IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.7212 of 2024 and
W.M.P.Nos.8060 & 8061 of 2024

Shri Umed Mehta,
31, Kent Apartments,
26, Ritherdon Road,
Vepery, Chennai-600 007. ...Petitioner

Vs.

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

2.Principal Commissioner of Income Tax-3,
Room No.410, 4th floor,
Main Building, 121,
Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

3.Income Tax Officer,
Corporate Ward-6(2),
Room No.707, 7th floor,
New Block, 121,
Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order dated 15.12.2023 bearing Settlement Application Number TN/CN-7/2009-2010/2/IT passed by the 1st respondent under Section 245D(4) of Income Tax Act, 1961 and quash the same and consequently direct the respondents to provide for the terms of settlement.

For Petitioner : Ms.T.V.Muthu Abirami

For Respondents : Mrs.S.Premalatha, Jr. Standing Counsel

O R D E R

An order of the Interim Board of Settlement is challenged by the petitioner.

2. Such challenge is primarily on the ground that the Interim Board of Settlement did not consider the direction of this Court in an earlier writ petition to examine the issue of double taxation. The petitioner is an individual who carries on business *inter ali*a of finance, investments and mining. He had filed an application before the Settlement Commission in October 2009 and such application was rejected on 23.10.2009. The said order was challenged by filing W.P.No.23631 of 2009. The said writ

petition was disposed of by order dated 09.08.2019 by remanding the matter to the Settlement Commission and directing the Settlement Commission to examine the issue of double taxation. The order impugned herein was issued thereafter.

3. Learned counsel for the petitioner assails the impugned order on about three grounds. The primary ground of challenge is that the question of double taxation was not considered by the Interim Board. In order to substantiate such contention, learned counsel refers to the earlier order of this Court in W.P.No.23631 of 2009. By referring to paragraph 6.2 of the impugned order, learned counsel submits that the issue of double taxation was not considered. The second ground of challenge is that the Rule 9 report was prepared by the Income Tax Officer and not by the PCIT. The third ground of challenge is that the order pertaining to the Kanwar Lal Group (KG Group) does not appear to have been considered by the Interim Board while deciding the petitioner's application. Learned counsel contends that in the absence of evidence of consideration of the order relating to the KG Group, no definite conclusions with regard to double taxation could have been recorded.

4. Mrs.S.Premalatha, learned junior standing counsel, accepts notice for the respondents. By referring to paragraphs 6 to 6.2 of the impugned order, she points out that the issue of double taxation was considered.

5. Paragraphs 6 to 6.2, in relevant part, are as under:

> *"6. In the Settlement Application, in Statement of Facts (SoF), the applicant has stated that he had provided accommodation entries in the form of commission to Kanwar Lal Group (KG Group). On such Commission, KG Group had deducted tax at source (TDS) at the rate ranging from 5.61% to 11.33%. It is the case of the applicant that he has earned only the TDS component and the balance amount was returned to KG Group in cash. Accordingly, it is the contention of the applicant that his income was limited only to the extent of TDS effected by KG Group. As per the applicant, post rejection of the application of the applicant, KG Group had also filed settlement application by admitting the entire amount of Commission except TDS in their (KG Group) hands. Applicant would content that the total accommodation entries minus TDS has been already assessed in the hands of KG Group by way of Settlement u/s 245D(4) and, hence, the same cannot be*

included in the income of the applicant. As per the applicant such an act would amount to double taxation of the same income. In the course of virtual hearing the CIT (DR) contended that such income has not been assessed in the hands of KG Group and the applicant's contentions in this regard are not correct on facts.

6.1 On going through the statements of the facts in (SoF) and other written submission we find that the accommodation entries were provided by the following three companies and not by the applicant to KG Group.

a. M/s.Umed Investments and Marketing Company Pvt. Ltd. (UIMC).

b. M/s.Kesaria Marketing Pvt. Ltd. (KMPL).

c. M/s.Vishwa Chakra Exports Pvt. Ltd. (VCE).

6.2 The applicant's contention in the SoF/written submissions as well as in the virtual hearing is that the entire transactions were arranged by the applicant albeit through the companies and hence, the applicant has offered the undisclosed income in his hands. We are unable to accept this proposition advanced by the applicant. The three entities who have given the accommodation entries to KG Group are incorporated entities and enjoy distinct status of Pvt. Ltd. Companies. They are separate juridical persons having their own identity distinct from the applicant. The TDS *has also been effected in the hands of such companies only.”*

6. On perusal of the above paragraphs, it is clear that the Interim Board noticed that accommodation entries were made pursuant to an understanding by and between M/s.Umed Investments and Marketing Company Pvt. Ltd. (UIMC), M/s.Kesaria Marketing Pvt. Ltd. (KMPL) and M/s.Vishwa Chakra Exports Pvt. Ltd. (VCE), on the one hand, and the KG Group, on the other. After noticing this aspect, the Interim Board concluded that the above mentioned entities are incorporated entities which enjoy distinct juridical status. On such basis, the Interim Board recorded the finding that the offer made by the applicant on behalf of the above mentioned incorporated entities cannot be accepted. Thereafter, it was further recorded as under:

“ .. .. As per the provisions of the 245C(1), in order to be eligible for settlement, the application has to not only contain full and true particulars of income but also the manner of earning the same. In the present case the income does not pertain to the applicant, instead, the applicant is trying to provide legal protection to the companies who have given

accommodation entries to the KG Group. Clearly, the application has not been filed with bonafide intentions. For these reason, the application suffers from incurable infirmity in as much as the income disclosed pertains to the said companies and not of the applicant."

7. The above conclusions of the Interim Board are based on a reasonable appraisal of the facts. I find no infirmity in the conclusion that the petitioner cannot offer amounts accruing as TDS credit to the aforesaid entities as income for purposes of the settlement. Therefore, it certainly cannot be said that the aspect of double taxation was not examined by the Interim Board. Nonetheless, since the Interim Board's conclusion flowed from the fact that the accommodation entries were made by three corporate entities and not the petitioner, it is open to such corporate entities to raise this issue.

8. Two other contentions warrant a brief discussion. The Rule 9 report, in this case, was prepared by the Income Tax Officer and, thereafter, endorsed and submitted by the Principal Commissioner of Income Tax to the Interim Board. On account of such endorsement, no interference on that count is warranted. The last contention that the order

relating to the KG Group may not have been considered by the Interim Board is speculative and, therefore, devoid of merit.

9. Therefore, the writ petition is dismissed without any order as to costs. Consequently, connected miscellaneous petitions are closed. Since it was submitted that a rectification petition was filed before the Interim Board, it is clarified that the dismissal of this petition will not stand in the way of the consideration thereof.

20.03.2024

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

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