IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-08-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP Nos.33431 and 33432 of 2017
And
WMP Nos.36924 to 36927 of 2017

Mr.Arun Mammen ...Petitioner in WP 33431/2017

Mr.Kandathil M.Mammen ...Petitioner in WP 33432/2017

vs.

1. Income Tax Settlement Commission,
   Additional Bench, Chennai,
   Ministry of Finance,
   Department of Revenue,
   488-489, Anna Salai,
   Chennai-600 035.

2. Deputy Commissioner of Income Tax,
   Central Circle 1(1),
   Investigation Wing, Room No.320,
   New No.46, Mahatma Gandhi Road,
   Chennai-600 034. ...Respondents in both WPs

WP 33431 of 2017 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent contained in its impugned order bearing No.TN/CN51/2015-16/34&35/IT, dated 06.12.2017, and to quash the same as arbitrary, unjust and illegal and to consequently direct the first respondent to reconsider the application filed by the petitioner bearing No.TN/CN-51/2015-16/34/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.

WP 33432 of 2017 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent contained in its impugned order bearing No.TN/CN51/2015-16/34&35/IT, dated 06.12.2017, and to quash the same as arbitrary, unjust and illegal and to consequently direct the first respondent to reconsider the application filed by the petitioner bearing No.TN/CN-51/2015-16/34/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 in both WPs	:	Mr.R.V.Easwar,Senior Counsel Assisted by Ms.Rubal Bansal and Mr.Suhrith Parthasarathy
For Respondent-1 in both Wps	:	No Appearance
For Respondent-2 in both Wps	:	Mr.A.P.Srinivas, Senior Standing Counsel for Income Tax.

C O M M O N O R D E R

The orders of rejection dated 06.12.2017 passed by the Income Tax Settlement Commission, rejecting the applications submitted by the writ petitioners under Section 245D of the income Tax Act, as not maintainable, are under challenge in these writ petitions.

2. The petitioners state that they had rich and diverse experience over several decades in the tyre and rubber industry, finance and investment business and rendering Consulting/Advisory Services. The petitioners state that they are the Managing Director and Chairman and Managing Director of MRF Limited, a renowned Corporation with worldwide reputation.

3. It is stated that in the year 2005, with a view to pursue the Consulting/Advisory Services related business activities outside India, the petitioners opened a Joint Bank Account (US Dollar Account) bearing No.18341724701 with Standard Chartered Bank, Dubai Branch. Further, a Joint Bank Account was opened with UBS AG Bank, Singapore Branch. In addition to this, various sub accounts were also opened subsequently in different currencies with the said Banks.

4. In the year 2007, it was jointly decided between the petitioners Shri Arun Mammen and Kandathil M.Mammen, the account holders, to carry on the aforementioned business activities substantially in the name of 'Moon Mist Enterprise Limited' ('Moon Mist'). 'Moon Mist' was registered in the British Virgin Island (BVI) in 2007. The said 'Moon Mist' opened the account with UBS Bank, Singapore Branch. In addition to this, various sub accounts were also opened subsequently in different

currencies with the said Banks. It was decided to close the Joint Bank Accounts with Standard Chartered Bank, Dubai Branch and UBS Bank, Singapore Branch and transfer the closing balance to Moon Mist's account in UBS Bank, Singapore Branch. It is stated that Mr.Kandathil M.Mammen and Mr.Arun Mammen settled a Trust known as 'Webster International Trust' and the deed for the same was executed by the Settlors and the Trustees, M/s.UBS Trustees (Singapore) Ltd., Singapore.

5. The said Trust floated a company namely, Fairwood Services Limited ('Fairwood') and the beneficial owners of 'Fairwood' were the petitioners. The 'Fairwood' opened an account with UBS Bank Singapore Branch and in addition to this, 'Fairwood' also opened various sub accounts subsequently in different currencies with the said Bank.

6. It is contended that in the year 2011, 'Moon Mist' and 'Fairwood' were liquidated and the Trust was also terminated. The petitioners opened a new Joint Account with First Gulf Bank, Dubai Branch. It was decided to close Fairwood's Bank Accounts with UBS Bank, Singapore Branch and transfer the closing balance to the Joint Account in First Gulf Bank, Dubai Branch.

7. On 28.08.2013, the Deputy Director of Income Tax (Investigation Wing) issued summons under Section 131 of the Income Tax Act to produce the documents as listed in the summons. The petitioners replied to this on 18.09.2013, stating that the petitioners had no investments in assets outside India and had no direct or indirect connection with Moon Mist Enterprises Ltd., Singapore, Portcullis Trust (Singapore) Ltd., Share Corp Ltd., and UBS AG Limited. Further summons were issued thereafter on 25.11.2013 and 17.12.2014 respectively by the Deputy Director of Income Tax (Investigation Wing) ['DDIT'] and the petitioners appeared before the DDIT on 22.01.2015 and the statements were recorded. The DDIT had confronted the petitioners stating that information has been received from the Ministry of Finance, British Virgin Island that a Company was incorporated under the name of Moon Mist Enterprises Limited in that jurisdiction in 2007 and closed in 2011. The Directors/Shareholders of Moon Mist Enterprises Limited are the petitioners and Mr.Rahul Mammen and the said Company does not have any Bank Account in that jurisdiction.

8. When the Deputy Director of Income Tax (Investigation Wing) gathered informations about the foreign accounts maintained as well as the details regarding certain transactions, search was conducted and the process of assessment/reassessment was commenced. The petitioners had filed applications under Section 245C of the Income Tax Act before the

Settlement Commission, seeking to settle the income tax assessment for the assessment years 2005-2006 to 2014-2015.

9. The petitioners earlier filed WP Nos.22216 to 22219 of 2015 before this Court, to set aside the order passed by the Income Tax Settlement Commission, rejecting the applications on the ground of maintainability and for remanding the matter back for fresh consideration.

10. This Court passed an order on 21.06.2016 and thereafter a common order was passed by the Settlement Commission under Section 245D(1) of the Income Tax Act, allowing the applications to be proceeded with. A report was filed on 16.11.2016 by the Principal Commissioner of Income Tax ('PCIT') under Section 245D(2B) of the Income Tax Act. A common reply was filed by the petitioners through their representatives before the Settlement Commission, setting forth the objections to the report filed by the PCIT.

11. On 22.11.2016, the Income Tax Settlement Commission passed an order under Section 245D(2C) of the Income Tax Act, directing the PCIT to file its report under Rule 9 of the Income Tax Settlement Commission (Procedure) Rule. Accordingly, under Rule 9 of the Income Tax Settlement Commission (Procedure) Rule, a report was filed raising certain objections on 09.02.2017. Petitioners filed their reply on 23.02.2017 to the Rule 9 report.

12. On 11.05.2017, a common order was passed by the Income Tax Settlement Commission under Section 245D(3) of the Income Tax Act, allowing the applications to be proceeded with subject to such enquiries as ordered. On 11.08.2017, objections were raised regarding the report filed by the PCIT under Section 245D(3) of the Income Tax Act. The petitioners submitted their reply on 06.09.2017 and the Principal Commissioner of Income Tax, Central-1, Chennai, submitted their reply on 05.10.2017 to the Settlement Commission. In response, the petitioners submitted their reply on 10.10.2017 and further objections were also submitted by the PCIT. Fresh submissions were also submitted on 22.11.2017. For all the objections submitted by the PCIT, the petitioners submitted a written note reply to the submissions made by the PCIT. On 23.11.2017, hearing was conducted by the Settlement Commission. However, the Settlement Commission has not considered any of the objections as well as the contentions raised and rejected the application filed for settlement in the impugned proceedings dated 06.12.2017. Thus, the petitioners are constrained to move these writ petitions.

13. The learned Senior Counsel, appearing on behalf of the petitioners, contended that the applications for settlement

filed under Section 245C of the Income Tax Act were rejected in an improper manner and without considering the disclosures made by the petitioners in a truthful manner. The disclosure of materials by the petitioners and full disclosure are to be considered as it is not a case where the petitioners have failed to disclose informations or materials. Petitioners submitted all the materials available within their knowledge and certain informations which were not within their knowledge, which was not produced, cannot be a ground for rejection of the application as not maintainable. Thus, a distinction is to be drawn with reference to the provisions of the Income Tax Act, that full and truthful disclosure means, the disclosure made by the petitioners, which is within their knowledge and not in respect of the informations, which all are not within the knowledge of the petitioners.

14. In the present cases, the writ petitioners are ready and willing to accept such informations gathered during investigations and ready to settle the issues and pay the tax as per the demand, if any, is to be raised. This being the genuinity put forth by the petitioners-Assessees, the Settlement Commission ought to have considered the spirit of the provisions as well as the purpose of the settlement provisions and considered the objections raised by the petitioners for the purpose of settling the issues in the manner contemplated under the Act.

15. In order to substantiate the said contentions raised by the learned Senior Counsel for the petitioners, the findings made by the Settlement Commission is relied upon. The decisions elaborately made by the Settlement Commission would reveal that certain primary facts were not disclosed by the applicants in their statement of facts being submitted by them before the Settlement Commission or in written statements filed before the Income Tax Department.

16. The learned Senior Counsel, appearing on behalf of the petitioners, read over the findings in paragraphs-6.1, 6.2, 6.3 and 6.4 and made submissions that an inference is to be drawn from and out of the said finding of the Settlement Commission. Throughout the findings, the Settlement Commission formed an opinion that the petitioners-Assessees have not furnished complete details with reference to the foreign bank accounts. However, the Settlement Commission failed to consider the fact that the Assessees had submitted the details of all the foreign bank accounts except, two accounts, which were closed. Further, it was informed by the Assessees that after closure of those two accounts, a new account was opened and the funds from the old accounts were transferred to the new accounts and therefore, the funds transferred from the old account to new

account is to be taken into consideration for the purpose of determining the tax to be demanded.

17. When the petitioners-Assessees have established their bona fide and the non-availability of foreign bank accounts details which were closed, the Settlement Commission ought to have considered the case of the petitioners based on the provisions of the Income Tax Act. Contrarily, the Settlement Commission has gone to the extent of stating that the petitioners have not furnished fully, the complete details regarding their foreign accounts merely based on certain factual discrepancies identified by the Investigation Wing and rejected the application, which is not in consonance with the spirit of the settlement provisions contemplated under the Income Tax Act, 1961.

18. The learned Senior Counsel, appearing on behalf of the petitioners, referred the fringe issues and the manner in which such fringe issues were erroneously appreciated by the Settlement Commission. For each and every issue, the petitioners have submitted their detailed explanations establishing that they have not suppressed any fact and in fact, they are intending to settle the issues by paying the tax, which is to be determined by the Settlement Commission.

19. This being the bona fides explicitly expressed by the petitioners-Assessees, the Settlement Commission rejected the applications based on certain factual inferences, which are immaterial and flimsy and cannot constitute legal ground for the purpose of rejection of applications submitted for settlement.

20. In support of the said contentions, the learned Senior Counsel appearing on behalf of the petitioners relied on the judgment of the Hon'ble Supreme Court of India in the case of Brij Lal vs. Commissioner of Income Tax [(2011) 1 SCC 1], paragraphs 29, 33 and 34, it has been held as under:-

> "29. This position is clarified by Sections 140-A(1-A) and (1-B) under which inter alia interest payable for default in payment of advance tax under Section 234-A shall be computed on the amount of tax on the total income as declared in the return minus the advance tax paid. Similarly, it is clarified vide sub-section (1-B) to Section 140-A that interest payable under Section 234-B for default in payment of advance tax shall be computed on an amount equal to the assessed tax [same words are used in Section 234-B(1)] or on the amount by which the advance tax

falls short of the assessed tax. However, what is "assessed tax" for the purposes of Section 140-A is explained by Explanation. It says that assessed tax will be tax on the total income as declared in the return minus the amount of tax deducted at source or collected at source in accordance with the provisions of Chapter XVII (which covers Sections 207, 209 and 215 of the Act)."

33. Under Sections 245-C(1-B) and (1-C) the additional amount of income tax payable on the undisclosed income shall be on the total income as calculated under Section 245-C(1-B). On computation of total income under Sections 245-C(1-B) and (1-C), interest follows such computation. It is important to note that interest follows computation of total income. Once such computation takes place under Section 245-C(1-B) then Section 234-B(2) applies. The said sub-section deals with the situation where before determination of the total income under Section 143(1) or Section 143(3) tax is paid under Section 140-A or otherwise interest shall be calculated in accordance with Section 234-B(1) up to the date on which tax is so paid. In that sense an application under Section 245-C(1) is a return. Section 245-C(1) deals with computation of total income.

34. There is one more way of looking at the Act. Chapter XIX-A refers to the procedure of settlement [see Section 245-D(1)]. As stated above, Section 245-D(1) provides for expeditious recovery of tax by way of pre-assessment collection. Interest on default in payment of advance tax comes under Sections 234-A, 234-B, 234-C, which fall in Chapter XVII which deals with collection and recovery of tax. It is important to note that interest follows computation of additional payment of income tax under Sections 245-C(1-B) and (1-C). This is how Sections 234-A, 234-B and 234-C get engrafted into Chapter XIX-A at the stage of Section 245-D(1)."

21. Following the above judgment, the Delhi High Court in the case of Agson Global Pvt. Ltd vs. Income Tax Settlement

Commission [(2016) 380 ITR 343], wherein in paragraphs-21 and 22, it has been observed as under:-

> "21. We have already expressed a similar view above. The exclusive jurisdiction of the settlement commission to exercise the powers and perform the functions of an income tax authority, in terms of section 245F(2) of the said Act, is to be exercised and performed for the purpose of settlement of the case under Chapter XIX-A and not for assessment under Chapter XIV. That being the case, the powers and functions which are in the exclusive jurisdiction of the settlement commission are circumscribed by the object and role which has been ascribed to the settlement commission, which is to settle the case in terms of the procedure stipulated in Chapter XIX-A. Since assessment of the type contemplated under section 143(3) is outside the purview of settlement proceedings, a special audit under section 142(2A), which is in aid of assessment, would also be beyond the scope of settlement proceedings. The other decisions referred to by the learned counsel for the revenue do not militate against the view we have taken.
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> 22. In sum, we hold that the income tax settlement commission does not have the power to direct a special audit under section 142(2A) in the course of settlement proceedings under Chapter XIX-A of the said Act. Consequently, the impugned order dated 26.04.2013, to the extent it directs the conduct of a special audit, is quashed. The matter be placed before the settlement commission for further consideration of the petitioners' settlement applications in accordance with the prescribed procedure under Chapter XIX-A. The writ petition is allowed to the aforesaid extent. We are making it clear that we have not commented upon the merits of the settlement applications. The parties are left to bear their own costs."

22. The High Court of Karnataka in the case of N.Krishnan vs. Settlement Commission [ILR 1990 KAR 404], wherein in paragraph-15, it has been observed as under:-

"15. With reference to the second question arising for our consideration, as we have pointed out earlier, the provision for constitution of the Settlement Commission was not in existence earlier. This legislative step was taken on the recommendation of the Wanchoo Committee. As observed by us earlier, the Settlement Commission was to be constituted for settling the complicated claims of chronic tax evaders as an extraordinary measure, for giving an opportunity to such persons to make true confession and to have the matters settled once for all, and earn peace of mind. It is a Forum for self surrender and seeking relief and not a Forum for challenging the legality of assessment order or orders passed in any other proceedings. This is not only evident from the provision of the Act which prevents the application made, from being withdrawn as also the provision which makes the decision of the Settlement Commission final and conclusive both on question of law and fact. The power conferred on the Settlement Commission is so wide that it can take any view on any questions of law, which it considers appropriate, having regard to the facts and circumstances of a case, which would be applicable only to that case and it has also the power to give immunity against prosecution or imposition of penalty. It is in this background we should find out the answer to the second question, namely, the scope for interference against a decision of Settlement Commission in a petition under Article 226 of the Constitution of India. The provision for settlement would show that it is in the nature or statutory arbitration, to which a person may submit himself voluntarily. Therefore, it appears to us that the scope is much more restricted than the power of the Court to interfere with an arbitration award. Regarding the jurisdiction of the Civil Court to deal with an arbitration award, the Supreme Court in the case of Coimbatore District Podu Thozillar Samgam v. Bala Subramania Foundry [(1987) 3 SCC 723 : AIR 1987 SC 2045.] has stated thus:

"The Court was also entrusted with the power to modify or correct the award on the ground of imperfect form or clerical errors, or decision on questions not referred, which were severable from those referred. The Court had also power to remit, the award when it had left some matters referred undetermined or when the award was indefinite, where the objection to the legality of the award was apparent on the face of the award. The Court might also set aside the award on the ground of corruption or misconduct of the arbitrator, or that a party had been guilty of fradulent concealment or wilful deception. But the Court could not interfere with the award if otherwise proper on the ground that the decision appeared to it to be erroneous. The award of the arbitrator was ordinarily final and conclusive, unless a contrary intention was disclosed by the agreement. The award was the decision of a domestic Tribunal chosen by the parties, and the Civil Courts which were entrusted with the power to facilitate arbitration and to effectuate the awards, could not exercise appellate powers over the decision. Wrong or right the decision was binding, if it be reached fairly after giving adequate opportunity to the parties to place their grievances in the manner provided by the arbitration agreement. This Court reiterated in the said decision that it was now firmly established that an award was bad on the ground of error of law on the face of it, when in the award itself or in a document actually incorporated in it, there was found some legal proposition which was the basis of the award and which was erroneous."

> In our opinion, many of the grounds on which arbitration award could be set aside, would not be available in view of the nature and jurisdiction of the Settlement Commission. We are of the view that a decision of Settlement Commission could be interfered with only.
>
> (i) if grave procedural defect such as violation of the mandatory procedural requirements of the provisions in the Chapter XIX-A and/or violation of Rules of natural justice is made out;
> (ii) if it is found that there is no nexus between the reasons given and the decision taken by the Settlement Commission.
> (iii) this Court cannot interfere either with an error of fact or error of law, alleged to have been committed by the Settlement Commission.
> We answer the second question accordingly."

23. Relying on the abovesaid judgments, the learned Senior Counsel for the petitioners, is of an opinion that when the petitioners have approached with true disclosure of materials, in the present cases regarding the foreign bank accounts details and certain particulars, which all are not within their knowledge could not able to be produced, the Settlement Commission ought to have considered the genuinity of the petitioners-Assessees in entirety and considered the applications for settling the issues.

24. Contrarily, the Settlement Commission on certain fringe issues and based on the flimsy grounds formed an opinion that the petitioners have not submitted the details of their bank accounts truly and fully and rejected the applications. In view of the facts and circumstances, the orders of Settlement Commission are to be construed as in violation of the true spirit of the settlement provisions contemplated under the Income Tax Act.

25. The learned Senior Standing Counsel, appearing on behalf of the second respondent, objected the contentions raised on behalf of the petitioners, by stating that the precondition for entertaining an application under Section 245C is to disclose the facts truly and fully. The proviso clause is self-explanatory and unless the ingredients of the Section is complied with the Settlement Commission is not obligated to entertain the applications for settling the issues. Therefore, the findings of the Settlement Commission are relevant for the

purpose of considering the preliminary requirements contemplated under Section 245C of the Income Tax Act.

26. The learned Senior Standing Counsel appearing on behalf of the second respondent contended that it is a special provision contemplated for the benefit of the Assessees to settle the issues on certain circumstances. The Income Tax Authorities are empowered to investigate and initiate action for assessment or reassessment by following the procedures. However, the Assessees are granted with the benefits to settle the issues in the manner contemplated under Section 245C and the related provisions. Thus, the precondition to be complied with is important and in the event of non-compliance, the application itself is liable to be rejected and in the present cases, it was rejected by recording the findings and thus, there is no infirmity as such.

27. The learned Senior Standing Counsel, appearing on behalf of the second respondent, drew the attention of this Court with reference to the findings of the Settlement Commission in its order as well as the manner in which the petitioners had approached the Settlement Commission for settling the issues. By reading those relevant paragraphs, the learned Senior Standing Counsel asserted by stating that the Settlement Commission has rightly rejected the application as not maintainable in view of the fact that the petitioners-Assessees have not approached the Settlement Commission with clean hands.

28. Considering the arguments as advanced by the learned Senior Counsel for the petitioners as well as the learned Senior Standing Counsel for the Income Tax Department, this Court is of the considered opinion that the benefit of settlement of cases are provided under the Income Tax Act for the benefit of the Assessees and therefore, the application submitted by any Assessee must be in compliance with the preconditions and ingredients contemplated under Section 245C of the Income Tax Act.

29. The dictionary meaning of the word 'Settlement' is “an official agreement intended to resolve a dispute or conflict”. Therefore, it is necessary that a party approaching the Income Tax Department by filing an application for settlement of cases must approach with clean hands and by complying with the preconditions stipulated for entertaining an application in the present cases under Section 245C of the Income Tax Act, 1961.

30. Let us consider the conditions stipulated for entertaining an application for settlement of cases under

Section 245C of the Income Tax Act. Sub-clause (1) of Section 245C of the Income Tax Act, enumerates that "An assessee may, at any stage of a case relating to him, make an application in such form and in such manner as may be prescribed, and containing a full and true disclosure of his income which has not been disclosed before the Assessing Officer, the manner in which such income has been derived, the additional amount of income-tax payable on such income and such other particulars as may be prescribed, to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided under the Act".

31. The procedures for disposal of the application are also contemplated. Therefore, the Settlement Commission is bound to follow the procedures contemplated scrupulously not only at the time of entertaining an application, but also while proceeding with the application, which is entertained till its disposal.

32. The first condition is that the application must be in the prescribed format. The second condition is that the application must contain full and true disclosure of the income has not been disclosed before the Assessing Officer. The third condition is that in the manner in which such income has been derived must be stated in the application and fourth condition is that the additional amount of income tax payable on such income and such other particulars also may be prescribed to the Settlement Commission.

33. In the event of complying with all the abovesaid conditions, the Settlement Commission is empowered to entertain the application and dispose of the said application by following the procedures contemplated under Section 245D of the Income Tax Act, 1961. Section 245D contemplates the procedures on receipt of an application under Section 245C. Therefore, the function of the Settlement Commission, at the first instance, would be to ascertain whether the application is filed by any Assessee in compliance with the conditions stipulated under Section 245C or not.

34. In this context, this Court has to consider the reasons for rejection of the applications submitted by the petitioners as not maintainable and the sustainability of the findings recorded by the Settlement Commission with reference to the conditions stipulated under Section 245C of the Income Tax Act.

35. Firstly, it is relevant to look into the contents of the applicants/ petitioners in their applications filed under Section 245C of the Income Tax Act, which reads as under:-

"The applicants stated that they have been filing their returns regularly without declaring their income deposited in foreign bank accounts in their own names or in the name of Moon Mist Enterprises Ltd and Fairwood Services Limited. Moon Mist Enterprises Ltd., is a company registered in 2007 in British Virgin Island (BVI). The applicants settled a trust known as Webster International Trust which floated a company, which is Fairwood Services Ltd. Fairwood Services Ltd opened an account with UBS Bank, Singapore Branch and funds were transferred Moon Mist Enterprises Ltd with UBS Bank from time to time to Fairwood Services Ltd with UBS Bank. The Companies Moon Mist Enterprises Ltd and Fairwood Services Ltd., were liquidated in 2011 and the Trust Webster International was terminated in 2011. Thereafter all records pertaining to the said entities were destroyed. The information relating to undisclosed foreign bank accounts/assets has come to the notice of the Department in the year 2013. The Applicants were served with notices under Section 131/131(1A) dated 28.08.2013 and 25.11.2013 (pg nos.50/1 and 50/2, APB Vol.I) and the statements were recorded from them. In 2014, more information had come under Section 90 or 90A of the Act to the Department under the exchange of information and the Applicants were again served with notices under Section 131 of the Act on 17.12.2014 (pg no.50/3, APB Vol.I) and once again statements were recorded from them. With a view to disclose the income deposited in foreign accounts in their names or in the bank accounts of companies namely Moon Mist Enterprises Ltd and Fairwood Services Limited before the Department, they have filed revised returns on 21.05.2015 for A.Ys 2005-2006 to 2012-2014 in order to get the same regularised by way of issuance of notice under Section 148 of the I.T. Act, 1961. The revised returns filed were non-est. The Assessing Officer in turn issued notices under Section 148 for A.Ys 2005-2006 to 2012-2013 on 29.05.2015. In response to the notices, the applicants have filed their returns on 01.06.2015."

36. The petitioners-Assessees have categorically admitted that they have been filing their returns regularly without declaring their income deposited in foreign bank accounts in their own name or in the names of Moon Mist Enterprises Limited and Fairwood Services Limited. Thus, the petitioners have made a clear admission that they have not at all submitted the details regarding the foreign bank accounts in their names and the connected details. Thus, it is the duty mandated on the part of the Assessees to furnish all the details relating to such foreign bank accounts and any omission or non-disclosure of true and full facts would be a ground to reject the application filed for settlement.

37. The learned Senior Counsel for the petitioners would urge this Court by stating that it is not as if the petitioners have not furnished the details. They have furnished the details which all are within their knowledge and certain informations and details, which were not within their knowledge. Thus, the details were not produced and therefore, it is to be construed that the petitioners approached the Settlement Commission with clean hands.

38. The question arose whether the petitioners have disclosed fully and truly all the informations and the materials relating to their foreign bank accounts and certain informations not produced by the Assessees may be construed as not within their knowledge. In this regard, the findings of the Settlement Commission are relevant. Close reading of the findings of the Settlement Commission under the caption 'DECISION' in paragraphs-6.1, 6.2, 6.3 and 6.4 would provide a clear picture that it is not a mere non-disclosure on the ground of lack of knowledge about the information and the non-furnishing of true and complete full facts not only established but the Settlement Commission could able to arrive a conclusion that there was suppression of facts on the part of the petitioners-Assessees. The abovesaid paragraphs are extracted for the benefit of understanding the relevancy of the findings made by the Settlement Commission:-

> "6.1 We have considered the submissions made by th Department, learned AR, the reports including information received from FT&TR Division and the relevant records. On the fresh submissions relating to foreign bank accounts and documents, further opportunity was given to the learned AR to make their written submissions. The applicants disclosed the accumulated balances in the foreign bank accounts in the name of Moon Mist Enterprises Limited, a British Island Virgin Company and Fairwood Services Limited (Company floated by

Webster International Trust) on the basis of bank statements. We observe that certain primary facts were not disclosed by the applicants in their Statement of Facts forming part of the settlement application or in the return of income filed before the Department. In spite of our directions in 245D(3) order, the applicants cooperation was not forthcoming in this regard. Further the manner in which the income was derived is also not stated fully and truly.

6.2 The applicant is unable to furnish complete details with reference to A/c No.2244535 - Standard Chartered Bank Dubai, Fixed Deposit accounts, salary income, trail of banking transactions with Mr.Percy Benhamin, etc. The Commission is of the view that there is suppression of facts relating to source of foreign bank credits, the year and the manner in which such income were earned. This requires deeper investigation into the case of the applicants. In the statement of facts, the applicants stated that they had 10 foreign bank accounts each. But the applicants admitted in the final submission stage after the PCIT pointed out during 245D(4) hearing and subsequently in the Affidavit that they had running A/c Nos.2244535 Standard Chartered Bank and opened A/s No.1685646 of FGB, Dubai. The credits in the bank account No.2244535 are vital information which were not shown in the SOF to determine the correct total income for the relevant assessment years. The applicants stated that in spite of their best efforts, they were not able to gather the details of this bank account. It is the applicants own account and in order to determine their income, it is their responsibility to furnish the full facts and account details for settlement of their case. There is deliberate suppression and the applicants have not come forward do disclose fully and truly all facts. The information about bank account No.2244535 and date of credits and source of funds for all the credits including US $ 499512.37 is essential to determine the correct additional income for the Assessment Year 2005-2006. Income cannot be determined by the applicants keeping the date of transfer of A/c No.18341724701 as the basis, which is not envisaged in the provisions of Income Tax Act. It is incorrect proposition to tax such transfers on the basis of 'date of transfer' instead of 'year in which such income or credit arose' to the applicants. Each assessment year is a separate unit/period for assessment of total income under the provisions of Income Tax Act. The learned AR during the hearing argued that once the funds transferred is disclosed, there is no need to examine further with regard to the source. This is not an acceptable proposition. We have to determine correct total income only in accordance with the provisions of Income Tax Act. We cannot shift the income from earlier year to next year or to previous year for assessment. To determine correct income in a particular assessment year, applicants should have furnished full and true date of credits or receipts of income including those in the bank account No.2244535 of Standard Chartered Bank, Dubai, which they failed. For an application to be full and true, it is imperative for the applicants to furnish complete details relating to the bank accounts. The data and information available are also incomplete to determine the correct total income in accordance with the provisions of Income Tax Act. In the absence of full and true facts in the SOF filed with the settlement application, the Commission also feels that justice will be done only by making further detailed investigation for proper assessment of correct income by the Department. Any adhoc settlement may not serve the purposes of provisions of the I.T Act. Further, enquiries in the case of the applicants activities in China and details of trail of banking transactions with Mr.Percy are still in progress through FT&TR Division. As per the Death Certificate of Percy Benhamin, the usual address given is 4/88, The Ramble, Booragoon, Western Australia, Australia. But the applicants in their SOF (page 17) filed along with the settlement applications have given the following address: Mr.Percy Benhamin, L-26, Rufino Pacific Tower, 6784 Ayala Avenue, Makati City, 1226 Philippines. Therefore, the information given in the Statement of Facts filed along with the applications are incomplete and not full.

6.3 According to the information received from FT&TR Division, there was a Fixed Deposit (No.93417247001) in the name of the applicants with maturity amount of USD 1,05,285. The applicants have neither disclosed this entry in the books nor the exact source of investment for the same. The date of deposit as per information received from the U.A.E. Authorities is 12/02/2005. The Department's contention on this issue is that though the applicants have disclosed the proceeds of FD of USD 1,05,285 as commission income in FY 2010-2011 on the date of maturity, the amount of deposit should have been disclosed as income in FY 2004-2005 and the interest should have been declared in each year till FY 2010-2011 in accordance with the provisions of I.T. Act. Hence the applicants have not disclosed correctly and truly the unaccounted income and the manner in which such income has been earned. The applicants claimed that the F.D amount as well as the interest thereon related to commission income. Accordingly, both the year of disclosure and the nature of source of income are not disclosed truly and correctly.

6.4 According to the Department, though the applicants have filed copy of AED A/c No.10360011666284010 in FG Bank, Dubai, the transactions in the bank a/c have not been made part of the books of accounts prepared by the applicants for the purpose of disclosure before the Commission. There is a credit entry of AED 5000 on 03.07.2013 which has not been disclosed. But, when questioned during the hearing, the applicants have merely submitted that this deposit was out of withdrawals made from other bank accounts. This is another instance which shows that the disclosure made by the applicants are not full and true.”

39. The concluding paragraph of the Settlement Commission at paragraph-6.10 deals with the manner regarding earning the additional income and the version of the applicants in statement of facts were considered. All along the petitioners have not submitted the source and figures and the manner in which the income has been derived. If the Assessee has not furnished the details regarding the income as well as the manner in which such income has been derived, it may not be possible for the Competent Authorities to complete the process of

assessment/ reassessment as only if the manner in which the income has been derived is traced out. Thus, the authorities will be in a position to cross check the sources through which the income has been derived. It requires an investigation by the Income Tax Officials. In the absence of producing such details, it is the requirements contemplated under Section 245C of the Income Tax Act, the authorities may not be in a position to settle the issues. The repeated findings of the Settlement Commission that the petitioners have failed to state the source from which the income has been derived and the said non-furnishing of information resulted in rejection of application on the ground that the petitioners have suppressed the vital informations. Paragraphs-6.11, 6.12, 6.13 and 6.14 are also relevant and are extracted hereunder:-

> "6.11 Though the cash deposits made in the bank accounts have been offered as additional income by the applicants, the source for such deposits or the details of the parties from whom the cash has been received have not been disclosed by the applicants. Similarly it is also not clear how proceeds from travellers cheques can be treated as commission income, though the same has been offered as additional income by the applicants. The manner in which such income has been earned were not stated truly and fully.
>
> 6.12 Further, in spite of repeated requests, the applicants failed to file the State of Affairs for the relevant financial years i.e., 2004-2005 to 2013-2014. Instead on the final day of the hearing, the applicants filed a set of Statement of Affairs without including the foreign transactions and foreign bank accounts. Thus, the applicants cooperation is failing miserably, in spite of the Department's request and the direction of the Commission, to prepare a combined Statement of Affairs (including domestic and foreign income/assets) for each applicant for each assessment year.
>
> 6.13 The applicants clearly suppressed the facts relating to foreign bank accounts (Nos.2244535 of Standard Chartered Bank, Dubai and 1685646 of FGB, Dubai), trail of banking transactions with Mr.Percy Benhamin and various other aspects mentioned in earlier paragraphs such as source for the

credit of 5000 AED, fixed deposits, salary income, funds from Shri Ashok Peter Jacob, source for the cash deposits and traveller cheques, unexplained credit of USD 10,00,000 etc., leading to non-disclosure of full and true facts with evidence. Further, whatever is stated in the Statement of Facts on the manner in which the income has been derived has not been corroborated with any specific evidence by the applicants. We find that in case of both the applicants, the disclosure is not full and true and the manner in which the income earned has also not been properly corroborated. Thus, it is not possible to hold that a full and true disclosure has been made by the applicants and the manner in which the income has been derived is correct. Hence the applications are not maintainable and liable to be rejected.

6.14 To sum up, the Commission is of the view that the applicants should have disclosed all the material facts, relating to the foreign bank accounts, the trail of banking transactions and various other aspects discussed above, even if it was not favourable to them. It is not open to the applicants to selectively disclose some facts and suppress some facts. Reliance is placed in the cases of ACE Investments [2003] 264 ITR 571 (Mad), Ajmera Housing [2010] 193 TAXMAN 193 (SC) and Rashmi Infrastructure Developers Ltd vs. Income Tax Settlement Commission and Others (2017) 396 ITR 210 (Bom). Thus, on the grounds that the applications are not maintainable and the disclosure is not full and true and that there is deficiency in corroborating the manner in which the income has been earned, the terms of settlement are not provided for. With regard to all other issues raised in the earlier paragraphs such as reasonable rental value, foreign exchange gain etc., there is no necessity for us to give any findings as it is already held that the applicants did not disclose full and true income in their applications and hence the applications are not maintainable. The settlement applications are thus rejected. Hence the proceedings before the Settlement Commission shall abate in accordance with the provisions of Section

245HA of the Income Tax Act. The Department may take further course of action in accordance with law.”

40. Non-cooperation of the petitioners-Assessees for arriving settlement is also recorded in paragraph-6.12 of the findings. The findings in paragraph-6.12 would reveal that there was lack of cooperation on the part of the petitioners-Assessees while considering their applications for settlement.

41. In paragraph-6.13 of the findings, the Settlement Commission made a finding that the applicants clearly suppressed the facts relating to foreign bank accounts i.e., Standard Chartered Bank, Dubai and FGB, Dubai. Various other details regarding the source for deposits and the sources for the income which has been derived were also not disclosed.

42. This being the factum established, this Court is of the considered opinion that the petitioners have not complied with the conditions stipulated under Section 245C of the Income Tax Act and when the petitioners were not complied with the conditions stipulated under Section 245C of the Act, the judgments relied on by the petitioners-Assessees have no avail to them for the purpose of considering the present writ petitions.

43. When Section 245C of the Act without any ambiguity stipulates that the Assessee filing an application in the prescribed format under Section 245C of the Act must disclose full and true informations of his income and such informations have not been disclosed before the Assessing Officer and further it is necessary that the Assessee must inform the manner in which such income has been derived. Only if the source from which such income has been derived is informed, the Authorities Competent must be in a position to cull out the truth by examining the sources and settle the issues.

44. Therefore, the Legislative intention is to ensure that the manner in which the income has been derived must be disclosed by the Assessee while submitting an application under Section 245C of the Income Tax Act and in the absence of furnishing all such details, settlement cannot be arrived and the authorities are bound to continue their investigation and proceed for assessment or for reassessment under the relevant provisions of the Income Tax Act.

45. This being the facts and circumstances established before this Court, the findings of the Settlement Commission in its order are candid and convincing and there is no infirmity or perversity as such.

46. Accordingly, the wit petitions fail and the same stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

Svn
To

1. Income Tax Settlement Commission,
   Additional Bench, Chennai,
   Ministry of Finance,
   Department of Revenue,
   488-489, Anna Salai,
   Chennai-600 035.

2. Deputy Commissioner of Income Tax,
   Central Circle 1(1),
   Investigation Wing, Room No.320,
   New No.46, Mahatma Gandhi Road,
   Chennai-600 034.

+2 Ccs to Mr.Arun Karthik, Advocate, Sr 37601 & 37600.
+1 CC to Mr.A.P.Srinivas, Advocate, Sr 37663.

WPs 33431 and 33432 of 2017

PL(CO)
LS(23/08/2021)