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W.P.No7116 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.11.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.7116 of 2020

and

WMP.Nos.8481 & 8483 of 2020

M/s.Sri Lakshmi Ammal Educational Trust,
Represented by its Managing Trustee,
Mr.Sundeeep Aanand,
No.29, Tilak Street, T.Nagar,
Chennai-600 017.

... Petitioner

Vs

Principal Commissioner of Income Tax,
Central – 2,
Chennai – 600 034.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the Respondent in PAN: AABTS1129F in passing the impugned order in ITBA/COM/F/17/2019-20/1026615871(1) dated 14.03.2020 under Section 12AA(3) of the Income Tax Act, 1961 and quash the same.

For Petitioner : Mr.R.Sivaraman

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



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ORDER

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The petitioner claims to be a Charitable Trust established in the year 1984, managing several educational institutions. There was a search in the premises of the petitioner trust on 13.07.2016 under the provisions of the Income Tax Act, 1961 ('Act'). Pursuant thereto, proceedings for assessment were initiated by issuance of notice under Section 153A for assessment years (AY) 2011-12 to 2017-18.

2. Pending such proceedings, the petitioner approached the Income Tax Settlement Commission ('Settlement Commission'/'Commission'/'ITSC') on 04.02.2019. The Commission rejected the application of the petitioner by an order passed under Section 245D(2C) of the Act dated 28.03.2019, as against which, a writ petition had been filed by the petitioner in WP.No.10707 of 2019.

3. That writ petition has been allowed by this Court on 11.10.2022 setting aside the order of rejection and holding that the disclosure made by the petitioner for purposes of admissibility was full and true. The matter had been sent to the Interim Board of the Settlement Commission by order dated 11.10.2022, in the following terms:

'The petitioner is a trust and had filed a settlement application before the Income Tax Settlement Commission in short ('Commission'/'Settlement Commission') constituted under the provisions of the Income Tax Act, 1961 (in short 'Act') relating to the assessments for the years 2011-12 to 2017-18.



2. The assessments had been framed consequent upon a search under Section 132 of the Act conducted on 13.07.2016 at the registered office of the petitioner trust and in the residential premises of the managing and other trustees. The application had come up for admission before the Settlement Commission on 15.02.2019 and after hearing the petitioner, the application was admitted to be proceeded further under Section 245D (1) of the Act.

3. Additionally, the petitioner was required to make a full remittance of the taxes due on the additional income offered, in compliance of the statutory pre-condition for maintaining its application before the Settlement Commission. The petitioner had remitted the taxes of additional income partly by way of adjustment against cash seized.

4. The trust had written to the Department on 11.12.2018 seeking a confirmation as to the amounts available for adjustment in the trust's personal deposit account (PD account) as on that date.

5. The Principal Commissioner of Income Tax responded on 17.12.2018 as follows:

Please refer to the subject mentioned above.

The details of balance amount available in PD Account in the name of the following assessee after adjustment in the group case of Shri S Jagathrakshakan is as under:

Sl. No.	Name of the assessee (M/s/Shri/Smt)	Name of the assessee in whose name cash seized deposited	Amount.
1.	Sree Balaji Medical College and Hospital	M/s.Lakshmiammal Educational Trust – AABTS1129F	34,97,070
2.	Sree Balaji Dental College and Hospital	M/s.Lakshmiammal Educational Trust – AABTS1129F	21,50,000
3.	J Devanathan (99,00,000+9397500)	No assessee details in the PD Account Challan	28695000
4.	S. Raghothaman	M/s.Lakshmiammal Educational Trust – AABTS1129F	50,00,000



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Sl. No.	Name of the assessee (M/s/Shri/Smt)	Name of the assessee in whose name cash seized deposited	Amount.
5.	Vilasini	M/s.Lakshmiammal Educational Trust – AABTS1129F	59,34,000
6.	V.Selva Kumar (3,87,18,200+2700000)	M/s.Lakshmiammal Educational Trust – AABTS1129F	41418200
7.	Saravanan Subramaniam	M/s.Lakshmiammal Educational Trust – AABTS1129F	1,25,02,095
8.	Arivazhagan Subramanian	M/s.Lakshmiammal Educational Trust – AABTS1129F	1,00,00,000
9.	Kumar	M/s.Lakshmiammal Educational Trust – AABTS1129F	27,50,000
10.	Raghunathan	M/s.Lakshmiammal Educational Trust – AABTS1129F	90,50,000

6. The above letter, in my view, gives a picture to the addressee, the petitioner herein, that the amounts lying to its credit amounted to a sum of Rs.11,15,98,860/- as is clear from the heading of the third column which states 'name of the assessee in whose name cash seized deposited'.

7. The petitioner had remitted a sum of Rs.11,40,63,961/- and had sought adjustment of a sum of Rs.9,23,01,365/- from out of the cash seized amounting to a sum of Rs.11,15,98,860/-. This position had also been accepted by the Settlement Commission in order dated 15.02.2019 at para 10, that reads as follows:

'10. The request of the applicant for adjustment of seized cash towards tax/interest payable is accepted and the PCIT is directed to adjust the seized cash against tax/interest due as per the letter dated 14.02.2019 submitted by the applicant before the Commission which is enclosed herewith.'



8. Thereafter, as per the procedure under Chapter XVII B, the Department had filed a report in Form 2B wherein for the first time they had taken the stand that the entirety of the amount lying in the petitioners PD account did not enure to its benefit, while accepting that a sum of Rs.7,73,46,770/- did enure to the credit of the petitioner.

9. The deposits that have been made alongside the names of two of the assesseees namely Arivazhagan Subramanian and Saravana Subramanian were stated to be unavailable to the petitioner, thus, leading to a difference of an amount of Rs.1,49,54,595/-. This fact was intimated to the petitioner only in the report under section 245(D) (2B).

10. Immediately, the petitioner has remitted a sum of Rs.1.5 crores and challans dated 27.03.2019 and 28.03.2019, have been placed on file. However, the Settlement Commission has, in the impugned order, proceeded on the basis that the admitted tax has not been remitted in full at the time of filing of the application and rejected the application for want of maintainability.

11. The provisions of Section 245C impose a pre-condition that the entirety of the admitted tax in respect of the amount offered be deposited along with the settlement application at the time of filing. The petitioner has proceeded in line with the contents of letter dated 17.12.2018 that convey that an amount of Rs.11.15 crores (approx.) is available to the credit of the petitioner in the PD account. It is thus that the petitioner has availed credit of a sum of Rs.9,23,01,365/- from the said amount towards the amount of tax due.

12. The confusion and the error, if at all, arises only from the contents of letter dated 17.12.2018. The unambiguous impression that it conveys is that the entirety of the credit determined as balance in the PD account enured to the benefit of this petitioner. Immediately and coming to know of the same, the petitioner has remitted the sum of Rs.1.5 crores and this, in my considered view, constitutes substantial and adequate compliance of the statutory condition.

13. The impugned order is thus set aside. The Settlement application stands restored to the file of the Settlement



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Commission (Interim Board) that shall hear the petitioner as expeditiously as possible and dispose the application, on merits.

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14. This writ petition is disposed in the above terms.

Connected miscellaneous petitions are closed. No costs.'

As at present, the matter is pending resolution before the Settlement Commission (Interim Board).

4.The present writ petition challenges an order passed by the Principal Commissioner of Income Tax/sole respondent on 14.03.2020 withdrawing the exemption granted to the petitioner in terms of Section 12A of the Act. The petitioner had been claiming exemption under Section 11 of the Act on the strength of an order passed under Section 12A, holding it to be a Charitable Institution. The genesis of the withdrawal was the proceedings for search itself that had resulted in the seizure of certain incriminating material relating to the collection of capitation fee.

5.A show cause notice had been issued by the respondent on 22.10.2019 proposing to cancel the registration of the trust for AY 2011-12 to 2017-18 and the petitioner filed a reply on 12.12.2019. The impugned order has been passed after taking note of the submission of the petitioner and withdrawing the registration under Section 12A from AY 2011-12 onwards, i.e. with effect from 01.04.2010.

6. The petitioner challenges the above impugned order. As regards the cancellation of registration itself, there are no submissions advanced and rightly



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so, since the petitioner does not dispute the reversal of registration and has acceded to the factum of undisclosed income/capitation fee/incriminating material, that was found in the course of the search. The very fact that the petitioner is before the settlement commission with an offer of additional income, and seeking settlement of various issues, involving the issue of capitation fee, stands testimony to the existence of undisclosed income.

7.As a consequence of the aforesaid fact, the reversal of registration under Section 12A, is also justified in light of the incriminating materials found and conceded to. The legal issue that arises in this writ petition is as to the effective date from which the registration under Section 12A could have been cancelled. In this connection, the rival contentions are as follows:

(i) According to the petitioner, the cancellation of registration must be from date of issuance of show cause notice being 22.10.2019. In this context, the petitioner relies on a decision of the *Allahabad High Court in the case of ACIT-I vs. Agra Development Authority* [(2018) 90 taxmann.com 282 (Allahabad)].

(ii) In that case, the Hon'ble Allahabad High Court has answered the question of retrospectivity from 2010 onwards, being the year of insertion of Section 12AA(3), against the revenue. However, the Bench has concluded that



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the Commissioner had the authority to cancel registration from date of issuance of show cause notice.

(iii) The issue has attained a finality at the stage of the High Court and neither of the parties have carried the matter in further appeal, though appeals have been filed by the Department as against other findings of the High Court.

(iv) The petitioner also relies on a decision of this Court in the case of *Thathi Trust vs. Director of Income Tax (Exemptions)* [(2020) 121 taxmann.com 119 (Madras)]. In that case, this High Court has held that withdrawal of the registration from 2010 is contrary to law.

(v) However, there is no specific finding as to what would constitute the appropriate date for reversal of registration, whether date of cause of action, or date of show cause notice. So too in the case of *Auro Lab vs. Income Tax Officer, Ward II (4), Range-II, Madurai* [(2019) 102 taxmann.com 225 (Madras), decided by learned Judge of this Court and the case of *Indian Medical Trust v. PCIT, Jaipur* [(2019) 108 taxmann.com 93 (Rajasthan)] decided by the Rajasthan High Court.

8.Per contra, revenue places reliance upon a decision of this Court in the case of *Prathyusha Educational Trust v. Principal Commissioner of Income-tax Central-2* [(2019) 108 taxmann.com 385 (Madras)] wherein the substantial



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question of law related specifically to cancellation of registration under Section 12AA, with retrospective effect.

9.The search in that case was on 02.07.2010 and the cancellation was effected with effect from 01.04.2009 i.e. from AY 2010-11 onwards. This Court, after considering the rival contentions held that the cancellation must be from date of search, which is 02.07.2010 i.e. with effect from 2010-11. Paragraph 19 of the decision reads as follows:

'19.The next contention of Mr.Anirudh Krishnan is that the cancellation of the exemption under Section 10(23C)(vi) of the Act and cancellation of the registration under Section 12AA of the Act with retrospective effect is illegal. At the first blush, the Court assumed that the argument of Mr.Anirudh krishnan is to the effect that the cancellation/withdrawal was with effect from the date of grant of exemption/registration. However, on a perusal of the order dated 18.11.2014 withdrawing the approval granted under Section 10(23C)(vi) of the Act, it is seen that it has been given effect to from the assessment year 2010- 2011. Likewise the order cancelling the assessee's registration under Section 12AA of the Act is from the assessment year 2010-2011. Can it be said that these orders of cancellation are with retrospective effect. The definite answer for this question is an emphatic 'No'. Admittedly, the business premises of the assessee was subjected to search during the assessment year 2010-2011. The Assessing Officer while completing the assessment found large scale diversion of funds and several improper actions on the part of the assessee in direct conflict to the terms of the Deed of Trust and conditions of registration/exemption. Therefore, it was recommended to the competent authority to initiate proceedings for cancellation of the exemption/registration. The matter was decided after due opportunity to the assessee and speaking orders have been passed and obviously these orders will take effect from the



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assessment year 2010-2011 and it is a mis-nomer to state that the orders are retrospective or retroactive. The lis which was the subject matter is for the assessment year 2010-2011 and though the orders of cancellation of the exemption/registration was passed on 18.11.2014 and 07.12.2016 they would take effect from the assessment year 2010-2011 during which year the cause of action arose. This being the factual position, the decision in the case of Agra Development Authority (supra) is not applicable to the facts of the present case.'

10. This matter was carried in appeal by the petitioner and the decision of this Court stands confirmed by the Hon'ble Supreme Court in SLP(C)Nos.16360 to 16362 of 2019 vide judgment dated 19.07.2019. Review Petition (Diary)No.8263 of 2022 has also been dismissed by the Hon'ble Supreme Court on 10.05.2022.

11. With the attaining of finality on the aforesaid position of law, there is no doubt that the retrospective cancellation with effect from 01.04.2010 cannot be countenanced. Applying the ratio of the above judgment to the sequence of dates in this case, the appropriate date of cancellation would be 01.04.2017 onwards i.e. AY 2017-18 onwards. The impugned order is quashed to this extent and this writ petition stands disposed in terms of the above order. No costs. Connected miscellaneous petitions are closed.

18.11.2022

Index : Yes
Speaking Order



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vs

To

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The Principal Commissioner of Income Tax,
Central – 2,
Chennai – 600 034.



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Dr.ANITA SUMANTH,J.

VS

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