IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.10.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

WP.Nos.29584, 29590, 29593, 29595 & 29598 of 2019 and WMP.Nos.29463, 29467, 29472, 29471, 29473, 29476, 29477, 29479, 29481, 29482, 29483, 29486, 29487 & 29488 of 2019

The Principal Commissioner of Income Tax,
Central-2, Chennai,
Investigation Wing, Room No.301,
3rd Floor, New No.46, Mahatma Gandhi Road,
Chennai-600 034. ... Petitioner in all WPs

Vs

1.The Income Tax Settlement Commission,
Additional Bench,
640, Anna Salai, Nandanam,
Chennai-600 035. ... 1st respondent in all WPs

2.V.M.Lakshminarayanan ... 2nd Respondent in WP.29584 of 2019

3.V.M.Balasubramaniam ... 2nd Respondent in WP.29590 of 2019

4.V.M.Sheshadri ... 2nd Respondent in WP.29593 of 2019

5.V.M.Gangadharam ... 2nd Respondent in WP.29595 of 2019

6.V.M.Kumaresan ... 2nd Respondent in WP.29598 of 2019

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the file of the 1st Respondent in Settlement Application Nos.TN/CN/52/2016-17/51-IT, TN/CN/52/2016-17/52-IT, TN/CN/52/2016-17/53-IT, TN/CN/52/2016-17/54-IT and TN/CN/52/2016-17/55-IT dated 09.04.2018 respectively in so far as income offered for unexplained investments in Gold Jewellery and Diamonds by the 2nd respondent and quash the same as illegal and contrary to the provisions of the Income Tax Act, 1961.

(In all WPs)
For Petitioner : Mr.A.P.Srinivas
Senior Standing Counsel

For Respondents : Mr.R.V.Easwar, Senior Counsel
for Mr.R.Sivaraman (for R2)

R1 – Settlement Commission

COMMON ORDER

The Income Tax Department has, in these writ petitions challenged an order passed by the Income Tax Settlement Commission (in short 'ITSC/Commission/Settlement Commission') on 09.04.2018, in terms of Section 245D(4) of the Income Tax Act, 1961 (in short 'Act').

2. R2 is the Chairman and Managing Director and R3 to R6, directors in short and collectively referred to as ‘assessees’) in Butterfly Gandhimathi Appliances Limited Private Limited (in short ‘company’). The premises of the company as well as the residential premises of the assessees had been subject to search and seizure action under Section 132 of the Act on 19.03.2015 and 20.03.2015.

3. The assessees had received notices under Section 153A of the Act for the assessment years (in short 'AY') 2009-10 to 2014-15 (period in question). Returns had been filed and assessments had been taken up for completion, when the assessees approached the Settlement Commission for settlement of the tax liability for the period in question.

4. An order under Section 245D(1) of the Act had been passed on 10.11.2016 in terms of which the application(s) was allowed to be proceeded with. Though several issues had been raised before the Settlement Commission, what is assailed in this writ petition is the decision at paragraph 4.1 of the impugned order. The search had yielded gold of 52,061.89 grams and the explanation furnished in regard to 13,995 grams thereof, was that it constituted Stridhana given to the daughters-in-law of the house at the time of their marriages.

5. In addition, certain amounts received from one L.L.M. Appliances had also been offered as part of the settlement. In the course of hearing before the Settlement Commission, the issues were discussed and debated in detail. The Commission had indicated that the second respondent must come forward with some explanation or proof in regard to the claim of Stridhana. Since the gold belonged to the daughters-in-law of the house, affidavits had been filed by the parents of the daughters-in-law.

6. The explanation tendered and affidavits filed in support thereof had not fully convinced the Commission, sensing which the assessee made an additional offer of Rs.1.59 crores (approx.) over and above what had been made in the application. The amount of Rs.1.59 crores comprised three components as follows:

Applicant: Mr.V.M.Lakshminarayanan

S.No.	Asst. Year	Towards amounts received from LLM Appliances Ltd.	Credits in Bank accounts for want of details	Towards Gold Jewellery found at the time of search	Total Rs.
1	2009-10	-	5,816	-	5,816
2	2010-11	4,00,913	3,860	-	4,04,773
3	2012-13	-	17,076	-	17,076
4	2015-16	-	-	15,00,000	15,00,000
	Total Rs.	4,00,913	26,752	15,00,000	19,27,665

Applicant: Mr.V.M.Balasubramaniam

S.No.	Asst. Year	Towards amounts received from LLM Appliances Ltd.	Credits in Bank accounts for want of details	Towards Gold Jewellery found at the time of search	Total Rs.
1	2012-13	61,50,000	-	-	61,50,000
2	2015-16	-	-	15,00,000	15,00,000
	Total Rs.	61,50,000	-	15,00,000	76,50,000

Applicant: Mr.V.M.Seshadri

S.No.	Asst. Year	Towards amounts	Credits in Bank	Towards Gold	Total Rs.

		received from LLM Appliances Ltd.	accounts for want of details	Jewellery found at the time of search	
1	2009-10	-	83,833	-	83,833
2	2013-14	-	39,865	-	39,865
3	2015-16	-	-	15,00,000	15,00,000
	Total Rs.	-	1,23,698	15,00,000	16,23,698

Applicant: Mr.V.M.Gangadharam

S.No.	Asst. Year	Towards amounts received from LLM Appliances Ltd.	Credits in Bank accounts for want of details	Towards Gold Jewellery found at the time of search	Total Rs.
1	2011-12	1,37,674	-	-	1,37,674
2	2015-16	-	-	15,00,000	15,00,000
	Total Rs.	1,37,674	-	15,00,000	16,37,674

Applicant: Mr.V.M.Kumaresan

S.No.	Asst. Year	Towards amounts received from LLM Appliances Ltd.	Credits in Bank accounts for want of details	Towards Gold Jewellery found at the time of search	Total Rs.
1	2010-11	1,87,980	3,60,000	-	5,47,980
2	2011-12	34,993	5,00,000	-	5,34,993
3	2012-13	2,12,980	87,068	-	3,00,048
4	2013-14	-	1,000	-	1,000
5	2014-15	-	2,09,899	-	2,09,899
6	2015-16	-	29,296	15,00,000	15,29,296
	Total Rs.	4,35,953	11,87,263	15,00,000	31,23,216
Grand Total Rs.		71,24,540	13,37,713	75,00,000	1,59,62,25 3

7. Of the total sum offered, (i) a sum of Rs.75 lakhs related to the alleged variation in gold jewellery (ii) an amount of Rs.71,24,540/- comprised investments by L.L.M. Appliances Limited and (iii) the remainder of a sum of Rs.13,37,713/- comprised credit in bank accounts for which no explanation was available.

8. According to the revenue, the investments by L.L.M Appliances would be liable to tax as deemed dividend under Section 2(22)(e) of the Act. However, the explanation put forth by the petitioners and the computation of tax liability in this regard has been accepted by the Commission in paragraph 13.3 reading thus:

> *'13.3 On the issue of deemed dividend relating to the investment in M/s.Wintronix (HK) Holdings Limited for the F.Y. 2011-12 (relevant to A.Y. 2012-13), the CIT(DR) mentioned that the applicant Shri V.M.Balasubramaniam received loans of Rs.1,00,44,544 from LLM Appliances Limited. The AR replied that the applicant received the aforesaid amount for investment of Rs.61,50,000/- in M/s.Wintronix Holdings (HK) Limited, Rs.23,69,544/- for investment in chits and the balance amount of Rs.15 lakhs donation to Anna University. The applicant entered into an agreement with M/s.Wintronix Holdings (HK) Limited on behalf of LLM Appliances in the capacity of Managing Director for business purpose. The CIT(DR) has not accepted the explanation of the AR and requested to treat the amount of Rs.61,50,000/- as deemed dividend u/s.2(22)(e) of the Act in the case of Shri V.M.Balasubramaniam. The AR finally agreed to offer the same to settle the issue. The CIT(DR) accepted the offer of Rs.61,50,000/- on account of investment in Wintronix Holdings (HK) Limited. The CIT(DR), after due verification, accepted the explanation offered by the AR with respect to investment in chits and donation to Anna University.'*

9. The additional offer also included a sum of Rs.13,37,713/-, being credits in bank accounts that could not be explained in full by the petitioners in the course of the proceedings. The findings and conclusion of the Settlement Commission in accepting the additional offer is in the following terms:

> *'<u>Decision</u>*
>
> *14.1 We have considered the reports and the submissions made by the Department, applicant side and arguments put forth by both the sides. On careful appraisal of the information contained in the documents brought on record and the arguments advanced by both the sides, we find that some objections primarily on the five issues of (i) accumulation of gold prior to A.Y.2009-10, (ii) proof for Sridhan for 13995 grams of gold jewellery, (iii) investment in M/s.Wintronix Holdings (HK) Limited for the A.Y. 2012-13 and (iv) amounts received from M/s.LLM Appliances Limited and (vi) credits in bank accounts for want of details for A.Ys 2009-10 to 2015-16. The applicants have come forward with explanations on the aforesaid issues but the explanation furnished does not fully convince us on these issues. During the course of hearing the applicants through AR expressed their sincere intention for settlement and came forward with the offer of further additional income of Rs.1,59,62,253/- by all the five applicants put together over and above what has been already disclosed in their Settlement Applications, in the spirit of settlement and to bring quietus to the matter. In support of the said offer of further additional income, the applicants have submitted a letter of offer dated 06.04.2018, which has been placed on record. The above disclosure has been made only to bring quietus to the issues and would not affect the true and full disclosure made by the applicant before the ITSC. We have accepted the submissions of the AR on all other issues as fair and reasonable. Accordingly, a sum of Rs.1,59,62,253/- has been added as further additional income over and above the amount of Rs.12,01,94,969/- already offered for the A.Ys 2009-10 to 2015-16. Considering the facts and circumstances of the cases and overall disclosures made by the applicants, we find that further*

offer of additional income as fair and therefore acceptable.'

10. Mr.A.P.Srinivas, learned Senior Standing Counsel for the petitioner/Income Tax Department would submit that the very fact that the petitioner has made an additional offer at the stage of final hearing/D4 hearing, puts paid to the integrity of the offer made by them. Section 245(C) requires the application filed by the petitioner to have made a full and true disclosure at the time of filing of application, and since in this case the disclosure made is evidently neither full nor true, it goes to the root of the matter and the settlement must stand nullified in full. He relies in this context, upon a judgment of the Hon'ble Supreme Court in the case of *Ajmera Housing Corporation v. Commissioner of Income Tax* (326 ITR 642).

11. Per contra, respondents/assessees would point out that the sum total of the income offered at the first instance was in excess of Rs.12 crores, and the additional income offered was only a fraction of that amount, amounting to less than 10% of the initial offer. They would urge that, in matters of settlement, Courts have always taken the view that any intervention must only be with the decision-making process and unless rank perversity is made out from the order, Courts must be slow to intervene in the conclusions arrived at by the Commission.

12. The assessees also rely upon an order passed by the Income Tax

Settlement Commission in settlement applications filed under the Wealth Tax Act 1957 by the very respondents in these writ petitions, that had come to be decided by the Settlement Commission by its order dated 22.02.2019. In that matter as well, the assessees had offered to tax the entirety of the gold found amounting to 52,061.89 gms. The explanations put forth before the Commission in those matters had been identical to the arguments in the income tax matters. The very same explanation of Stridhana had come to be accepted by the Commission in the following terms:

> *'5.2 With respect to jewellery, the main two contentions of the Department is in respect of Stridhan and wastage claim made by the applicants. The AR of the applicants has made detailed submissions on this issue. Taking the number of female members available in the family, the Affidavits filed by most of the parents of the daughter-in-laws and also considering the social status of the applicants, we find the sridhan claimed by the applicants to be quite reasonable and the same is accepted. Regarding the wastage claim of gold jewellery, the applicants have mainly relied on Rule 18 of Schedule III of the Wealth Tax Act which states that the value of the jewellery shall be estimated to be the price which it would fetch if sold in the open market on the valuation date i.e. the market value, the value it would fetch if sold in the market, and the rule is silent as to whether the wastage claim is only applicable on sale / remaking of jewellery. Further, the applicants are found to have made the valuation based on the valuation procedure given in the Department's website only and also at the prescribed percentage of allowance as laid down in the IT Rules. Keeping these factors in mind, we are inclined to accept the submissions made by the applicants on the issue of gold jewellery in respect of all the five applicants.'*

13. There is, admittedly, complete identity in regard to the issue of gold

found, as dealt with in the wealth tax settlement orders and in the orders impugned before me now. The conclusions in order dated 22.09.19 passed by the Additional Bench of the Settlement Commission (IT and WT) have attained finality and, the Department having accepted the argument of Stridhana in regard to the very same asset in the wealth tax proceedings, cannot take a contrary stand in the income tax proceedings.

14. The judgment in the case of *Ajmera* is distinguishable. In that case, the applicant had, in the original application, offered additional income of Rs.1.94 crores. Thereafter, the assessee had moved multiple applications before the Income Tax Settlement Commission, enhancing the offer, every time a deficiency/lacuna was found in the previous offer of settlement. In the course of the hearing a revised annexure has been filed enhancing the undisclosed income to a sum of Rs.11.41 crores, which is tenfold when compared with the initial offer. Then again, two more voluntary disclosures had been made that found acceptance by the Settlement Commission, as a result that the total income had been determined at a sum of Rs.42.58 crores.

15.It was the periodic and repeated revisions that were frowned upon by the Court, which concluded that the offer made in the original application was neither full nor true. These facts are set out at paragraph 17 of the taxmann.com report extracted below:

'17. Learned counsel contended that revision of undisclosed income from Rs.1.94 crores to Rs.11.41 crores, as projected in the revised annexure and thereafter the two voluntary disclosures during the course of hearing and finally acceptance of Settlement Commission's order determining total income at Rs.42.58 crores without demur shows that the disclosure made by the assessee in their application under Section 245C of the Act was neither full nor true and, therefore, the Settlement Commission ought to have rejected the application for settlement. It was pleaded that the piecemeal disclosures, in particular the revision of the statement of facts vide assessee's letter dated 25th January, 1999, offering an ad hoc income of Rs.1 crore for the assessment year 1992-93 and Rs.6 crores for the assessment year 1993-94 to cover up "any discrepancies and/or any unforeseen contingencies" is not contemplated in the scheme of Chapter XIX-A and, therefore, the final order passed by the Settlement Commission on the basis of revised statement of facts and annexures is void ab initio. In support of the submission that a full and true disclosure of income in the application is a sine qua non for an application under Section 245C(1) of the Act, learned counsel placed reliance on the decisions of this Court in Sanghvi Reconditioners (P.) Ltd. v. Union of India [2010] 2 SCC 733 and CIT v. Om Prakash Mittal [200] 143 Taxman 373 (SC).'

16. This is what had led the Hon'ble Supreme Court to conclude at paragraph 28 as follows:-

'28. As aforestated, in the scheme of Chapter XIX-A, there is no stipulation for revision of an application filed under Section 245C(1) of the Act and thus, the natural corollary is that determination of income by the Settlement Commission has necessarily to be with reference to the income disclosed in the application filed under the said section in the prescribed form.'

17. In the present case, this situation does not arise. The petitioner has filed only a single application and the explanation of the petitioner, as tendered in the wealth tax settlement applications, had been accepted by the very same

Settlement Commission. Thus, in my considered view, reliance on the judgment in the case of *Ajmera,* does not advance the case of the revenue. This argument of the revenue is thus rejected.

18. Before parting, there was also some discussion as to whether the impugned order would be vitiated on the ground that the Bench had been constituted with only two members, contrary to the scheme of Chapter XIXA of the Act that requires, in terms of Section 245BA(2), for a Bench to be presided over by the Chairman or Vice Chairman and to comprise of two other members.

19. Mr.A.P.Srinivas has filed a compilation dated 14.10.2022 pointing out that there was a vacancy of members in the Chennai Bench of the Income Tax Settlement Commission. A request has been addressed by the Vice Chairman sitting at Chennai to the Chairman in this very batch of cases pointing out that on account of the vacancy it had been impossible to constitute a Bench to conduct the 245D(3) proceedings in these cases. He had thus requested that since the applications were getting time barred, a vice Chairman or a member from any other Bench of the Settlement Commission be deputed to complete the proceedings in time.

20. By order dated 05.12.2017, the Chairman of the Income Tax Settlement Commission has deputed one Sri.Sudheerkumar, Vice Chairman of the Income Tax Settlement Commission, Additional Bench-II, Mumbai to

discharge the functions of member of the Income Tax Settlement Commission, Additional Bench, Chennai to hear these matters. It is the Bench of the Vice Chairman in Chennai along with the member, who has been deputed from Mumbai, who has ultimately heard and passed these orders.

21. Section 245BA(4) permits the Chairman to authorise the Vice Chairman or other member appointed to a Bench to discharge the functions of the Vice Chairman as well. Sub Section (5) provides as follows:-

> *'Jurisdiction and powers of Settlement Commission.*
>
> *……….*
>
> *(5) Notwithstanding anything contained in the foregoing provisions of this section, and subject to any rules that may be made in this behalf, when one of the persons constituting a Bench (whether such person be the Presiding Officer or other Member of the Bench) is unable to discharge his functions owing to absence, illness or any other cause or in the event of the occurrence of any vacancy either in the office of the Presiding Officer or in the office of one or the other Members of the Bench, the remaining two persons may function as the Bench and if the Presiding Officer of the Bench is not one of the remaining two persons, the senior among the remaining persons shall act as the Presiding Officer of the Bench:'*

22. Section 245BA(5) states that notwithstanding anything contained in the foregoing provisions, when one of the persons constituting a Bench is unable to discharge functions owing to his absence, illness or any other cause or in the event of the occurrence of any vacancy either in the office of the Presiding Officer or in the office of the members, the remaining two persons

may function as the Bench.

23. If the Presiding Officer were not to be one of the remaining two persons, the senior most among the remaining persons shall act as the Presiding Officer of the Bench. Thus, it is very clear to my mind that there is no error that has been occasioned by the constitution of a Bench comprising two members. To be noted that Section 245BD provides that decision is to be by majority and states as follows:

> '[***Decision to be by majority.***
>
> ***245BD.*** *If the Members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Settlement Commission and such point or points shall be decided according to the opinion of the majority of the Members of the Settlement Commission who have heard the case, including those who first heard it:]*
>
> *[**Provided** that the provisions of this section shall not apply on or after the 1st day of February, 2021.]'*

24. The provision states that where the members are equally divided, they should state the point of difference to the Chairman, who shall either hear the points himself or refer the points for decision by another member of the Settlement Commission. The question of members being equally divided would arise only in the case of a two member Bench and thus this view is fortified by

the statutory provisions of Section 245BD as well.

25. My attention is drawn to a decision of the Calcutta High Court in the case of *Smrithi Properties Private Limited v. Settlement Commission* (149 taxmann 386). In that case, the original order had been passed by a Bench of three members. On an application for rectification by the revenue, a two member Bench had rectified the order and that order of rectification was challenged by *Smrithi Properties* before the Calcutta High Court. The Bench held that since the original order had been passed by a Bench comprising three members, any rectification thereof had also to be undertaken only by a three member Bench. There is nothing in that decision to lead to the conclusion that the scheme of Chapter XIX B requires only a Bench of three members to hear and dispose settlement applications.

26. In light of the discussion as aforesaid, these writ petitions filed by the petitioners are dismissed. No costs. Connected miscellaneous petitions are closed.

14.10.2022

vs
Index : Yes
Speaking Order
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DR.ANITA SUMANTH, J.

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