IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 25.02.2021

DELIVERED ON:16.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos. 15320 to 15322 of 2018
and
W.M.P.Nos.18210 to 18215 of 2018

M/s. Ess & Ess Infrastruture Private Ltd.,
Represented by its Director,
Mr. Shreevathsaa,
No.53, Sri Chambers, II Floor,
Subbarama Chetty Road, Basavanagudi,
Bengaluru - 560 004. ... Petitioner
(In W.P. No.15320 of 2018)

2.Mr. Shreevathsaa, ... Petitioner
(In W.P. No.15321 of 2018)

Mr. Shreekanth Dass, ... Petitioner
(In W.P. No.15322 of 2018)

Vs.

1.The Income Tax Settlement Commission,
Additional Bench, Chennai,
Ministry of Finance,
Department of Revenue,
640, Anna Salai, Chennai - 600 035.
2.The Principal Commissioner of Income Tax (Central)
C.R. Building, Queen's Road,
Bengaluru, Karnataka - 560 001.

3.The Deputy Commissioner of Income Tax,
Central Circle 1(3), Bangalore,
Central Revenue Building, No.1 Queen's Road,
Karnataka - 560 001.
... Respondents

Common Prayer: Writ Petitions are filed under Article 226 of the Constitution of India praying for to issue a writ, direction or order in the nature of CERTIORARIFIED MANDAMUS or any other appropriate writ, order, or direction calling for the records of the 1st respondent contained in its impugned order bearing Nos.(i) KA/BL-51/2016-17/46/IT dated 28.02.2018 (ii)KA/BL-51/2016-17/47/IT & (iii) KA/BL-51/2016-17/48/IT and quash the same and consequently direct the 1st respondent to reconsider the application filed by the petitioners bearing Nos. (i) KA/BL-51/2016-17/46/IT (ii) KA/BL-51/2016-17/47/IT and (iii) KA/BL-51/2016-17/48/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.P. Sivaraman

For Respondents: Mr.A.N.R. Jayaprathap
(Govt. Advocate)

(In all Cases)

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COMMON ORDER

The petitioner has filed these writ petitions wherein the petitioner has challenged the impugned order dated 28.2.2018 passed by the first respondent Settlement Commission under section 245D(4) of the Income Tax Act, 1961. As a consequence, the petitioner has also prayed for a direction to the first respondent Settlement Commission rehear the case for a fresh.

2.By the impugned order, the first respondent settlement commission has rejected the application filed by the petitioner to settle the case of the petitioner for the assessment years 2008-09 to 2015-16.

3.Though an interim order was passed on 25.6.2018, the preliminary objection of the second respondent was recorded stating that the writ petition was not maintainable before this court as not only the petitioner but also the contesting respondents namely respondent No. 2 and 3 are within the jurisdiction of the Karnataka High Court and therefore this Court had no jurisdiction.

4.Today when the case was taken up for hearings, learned counsel for the respondent drew attention to the order passed by in Division Bench of this court in Mulberry Silks Ltd. Versus The Settlement Commission [2020] 428 ITR 136 (Madras).

5.The counsel for the petitioner has brought to the attention of this court to the decision of the Supreme Court rendered in Commissioner of Customs and Central Excise versus Gao Ispat Ltd 2017 (50) STR 118 (Supreme Court) wherein the Honourable Supreme Court has held that the petition ought to have been filed by the Department before the Delhi High Court and that the Bombay High Court had no jurisdiction to decide upon a validity of the order passed by the Settlement Commission, New Delhi.

6.It is therefore submitted that the above decision was not brought to the knowledge of the Division Bench of this court when it passed its order inMulberry Silks Ltd. Versus The Settlement Commission [2020] 428 ITR 136 (Madras) and therefore there is no impediment for this court examine the issue and pass final order on merits. Both the counsels fairly submitted that amendments have been proposed to abolish the first respondent settlement commission in the Finance Bill, 2021.

7.Heard learned counsel for the petitioner and the respondent. The Honourable Supreme Court while passing its order in Commissioner of Customs and Central Excise versus Gao Ispat Ltd 2017 (50) STR 118 (Supreme Court) has not not considered any of the decisions rendered in the context of territorial jurisdiction of the High Courts under Article 226 of the Constitution of India.

8.The Honourable Supreme Court in Kusum Ingot's And Alloy versus Union of India 2004 (168) ELT 3 (SC) has observed that even though in a given case, where the original authority is constituted at one place and the appellate authority is constituted at another, a writ petition would be maintainable at both the places as order of the appellate authority constitutes a part of cause of actionnever the less ultimately held that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merits. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens .

9.As the writ petitions have not been admitted, and since the contesting respondents have raised objection regarding the jurisdiction at the time of admission that the contesting respondents are located outside the jurisdiction of this court and within the jurisdiction of the courts in Karnataka, these writ petition are liable to be dismissed on the ground of forum conveniens.

10. Therefore, these writ petitions are dismissed with liberty to the petitioner to work out the remedy before the jurisdictional High Court in Karnataka in accordance with Law.

No cost. Consequently, connected writ miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Lbm

To

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Additional Bench, Chennai,
Ministry of Finance,
Department of Revenue,
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+1cc to Mr.A.P.Srinivas, Advocate SR.No. 23136

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ad (CO)
A.SK(22.06.2021)