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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	13.12.2024
Pronounced On	02.01.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.1153, 1159, 1162 and 1164 of 2021
and
W.M.P.Nos.1293, 1295, 1299, 1304, 1305 and 1306 of 2021

W.P.No.1153 of 2021

Arun Mammen
Represented by his Power Agent
Jossy M.Joseph ... Petitioner

Vs.

The Deputy Director of Income Tax (Investigation),
Unit 3(2), Room No.224,
2nd Floor, New Building,
New No.46 (Old No.108),
Nungambakkam, Chennai – 600 034. ... Respondent

Prayer in W.P.No.1153 of 2021**:** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the respondent in the Impugned Notice dated 27.02.2018 bearing No.DDIT/Unit3(2)/BMAct/01/AADPM7707R and all further proceedings thereto, and consequential notices dated 03.03.2020, 16.10.2020 and 26.12.2020, and quash the same as being without jurisdiction, illegal, arbitrary and unjust.

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W.P.No.1159 of 2021

Arun Mammen
Represented by his Power Agent
Jossy M.Joseph ... Petitioner

Vs.

1.The Deputy Director of Income Tax (Investigation),
Unit 3(2), Room No.224,
2nd Floor, New Building,
New No.46 (Old No.108),
Nungambakkam, Chennai – 600 034.

2.The Deputy Commissioner of Income Tax,
Central Circle 1(1), Investigation Wing,
Room No.320, New No.46,
Mahatma Gandhi Road,
Chennai – 600 034. ... Respondents

Prayer in W.P.No.1159 of 2021**:** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Prohibition, to prohibit the respondents, and their agents and servants from taking any steps or action against the petitioner under the Black Money (Undisclosed Foreign Income and Assets) Imposition of Tax Act, 2015.

W.P.No.1162 of 2021

Kandathil M.Mammen ... Petitioner

Vs.

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The Deputy Director of Income Tax (Investigation),
Unit 3(2), Room No.224,
2nd Floor, New Building,
New No.46 (Old No.108),
Nungambakkam, Chennai – 600 034. ... Respondent

Prayer in W.P.No.1162 of 2021**:** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the respondent in the Impugned Notice dated 27.02.2018 bearing No.DDIT/Unit3(2)/BMAct/01/AAEPM0314R and all further proceedings thereto, and consequential notices dated 03.03.2020, 16.10.2020 and 26.12.2020, and quash the same as being without jurisdiction, illegal, arbitrary and unjust.

W.P.No.1164 of 2021

Kandathil M.Mammen ... Petitioner

Vs.

1.The Deputy Director of Income Tax (Investigation),
Unit 3(2), Room No.224,
2nd Floor, New Building,
New No.46 (Old No.108),
Nungambakkam, Chennai – 600 034.

2.The Deputy Commissioner of Income Tax,
Central Circle 1(1), Investigation Wing,
Room No.320, New No.46,
Mahatma Gandhi Road,
Chennai – 600 034. ... Respondents

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Prayer in W.P.No.1164 of 2021**:** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Prohibition, to prohibit the respondents, and their agents and servants from taking any steps or action against the petitioner under the Black Money (Undisclosed Foreign Income and Assets) Imposition of Tax Act, 2015.

For Petitioners (In all W.Ps)	:	Mr.R.V.Easwar Senior Counsel for Mr.Suhrith Parthasarathy
For Respondents (In all W.Ps)	:	Mr.A.P.Srinivas Senior Standing Counsel and Mr.A.N.R.Jayaprathap Junior Standing Counsel

COMMON ORDER

By this Common Order, all these Writ Petitions are being disposed of.

2. These Writ Petitions have been filed by the respective petitioners for a Writ of Certiorari, to quash the Impugned Notice dated **27.02.2018** issued under Section 10(1) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and all further Consequential Notices dated **03.03.2020**, **16.10.2020** and **26.12.2020** and

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for a Writ of Prohibition, to prohibit the respondents from proceeding further with the aforesaid notices issued to the respective petitioners.

3. The said Act came into force on **01.07.2015**. Even prior to the Act came into force on **01.07.2015**, the respective petitioners appeared to have received notices under Section 131 of the Income Tax Act, 1961 for the Assessment Years 2005-2006 to 2011-2012. Under these circumstances, the respective petitioners filed Return of Income for the Assessment Years 2005-2006 to 2011-2012 on **21.05.2015**.

4. The respective petitioners opted to settle the dispute before the Income Tax Settlement Commission (ITSC) by filing Statement of Facts on **10.07.2015**. This was about few days after the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 came into force with effect from **01.07.2015**.

5. By an order dated **30.06.2015**, the Settlement Commission rejected the applications. Under these circumstances, the respective petitioners once again filed fresh applications on **10.07.2015** before the

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Settlement Commission which were again rejected by the Settlement Commission on **15.07.2015** on the ground that the income which are liable to tax under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 cannot be settled under Chapter XIX-A (19-A) of the Income Tax Act, 1961.

6. Under these circumstances, the respective petitioners approached this Court in **W.P.No.22216 of 2015 and W.P.No.22219 of 2015**. By an Order dated **21.06.2016**, this Court was pleased to allow the above Writ Petitions with the following observations:-

> ***"7. In the light of the above stand taken which is based on the Explanatory Note dated 02.07.2015 issued in Circular No.12 of 2015, as the Black Money (Undisclosed Foreign Income Tax and Assets) and Imposition of Tax Act, 2015 comes into effect from 01.07.2015 and the petitioners had filed their Return of Income on 21.05.2015 and notice was issued under Section 148 of the Income Tax Act by the Assessing Officer on 29.05.2015 which is before coming into effect of the provisions of the Black Money Act, 2015, the applications submitted by the petitioners before the Commission are maintainable.***
>
> ***8. Accordingly, the Writ Petitions are allowed and the impugned orders are set aside and the petitioners are directed to file an application before the Income Tax Settlement Commission, which shall be considered by the***

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> ***Commission in accordance with the provisions of the Act. No costs. Consequently, connected Miscellaneous Petitions are closed."***

7. Pursuant to the Directions of this Court dated **21.06.2016** in **W.P.No.22216 of 2015 and W.P.No.22219 of 2015**, the Settlement Commission passed an Order dated **06.12.2017** on merits and thus, rejected the applications filed by the respective petitioners to settle the dispute under Chapter XIX-A of the Income Tax Act, 1961.

8. During the Interregnum, with effect from **01.04.2021**, the Settlement Commission was abolished and was replaced by Interim Board of Settlement (IBS). The respective petitioners however challenged the Order of the Settlement Commission dated **06.12.2017** in **W.P.No.33431 of 2017** and **W.P.No.33432 of 2017**. By an Order dated **03.08.2021**, this Court had dismissed the Writ Petitions against the Order dated **06.12.2017** of the Income Tax Settlement Commission.

9. Aggrieved by the same, the respective Writ Petitioners filed **W.A.No.2629 of 2021** and **W.A.No.2632 of 2021**. The Division Bench of

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this Court ultimately allowed these Writ Appeals on **27.06.2022** and thereby allowed **W.P.No.33431 of 2017** and **W.P.No.33432 of 2017**. Pursuant to the Order of the Division Bench of this Court in **W.A.No.2629 of 2021** and **W.A.No.2632 of 2021** dated **27.06.2022**, the Interim Board of Settlement-II vide Order dated **26.08.2022** accepted the applications filed by the respective petitioners for settling the dispute under the provisions of the Income Tax Act, 1961.

10. Learned Senior Counsel for the petitioners would submit that the notices which have been issued to the petitioners were subject matter of the notices issued to the respective petitioners on **29.05.2015** under Section 148 of the Income Tax Act, 1961.

11. It is submitted that since the Income Tax Cases have now been settled under the provisions of the Income Tax Act, 1961 vide Order dated **26.08.2022** of the Interim Board of Settlement-II, the proceedings initiated under the Impugned Notices dated **27.02.2018** impugned in **W.P.No.1153 of 2021** and **W.P.No.1162 of 2021** cannot be proceeded further.

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12. It is submitted that the subsequent developments which have been mentioned above have neutralized the proceedings issued in the Impugned Notices under the provisions of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and therefore, these Writ Petitions have to be allowed.

13. It is noticed that the respondents have filed a Common Counter Affidavit to which, Common Rejoinder was also filed by the respective petitioners. All these are before the Orders were passed by the Interim Board of Settlement-II on **26.08.2022** accepting the case of the respective petitioners under Chapter XIX-A of the Income Tax Act, 1961.

14. It is noticed that the Order passed by the Interim Board of Settlement-II on **26.08.2022** has also been accepted by the Department and a giving effect order has also been passed on **20.09.2022** and **26.09.2022** for the respective writ petitioners.

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15. In the Additional Counter Affidavit dated **11.12.2014** filed by the respective petitioners, it has been stated that the Deputy Director of Income Tax (Investigation) the first respondent herein had issued notice under Section 10(1) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 on **27.02.2018** inquiring about the investments made abroad. Subsequently, the Interim Board of Settlement had passed the Order on **30.06.2022** and the assessee claims that the assets held abroad have been declared before the Interim Board of Settlement and have been offered to tax.

16. According to the respondents, as per Section 4 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, the income included in the total undisclosed foreign income and asset shall not form part of the total income under the Income Tax Act, 1961. Therefore, the assessee's statement that it has already been offered to tax under the Income Tax Act, 1961 is grossly erroneous.

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17. As per Sub-Clause (ii)(b) to Clause (1) to Section 5 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, in computing the total undisclosed foreign income and asset of any previous year of an assessee, any income which is assessable or has been assessed to tax for any assessment year shall be reduced from the value of the undisclosed asset located outside India, if, the assessee furnishes evidence to the satisfaction of the Assessing Officer that the asset has been acquired from the income which has been assessed or is assessable, as the case may be, to tax.

18. It is submitted that the stand of the Department is based on the order of the Interim Board of Settlement even though assessment under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 results in "Nil" income, the notice issued under Section 10(1) is maintainable as penalties enumerated under Section 41 to Section 47 and prosecution as per Section 48 to Section 58 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 operate independently and both the penalty under Section 43 and

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prosecution under Section 50 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 squarely apply to the case of the assessee.

19. I have considered the arguments advanced by the learned Senior Counsel for the petitioners and the learned Senior Standing Counsel for the respondents.

20. The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 received the assent of the President on **26th May 2015**, which came into force with effect from **01.07.2015**.

21. Prior to the above, already the proceedings under Section 131 of the Income Tax Act, 1961 had been initiated against the respective petitioners and the other share holders/promoters of the Companies called M/s.Moon Mist Enterprises Private Limited in BVI and M/s.Moon Mist Enterprises Private Limited in UBS AG, Singapore have filed return of income on **21.05.2015** disclosing the investments/income from the assets in the said Companies.

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22. It is in this background, the proceedings initiated against the respective petitioners under Section 148 of the Income Tax Act, 1961 on **29.05.2015** which have ultimately culminated in the Order of the Interim Board of Settlement accepting the cases of the respective petitioners for settling the dispute under Chapter XIX-A of the Income Tax Act, 1961 vide Order dated 26.08.2022.

23. The Order of the Interim Board of Settlement has also been implemented the case of the respective petitioners vide the following 2 orders as detailed below:-

W.P.No.	***Date***	***Document / Event & Description***	***Relevant Act / Order / Notice No.***	***Page***
1153 and 1159 of 2021	20.09.2022	Order from ACIT giving effect to order of IBS for the Assessment Year 2005-2006 to 2014-2015	Settlement Application No.TN/CN51/ 2015-16/34-IT	1 (Add typed set)
1162 and 1164 of 2021	26.09.2022	Order from ACIT giving effect to order of IBS for the Assessment Year 2005-2006 to	Settlement Application No.TN/CN51/ 2015-16/34-IT	27 (Add typed set)

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W.P.No.	*Date*	*Document / Event & Description*	*Relevant Act / Order / Notice No.*	*Page*
		2014-2015		

24. Thus, the question is whether the Impugned Notices issued on **27.02.2018** to the respective petitioners under the provisions of the Income Tax Act, 1961 can be allowed to be proceeded.

25. The explanatory note to the provisions relating to "tax compliance" for undisclosed foreign income and assets as provided in Chapter VI of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

26. The Central Board of Direct Taxes by its Circular No.12 of 2015 dated **02.07.2015** has clarified as under:-

> "Considering the stringent nature of the provisions of the new law, Chapter VI of the Act, comprising sections 59 to 72, provides for a one-time compliance opportunity for a limited period to persons who have any foreign assets which have hitherto not been disclosed for the purposes of Income-tax. This circular explains the substance of the provisions of the compliance window provided for in the said Chapter VI of the Act."

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27. A reading of the above indicates that one time compliance opportunity has been given for a limited period to those persons, who have any assets which had not been disclosed for the purpose of income tax. Thus, the proceedings under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 is directed against those who have failed to file the returns under the Income Tax Act, 1961.

28. In this case admittedly, the Return of Income was filed by the respective petitioners on **21.05.2015** which is prior to the implementation of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 with effect from **01.07.2015**.

29. Therefore, continuance of the proceedings under the provisions of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 cannot be countenanced.

30. In fact, the respective petitioners applications for settling the dispute under Chapter XIX-A of the Income Tax Act, 1961 was earlier

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rejected by the Settlement Commission twice on **30.06.2015** and thereafter once again on **10.07.2015** which was challenged before this Court in **W.P.No.22216 of 2015** and **W.P.No.22219 of 2015**.

31. The applications for settling the dispute under the provisions of Chapter XIX-A of the Income Tax Act, 1961 was purely on the ground that the income for the Assessment Years 2005-2006 to 2011-2012 were liable to tax under the provisions of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 which came into force with effect from **01.07.2015**.

32. The Court taking note of the above by its Order dated **21.06.2016** in **W.P.No.22216 of 2015 and W.P.No.22219 of 2015** has clearly held that merely because the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 came into force would not be a bar on the respective petitioners to settle the dispute under Chapter XIX-A of the Income Tax Act, 1961.

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33. The Court also took note of the Explanatory Note in Circular No.12 of 2015 dated **02.07.2015** of the Central Board of Direct Taxes to substantiate the Order dated **10.07.2015** of the Settlement Commission.

34. Thus, the continuance of the proceedings under the Impugned Notices dated **27.02.2018** cannot be countenanced.

35. It would defeat from the purpose of Chapter XIX-A of the Income Tax Act, 1961. It would have been different if the petitioner had not filed Return of Income and had also operate to settle the dispute under Chapter XIX-A of the Income Tax Act, 1961.

36. Since the dispute has been settled under Chapter XIX-A of the Income Tax Act, 1961, the continuance of the proceedings under the Impugned Notices dated **27.02.2018** issued under Section 10(1) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 cannot be allowed to continue.

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37. The Order of the Interim Board of Settlement-II dated **26.08.2022** is a *fait accompli*.

38. Therefore, these Writ Petitions deserves to be allowed and are accordingly allowed with consequential relief to the respective petitioners. No costs. Connected Writ Miscellaneous Petitions are closed.

02.01.2025

Neutral Citation : Yes / No

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To:

1.The Deputy Director of Income Tax (Investigation),
Unit 3(2), Room No.224,
2nd Floor, New Building,
New No.46 (Old No.108),
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C.SARAVANAN, J.

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Pre-delivery Common Order in
W.P.Nos.1153, 1159, 1162 and 1164 of 2021

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