



WEB COPY

In the High Court of Judicature at Madras

Dated : 24.8.2021

Coram

The Honourable Mr. Justice T.S.SIVAGNANAM
and

The Honourable Mr. Justice SATHI KUMAR SUKUMARA KURUP

Writ Appeal Nos.2047, 2050 and 2052 of 2021 &
CMP.Nos.13023, 13029 & 13032 of 2021

M/s.Akash Fertility Centre &
Hospital, Chennai-26.

...Appellant in
WA.2047/2021

T.Kamaraj

...Appellant in
WA.2050/2021

K.S.Jeyarani

...Appellant in
WA.2052/2021

Vs

1. The Commissioner of Income Tax,
Central II, Chennai-34.

2. The Income Tax Settlement Commission,
(now substituted by Interim Board
for Settlement by the Finance Act,
2021), Additional Bench, Chennai,
No.640, Anna Salai, Chennai-35.

...Respondents
in all WAs

APPEALS under Clause 15 of the Letters Patent against the
common order dated 30.4.2021 made in W.P.Nos.25845 to 25847 of
2014.

Prayer in W.P.Nos.25845 to 25847 of 2014: Writ Petitions
filed under Article 226 of the constitution of India, praying
for the issuance of a Writ of Certiorari, calling for the
records on the file of the second respondent in Settlement
Application Nos.TN/CN/52/2013-14/8/IT, TN/CN/52/2013-14/7/IT and
TN/CN/52/2013-14/5/IT respectively, dated 23.01.2014 and quash
the same as illegal and restore the jurisdiction of the
Assessing Officer in respect of the assessments for assessment
years 2006-07 to 2012-13 of the First Respondent.



WEB COPY

For Appellants : Ms.Vandana Vyas
for Mr.R.Sivaraman

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

Judgment was delivered by T.S.SIVAGNANAM,J

We have elaborately heard Ms.Vandana Vyas, learned counsel appearing on behalf of Mr.R.Sivaraman, learned counsel on record for the appellants and Mr.A.P.Srinivas, learned Senior Standing Counsel accepting notice for the first respondent - Revenue. In the light of the decision, which we propose to render in these appeals, notice to the second respondent is dispensed with and the appeals themselves are taken up for final disposal.

2. These appeals are directed against the common order dated 30.4.2021 made in W.P.Nos.25845 to 25847 of 2014.

3. In this judgment, the appellants are referred to as the assessees, the first respondent is referred to as the Revenue and the second respondent is referred to as the ITSC.

4. The Revenue filed the said writ petitions challenging the common order dated 23.1.2014 passed by the ITSC under Section 245D(4) of the Income Tax Act, 1961 (for short, the Act).

5. Two of the assessees are doctors specialized in Gynaecology and Reproductive Technology and are treating infertility. They run a medical facility at Chennai. A search was conducted by the Revenue in the hospital of the assessees and the business and the residential premises of the partners. According to the Revenue, the search revealed substantial amount of undisclosed (professional) receipts of the assessee as well as the hospital and other partners, huge investments in immovable properties and payment of on money, etc., for the assessment years from 2006-07 to 2011-12 apart from part of the assessment year 2012-13.

6. Pursuant to the notices issued under Section 153A of the Act, the assessees filed their return of income disclosing the same income in the returns, which were filed during March



2013. Thereafter, two of the assesseees namely Dr.T.Kamaraj and M/s.Akash Fertility Centre and Hospital filed an application before the ITSC and it was rejected on account of short payment of tax. Therefore, they filed a fresh application and it was allowed and they were permitted to proceed under Section 245D(1) of the Act by order dated 05.6.2013. Further, the separate application filed by Dr.Jeyarani was allowed to be proceeded by order dated 30.5.2013. Thereafter, a common order dated 12.7.2013 came to be passed under Section 245D(2C) of the Act.

7. Subsequently, an order under Section 245D(4) of the Act was passed on 23.1.2014 settling the case and holding that the assesseees having satisfied the requisite conditions provided under Section 245H of the Act and having cooperated with the proceedings before the ITSC and made full and true disclosure of their income, they were granted immunity from penalty and prosecution under the Act.

8. Admittedly, the order passed by the ITSC was given effect to, the tax as computed by the Assessing Officer was paid and the seized jewellery were returned to the assesseees. After the common order was passed by the ITSC, the Revenue filed the said writ petitions before this Court challenging the common order. The grounds of challenge were summarized in paragraphs 10 to 15 of the respective affidavits filed in support of the said writ petitions. The said writ petitions were pending from the year 2014 onwards, the matters were taken up for hearing only during April 2021 and the same were allowed by a common order dated 30.4.2021. The correctness of such a common order is questioned before us in these appeals.

9. The first aspect, which strikes our mind, is as to whether a writ petition could have been entertained nearly eight months after the common order was passed by the ITSC and that too, after it was given effect to and the tax was fully paid by the assesseees. In the respective affidavits filed in support of the said writ petitions, we find that there is absolutely no explanation for the delay and laches.

10. It is argued by Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the Revenue that the giving effect to order of the ITSC by the Assessing Officer is a procedure, which has to be adopted and that, by itself, will not mean that Revenue cannot challenge the common order passed by the ITSC by filing a writ petition.



11. As a general proposition, Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the Revenue is right. But, what we need to note is that the common order impugned is an order passed by the ITSC and it is not a regular assessment order nor an order passed by the Appellate Authority testing the correctness of an assessment order. This aspect has to be borne in mind because the Act prescribes a separate procedure for settlement of cases and it is obvious that those, who approach the ITSC, are defaulters where search and seizure operations would have been conducted, unaccounted cash and documents relating to properties, etc., would have been recovered. Bearing in mind the fact that the tax amount is required to be collected to augment the State Exchequer, such a provision had been inserted in the Act.

12. Therefore, what is required to be examined is as to whether the filing of applications by the assesseees for settling the cases is a genuine attempt of the assesseees wherein the assesseees fully and truly disclosed all material particulars bearing in mind that it is they who approached the ITSC to settle the dispute. If the ITSC, on examination of the facts placed before it, records satisfaction that the assesseees cooperated in the proceedings and that there was full and true disclosure and then proceeds to grant immunity from penalty and prosecution, as a Writ Court having jurisdiction under Article 226 of The Constitution of India, the scope of examination of such orders can be limited only to the decision making process and not to the decision itself whereby the Court cannot substitute its views to that of the views recorded by the ITSC, which obviously proceeded on the basis that endeavour should be made to settle the case and recover tax from defaulting assesseees.

13. The grounds, which have been raised by the Revenue, in the said writ petitions, were, in fact, the same grounds, which were raised by the Revenue in the report filed under Rule 9 of the Income Tax Settlement Commission (Procedure) Rules, 1997. This report was the subject matter of consideration by the ITSC and by a detailed speaking order running to 94 pages, the ITSC considered the objections of the Revenue in the said report and recorded reasons as to why the case is required to be settled. We find that invariably on all issues, additions, which were suggested by the ITSC were accepted unconditionally by the assesseees and additional amounts were offered to tax.

14. The Revenue faulted the ITSC for adopting 'net accretion method' for the purpose of computing the income.

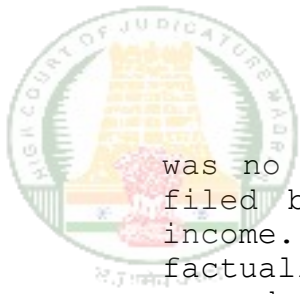


This, according to the Revenue, is incorrect and without any basis. In fact, this issue was considered by the ITSC, which rendered a finding that the assessees have not kept proper books of accounts in all the three cases before it. The ITSC noted that the Revenue had taken cash found at the time of search for two days and multiplied it by the number of days the doctors worked to arrive at the suppressed income. The assessees' explanation was considered by the ITSC for its correctness. The assessees stated that the treatments were provided as packages and various types of treatments were given to the patients. Since the hospital is specialized in treating cases of infertility, the patients are required to visit the doctor till they conceive and periodical monitoring has to be done to enable the patients to sustain pregnancy. The definite stand of the assessees was that every sitting cannot result in the payment of fees.

15. The Revenue did not project its case based on the average income earned by the assessees during the period, for which, search had been conducted and assessments were opened. Therefore, when the material available with the Department was only cash found for two days, the ITSC, in our view, in the absence of proper books of accounts and in the light of the fact that the Revenue sought to sustain its computation of suppressed income based on the cash found during two days, rightly held that the net asset method was found to be the only way to proceed further. We do not find any perversity in the common order passed by the ITSC in this regard.

16. Equally, in respect of other issues also, the ITSC considered the objections in the report filed under Rule 9 of the said Rules and the stand of the assessees and recorded reasons as to why the stand of the assessees on certain issues was not acceptable and certain amounts were directed to be added in the hands of the assessees and they were accepted and the issues were settled. The Revenue does not fault the ITSC on any procedural ground. Rather, there is no allegation that the Revenue did not have adequate opportunity to place the materials before the ITSC.

17. As noted above, the grounds, which have been raised in the said writ petitions are the grounds, on which, the report under Rule 9 of the said Rules was filed and the said report was taken into consideration and in almost all the heads, additions have been made thereby demonstrating that the plea raised by the assessees was not accepted by the ITSC. The learned Single Judge observed in paragraph 33 of the common impugned order that there



was no clear finding rendered by the ITSC that the applications filed by the assesseees contained full and true disclosure of income. This finding rendered by the learned Single Judge is factually incorrect, as, in more than one place, the ITSC recorded that the applications filed by the assesseees contained full and true disclosure. This aspect has also been specifically dealt with in paragraph 8.4 of the common order passed by the ITSC while dealing with immunity. Therefore, such a finding rendered by the learned Single Judge is incorrect. Thereafter, the learned Single Judge proceeded to extract paragraphs 7.1.2 and 7.1.3 of the common order passed by the ITSC and stated that the assesseees have not kept proper books of accounts in the three cases before it.

18. The proper method of reading the common order passed by the ITSC is to read the order in its entirety. It is an undisputed fact that proper books of accounts were not maintained in all the three cases and the assesseees do not, at any point of time, state that they have maintained books of accounts. This is precisely the reason for which the matter has gone before the ITSC and the assesseees made full and true disclosure and also offered additional income to tax and regarding valuation of the properties, etc., additions have been made. So far as the method of valuation is concerned, unless and until the Department had prima facie material to show that there was gross undervaluation, the valuation adopted by the assesseees, based on the guideline value issued by the Government, cannot be faulted. Therefore, the ITSC was right in finding that the Revenue could not offer any evidence in their defence with regard to valuation of the properties. Even while examining the issue regarding cost of construction of the building, the ITSC took note of certain seized documents, which showed the cost of construction of two buildings at Rs.1.90 Crores and the said shortfall should be added.

19. We need not labour much on the other issues, as the ITSC examined each of the issues and wherever required, it has added the shortfall. Therefore, by referring to one sentence in paragraph 7.1.2 of the common order passed by the ITSC, it cannot be stated that there was no full and true disclosure. In fact, the findings in paragraph 7 have to be read in its entirety, which had several sub-paragraphs and which considered the case of the assesseees on various heads culminating in paragraph 7.7, which deals with withdrawals or drawals of the assesseees from bank accounts. The ITSC found that the drawals were inadequate and therefore, ordered Rs.5 lakhs to be added in the hands of both the individual assesseees for the relevant assessment years. Therefore, we find that there is no perversity



in the approach of the ITSC and bearing in mind the conduct of the assessee that they approached the ITSC with true spirit of settlement, the ITSC granted relief.

WEB COPY

20. Thus, we are of the view that the learned Single Judge ought not to have set aside the common order passed by the ITSC and remanded the matter to the Assessing Officer to follow the consequential assessment procedure without recording any finding as to whether there was any procedural error committed by the ITSC or any error with regard to the decision making process.

21. That apart, we find that the learned Single Judge has not rendered any finding on the decision of the ITSC, which obviously could not have been done and that aspect has been taken note of by the learned Single Judge. We find that the decision relied upon by the Revenue as noted by the learned Single Judge in the case of Canara Jewellers Vs. Settlement Commission [reported in (2009) 184 Taxman 491] would support the common order passed by the ITSC wherein it had been pointed out that the ITSC is empowered to have all the powers which are vested in an Income-Tax Authority under the Act in addition to the power conferred under Chapter XIX-A and we find that the ITSC has not done a reassessment for the order to the interference with.

22. In paragraph 25 of the common impugned order, the learned Single Judge noted the submissions of the learned Senior Standing Counsel appearing for the Revenue, who placed reliance on the decision of this Court in the case of ACE Investments Limited Vs. Settlement Commission [reported in (2003) 264 ITR 571] wherein it has been pointed out that in so far as the power of this Court to exercise its jurisdiction under Article 226 of The Constitution of India, the law is well settled that the judicial review of this Court is not concerned with the decision, but only with regard to the decision making process.

23. The learned Single Judge also noted the decision of the Apex Court in the case of R.B.Shreeram Durga Prasad and Fatechand Nursing Das Vs. Settlement Commission [reported in (1989) 176 ITR 169]. After noting the above decision, the learned Single Judge observed that judicial review of this Court to interfere with the order of the Settlement Commission is not barred, if the order of the Settlement Commission is in contravention to any of the provisions of the Act. In this regard, the learned Single Judge referred to the decision of the Apex Court in the case of Jyotendrasinhji Vs.



S.I.Tripathi [reported in (1993) 201 ITR 611] and the decision of this Court in the case of C.A.Abraham Vs. ACIT [reported in (2002) 255 ITR 540].

24. The learned Single Judge, in the impugned order, has not recorded any finding that the ITSC contravened the provisions of the Act nor there is any finding recorded duly supported by material that the common order passed by the ITSC suffers from patent illegality. In such circumstances, we are of the clear view that the common order passed by the ITSC ought not to have been interfered with and that too, after such a long delay and the matter was allowed to rest and the assessee's case was settled and they paid taxes and seized jewellery were returned to the assessee.

25. For all the above reasons, the writ appeals are allowed, the impugned common order dated 30.4.2021 is set aside and consequentially, the common order dated 23.1.2014 passed by the ITSC is restored. No costs. Consequently, the connected CMPs are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

RS

To

1. The Commissioner of Income Tax,
Central II, Chennai-34.
2. The Income Tax Settlement Commission,
(now substituted by Interim
Board for Settlement by the Finance Act, 2021),
Additional Bench,
Chennai, No.640, Anna Salai, Chennai-35.

+3CCs to Mr.A.P.Srinivas, Advocate, Sr.No.42608

WA.Nos.2047, 2050 & 2052/2021 &
CMP.Nos.13023, 13029 & 13032 of
2021

PA (CO)

K.RK. (15.09.2021)