IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.9586 of 2022
and
W.M.P.No.10174 of 2021

1.Smt.Gowri Gurumurthy
Deceased

2.G.Thiagarajan ... Petitioners
(P2-substituted as LRS of deceased P1,
as per order dated 27.08.2024 in
W.M.P.No.24951/2023 in
W.P.No.9586 of 2021)

Vs.

1.The Income Tax Settlement Commission,
Additional Bench,
Chennai – 600 017.

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

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

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in Settlement Application No.TN/CN 51/2020-21/6/IT dated 21.12.2020 and quash the same and further direct the 1st respondent to proceed further in accordance with Section 245D(2C) of the Income Tax Act.

For Petitioners : Mr.T.Vasudevan

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

The petitioner since deceased during the pendency of the present Writ Petition now represented by her son who is the sole surviving legal heir is before this Court challenging the impugned order dated 21.12.2020 passed by the Income Tax Settlement Commission under Section 245D(2C) of the Income Tax Act, 1961.

2. By the impugned order, the application filed by the deceased petitioner namely late Mrs.Gowri Gurumurthy on 12.10.2020 has been

rejected on the ground that there was no true and full disclosure.

Operative portion of the impugned order reads as under:-

> "*4.1.During search, loose sheets were found indicating various payments made in cash from 11.06.2011 to 14.07.2017 amounting to Rs.44.50 crores. Another set of papers relating to more unaccounted payments of Rs.18.47 crores was also found totalling to Rs.62.97 crs.(Rs.44.50 crs.+Rs.18.47 crs.). Further, during the search, gold, silver and bullion valued at Rs.17.79 crores was found and the applicant admitted the same as her unaccounted income for the A.Y.2018-2019. Lastly, cash of Rs.51.90 lakhs was found. Considering all the above, an amount of Rs.15.04 crs. had been declared for the entire group.*
>
> *4.2.The Department has pointed out that the applicant has dismissed the entire unaccounted payments found in the loose sheets by claiming loss of papers in flood. The applicant had agreed that uncertain unaccounted payments were made by her in cash by inflating expenses but rather than factoring all these papers that were found, the applicant had simply assumed the income at 8% without any basis. Further, this 8% without any basis. Further, this 8% estimation has been made only on the contract receipts and not on the sale of bitumen which is a greater component of the total turnover and in all likelyhood, the same had been sold in grey market in cash at huge profit. From the data submitted by the applicant, the contract receipts vis-a-vis bitumen sales is given as under:-*

Asst.Year	***Contract Receipts as reported in ITR***	***Bitumen sales***	***Total turnover***	***Profit from Bitumen sales***
1	2	3	4=2+3	5
2013-14	82,94,611	43,17,36,444	44,00,31,055	84,67,146
2014-15	3,26,11,192	44,63,01,452	47,89,12,644	87,54,154
2015-16	3,33,73,903	39,43,57,353	42,77,31,256	84,81,682
2016-17	4,15,86,109	34,49,06,536	38,64,92,645	68,29,858
2017-18	12,83,52,660	30,49,73,550	43,33,26,210	72,14,600
2018-19	-	-	-	48,80,233

From the above table, it can be seen that almost 90% of the turnover is in bitumen sales and for that the applicant had declared a very meagre profit for every year. Thus, one can see that the profit on bitumen sales is in the range of 1% to 2% only. No disclosure has been made on this account.

4.3.As regard jewellery, the applicant has tried to explain the source by saying that they were purchased in cash in the A.Ys.2017-18 and 2018-19 from the cash withdrawls from her business account. For these two years, the applicant had not filed the returns of income at the time of search and these returns were filed subsequently, showing the jewellery in the Balance Sheet, although at the time of search they had clearly admitted that the investment in jewellery was not accounted for. As already mentioned above, the applicant was in the habit of inflating expenses and taking out cash from the bank accounts for making the unaccounted payments as found in the seized material. Thus, it is obvious that the cash withdrawls were for the purpose of making unaccounted payments as evidenced from the seized papers found. However, it is now stated that the expenses mentioned in the loose papers were in *the nature of payment of wages, purchase of construction materials and business promotion, etc. Having said that, the applicant has then refused to explain those papers and even contradicting herself tried to explain that the cash was used for jewellery purchased although no such noting was found in the seized papers.*

4.4.During the course of hearing, the CIT(DR) has pointed out that as per the seized papers found, the turnover as per certificates issued by the Sales Tax/VAT Authorities was much more than what the applicant has shown in the Income Tax Returns and before the ITSC. In this regard vide her submission dated 18.12.2020 the applicant has stated that the turnover as per Sales Tax/VAT Authorities' estimates is matching with what she has shown in the Income Tax Return and before ITSC although in the Sales Tax returns she has shown bitumen sales as part of turnover. As regards the highly exaggerated turnover in the sheets found from the applicant's premises, it is stated that the applicant, in order to get Government contract had to show huge turnover and, therefore, had made forged letters signed by the Sales Tax authorities and that they had no real significance. The explanation of the applicant is very surprising and shocking.

4.5.The applicant has neither explained the huge payments of Rs.62.97 crores as found in the seized papers, nor given any cogent reason of offering profit of only 8% and that too only on contract receipts and not on the major portion of her turnover i.e bitumen sales and lastly the applicant has failed to conclusively explain the source of huge amounts of jewellery found during the search. Thus it is obvious that the applicant has not made a True and Full disclosure of her income and has also not specified the manner in which the

> *same was earned. In the light of the above, we are of the opinion that the applicant has not come with clean hands and has not fulfilled the essential requirement of full and true disclosure of facts and income. Hence the Settlement Application is not maintainable and liable to be rejected.*
>
> *4.6.Under the above circumstances, the Settlement Application filed by the applicant on 12.10.2020 is not allowed to be proceeded with and is treated as 'invalid' under Section 245D(2C) of the I.T Act and the Settlement Application filed by the applicant is rejected."*

3. Along with the deceased petitioner, the petitioner's husband late Shri Vadivelu Gurumurthy since deceased and her son Shri Gurumurthy Thiagarajan were searched on 19.07.2017. Based on the records that were gathered during the search under Section 132 of the Income Tax Act, 1961, statement is said to have been obtained from the three persons that approximately 50 crores had not been reported and not brought to tax. Later the aforesaid statement was retracted on 16.10.2017 and they agreed that the aforesaid amount should be confined to only 12.92 crores. Meanwhile, the Income Tax Department proceeded to issue notices under Section 153A of the Income Tax Act to the petitioner, deceased

petitioner's deceased husband and her son the sole surviving legal heir namely Mr.Gurumurthy Thiagarajan. Earlier, an application was filed by the deceased petitioner on 17.12.2019 by all the three persons.

4. Eventually, the applications were rejected on account of shortfall payment of the admitted tax liability. As far as deceased petitioner was concerned, this petition was admitted on 19.10.2020.

5. Initially, all the three persons filed an application on 17.12.2019 that were rejected on 27.12.2019. The deceased petitioner thereafter filed a fresh application on 12.10.2020 which was admitted under Section 245D(1) on 19.10.2020. Thereafter, a report was also called for from the department under Section 245D(2B) of the Act.

6. In response, the petitioner has filed a detailed submission on 07.12.2020 and 18.12.2020 which according to the petitioner has been discarded and therefore the impugned order has to be passed and submitted that the impugned order is liable to be set aside.

7. The learned counsel for the petitioner would submit that the deceased petitioner's husband and the son independently filed separate applications on 24.03.2021. This was few days before the abolition of the Commission vide amendment to Income Tax Act, 1961 vide Finance Act, 2021 with effect from 01.04.2021 with retrospective effect from 31.01.2021. In this background, the applications filed by the deceased petitioner's husband namely Mr.Vadivelu Gurumurthy and their son Gurumurthy Thiagarajan have been settled by a common order passed by the Interim Board for settlement vide order dated 28.12.2023 under Section 245D(4) of the Income Tax Act, 1961.

8. The learned counsel for the petitioner further submits that since the dispute has been settled for the two others based on the same search, the petitioner is also entitled for a similar relief. It is submitted that the issue is covered by the decision of the Division bench of this Court rendered in the case of **Deputy Commissioner of Income Tax and others** Vs **M/s.Hitachi Power Europe GmbH, Represented by its Authorised Signatory** vide its order dated 04.09.2020 in W.A.No.581 of

2020.

9. On the other hand, the learned Senior Standing Counsel for the respondent would submit that the order is well reasoned and requires no interference under Article 226 of the Constitution of India. It is submitted that the deceased petitioner has given the explanation, as huge payments of Rs.62.97 crores as found in the seized papers, nor had given any cogent reason for offering profit of only 8% and that too only on contract receipts and not on the major portion of her turnover i.e. bitumen sales and lastly the applicant has failed to conclusively explain the source of huge amounts of jewellery found during the search. It is therefore submitted that the findings rendered to the Settlement Commission that there was no true and full disclosure in the application filed for settling the dispute on 12.10.2020 which stands rejected.

10. Having considered the submissions made by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents and having considered the order passed by the Interim Board for settlement for the deceased petitioner's husband namely Vadivelu Gurumurthy (since deceased) and her son Gurumurthy Thiagarajan vide

order dated 28.12.2023 under Section 245D(4) of the Act, I am inclined to come to the rescue of the deceased petitioner and following the aforesaid decision of the Division Bench in the above case and therefore set aside the matter and remit the case back to the Interim Board for settlement to look into the issue afresh in the light of the orders passed for the deceased petitioner's, deceased husband, deceased petitioner's son. This exercise may be carried out by the Interim Settlement Board as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order.

11. This Writ Petition stands disposed of with the above observations. No costs. Consequently, connected writ miscellaneous petition is closed.

23.09.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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C.SARAVANAN, J.

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