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W.P.No. 10707 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No. 10707 of 2019 and
WMP.Nos. 11192 &11189 of 2019

M/s. Sri Lakshmi Ammal Educational Trust,
Represented by its Managing Trustee
Mr.Sundeeep Aanand
No.29, Tilak Street,
T.Nagar, Chennai-17

...Petitioner

Vs.

1.Income Tax Settlement Commissioner
Additional Bench, Chennai,
Ministry of Finance,
Department of Revenue,
640, Anna Salai, Nandanam,
Chennai-35
2.Assistant Commissioner of Income Tax,
Central Circle 2(3), Chennai,
New No.46, Mahatma Gandhi Road,
Chennai-34

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of certiorarified mandamus calling for the records of the 1st respondent in TN/CN 52/2018-19/113/IT in passing the order under Section 245D(2C) of the Income Tax Act, 1961 dated 28.03.2019, quash the same and consequently direct the 1st respondent to proceed with the settlement application under Section 245D(2C) of the Income Tax Act, 1961.

For Petitioner : Mr.R.Sivaraman
For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel



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ORDER

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The petitioner is a trust and had filed a settlement application before the Income Tax Settlement Commission in short ('Commission'/'Settlement Commission') constituted under the provisions of the Income Tax Act, 1961 (in short 'Act') relating to the assessments for the years 2011-12 to 2017-18.

2. The assessments had been framed consequent upon a search under Section 132 of the Act conducted on 13.07.2016 at the registered office of the petitioner trust and in the residential premises of the managing and other trustees. The application had come up for admission before the Settlement Commission on 15.02.2019 and after hearing the petitioner, the application was admitted to be proceeded further under Section 245D (1) of the Act.

3. Additionally, the petitioner was required to make a full remittance of the taxes due on the additional income offered, in compliance of the statutory pre-condition for maintaining its application before the Settlement Commission. The petitioner had remitted the taxes of additional income partly by way of adjustment against cash seized.

4. The trust had written to the Department on 11.12.2018 seeking a confirmation as to the amounts available for adjustment in the trust's personal deposit account (PD account) as on that date.



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5. The Principal Commissioner of Income Tax responded on 17.12.2018 as follows:

Please refer to the subject mentioned above.

The details of balance amount available in PD Account in the name of the following assessee after adjustment in the group case of Shri S Jagathrakshakan is as under:

Sl. No.	Name of the assessee (M/s/Shri/Smt)	Name of the assessee in whose name cash seized deposited	Amount.
1.	<i>Sree Balaji Medical College and Hospital</i>	<i>M/s.Lakshmiammal Educational Trust – AABTS1129F</i>	<i>34,97,070</i>
2.	<i>Sree Balaji Dental College and Hospital</i>	<i>M/s.Lakshmiammal Educational Trust – AABTS1129F</i>	<i>21,50,000</i>
3.	<i>J Devanathan (99,00,000+9397500)</i>	<i>No assessee details in the PD Account Challan</i>	<i>28695000</i>
4.	<i>S. Raghothaman</i>	<i>M/s.Lakshmiammal Educational Trust – AABTS1129F</i>	<i>50,00,000</i>
5.	<i>Vilasini</i>	<i>M/s.Lakshmiammal Educational Trust – AABTS1129F</i>	<i>59,34,000</i>
6.	<i>V.Selva Kumar (3,87,18,200+2700000)</i>	<i>M/s.Lakshmiammal Educational Trust – AABTS1129F</i>	<i>41418200</i>
7.	<i>Saravanan Subramaniam</i>	<i>M/s.Lakshmiammal Educational Trust – AABTS1129F</i>	<i>1,25,02,095</i>
8.	<i>Arivazhagan Subramanian</i>	<i>M/s.Lakshmiammal Educational Trust – AABTS1129F</i>	<i>1,00,00,000</i>
9.	<i>Kumar</i>	<i>M/s.Lakshmiammal Educational Trust –</i>	<i>27,50,000</i>



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Sl. No.	Name of the assessee (M/s/Shri/Smt)	Name of the assessee in whose name cash seized deposited	Amount.
		AABTS1129F	
10.	Raghunathan	M/s.Lakshmiammal Educational Trust – AABTS1129F	90,50,000

6. The above letter, in my view, gives a picture to the addressee, the petitioner herein, that the amounts lying to its credit amounted to a sum of Rs.11,15,98,860/- as is clear from the heading of the third column which states 'name of the assessee in whose name cash seized deposited'.

7. The petitioner had remitted a sum of Rs.11,40,63,961/- and had sought adjustment of a sum of Rs.9,23,01,365/- from out of the cash seized amounting to a sum of Rs.11,15,98,860/-. This position had also been accepted by the Settlement Commission in order dated 15.02.2019 at para 10, that reads as follows:

'10. The request of the applicant for adjustment of seized cash towards tax/interest payable is accepted and the PCIT is directed to adjust the seized cash against tax/interest due as per the letter dated 14.02.2019 submitted by the applicant before the Commission which is enclosed herewith.'

8. Thereafter, as per the procedure under Chapter XVII B, the Department had filed a report in Form 2B wherein for the first time they had taken the stand that the entirety of the amount lying in the petitioners PD



account did not enure to its benefit, while accepting that a sum of Rs.7,73,46,770/- did enure to the credit of the petitioner.

9. The deposits that have been made alongside the names of two of the assessee namely Arivazhagan Subramanian and Saravana Subramanian were stated to be unavailable to the petitioner, thus, leading to a difference of an amount of Rs.1,49,54,595/-. This fact was intimated to the petitioner only in the report under section 245(D) (2B).

10. Immediately, the petitioner has remitted a sum of Rs.1.5 crores and challans dated 27.03.2019 and 28.03.2019, have been placed on file. However, the Settlement Commission has, in the impugned order, proceeded on the basis that the admitted tax has not been remitted in full at the time of filing of the application and rejected the application for want of maintainability.

11. The provisions of Section 245C impose a pre-condition that the entirety of the admitted tax in respect of the amount offered be deposited along with the settlement application at the time of filing. The petitioner has proceeded in line with the contents of letter dated 17.12.2018 that convey that an amount of Rs.11.15 crores (approx.) is available to the credit of the petitioner in the PD account. It is thus that the petitioner has availed credit



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of a sum of Rs.9,23,01,365/- from the said amount towards the amount of tax due.

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12. The confusion and the error, if at all, arises only from the contents of letter dated 17.12.2018. The unambiguous impression that it conveys is that the entirety of the credit determined as balance in the PD account enured to the benefit of this petitioner. Immediately and coming to know of the same, the petitioner has remitted the sum of Rs.1.5 crores and this, in my considered view, constitutes substantial and adequate compliance of the statutory condition.

13. The impugned order is thus set aside. The Settlement application stands restored to the file of the Settlement Commission (Interim Board) that shall hear the petitioner as expeditiously as possible and dispose the application, on merits.

14. This writ petition is disposed in the above terms. Connected miscellaneous petitions are closed. No costs.

11.10.2022

Index : Yes
Speaking Order
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To

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