now substituted
as Interim Board for Settlement
by Finance Act, 2021) Additional
Bench, Nandanam, Chennai-35.

...2nd Respondent/ 1st Respondent

APPEAL under Clause 15 of the Letters Patent against the order dated 09.4.2021 made in W.P.No.16552 of 2014.

Prayer in WP.1655 of 2014: Writ Petition filed under Article 226 of Constitution of India, Praying for the issuance of a writ of Certiorari to call for the records on the file of the first respondent in S.A.No. TN/CN.53/2013-14/1/IT dated 31.07.2013 and quash the same as illegal and beyond the jurisdictional and authority and restore the jurisdiction of assessing officer to pass regular assessment order of the 2nd respondent for the Assessment year 2007-08 to 2013-14.

For Appellant : Mr.R.Sivaraman

For Respondent-1 : Mr.A.P.Srinivas, SSC



Judgment was delivered by T.S.SIVAGNANAM, J

We have elaborately heard Mr.R.Sivaraman, learned counsel appearing for the appellant and Mr.A.P.Srinivas, learned Senior Standing Counsel accepting notice for the first respondent.

2. In the light of the decision we propose to render in this appeal, notice to the second respondent is dispensed with and the appeal itself is taken up for final disposal.

3. This appeal is filed by the assessee challenging the order dated 09.4.2021 passed in W.P.No.16552 of 2014 filed by the first respondent herein as against the order passed by the second respondent herein.

4. In this judgment, the parties shall be referred to as the assessee (appellant), the Revenue (first respondent) and the ITSC (second respondent).

5. The facts leading to filing of the writ petition are as hereunder:

The assessee is carrying on business in jewelery and diamonds under the name and style of M/s.Suman Jewellery, Coimbatore. The assessee has been filing return of income and for the assessment years from 2007-08 to 2012-13, the returns were filed. Seizure and search operations under Section 132 of the Income Tax Act, 1961 (for short, the Act) were carried on in the business and residential premises of the assessee and her elder son on 25.9.2012 and concluded on 14.11.2012. During the seizure and search operations, several documents as well as computers and other records were seized. The assessee was issued with notices under Section 153A of the Act on 06.3.2013, pursuant to which, the assessee filed the return of income for the assessment years 2007-08 to 2011-12 on 25.3.2013 and for the assessment year 2012-13 on 13.3.2013.

6. Thereafter, the assessee filed an application on 10.4.2013 before the ITSC under Section 245D(1) of the Act. The said application was taken on file and a report was directed to be submitted by the Commissioner of Income Tax, Central III, Chennai in terms of Rule 9 of the Income Tax Settlement Commission (Procedure) Rules, 1997 (for short, the Rules). Among other things, the said report stated that there was no full and



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true disclosure made by the assessee apart from other issues on the merits of the said application filed by the assessee for settlement of their case. Subsequently, a further report under Section 245D of the Act was submitted on 25.7.2013 before the ITSC and it enclosed proceedings sheet as per the directions of the ITSC, in which, the assessee as well as the Deputy Commissioner of Income Tax (I/C), Central Circle II, Coimbatore affixed their signature. According to the assessee, based on the additional report and as per the corrected workings of the Assessing Officer, the total amount was mentioned as Rs.45,09,03,566/- and the assessee offered for settlement a sum of Rs.47,89,54,313/-.

7. The ITSC passed the order dated 31.7.2013 under Section 245D(4) of the Act by bringing on record the additional income, which was offered by the assessee during the course of settlement proceedings and rejecting the plea of waiver of interest. With regard to grant of immunity from penalty and prosecution, the ITSC recorded that the assessee cooperated with the proceedings and that she disclosed the manner, in which, the income was derived. With regard to the issue as to whether the assessee made full and true disclosure, the ITSC observed that it had directed the assessee to offer additional income by means of further disclosure and also noted that in respect of most of the issues, there was no evidence to conclusively establish that there had been any under-disclosure of income. The ITSC also recorded that the assessee agreed to abide by its directions for further disclosure not because she accepted any understatement of income, but basically with a view to bring quietus to the matter and in the spirit of settlement.

8. Hence, the ITSC was of the opinion that it could not be said that the disclosure of income by the assessee was not full and true. Further, the prayer for immunity from penalty and prosecution was granted. The Assessing Officer was directed to compute tax as per law and it was directed to be paid in 12 monthly instalments starting from 30.9.2013. There has been a further direction issued by the ITSC for release of documents relating to a property at Theni.

9. After the order was passed by the ITSC under Section 245D(4) of the Act dated 31.7.2013, the assessee submitted a representation dated 13.3.2014 to the Commissioner of Income Tax,



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Central III, Chennai-34 for release of documents. Pursuant to that, by order dated 07.4.2014, the Income Tax Officer (HQ), Central III, Chennai addressed the Deputy Commissioner of Income Tax, Central Circle II, Coimbatore stating that the Commissioner of Income Tax, Central III, Chennai-34 recorded that since the assessee paid the entire outstanding demand, permission was granted for release of the original agreement dated 14.9.2012 seized during the search on 25.9.2012 evidencing payment of Rs.2 Crores for purchase of the property in Theni District. The Income Tax Officer (HQ), Central III, Chennai further called for a compliance report for release of the original document.

10. We are informed by the learned counsel appearing for the assessee that whatever is the tax, which has been directed to be paid, has been fully paid and the documents were also released.

11. While the undisputed facts are as above, the Revenue filed the said writ petition some time during June 2014 challenging the order of the ITSC. We have carefully gone through the grounds raised by the Revenue in the said writ petition and we find that the primary ground, on which, the Revenue sought to question the order passed by the ITSC was that the ITSC should have taken the entire entries found in the other set of books, which is a duplicate set or rejected the same instead of erroneously accepting the same in bits and pieces. The other ground is with regard to the method adopted by the assessee namely weighted average cost method or net accretion to asset method.

12. The assessee resisted the said writ petition by filing a counter and raising a preliminary objection with regard to the maintainability of the said writ petition stating that the Writ Court would not sit as an Appellate Court over the decision of the ITSC. In this regard, reliance was placed on the decisions of the Hon'ble Supreme Court in the cases of

(i) R.B.Shreeram Dugra Prasad Vs. Settlement Commission [reported in 1989 (1) SCC 648];

(ii) Jyotendrasinhji Vs. S.L.Tripathi [reported in 1993 (3) SCC 38];

(iii) Shriyans Prasad Jain Vs. Income Tax Officer [reported in 1993 Supp. (4) SCC 727] and



(iv) Union of India Vs. Ind-Swift Laboratories [reported in 2011 (4) SCC 635].

13. The assessee further contended that the factual details could not be agitated in a writ petition under Article 226 of The Constitution of India and that what the Revenue sought to do by way of filing the said writ petition was to contest the findings recorded by the ITSC on merits, which would be impermissible. The assessee also contended that the issue regarding which set of books had to be reckoned for the purpose of considering as to whether a settlement could be arrived at was also discussed by the ITSC and they recorded reasons as to why the procedure adopted by them was just, fair and proper.

14. As mentioned above, apart from preliminary objection, other objections were raised by the assessee on the merits of the matter as well. But, the said writ petition was pending from 2014 onwards and by the impugned order, the same had been allowed, the order passed by the ITSC was set aside and the Revenue has been permitted to proceed with the regular assessment proceedings.

15. We have carefully perused the impugned order passed in the said writ petition and examined as to the grounds, on which, the learned Writ Court had interfered with the order passed by the ITSC. We find that the primary and main reason for interfering with the order of the ITSC was on the ground that the assessee did not make a full and true disclosure before the ITSC and therefore, the application under Section 245C of the Act ought to have been rejected. The reason for coming to such a conclusion is on account of the fact that additional disclosure of income was made by the assessee during the pendency of the settlement proceedings.

16. The question would be as to whether this could be a reason to hold that the assessee was guilty of not fully and truly disclosing the facts at the first instance before the ITSC. In our considered view, the said finding is incorrect for more than one reason. Firstly, it has to be borne in mind that the proceedings before the ITSC is a special mechanism provided under the Act. Chapter XIXA of the Act deals with settlement of cases. Therefore, the Act itself provides for a mechanism or amnesty to an assessee, who is undoubtedly a defaulter or an assessee as that of the assessee before us, who has been subjected to search



and seizure operations, to come before the ITSC, make a full and true disclosure and settle the case by paying taxes and other dues and if the ITSC is satisfied, then, it will be in a position to grant immunity from penalty and prosecution after recovering the tax payable by the assessee. Therefore, the case has to be examined bearing in mind the fact that the Act itself provides for a mechanism for the defaulting assessee to approach the ITSC with a view to settle the dispute.

17. The argument of the Revenue before the Writ Court was that there were two sets of accounts and that the ITSC ought to have accepted one set of accounts and rejected the other, but could not have accepted both the accounts in bits and pieces.

18. This aspect of the matter has been dealt with by the ITSC in paragraph 6.2.2 of the order passed by the ITSC. For better appreciation, we quote the relevant portion as hereunder :

"We have carefully perused the other set of books and find that those are incomplete. The other set of accounts does not contain the cash book, bank book and do not incorporate many other assets of the business. In many instances, the value of sales and purchases has been recorded erroneously during the period 01.9.2011 to 20.9.2012. To illustrate, certain purchases/sales have been entered by adopting the value of gold at Rs.3,950/- per gram, which did not represent the prevalent market rate of gold. On 15.12.2010, an entry for 55276.130 gms has been made in respect of gold jewellery with the narration 'shortage'. On certain occasions, the value of gold has been adopted at Rs.27,000/- per gram, which is an astronomical figure if the market value of gold at that point of time is taken into consideration. In most of the places, the names of the suppliers and the liabilities of the applicant have not been mentioned. In this context, we also find that such other set of accounts were not found in respect of AY 2007-08. There is a large number of other deficiencies and discrepancies in the other



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set of accounts. We are, therefore, of the considered opinion that the other set of books cannot be relied upon for the purpose of quantifying the applicant's undisclosed income."

19. In our considered view, the learned Single Judge, while examining the above conclusion arrived at by the ITSC, ought not to have substituted his views with that of the ITSC unless he finds that there is a serious error in the decision making process. The learned Single Judge proceeded to hold that the observations and findings of the ITSC were utterly perverse and without jurisdiction and no prudent person could have come to such a conclusion. But, we do not find anything of that sort on a reading of paragraph 6.2.2. of the order passed by the ITSC.

20. The ITSC has given certain reasons, which appear to be plausible reasons for the course, which has been adopted by the ITSC with regard to the set of books of accounts to be reckoned while considering the case for settlement. The next aspect is as to which of the valuation methods should have been adopted by the assessee and whether they should have adopted weighted average cost method or net accretion to asset method. This aspect has been dealt with by the ITSC in paragraphs 6.2.3 and 6.2.4 of the order passed by the ITSC, which read as hereunder :

"6.2.3. In these circumstances, the most appropriate and logical method to be adopted is 'net accretion to asset method'. The only undisclosed asset, which has been unearthed during the search, is the excess stock. Basically, the value of such stock is to be taken as representing the undisclosed income of the applicant. The question to be decided is whether the value of the excess stock is to be taxed entirely for the year, in which, the search took place or has to be spread over in the earlier years also. We find that the other set of books clearly indicates that the stock has accumulated over a period of years. In fact, we find that basically the other set of books seems to have served as a record for maintaining the stock details. This is supported by the fact that the value



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of the stock found during the search more or less tallies with the stock shown in the other set of books. Even otherwise, it is not possible to accept that the entire undisclosed income would have been earned only during the year of the search. We are of the considered view that the excess stock found represents accumulation of the undisclosed income of the earlier years. In the settlement application and during the course of hearing before us, the learned authorized representative submitted a detailed working as to how the apportionment of excess stock has been done for the years covered in the settlement application. His submissions in this respect had been summarized by us in para 2.2.1 to 2.2.10 above. What the applicant has basically done is to take the quantity of physical stock as on the date of search and deduct therefrom the quantity of gold ornaments to be returned to the goldsmiths and the customer order gold. Thereafter, the erroneous entries in the other set of goods relating to the stock were corrected including the single outward entry of the stock at 55276.130 gms. The correct market value of the stock has also been substituted. Considering the stock position reflected in the other set of books as a guideline, the yearwise stock accumulation has been worked out and the corresponding income has been offered for taxation. We find that the approach adopted by the applicant in this respect is logical, reasonable, scientific and hence, acceptable.

6.2.4. The Department has stated that for valuing the stock for each year, the applicant has adopted the 'weighted average cost method'. We find that the valuation of stock by adopting the 'weighted average cost method' is normally followed in this line of business. At this stage, we would like to examine the method adopted by the Department



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for working out the undisclosed income on the 'net accretion to asset method'. It appears that the working of the undisclosed income quantified by adopting this method in the report under Rule 9 of the Department was erroneous. This is indicated by the fact that different figures have been reached by the Department by adopting the same method in the paper book submitted on 25.7.2013. We, however, find that even the new working done by the Department suffers from a number of infirmities. The Department has considered negative figures in the regular books representing sundry debtors as an asset while such figures reflected both the sundry creditors and sundry debtors grouped together and were required to be deducted. Similarly, the bank liabilities and the current liabilities already reflected in the regular books were required to be deducted on incremental basis. Even otherwise, as the other set of books are also incomplete, it would not be possible to quantify the correct figure of undisclosed income by relying upon them."

21. In the light of the above, we find that the reasons assigned by the ITSC for coming to such a conclusion as to what would be the appropriate valuation method cannot be treated to be a perverse decision.

22. With regard to the aspect as to whether there was a full and true disclosure by the assessee, this has been considered by the ITSC, which recorded that the assessee cooperated with the proceedings before the ITSC. In fact, this has also been recorded so by the learned Single Judge in the impugned order. Thus, the ITSC also noted the conduct of the assessee during the course of the proceedings. As pointed out earlier, the first report as per Rule 9 of the said Rules was submitted in June 2013, the comments were filed by the assessee before the ITSC to the said first report on 05.7.2013 and thereafter, a verification report was submitted and the comments were furnished to the assessee where the assessee offered



additional sum by way of further disclosure.

23. These aspects were noted by the ITSC and the conduct of the assessee was examined qua the aspect of full and true disclosure and in paragraph 7.4, while dealing with the aspect as to whether the assessee would be entitled for immunity, the ITSC clearly recorded that the assessee readily agreed to abide by the directions that would be issued by the ITSC and that the direction for further disclosure was not because the assessee accepted any understatement of income, but basically with a view to bring quietus to the matter and in the spirit of settlement. Therefore, further disclosure pursuant to the verification report submitted before the ITSC, which was a further report under Section 245D of the Act cannot be construed to non suit the assessee that she has not made a full and true disclosure before the ITSC at the first instance.

24. If a very rigid approach is taken in this regard, then the very purpose of enacting Sub-Section (6) of Section 245D of the Act would lose its purpose. In any event, we find that there is no error in the decision making process and as pointed out, we are not expected to substitute the decision of the ITSC, which has taken note of the conduct of the assessee, who was in the spirit of settlement subject to conditions. Therefore, we are of the view that the order passed in the said writ petition calls for interference.

25. We are conscious of the fact that the assessee had raised a preliminary objection with regard to the maintainability of the said writ petition filed at the instance of the Revenue against challenging the order passed by the ITSC. In fact, this issue had come up before us in other appeals as well and certain writ appeals were admitted to decide this question of law as to the maintainability of writ petitions filed by the Department questioning the order passed by the ITSC.

26. However, in the case on hand, we have not ruled on the aspect regarding maintainability of the said writ petition, as we are fully satisfied that there is no error in the decision making process committed by the ITSC nor the order passed by the ITSC can be construed to be perverse or illegal warranting interference under Article 226 of The Constitution of India. Therefore, the question of law as regards maintainability of writ



petitions as against orders passed by the ITSC is left open to be agitated in the proper proceedings at appropriate stage.

27. For all the above reasons, the writ appeal is allowed, the impugned order passed in W.P.No.16552 of 2014 dated 09.4.2021 is set aside and the order dated 31.7.2013 passed by the ITSC is restored. No costs. Consequently, the connected CMP is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

RS

To

1.The Commissioner of Income Tax
Central-11
No.46, Mahatma Gandhi Road,
Chennai-600 034.

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

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.41706

WA.No.2005 of 2021 &
CMP.No.12867 of 2021

RLD(CO)
SB(21/09/2021)