IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2023

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.29360 of 2023 &
WMP.Nos.28989 & 28990 of 2023

M/s. Binny Limited
represented by its Executive Chairman
Mr.M.Nandagopal ... Petitioner

Vs.

1. Interim Board for Settlement-II,
9th Floor, C-Wing,
Lok Nayak Bhawan,
Khan Market,
New Delhi 110 003.
2. The Principal Commissioner of
Income Tax, Central-1,
Investigation Wing,
Room No.301, 3rd Floor, New No.46,
Mahatma Gandhi Road, Chennai 600 034.
3. The Assistant Commissioner of Income-Tax,
Central Circle-3(1),
Aayakar Bhawan,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records in TN/CN-51/2020-21/68/IT, dated 15.09.2023 for the Assessment Years 2012-13 to 2018-19 u/s.245D(4) of the Income Tax Act, 1961 on the file of 1st respondent and quash the same and direct the 1st respondent to accept the application and pass appropriate orders in accordance with provisions of the Income Tax Act, 1961.

For Petitioner : Mr. V.S.Jaya Kumar,
Senior counsel for
Mr.Sandeep Bagmar R.

For Respondents : R1- Board
Mr. A.P. Srinivas
Senior Standing Counsel for R2 & R3

ORDER

This Writ Petition is filed to quash the impugned order passed by the first respondent/Interim Board for Settlement-II and to direct the 1st respondent to accept the application of the petitioner and pass appropriate orders in accordance with the provisions of Income Tax Act, 1961.

2. Mr. V.S. Jayakumar, learned Senior counsel appearing representing Mr.Sandeep Bagmar, the learned counsel for the petitioner would submit that the petitioner herein, in order to settle the pending open assessments for the Assessment Years 2012-13 to 2018-19, approached the Income Tax Settlement Commission on two occasions by filing application and the same came to be rejected by the Settlement Commission for two occasions i.e. on 27.12.2019 and 19.01.2021 for the reason that tax on additional income and interest was not paid. The learned Senior Counsel further submitted that during the pendency of assessment proceedings, the Act was amended by the Finance Act, 2021 and the Settlement Commission was abolished, subsequently, pursuant to CBDT's order, dated 31.01.2021, Interim Board for Settlement II was constituted and the third application filed by the petitioner was allocated to first respondent/Interim Board for Settlement-II and thereafter, the petitioner's application was dealt with by the first respondent/Interim Board. The learned Senior Counsel submitted that when the petitioner submitted application before the first respondent/Interim Board for Settlement-II for third time, i.e. on

10.03.2021, they have paid entire amount of tax due and the interest on the income. The entire balance amount of tax paid by the petitioner would comes around a sum of Rs.8,84,47,668/-, and the details of which are furnished in a tabular column below:-

A.Y. (1)	***Income Returned*** (2)	***Addl. Income offered before ITSC*** (3)	***Revised Total Income before ITSC*** (4) = (2+3)	***Total tax liability*** (8)	***Total taxes paid*** (9)	***Balance tax payable*** (10) = (8) –(9)
2012-13	(34,49,649)	-	(32,97,536)	76,21,106	74,04,527	2,16,579
2013-14	1,46,34,930	-	1,46,34,930	1,06,63,429	1,18,00,963	(11,37,534)
2014-15	(25,96,42,589)	1,68,00,000	(24,28,42,589)	62,61,165	33,90,672	28,70,493
2015-16	28,37,570	1,01,63,500	1,30,01,070	42,18,197	2,14,14,767	(1,71,96,570)
2016-17	(6,50,78,265)	1,17,36,986	(5,33,41,279)	14,578	1,00,82,261	(1,00,67,684)
2017-18	3,86,83,60,487	63,16,382	3,89,30,83,164	1,67,80,09,900	1,64,10,54,871	3,69,55,029
2018-19	60,64,90,110	-	60,64,90,110	23,54,65,990	15,86,58,635	7,68,07,355
TOTAL	4,16,41,52,594	4,50,16,868	4,22,77,27,870	1,94,22,54,365	1,85,38,06,696	8,74,47,668

2.1 The learned Senior Counsel for the petitioner submitted that despite the fact that the petitioner paid entire tax due and interest, their application came to be rejected by the first respondent/Interim Board for Settlement II on 15.09.2023 for the reason that the petitioner had filed the application without payment of tax and interest on the income disclosed as mandated under the provisions of section 245 C (1) of Income Tax Act, 1961.

2.2 The learned Senior Counsel appearing for the petitioner contended that the grievance of the petitioner is that though the petitioner had paid entire amount of tax liability along with interest, the first respondent refused to entertain the application, without even making any reference to the payments made by the petitioner, as described in the above tabulated column, and hence, the petitioner made an application to rectify the mistake to the 1st respondent by virtue of application dated 29.09.2023 wherein, the petitioner had disclosed the payments details made by them on different dates and modes of payment, however, the same has not been considered by the first respondent and by means of the impugned order, the application has been rejected, which necessitated the petitioner to approach this Court by way of filing this Writ Petition.

3. Per contra, Mr.A.P.Shrinivas, learned Senior Standing Counsel appearing for the respondents 2 and 3, on instructions, submitted that the petitioner had made only a part payment of the tax liability and they have to make further payments and hence, their application has been rejected.

4. In reply, the learned Senior Counsel appearing for the petitioner submitted that the entire tax liability along with interest has been discharged and no further amount is liable to be paid by the petitioner towards tax as well as interest, and hence, 1st respondent may be directed to take the petitioner's application on record and dispose of the same in accordance with law, and in the event if any amount is still due, the application need not be considered. However, the learned counsel assured that no amount is due to be paid by the petitioner towards tax and interest.

5. Heard the submissions made by Mr.V.S.Jayakumar, learned Senior Counsel appearing for the petitioner and Mr.A.P.Srinivas, learned Senior Standing counsel appearing for the respondents 2 and 3.

6. A mere perusal of the order impugned herein as well as the application made by the petitioner for third occasion, dated 10.3.2021, it is seen that the petitioner has clearly furnished the details with regard to the discharge of entire tax liability along with interest, however, the application came to be rejected, without stating as to why, the application is rejected and further, in the impugned order, there is not even a reference made with regard to the payment details made by the petitioner towards tax and interest and mechanically, the first respondent rejected the application for settlement filed by the petitioner.

7. Hence, this Court is inclined to direct the 1st respondent to take up the application of the petitioner on record and dispose of the same on merits and in accordance with law within a specified time.

8. Accordingly, this Writ Petition is disposed of by directing the 1st respondent to take the application of the petitioner on record and dispose of the same on merits and in accordance with law on or before 31.12.2023. No costs. Consequently, the connected miscellaneous petitions are closed.

11.12.2023

msr
Index:Yes/No
Internet:Yes/No
Note: Issue on 12.12.2023

To

1. Interim Board for Settlement-II,
   9th Floor, C-Wing, Lok Nayak Bhawan,
   Khan Market, New Delhi 110 003.

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

3. The Assistant Commissioner of Income-Tax,
   Central Circle-3(1), Aayakar Bhawan,
   121, Mahatma Gandhi Road,
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KRISHNAN RAMASAMY, J.

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