IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **29.02.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.464 of 2024 and
W.M.P.Nos.484 & 485 of 2024

M/s.Sri Lakshmi Ammal Educational Trust,
Represented by its Trustee,
Ms.J.Srinisha,
No.29, Thilak Street, T.Nagar,
Chennai-600 017
[PAN:AABTS1129F] ... Petitioner

-vs-

1.Interim Board for Settlement
Bench-II,
9th floor, Lok Nayak Bhavan,
Khan Market,
New Delhi-110 003,
Successor of the erstwhile,
Income Tax Settlement Commission,
Additional Bench, Chennai-600 035.

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

3.Assistant Commissioner of Income Tax,
Central Circle(1),
Chennai-600 034. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records on the file of the 1st respondent contained in the impugned order under Section 245(D)(4) bearing S.A.No.TN/CN-52/2018-2019/113/IT dated 26.12.2023, and thereby quash the same as arbitrary, unjust, illegal, against the principles of natural justice and consequently direct the 1st respondent to consider the submissions of the petitioner dated 20.12.2023 and 22.12.2023 and reconsider the application filed by the petitioner in S.A.No.TN/CN-52/2018-2019/113/IT and pass fresh order under Section 245D(4) of the Income Tax Act, 1961 (hereinafter referred to as the "Act") after affording sufficient opportunity of being heard.

For Petitioner : Mr.P.S.Raman, Senior Counsel
for Mr.Sivaraman R.

For R2 & R3 : Mr.A.P.Srinivas, Senior Standing Counsel
Mr.A.N.R.Jayaprathap, Junior Standing Counsel

ORDER

The order issued by the Interim Board for Settlement is challenged primarily on the ground that materials submitted by the petitioner were not taken into consideration.

2.The petitioner is a Trust administering about nine educational institutions. The proceedings culminating in the impugned order originated in a search undertaken in 2016. In February 2019, the petitioner filed a settlement application before the 1st respondent. In respect thereof, orders were issued under Sections 245D(1) and 245D(2C) of the Income Tax Act, 1961 (the Income Tax Act) on 15.02.2019 and 28.03.2019. These orders were challenged by filing W.P.No.10707 of 2019 before this Court. The said writ petition was disposed of by order dated 11.10.2022 setting aside the impugned order and restoring the settlement application to the file of the Settlement Commission for expeditious disposal on merits.

3. Thereafter, an order was issued by the 1st respondent on 07.11.2023 calling for a joint verification report. In connection thereto, the petitioner was called upon to submit all relevant documents on or before 19.12.2023. The petitioner filed written submissions on 19.12.2023 and submitted two box folders of documents on 20.12.2023. The assessing officer conveyed to the Additional Commissioner of Income Tax that it was

not possible to verify these records in the short span of time available. This was, in turn, indicated by the Additional Commissioner of Income Tax to the Principal Commissioner of Income Tax on 20.12.2023. By such communication, it was further stated that the income as estimated by the Income Tax Department in the Rule 9 report and subsequent reports may be taken into consideration by the 1st respondent while deciding the application for settlement. The impugned order was issued by the 1st respondent in these facts and circumstances.

4. Learned senior counsel for the petitioner invited my attention to the above mentioned communication dated 20.12.2023. He pointed out that the admitted position is that the petitioner submitted two box folders of documents on 20.12.2023. He also pointed out that the assessing officer admitted that he did not have sufficient time to examine these documents. Learned senior counsel contends that the question to be examined by the Settlement Commission is whether the petitioner made a full and fair disclosure and that such question cannot be fairly determined without examining the documents submitted by the petitioner. He points out that if

such documents are examined, the alleged unaccounted receipts would stand duly explained and reconciled. Therefore, he makes a request that the matter be remanded for reconsideration so as to enable a decision to be taken after considering all documents submitted by the petitioner.

5. In response to these contentions, learned standing counsel referred to the affidavit of the Deputy Commissioner of Income Tax, wherein the chronology of events were set out in a table at pages 4 and 5 thereof. By referring to such table, learned counsel points out that about 21 days were available for the petitioner to provide details on or before 30.11.2023 for purposes of the submission of a joint verification report. He further submits that the proceedings originated in a search conducted on 13.07.2016. Pursuant to the seizure of material in course of such search, he submits that the petitioner submitted a reconciliation statement. Therefore, he contends that the onus was on the petitioner to submit all supporting documents to establish the correctness of such reconciliation statement. Since the petitioner failed to submit documents in support of the reconciliation

statement in spite of the lapse of five years from the date of settlement application, he contends that no interference is warranted with the impugned order.

6. In these proceedings, it is inappropriate to deal with the merits of the settlement application and record any findings in relation thereto. The limited question that falls for consideration is whether the petitioner was provided sufficient opportunity to establish that a full and fair disclosure was made so as to enable the 1st respondent to pass orders upon consideration of relevant material. The documents on record clearly indicate that the petitioner had submitted two box folders of documents on 20.12.2023. The communication dated 20.12.2023 from the Additional Commissioner of Income Tax, Central Range 2 to the Principal Commissioner of Income Tax records that these two box folders of documents were received. It further records that the assessing officer could not verify these documents on account of paucity of time. The separate communication dated 20.12.2023, by way of report from the Deputy Commissioner of Income Tax, categorically records that the income as estimated by the Income Tax Department in the Rule 9 report and the subsequent reports may be

considered because there is insufficient time to examine the submissions made in multiple box folders by the petitioner.

7. In those circumstances, in the impugned order, it is recorded, at internal page 32 thereof, that the applicant/petitioner herein has claimed expenses and deductions to the extent of Rs.666.48 crore but such deductions are not borne out by the seized material or by evidence adduced by the petitioner in support of the claim. This conclusion was drawn without taking into consideration the additional materials submitted by the petitioner on 20.12.2023. For this limited reason, the impugned order calls for interference.

8. For reasons set out above, the impugned order of the 1st respondent is quashed and the matter is remanded to the 1st respondent for reconsideration from the Section 245D(3) stage. Such reconsideration shall be undertaken after documents submitted by the petitioner are jointly verified. Pursuant to such verification, a fresh order shall be issued. The entire process shall be concluded within a period of three months from the date of receipt of a copy of this order.

9. The writ petition is disposed of on the above terms. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

29.02.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

kj

To

1.Interim Board for Settlement
Bench-II,
9th floor, Lok Nayak Bhavan,
Khan Market,
New Delhi-110 003,
Successor of the erstwhile,
Income Tax Settlement Commission,
Additional Bench, Chennai-600 035.

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

3.Assistant Commissioner of Income Tax,
Central Circle(1),
Chennai-600 034.

SENTHILKUMAR RAMAMOORTHY,J.

Kj

Writ Petition No.464 of 2024 and
W.M.P.Nos.484 & 485 of 2024

29.02.2024