



W.A.Nos.3554 to 3556 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 05.06.2025

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

W.A.Nos.3554, 3555 and 3556 of 2023
and C.M.P.Nos.29075, 29080 and 29107 of 2023

M.Vedamurthy

.. Appellant
in W.A.No.3554/2023

Dr. Maya Vedamurthy

.. Appellant
in W.A.No.3555/2023

M/s.RSV Skin and Laser Centre,
rep. by its Partner M.Vedamurthy,
New No.9, Old No.5, 2nd Cross Street,
Mahilingapuram,
Chennai-600 034.

.. Appellant
in W.A.No.3556/2023

VS

1.Income Tax Settlement Commission,
Additional Bench at Chennai,
Ministry of Finance,
Department of Revenue,
No.640, Anna Salai,
Nandanam, Chennai-600 035.



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Presently:

Interim Board for Settlement,
9th Floor, Lok Nayak Bhavan,
Khan Market,
New Delhi-110 003.

2.Principal Commissioner of Income Tax,
Central-1,
Income Tax Department,
108, Nungambakkam High Road,
Chennai-600 034.

3.The Deputy Commissioner of Income Tax,
Central Circle – 1(4),
Income Tax Department,
108, Nungambakkam High Road,
Chennai-600 034.

.. Respondents
in all appeals

Prayer: Appeals filed under Clause 15 of the Letters Patent against the common order dated 31.10.2023 passed by the learned Single Judge in W.P.Nos.6482, 6497 and 6553 of 2020.

For Appellant
in all WAs

: Mr.R.Sivaraman

For Respondents
in all WAs

: Mr.A.P.Srinivas
Sr. Standing Counsel
assisted by
Mr.ANR Jayapratap
Jr. Standing Counsel



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COMMON JUDGMENT

(Delivered by the Hon'ble Chief Justice)

These three appeals arise out of a common order and judgment pronounced on 31st October, 2023 by a learned Single Judge of this Court rejecting the writ petitions.

2. One of the appellant is Dr. Maya Vedamurthy, an individual professional. The said Dr. Maya Vedamurthy is a cosmetic dermatologist at Chennai. She is specialized in dermatology, laser treatment and aesthetic medicine. The other appellant is Mr.M.Vedamurthy, who is husband of Dr. Maya Vedamurthy. Both of them are partners in the Firm by name M/s.RSV Skin and Laser Centre, which is the third appellant. The Firm has been operational with effect from the assessment year 2015-2016.

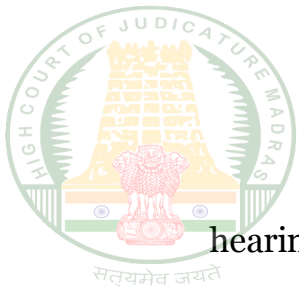
3. A search under Section 132 of the Income Tax Act, 1961 (the Act) was conducted on 1st March, 2018 at the business premises as well as the



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residence of the three appellants. Incriminating documents, such as books, diaries, folders, loose sheets, etc., were seized at the time of search. The search indicated investment in immovable property to the tune of Rs.7,35,00,000/- made from the partnership Firm. Sworn statements of two partners as well as the Accountant one Mr.Nirmal Nareshkumar was also taken during search. Substantial cash and gold bullion were also found.

4. The three appellants filed settlement applications in Form 34B under Section 245C of the Act on 27th December, 2019. These were allowed to be proceeded with by the Income Tax Settlement Commission (ITSC) vide a consolidated order dated 9th January, 2020 under Section 245D(1) of the Act. The year-wise details of disclosure of additional income and payment of taxes in the case of appellants was also mentioned in the settlement application. Subsequently, reports under Section 245D(2B) of the Act were called for from the Principal Commissioner of Income Tax on 10th January, 2020, which were submitted in all the three cases. Copies were forwarded to appellants for their comments. Appellants responded vide their replies dated 24th February, 2020. The cases were posted for



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hearing under Section 245D(2C) of the Act on 26th February, 2020. The

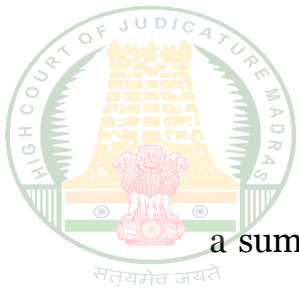
Department was represented by the Commissioner of Income Tax (DR).

Appellants were also represented. After the parties were heard, the ITSC passed an order dated 27th February, 2020 holding all three applications as invalid. According to the ITSC, appellants failed to make full and true disclosure of their income and, hence, did not pay additional taxes with interest as required which was the primary condition to be satisfied on or before the date of making settlement application.

5. This was challenged by way of writ petitions, which came to be dismissed by the impugned order pronounced on 31st October, 2023.

6. A short point before us is whether the ITSC could have rejected the applications at the stage of hearing under Section 245D(2C) of the Act or should have proceeded with the matter and then passed a final order under Section 245D(4) of the Act?

7. The three appellants, in their applications, had admittedly disclosed unaccounted receipts totalling to Rs. 25,22,23,809/-. Out of this,



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a sum of Rs.7.25 Crores was accepted to be offered in the case of Dr. Maya Vedamurthy; Rs.16.28 Crores in the hands of M/s.RSV Skin and Laser Clinic; and Rs.1.67 Crores in the hands of Mr.M.Vedamurthy. But, while filing settlement applications, appellants claimed as under:

"i) Dr. Maya Vedamurthy: Out of receipt of Rs.7.25 Crores, she has offered just 23% of the income i.e. Rs.1.67 Crores and claimed 77% as expenses despite the fact that no such evidence was found during the search.

ii) M/s.RSV Skin and Laser Clinic: Instead of Rs.16.28 Crores, it has offered unaccounted income of Rs.10.73 Crores and on which it has claimed 82% of expenses. Thus it has offered just Rs.1.93 Crores as its income. Regarding Rs.5.56 Crores not offered by the applicant, it is stated that:-

(a) Rs.3.06 Crores has been offered in the return of income filed for the A.Y. 2018-19 for both the applicant as well as Dr. Maya Vedamurthy. This is very strange because all along the applicant has been stating that from A.Y. 2015-16, the income of the clinic has been offered in the applicant Firm and not in the hands of Dr. Maya Vedamurthy. On being questioned during the hearing, the applicant had no answer to justify this claim and thus it is clear that this income of Rs.3.06 Crores clearly evidenced from the impounded documents has not been offered by the applicant.

(b) As regards the balance of Rs.2.50 Crores of discrepancy found in the fee receipts, the applicant has simply stated that it is covered under the total disclosure without justifying how and where. During the hearing, when the A.R. was questioned on the same, he could not justify this exclusion and simply stated that there are expenses against this income without giving any supporting proof or giving any cogent reason.

(iii) Mr.M.Vedamurthy: Against the unaccounted income of Rs.1.67 Crores found during the search, the applicant has claimed 30% of expenses. The said income is stated to be unaccounted commission from pathology. The applicant was asked to explain as to how there were expenses against this income and the proof of the same. The applicant has not been able to justify the same."



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8. A Co-ordinate Bench of this Court in ***Deputy Commissioner of Income Tax (International Taxation-1), Chennai v. Hitachi Power Europe GmbH*** has analysed the scope of Section 245D(2C) of the Act. The Court has held that the procedure to be adopted by the ITSC while exercising powers under sub-section (2C) of Section 245D of the Act is summary in nature, notwithstanding the fact that applicant is being given an opportunity of being heard. The Court has also held that a plain reading of sub-section (2C) of Section 245D of the Act does not spell out an adjudicatory process and, therefore, if, in the opinion of the Commission based upon the report, the issue needs to be adjudicated, the application cannot be declared as invalid and each case which comes before the Commission has to be decided on its own facts.

9. Paragraphs 13 and 15 to 21 of *Hitachi Power Europe* (supra) read as under:

“13. The application filed by the 1st respondent/writ petitioner was allowed to be proceeded with by the Settlement Commission under

1 [2020] 119 taxmann.com 173 (Madras)



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Section 245D(1) of the Act. In terms of Section 245D(2), the copy of such order passed under sub-Section (1) of Section 245D will be sent to the applicant and to the CIT and in terms of sub-Section (2B) of Section 245D, the Settlement Commission shall call for a report from the CIT, who shall furnish the report within a period of thirty days' of the receipt of the communication from the Settlement Commission. On receipt of the report, the Commission will proceed to take a decision under sub-Section (2C) of Section 245D of the Act within a period of fifteen days' from the date of receipt of the report by an order in writing declaring the application in question as invalid and before doing so, afford opportunity of being heard to the applicant. The application filed by the 1st respondent/writ petitioner was declared to be invalid on the ground that there is no true and full disclosure of the income of the assessee.

....

15. We do not agree with the said submission, as it is important to take note of the legislative intent and scope of power vested with the Settlement Commission under sub-Section (2C) and sub-Section (4) of Section 245D. For better appreciation, these two sub-Sections are quoted hereinbelow:-

“Section 245D(2C):-

Where a report of the [Principal Commissioner or] Commissioner called for under sub-section (2B) has been furnished within the period specified therein, the Settlement Commission may, on the basis of the report and within a period of fifteen days of the receipt of the report, by an order in writing, declare the application in question as invalid, and shall send the copy of such order to the applicant and the [Principal Commissioner or] Commissioner:

Provided that an application shall not be declared invalid unless an opportunity has been given to the applicant of being heard:

Provided further that where the [Principal Commissioner] Commissioner has not furnished the report within the aforesaid period, the Settlement Commission shall proceed further in the matter without the report of the [Principal



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Commissioner or] Commissioner.

Section 245D(4):-

(4) After examination of the records and the report of the [Principal Commissioner or] Commissioner, if any, received under—

*(i) sub-section (2B) or sub-section (3), or
(ii) the provisions of sub-section (1) as they stood immediately before their amendment by the Finance Act, 2007,*

and after giving an opportunity to the applicant and to the [Principal Commissioner or] Commissioner to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the [Principal Commissioner or] Commissioner.”

16. The power to be exercised by the Commission under sub-Section (2C) of Section 245D is within a period of fifteen days' from the date of receipt of the report of the CIT. This provision gives power to the Settlement Commission to declare an application as invalid after affording an opportunity of hearing to the applicant. Under sub-Section (4) of Section 245D, the Commission after examination of the records and report of the CIT under sub-Section (2B) or sub-Section (3) of Section 245D and after affording an opportunity to the applicant and to the CIT to be heard either in person or through Authorized Representative and after examining such further evidence as may be placed before it, or obtained by it, the Settlement Commission may, in accordance with the provisions of the Act, pass such order as it deems fit on the matters covered by the application or any other matter relating to the case not covered by the application, but referred to in the report of the CIT. Thus, the procedure to be adopted by the Settlement Commission while exercising powers under sub-Section (2C) of Section 245D is summary in nature. No doubt, the applicant is given an opportunity of being heard.



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17. The plain reading of sub-Section (2C) of Section 245D of the Act does not spell out an adjudicatory process. Therefore, if in the opinion of the Commission, based upon the report the issue needs to adjudicated, the application cannot be declared as invalid. Therefore, each case, which comes before the Commission has to be decided on its own facts.

18. In several cases, where search and seizure operations are conducted, where contraband is involved, where there is fraudulent practice adopted, the assessee approach the Commission. Even in those cases, if the Commission allows an application to be proceeded with under Section 245D(1), yet upon receipt of the report, the application can be declared invalid under sub-Section (2C) of Section 245D. In fact, the decision in Abdul Rahim (supra) is one such case.

19. We have referred to the four issues, which the applicant wanted to be settled by the Commission, which have been stated above and, the first among the four issues is with regard to the income earned from offshore supply of goods. The Commission was largely guided by the report of the CIT, who reported that the composite contract of offshore and onshore services are artificial bifurcated. The Settlement Commission held that the contention of the 1st respondent/writ petitioner that it is not a composite and it was a separate composite and the same was done by NTPC was held to be not fully true. In other words, the Settlement Commission appears to have accepted the fact that the contracts were bifurcated by NTPC, the entity which invited the tender, but the Commission would state that the bifurcation done by NTPC was only for financial reasons. The question is whether such a finding could lead to an application being declared as invalid under Section 245D(2C) on the ground that the 1st respondent/writ petitioner has failed to make full and true disclosure of income. In our considered view, the answer to the question should be a definite no, as this issue could not have been decided without an adjudication.

20. To decide whether a contract is a composite contract or separate contracts, a deeper probe in to the factual scenario as well as the legal position is required. If such is the fact situation in the case on hand, the application of the 1st respondent/writ petitioner could not have been declared as invalid on account of failure to fully and truly disclose its income. Thus, what was required to be done in the instant case was to allow the application to be proceeded with under Section 245D(2C) and take up the matter for consideration under



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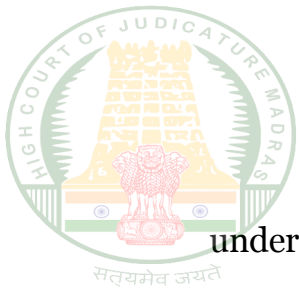
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Section 245D(4) and take a decision after adjudicating the claim.

21. The argument of the appellant-Revenue that the learned Writ Court has re-written the statutory provision is an incorrect submission. The marked distinction with regard to the exercise of power of the Settlement Commission at the (2C) state and (4) stage is amply clear from the wordings in the statute. The Commission can declare an application to be invalid at the (2C) stage. Such invalidation cannot be by a long drawn reasoning akin to a decision to be taken at the stage of Section 245D(4). This is so because, sub-Section (4) of Section 245D gives ample power to the Commission to examine the records, the report of CIT received under sub-Section (2B) or sub-Section (3) or the provisions of sub-Section (1), as they stood immediately before their amendments by Finance Act, 2007. The Commission is required to give an opportunity to the applicant, the CIT, they are entitled to be represented by an Authorized Representative and after hearing them and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission, may, in accordance with the provisions of the Act, pass such order as it deems fit. Therefore, the scope of enquiry is not confined to the statements made in the application, the response filed by the applicant to the report of the CIT, but also the submissions made during the personal hearing and any further evidence as may be placed before it by the applicant or obtained by the Settlement Commission in exercise of its power and then proceed to pass orders as it deems fit. Therefore, the procedure at the (2C) stage is undoubtedly summary in nature and the application filed by the 1st respondent/writ petitioner could not have been declared as invalid at the said stage, as the issue requires adjudication, which can be done only when the application is decided under Section 245D(4) of the Act.”

10. In a similar matter, in **Principal Commissioner of Income-tax (Central) v. Settlement Commission**² also the Court held that question of fulfillment of all material requirements of a valid application for settlement would be still open for the Commission to examine before further inquiry

² [2016] 65 taxmann.com 309 (Gujarat)



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under sub-section (3) of Section 245D of the Act and passing final order

under sub-section (4) of Section 245D of the Act. That was a case where

the Department went to the High Court challenging the decision of the

Settlement Commission to move to the next stage under sub-section (3) of

Section 245D. According to the Department, the application for settlement

was irregular and, therefore, ought not to have been proceeded further

beyond the stage of Section 245D(1) of the Act. According to the

Department, assessee had not made the true disclosure of his income.

Rejecting the submission of the Department, the Gujarat High Court came

to the finding as noted above. Paragraphs 5 and 7 of the judgment in the

case of *Principal Commissioner of Income-tax* (supra) read as under:

“5 . Thus, at the stage of sub-section (1) of section 245D, there is no requirement of hearing the Commissioner at all. The stage is to be crossed within a rigid time frame and in absence of any order, either rejecting the application for settlement or allowing it to be proceeded further, it would be deemed to have been allowed to proceed. In this context, the Division Bench of this court in case of Vishnubhai Mafatlal Patel (supra) observed as under:-

"12. The twin requirements for an assessee making an application for settlement under section 245C(1) of the Act, of containing full and true disclosure of income which has not been disclosed before the Assessing Officer and the manner in which such income has been derived, are thus of considerable importance and would be open for the Settlement Commission to examine the fulfilment thereof at several stages of the settlement proceedings. If therefore, while at the threshold, considering the question whether such application should be allowed to be



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proceeded with or be rejected, the Commission examined such questions on the basis of disclosure made by the applicants and the supporting material produced along with the applications, we do not see that the Commission committed any legal error. As already noted, it was well within the jurisdiction of the Commission at the stage of sub-section (1) of section 245D of the Act to examine whether the application for settlement fulfills the statutory requirements contained in sub-section (1) of section 245C of the Act. At this stage we may refer to the decision of the Supreme Court in case of Ajmera Housing Corporation v. CTT [2010] MANU/SC/0623/2010 : 326 ITR 642 (SC). It was a case in which the assessee had made certain disclosures in the initial application under section 245C(1) of the Act. Such disclosures were however, revised and additional income was disclosed in the revised annexures. The apex court held that the assessee had no right to revise an application under section 245C(1) of the Act and further that such revised annexure making further disclosure of undisclosed income alone was sufficient to establish that the initial application made by the assessee could not be entertained as it did not contain true and full disclosure of the undisclosed income and the manner in which such income had been derived."

.....

7 . In the said judgment, as reproduced in para 13, the counsel for the assessee had not contended that once the application has been proceeded with under section 245D(1) and has not been held to be invalid under section 245D(2C), the validity of the same in terms of the requisite conditions stipulated in section 245C(1) cannot be gone into at the subsequent stages up to the passing of the order under section 245D(4) of the Act. Same is the situation in the present case. We record the contention of the counsel for the assessee that despite the orders being passed by the Settlement Commission under sub-section (1) of section 245D and section 245D(2C) of the Act, the question of fulfilment of all material requirements of a valid application for settlement would be still open for the Commission to examine before further inquiry under sub-section (3) of section 245D and passing final order under sub-section (4) of section 245D. In fact, the Commission also in the order dated 23.03.2015 made following observations:-

"We appreciate that some of the issues raised by the



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Department in the report under section 245D(2B) may call for necessary enquiry and investigation under section 245D(3) of the Act and in the absence of the same, it cannot be conclusively, observed that the applicant has not made true and full disclosure of its income in the settlement application. At this stage, we find that no clinching, cogent and direct evidence have been placed on record by the Department to come to the conclusion that the above applicant has not made a true and full disclosure of his income in the settlement application. We have no adverse material/information in our possession at this stage to come to a negative conclusion against the applicant. As mentioned above, all other technical requirements have been fulfilled by the applicant. Under the circumstances, we are of the opinion that the settlement application filed in this case cannot be held to be 'invalid'."

11. A similar view has also been taken by the Delhi High Court in the case of **Commissioner of Income-tax v. Income Tax Settlement Commission**³, in which paragraph 13 reads as under:

"13. From the above provisions, it is apparent that the settlement application passes through several stages before the final order providing for the terms of settlement is passed by the Settlement Commission. The first stage is under Section 245D(1). This is followed by the next step under Section 245D(2C) and finally by the order passed under Section 245D(4). In the present case, the final order under Section 245D(4) is yet to be passed. The orders under Section 245D(1) and 245D(2C) are not final orders and they are subject to the final orders that may be passed under Section 245D(4). It is, therefore, clear that the issue of full and true disclosure on the part of the applicants and the manner in which the undisclosed income was derived is still open for discussion and debate and the Settlement Commission would have to give its final decision on these aspects before an order of settlement is passed under Section 245D(4) of the said Act. Therefore, on a plain reading of the provisions, it is apparent that the submission made by the learned

³ [2013] 35 taxmann.com 56 (Delhi)



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counsel for the respondents 2 to 5 merits acceptance insofar as it was contended by him that the entire issue remains open and at any stage of the proceedings till the order under Section 245D(4) is passed by the Settlement Commission, the issue with regard to full and true disclosure and the manner in which the undisclosed income had been derived would be open and can be raised by the Revenue. In fact, it was clarified by the learned counsel for the respondents 2 to 5 that the said respondents do not even contend that once an application has been proceeded with under Section 245D(1) and has not been held to be invalid under Section 245D(2C), the validity of the same in terms of the requisite conditions stipulated in Section 245C(1) cannot be gone into at the subsequent stages up to the passing of the order under Section 245D(4) of the said Act.”

12. Here, in this case, each of the appellants have disclosed the receipt and also offered part of the receipt as income by claiming the remaining as expenses. This is the situation where a deeper probe into the factual scenario is required. In the fact situation of the case at hand, in our view, the Commission should have proceeded to the next stage under Section 245D(4) of the Act and at that stage should have called for evidence to justify the expenses claimed as deductible and then given a finding on the amount of tax to be paid on the unaccounted income. Therefore, what was required to be done was to allow the applications to be proceeded with under Section 245D(2C) of the Act and take up the matter for consideration under Section 245D(4) of the Act and take a decision after adjudicating the



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claim.

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13. In the circumstances, in our view, the impugned order of the learned Single Judge requires to be interfered with. We hereby quash and set aside the impugned order pronounced on 31st October, 2023.

14. Appeals are allowed. There shall be no order as to costs. Consequently, interim applications are closed.

15. Since the Income Tax Settlement Commission has been abolished and Interim Board for Settlement has been constituted under Section 245AA of the Act with effect from 1st February, 2021, the cases of three appellants shall also be placed before the Interim Board for Settlement, which shall proceed further in the matter and dispose the same in accordance with law.

16. We hasten to add that we have not made any observation on the merits of the settlement applications made.



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(K.R.SHRIRAM, C.J.)

(SUNDER MOHAN, J.)

05.06.2025

Index : Yes/No
NC : Yes/No
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To

- 1.Income Tax Settlement Commission,
Additional Bench at Chennai,
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Presently:
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- 2.The Principal Commissioner of Income Tax,
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108, Nungambakkam High Road,
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