IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2022

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.12960 & 27585 of 2019 and

WMP.Nos.27081 & 27083 of 2019

WP.No.12960 of 2019
Sri Balaji Educational and
Charitable Public Trust
No. 60, 3rd Floor Jai Durga Complex
First Avenue Ashok Nagar
Chenani-83
PAN AACTS 1386D ...Petitioner in WP.No.12960 of 2019

Vs.

1.The Income Tax Settlement Commission
Additional Bench,
640 Anna Salai, Chennai-35
2.The Director General Income Tax (Investigation)
Income Tax Department
No.46, Mahatma Gandhi Road
Chennai-34
3.The Principal Commissioner of Income Tax
Central-1, Income Tax Department
No. 46 Mahatma Gandhi Road
Chennai-34
4.The Assistant Commissioner of Income Tax
Central circle 3(4), Income Tax Department
No. 46 Mahatma Gandhi Road
Chennai-34 ...Respondents in WP.No.12960 of 2019

Prayer in WP.No.12960 of 2019: Writ Petition filed under Article 226 of the Constitution of India, to issue aWrit of certiorarified mandamus calling for the records of the 1st Respondent to quash the impugned order dated 25-9-2018 in TN/CN/51/2016-17/141/IT in so far as the excess taxation and taxation of gross anonymous donations under section 115 BBC of the Income tax act 1961 which formed part of the computation of taxable total income for the Assessment year 2013-14 to 2016-17 while directing the Respondents to tax the real income based on the search materials and to grant the statutory deduction of 5 percentage as prescribed in section 115 BBC of the Income tax act 1961 in bringing to tax the anonymous donations as part of the settlement reached in the computation of taxable total income of the Assessment year 2013-14 to 2016-17.

WP.No.27585 of 2019

The Principal Commissioner
of Income Tax,
Central -1, Chennai
Investigation Wing,
Room No.301, 3rd Floor
New No.46, Mahatma Gandhi Road
Chennai 600 034.

...Petitioner in WP.No.27585 of 2019

Vs.

1.The Income Tax Settlement Commission
Additional Bench,
640 Anna Salai
Chennai 600 035.

2.Sri Balaji Educational and Charitable Public Trust
Rep. by its Chairman
No.60, 3rd Floor, Jai Durga Complex
First Avenue, Ashok Nagar
Chennai 600 083.
PAN. AACTS 1386 D.

...Respondents in WP.No.27585 of 2019

Prayer in WP.No.12960 of 2019: Writ Petition filed under Article 226 of the Constitution of India, to issue aWrit of certiorarified calling for the entire records of the 1st respondent in Settlement Application Nos. TN/CN. 51/2016 -17 /141 /IT dated 25/09/2018 so far as the Unaccounted donations received by the 2nd respondent and quash the same.

For Petitioner : Mr.A.S.Sriraman
(WP.No.12960 of 2019)
: Mr.A.P.Srinivas
(WP.No.27585 of 2019)

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel
(WP.No.12960 of 2019)
: Mr.A.S.Sriraman [R2]
(WP.No.27585 of 2019)

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ORDER

These writ petitions are filed by an entity claiming to be a public charitable trust, challenging an order passed by the Income Tax Settlement Commission (in short 'commission/settlement commission') dated 25.09.2018 in terms of Section

245D(4) of the Income Tax Act, 1961 (in short 'Act') and an order of assessment dated 28.12.2018 in so far as it relates to taxation of gross anonymous donations under section 115 BBC of the Act. A common order is passed disposing both writ petitions as the facts and legal position involved, are one and the same.

2. A search was conducted in the premises of the petitioner trust on 24.06.2016 and notices were issued in terms of Section 153A of the Act. Returns of income were filed belatedly and in the course of assessment proceedings, applications were filed before the Settlement Commission by the Petitioner as well as its Managing Trustee, M.K.Rajagopalan. The applications were initially rejected but, after rectification of defects and re-submission of the same in proper form, were allowed to be proceeded with.

3. The petitioners had, in their settlement applications, offered additional income amounting in toto, to a sum of Rs.245.73 crores. The Petitioner had interalia, offered a sum of Rs.28.82 crores (approx), towards anonymous donations received. The report filed by the Principal Commissioner of Income Tax on 23.08.2017, in terms of Rule 9 of the Income tax Rules, pointed to substantial variation between the additional income offered and the undisclosed income detected and quantified by the Department.

4. To be noted that while the offer of the petitioner and Managing Trustee together amounted to a sum of Rs.245.71 crores (as per Rule 9 Report), the undisclosed income detected by the Department amounted to a sum of Rs.427.62 crores, a difference of Rs.181.91 crores.

5. In light of the yawning gap in the amounts as noticed in the preceding paragraph, the Income Tax Settlement Commission sought a joint verification report taking into account the inputs of both the assessees, the petitioner as well as the MD, and the respondents.

6. The joint verification report dated 14.08.2018 enhanced the amount determined originally on account of anonymous donations, to a sum of Rs.197 crores. Faced with this aspect, the petitioner came forward with an additional offer of a sum of Rs. 65 crores.

7. The Income Tax Settlement Commission was thus required to look into the veracity or otherwise of the additional offer made by the petitioner and ultimately came to accept the offer made by the petitioner by way of the impugned order:

8. The Department challenges the acceptance of the offer of Rs.65 crores, as according to them, the joint verification report is based upon materials seized in the course of search and had arrived at a difference of Rs.197 crores. There was thus,

no justification for the Commission to have accepted the additional offer made by the petitioner which was far less in quantum, merely for the asking.

9. The relevant paragraph in the impugned order reads as follows:

3.1. The department has raised certain objections as regards the fullness and trueness of the income disclosed, primarily on the issue of unaccounted anonymous donations received and eligibility of 5% deduction on claim of anonymous donations us.115BBC. The details available in seized material with regard to donation received for number of student is not full as compare to total number of seats available for management quota in MBBS/MD courses. Similarly, the seized records indicating collection of donation in BDS course also. With regard to issue of unaccounted receipts to the tune of Rs. 181.96 crores as mentioned in the Rule-9 report, subsequently it was raised to Rs.197 cr. by the department on verification, the PCIT stated that during joint verification, it was noticed that the total receipts as per excel sheet for various financial years are at Rs.2,72,13,37,000 and as the applicant had already explained Rs.75,13,25,000, the difference worked out to Rs.197,00,12,000. The department relied on two seized materials viz. ANN/KN/JERD/LS/S & SMNSR/LS/S relating to F.Ys.2013-14, 2014-15 & 2015-16. The department's contention is that the applicant is not accounting for the sums reflected in these seized documents. On the other hand, the applicant stated that the documents covered under the above seized documents are excel sheets containing records only and do not contain details of donations and the rest of the items are covered in the settlement application. I Sufficient opportunities were given to both the applicant and department to reconcile the same. The applicant has come forward with explanations on the issues/deficiencies pointed out by the Department, but the explanation furnished do not fully convince us as it is on record that the seized material is in respect of part period / only some students. During the course of hearing, the applicant through A.R. expressed its sincere intention for settlement and came *forward with the offer of further additional income of Rs.65 cores; out of which, Rs.54,49,61,064 towards unaccounted anonymous donations received during the settlement period for MBBS/PG/BDS courses, Rs.9,64,32,150 by way of withdrawal of deduction u/s.115BBC for all the assessment years, Rs.86,06,786 towards agreed additions on various claims by the applicant.*

3.2 As regards bifurcation of seized cash of Rs.82.93 cr., we accept that the cash balance in the books of the trust as well as the individual has been telescoped to the extent of additional income offered. As stated in the preceding paragraph, during verification, the PCIT has verified certain issues and found to be correct. In respect of other disputed issues though the PCIT has made some objections in his report, during the course of hearing, the department has not raised any objection on these issues as the explanation/evidence furnished by the applicant is satisfactory and acceptable.

3.3 In our considered view, the above offer of further additional income of Rs. 65 crores is fair and reasonable. We are inclined to observe that such offer of further additional income of Rs.65 crore by the applicant no way detracts from fullness and trueness of the income disclosed in its SOF for the reason that the applicant has made this voluntary offer with the expectation to bring a peaceful quietus. On all other issues, addition is made as the explanation/evidence furnished by the applicant is found acceptable. Accordingly, the income of the applicant is settled by including the offer of further additional income of Rs.65 cores in the respective assessment year as per the computation given in ensuing paragraph.

Computation of Income:

4. In view of the discussions made above, the total income is computed as under:

(Amount in Rupees)

Asst. Year	***Income returned u/s. 153A*** ***(a)***	***Additional Income Offered before ITSC*** ***(b)***	***Further additional income brought to tax***		***Aggregate Total Income*** ***d=(a)+(b)+(c)***
			Amount (c)	Ref. Para No.	
2013-14	2,23,67,000	4,62,16,000	8,90,92,991, 68,77,900 77,58,000	3.1	17,53,11,891
2014-15	36,11,63,000	13,55,39,000	9,89,92,212 2,48,55,100 2,91,507		62,08,40,819
2015-16	81,58,67,530	6,40,15,470	11,81,85,983 4,39,94,150 3,52,413		104,24,15,546
2016-17	37,46,00,000	3,95,00,000	23,86,89,878 2,07,05,000 2,04,866		67,36,99,744
Total	157,39,97,530	28,82,70,470	65,00,00,000		251,22,68,000

10. I am of the considered view that though the facts in relation to the additional income computed by the Department as well as the additional offer have been set out by the Settlement Commission, there is no reasoning set out as to why the Commission was persuaded to accept the offer of Rs.65 crores. While the Commission will decide an application in a wholistic manner and in a spirit of settlement, it is incumbent upon it to justify its conclusions.

11. The Commission, at paragraphs 3.1 to 4 extracted above, has noted the objections raised by the revenue in regard to the quantification of anonymous donations. Though the rival claims of both the assessees and department have been recorded, the Commission proceeds thereafter to merely accept the additional income offered. Being unconvinced by the reasoning advanced, and there being no arguments advanced before me in support of the impugned conclusions, the order of the Settlement Commission on this score is set aside.

12. Before me, and assailing the assessment, learned counsel for the petitioner would restrict his submissions to the eligibility of the petitioner to 5% deduction under claim of anonymous donations under Section 115BBC. Section 115BBC deals with the taxation of anonymous donations in certain cases. Section 115BBC (1)(i) (A & B) provide for a deduction of 5% of the total donations or a sum of Rs.1 lakh whichever may be higher.

13. Learned counsel would submit that though the eligibility or otherwise of the petitioner to such claim was a question raised specifically before the Settlement Commission, the Commission has omitted to advert to and consider the same. He thus prays for an opportunity to put forth this claim before the Commission for its decision. Learned Standing Counsel, fairly, does not raise any object to the prayer

of the petitioner that this issue be adjudicated upon denovo.

14. Hence, the request as above is acceded to and the matter is remanded to the Settlement Commission solely for decision on this issue. The Commission shall render a finding on the eligibility or otherwise of the petitioner to statutory deduction of 5% or 1 lakh in respect of the total donations that shall, subject to a decision in its favour, be taken note of in determining final liability in assessment.

15. The impugned orders are set aside to the limited extent as indicated above and the matter is remanded to the file of the Settlement Commission (Interim Board) for orders within a period of four months from date of receipt of a copy of this order, and consequential orders of assessment, within four weeks thereafter, if at all.

16. These writ petitions are disposed as above. Connected miscellaneous petitions are closed. No costs.

14.10.2022

Index : Yes
Speaking Order
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