IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.41407 of 2016
W.P.Nos.35376 & 35377 of 2016, 18991 of 2020

K.S.Thirumalaivasan ..Petitioner

vs.

1. The Chairman,
   Income Tax Settlement Commission,
   Principal Bench, New Delhi.

2. Income Tax Settlement Commission,
   Additional Bench, 640, Anna Salai,
   Chennai-35.

3. Principal Commissioner of Income Tax,
   Central-II, Chennai.

4. The Assistant Commissioner of Income Tax (AO),
   Central Circle-I(4), No.46, M.G.Road,
   Chennai-34. ..Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus to call for the records relating to the order of the second respondent made in Settlement Application Nos.TN/CN51/2014-15/69/IT dated 26.09.2016 and consequential provisional order/warrant of attachment of movable properties u/s 281B of IT Act, 1961 in respect of petitioner's PAN:AAEPT1716C/CC-1(4)/2016-17 dated 28.10.2016 issued by the 4th respondent and quash the same and consequently, direct the 1st respondent to constitute a Special Bench under Section 245BA (5) of Income Tax Act, 1961 to hear the petitioner's Settlement Application dated 25.03.2015 uninfluenced by the findings of the impugned order of the 2nd respondent dated 26.09.2016 and forbearing the 4th respondent from proceeding further with Assessment Proceedings in pursuance to the Assessment notices dated 27.10.2016 issued under Section 142(1) r/w Section 129 of Income Tax Act, 1961 in respect of the petitioner's assessment for Assessment years 2007-08 to 2013-14.

For petitioner : Mr.N.Viswanathan

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

O R D E R

The order passed by the Settlement Commission rejecting the application filed by the petitioner under Section 245D (4) of the Income Tax Act is under challenge in the present writ petition.

2. The learned counsel appearing for the petitioner sterroneously contended that the petitioner has made true and full disclosure of his income, at the time of filing an application under Section 245C of the Act. The entire facts are misconstrued by the Settlement Commission and the explanations offered by the petitioner were not considered with reference to the details and particulars provided. It is contended that the Settlement Commission entertained the application, scrutinized the same and formed an opinion that the petitioner has made full and true disclosure of the income. Under Sub-clause (1) (2) & (3) to Section 245D of the Act, orders were passed and those orders would reveal that the petitioner has made full and true disclosure of the income and the said fact was admitted by the Commission. While so, there is no reason to deviate the findings already arrived and form an opinion for the purpose of rejection of the application itself under Section 245(D)(4). The facts which are not controverted at three stages cannot be disputed at the final stage. In this regard, the learned counsel for the petitioner made a submission that the Authority, who investigated the matter, decided the issue finally and thereafter, the application was rejected.

3. However, the Authority concerned has not been impleaded in his personal capacity so as to raise an allegation of malafide. It is a established principle that in the event of raising the malafide allegation against the Authority, the said allegations are to be substantiated with reference to some evidence and documents and the Authority concerned must be impleaded as party in the writ proceedings in his personal capacity. General contentions or allegations made against the Authority cannot be entertained in the writ proceedings, in view of the fact that the petitioner has not substantiated any such allegations nor impleaded the Authority in his personal capacity. Therefore, this Court is not inclined to entertain the contention raised on behalf of the writ petitioner.

4. The learned counsel appearing for the petitioner solicited the attention of this Court with reference to the

orders passed by the Settlement Commission at various stages. The Settlement Commission, after entertaining the application, gone into the facts and circumstances and made an observation that the petitioner has provided full and true disclosure and accordingly, came to the final stage for the purpose of settling the issues. Unfortunately, the Settlement Commission, at the final stage, misconstrued the facts which were already adjudicated and formed an erroneous opinion and dismissed the application filed under Section 245C of the Act. Thus, the writ petition is to be allowed.

5. The learned counsel appearing for the petitioner made a submission that the petitioner has no additional income of his own and further, he has paid a sum of Rs.1 Crore towards tax. All those factors were not taken into consideration while passing the final order by the Settlement Commission. Thus, the order is untenable and to be set aside.

6. The learned Senior Standing Counsel appearing for the respondent disputed the said contention by stating that the Settlement Commission is empowered to form an opinion at every stage regarding the true and full disclosure of income. Merely because the application filed under Section 245C is entertained, it will not provide a right to the assessee. Investigations are conducted throughout and the additional materials or informations received by the Authorities Competent are produced before the Settlement Commission, the Commissioner has filed a report in this regard. Thus, the application is liable to be rejected at any stage of the proceedings under Section 245D of the Act, if the Settlement Commission could able to form an opinion that there was no true and full disclosure. This being the spirit of the procedures contemplated under Section 245D of the Act, the mere admission of an application or passing of an order under Sub-clause (1)(2)(3) would not be a ground to set aside the final order passed by the Settlement Commission.

7. Various stages contemplated under Section 245D of the Act were discussed by the High Court in the case of Abdul rahim Vs. Income Tax Settlement Commission, Chennai, reported in [2018] 96 taxmann.com 571(Madras). The relevant paragraphs are extracted hereunder:

> "16. It is to be noted at this juncture that the Settlement Commission is vested with power to reject the Settlement Application at three stages, as provided under Section 245D of the said Act. Rejection at the threshold is contemplated under Section 245D(1). Rejection after notice to the Revenue and on perusing the report filed by the Revenue could be made under Section 245D(2). While rejection under Section

245D(1) is a dismissal at the admission stage, rejection under Section 245D(2) is after notice to the revenue and on being satisfied with non disclosure of true and full undisclosed income. The third stage of rejection is contemplated under Section 245D(4), after directing the Revenue to furnish records and thereafter to conduct an investigation or enquiry. In all these stages, the satisfaction of the Commission with regard to true and full disclosure of income must continue to exist so as to carry over the proceedings from one stage to another and finally, to pass an order determining the terms of settlement as provided under Section 245D(6). In other words, true and full disclosure is the life line, satisfaction of the same should remain to live in the mind of the Commission till the final order is passed. On the other hand, if the Commission finds, at any stage of the proceedings under Section 245D that the applicant has not come before the Commission with clean hands and by disclosing true and full income, it is empowered to reject the application, thereby driving the applicant to face the regular assessment proceedings. The applicant cannot, as a matter of right, seek the Commission to carry over the application from one stage to another, notwithstanding the fact as to whether true and full disclosure of income was made or not. In other words, the applicant who approaches the Commission, bypassing the regular assessment proceedings, must provide material facts without any suppression and establish that the disclosure of income in the application is true and full in its strict sense. Otherwise, the applicant cannot find fault with the Commission in showing him the door to face the regular assessment proceedings. The term "true and full disclosure" does not mean that whatever the amount shown by the applicant, which according to him is undisclosed income, is in fact, the true and full disclosure. It may be the disclosure of undisclosed income in the view of the applicant. But whether such disclosure is "true and full", in its strict sense, is a question that should fetch an answer in favour of the petitioner/applicant at all stages even after hearing the revenue. In other words, such disclosure should not give room for deduction of concealed fact with regard to any other income either after getting a report from the Revenue or conducting an investigation or enquiry at the instance of the Commission.”

8. The Delhi High Court considered the scope of Section 245D in the case of Rohit Kumar Gupta Vs. Principal Commissioner of

Income Tax, Central-II, reported in [2019] 109 taxmann.com 257 (Delhi), and held as follows:

> "45. The above decision interprets Section 245D (4) as a substantive provision from where the powers of the ITSC to pass 'such order as if it thinks fit' arises. The next question that arises is whether the expression 'such orders if it thinks fit' would include the power to pass an order rejecting an application. If the interpretation placed by the Petitioners on this provision is accepted it would mean that after having allowed the applications to be proceeded with in terms of its order passed under Section 245D (1) of the Act, the ITSC cannot at this stage, after the report of the Commissioner has been submitted to it pursuant to an order under Section 245D (2C) of the Act, dismiss the application at all and that it would necessarily have to pass an order providing for the terms of settlement. However, this does not appear to be a correct understanding of the ambit of the expression 'such orders it deems fit.'
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> 47. The Court is unable to understand how the above decision helps the Petitioners in support of their contention that the ITSC cannot at the stage of passing of final order under Section 245D(4) of the Act, reject an application for failure of the Applicant to make a full and true disclosure and the manner in which the undisclosed income was derived."

9. Relying on the said judgment, the learned Senior Standing Counsel is of the opinion that in the present case, the Settlement Commission formed an opinion that the petitioner had not made full and true disclosure with reference to certain incriminating evidence. Therefore, the order of rejection is in consonance with the provisions of the Act.

10. This Court is of the considered opinion that it is a pre-requisite condition that an assessee, who approaches the Settlement Commission under Section 245C of the Act, must disclose true and full income. How to form an opinion regarding true and full disclosure of the assessee. Undoubtedly, it is a difficult procedure to be adopted and further, various facts and circumstances are also to be ascertained. Thus, the procedures are contemplated under Section 245D of the Act. Various stages are provided for the purpose of deciding the application filed under Section 245C. While the process of adjudication of an application is in progress, the Authorities Competent are empowered to provide additional informations, report enabling the Commission to decide the issues in a proper perspective. The

benefit of settlement is an enabling provision permitting the assessee to resolve the disputes in a peaceful manner. Thus, the special provision is to be dealt with in accordance with procedures contemplated under Section 245D of the Act. While the application is in the process of adjudication, the Authority Competent is empowered to file reports and produce materials to dispute the application on the ground that the true and full disclosure is not made. During that process, at any stage, if the Commission could able to form an opinion that there was no true and full disclosure of income, then the assessee must face the regular assessment proceedings and the settlement cannot be arrived.

11. The settlement of cases under Section 245C cannot be construed as an absolute right of an assessee. It is only a facility provided to the assessee to settle the cases in a peaceful manner. When the settlement being not a right, the procedures contemplated are to be followed scrupulously. All the assessments are to be made by the regular Assessing Officer by following the provisions of the Act. Thus, the application filed under Section 245C is a special provision contemplated for the purpose of settling the cases in a speedy manner, only in the event of furnishing the true and full disclosure of income by an assessee along with the application.

12. Doubts raised based on incriminating evidence by the Department and the particulars produced by the assessee are sufficient enough to form an opinion that there was no true and full disclosure. The true and full disclosure contemplated under the provision must be understood that the said disclosure must be an acceptable disclosure with reference to the documents and evidences available with the Department. The very settlement is a consensus to arrive a settlement and the parties are expected to be fair and honest. With this idea, the concept of true and full disclosure is contemplated in the provision.

13. As far as the writ proceedings are concerned, such disputed facts and circumstances with reference to the documents and evidence cannot be adjudicated under Article 226 of the Constitution of India. Such an adjudication must be done by the Competent Authority by conducting a full-fledged enquiry/trial. In the event of rejection of an application filed under Section 245C, the matter shall go before the Assessing Officer before whom the assessee would get an opportunity to submit his explanation or documents or otherwise. Thus, the High Court under Article 226 cannot adjudicate or made any finding with reference to the disputed facts. Thus, the contention raised by the writ petitioner in this regard need not be considered.

14. The learned counsel appearing for the petitioner made a submission that the Principal Commissioner and Joint Commissioner of Income Tax accept the statement of the writ petitioner regarding the income details. However, the Settlement Commission is empowered to go into the details of such admission and conduct an enquiry. If there is any doubt regarding such statement or such admission, then the Commission shall reject the application enabling the regular Assessing Officer to assess the income by following the procedures contemplated under the Income Tax Act. Thus, mere admission of an authority would not be a conclusive factor for the Settlement Commission to form an opinion under Section 245D. Various stages are to be followed and the Commission is empowered to go into those details and materials and form an independent opinion and pass an order accordingly.

15. For the purpose of considering the writ petition, it is sufficient that the findings of the Settlement Commission are looked into and the said findings are hereunder:

> 13.In the course of business, it is seen that the applicant has received this sum of Rs.56 crores. He has credited the same in the P&L Account. The entire sum was received as a sale consideration and once the sum is credited in the P&L Account it is liable to tax. Even gifts are business receipts if received in the course of, or incidental to business. CIT vs. Paramanand Hukumchand 146 ITR 430 (Mad). This very principal is laid down in the case of Boying Vs.CIT 250 ITR 667 (Mad). Further when such unclaimed credit is credited in the P&L Account it is also liable to taxation. CIT Vs.TVS Sundaram lyengar & Sons Ltd. [1996] 222 ITR 344(SC). Thus, the argument of the CIT (DR) is in accordance with law. The A.R. during the course of arguments on 20.09.2016 categorically admitted that the sum of Rs.53.60 crores cannot taxed under the head other sources (Section 56). He admitted categorically that it was received as a contract receipt and credited so in the P&L Account. It was a transaction entered into on account of commercial expediency according to the A.R. It was received in the course contract only according to A.R. This was only a business transaction between the applicant and the RRIPL. Thus, when the A.R. admits so, it naturally follows that the sum credited in the P&L Account to the extent of Rs.53.60 crores is to be taxed u/s 28 (iv). If it is stated that it is received gratuitous section 56 would apply in so far as the sum is credited and is in excess of Rs.50,000. When this was clearly pointed out to the A.R., the A.R. argued that

either the application be allowed or the matter sent back to the A.O. to follow the regular legal course.

14.The argument of the CIT(DR) that the entire sum of Rs.53.60 crores should be added as income and subjected to tax is valid. The applicant has not discharged the onus that the sum is due to be paid to someone else and it is his liability. The letter given by the Company Secretary cannot be taken note of, because he was an erstwhile employee and presently, the Company is under liquidation. Only Rs.4 crores (approx) is due from the applicant to RRIPL according to financial statements on regular contract. Thus, this sum which is credited in the P&L Account by the applicant is to be brought to tax u/s 28(iv) and the applicant failed to disclose this sum. The records of RRIPL are not produced to show that entries are reversed and they have to receive the sum of Rs.53.60 crores from the applicant. The investment in redeemable preference shares is held by the applicant in his name and it was invested out of the contract receipts received and credited in P&L Account. Investment in other companies in his own name does not amount to paying back the sum. He has also failed to disclose Rs.13.09 crores redeemed in the F.Ys 2009-10 to 2011-12 as income or explained as to why it is not his income. He has not explained how the money was utilized. This information about redeeming shares worth Rs.13.09 crores is brought to light through letter of Shri Jayapandi. Application of this fund is not explained. Thus on all the above counts the disclosure made is not full and true.

16.The applicant has also not established as to how and why only 3% of inflated contract value is to be treated as his income. On all these counts it is clearly seen that the applicant has not made full and true disclosure. The applicant states at one stage that the transaction is financial in nature and no profit was generated while at another point of time he states through A.R . that he received 3% on account of accommodation entry. There is no consistency in the explanations given.

17.The applicant is to note that the law does not give scope to withdraw an application. However as per case law when the disclosure is not full and true and the application is not maintainable the Commission is free to reject the application and not provide for the terms of settlement.

16. The entire findings of the Settlement Commission reveal that certain contra materials were produced by the Department before the Settlement Commission and disputed statements are also made. All such disputed statements and evidences cannot be adjudicated by the High Court.

17. This being the factum, this Court is not inclined to entertain the writ petition and further, the procedures followed for deciding the issues as well as the decision arrived are in consonance with the provisions of the Act and there is no perversity or infirmity as such. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are also closed.

s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

ssb
To
1.The Chairman,
Income Tax Settlement Commission,
Principal Bench, New Delhi.

2.Income Tax Settlement Commission,
Additional Bench, 640, Anna Salai,
Chennai-35.

3.Principal Commissioner of Income Tax,
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Chennai-34.

+1 CC to Mr.N. Viswanathan, Advocate sr 23783.
+1 Cc to Mr.A.P. Srinivas, Advocate sr 23301.

W.P.No.41407 of 2016

KJ(CO)
SP(29/06/2021)