

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Harish Tandon

and

The Hon'ble Justice Hiranmay Bhattacharyya

MAT 375 of 2022

with

I.A. No. CAN 1 of 2022

Shri Pradeep Kumar Naredi

Versus

Union of India & Ors.

WITH

MAT 376 of 2022

with

I.A. No. CAN 1 of 2022

RSB Industries Ltd. & Anr.

versus

Union of India & Ors.

For the Appellants

: Mr. J.P. Khaitan, Sr. Adv.
Mr. Saumya Kejriwal
Ms. Ananya Rath
Mr. Debarghya Banerjee
Mr. Navin Mittal

.....advocates

For the Respondents

: Mr. Vipul Kundalia, Sr. Adv.
Mr. Soumen Bhattacharjee

..... advocates

Reserved on

: 10.12.2024

Judgment on

: 24.12.2024

Hiranmay Bhattacharyya, J.:-

1. These appeals are at the instance of an assessee and are directed against an order dated 23.02.2022 passed by a learned Single Judge in WPA 3048 of 2022 heard analogously with WPA 3049 of 2022. By the order impugned the writ petitions stood dismissed.
2. The appellants have prayed for a declaration that the amendment introduced by the Finance Act, 2021 by which the Income Tax Settlement Commission was abolished and an interim Board was constituted to deal with the pending applications to be ultra vires, arbitrary, unconstitutional and violative of the provisions of the Act and Article 14 of the Constitution of India. The petitioners have also prayed for issuance of a writ in the nature of certiorari quashing the CBDT order dated 28.09.2021 being *ultra vires*, arbitrary, unconstitutional and violative of the provisions of the Act and Article 14 of the Constitution of India and for quashing the order of the Settlement Commission dated 14.01.2022.
3. The appellants filed applications under Section 245 C(I) of the Income Tax Act 1961 before the Settlement Commission (IT & WT) Additional Bench, Kolkata on 17.03.2021 for the settlement of his income tax matters for the assessment years 2014-15 to 2020-21. The appellants were subjected to search and seizure operations under the 132 of the Act on 16.01.2020 and notices under Section 153(A) of the Act were issued to them on 02.02.2021 for assessment years 2014-15 to 2019-20. The Secretary, Settlement Commission IT & WT Additional Bench, Kolkata, by an order dated 14.01.2022, held that the application is treated as invalid and is not allowed to be proceeded with Section 245(D) 1 of the Act. It was observed in the said order that the requisite conditions or parameters for filing a settlement application under Section 245(C) of the Act read with Finance Act, 2021, Income Tax Act, 1961 press release dated 07.09.2021 and CBDT's order under Section 119(2) (b) dated 28. 09.2021 have prima facie not being fulfilled.

4. Challenging the said order, the appellants filed applications under Article 226 of the Constitution of India. The learned Single Judge, by the order impugned dismissed the said application upon holding that the order of the board was constitutionally valid and legal and is, perfectly, within the power conferred upon it and the same is not discriminatory.
5. Prior to the Finance Act, 2021, the eligible assesseees were entitled to approach the Income Tax Settlement Commission (for short "Settlement Commission") at any stage of a case relating to them. The Settlement Commission was abolished by the Finance Act, 2021 which was notified on 01.04.2021 and an Interim Board was constituted to deal with the pending applications. Proviso to section 245B was inserted which states that the Settlement Commission shall cease to operate on or after 01.02.2021. Section 245C(1) was inserted by the Finance Act, 2021 which states that no application shall be made under that Section on or after 01.02.2021. The Finance Act was made retrospective in operation with effect from 01.02.2021. A circular was issued on 28.09.2021 extending the time limit for filing applications before the Interim Board upto 30.09.2021. Para 4 of the said circular provided that the said relaxation shall be available to the application filed by the assesseees who were eligible to file application for settlement on 31.01.2021 for the assessment years for which the application is sought to be filed and where the relevant assessment proceedings of the assessee are pending as on the date of filing of the application for settlement.
6. Mr. Khaitan contended that the Finance Act, 2021 was notified only on 01.04.2021. He submitted that the statutory remedy of approaching the Settlement Commission could not have been taken away retrospectively. He further contended that such vested right could not be affected by a retrospective legislation. Mr. Khaitan submitted that the issue involved in this writ petition has been settled by various High Courts and the Hon'ble Supreme Court. He concluded by submitting that the application of the appellant should have been accepted and entertained by the Settlement Commission.

7. Heard Mr. Kundalia, learned advocate for the Income Tax Department on such submission.
8. The issue as to whether paragraph 4(i) of the circular dated 28.09.2021 is bad in law in as much as it imposes a condition of liability to file application for settlement as on 31.01.2021 along with the issue as to whether the Finance Act, 2021 is unconstitutional in as much as by giving retrospective application with effect from 01.02.2021 fell for consideration before the Hon'ble Division Bench of the Madras High Court in the case of **Jain Metal Rolling Mills vs. Union of India and Others** reported at **(2024) 461 ITR 423 (Mad)**. In paragraph 34 of the said reports 3 questions were formulated, which are set out hereunder.

"34. We have considered the rival submissions made on either side and perused the material records of the cases. The following three questions arise for consideration in the present cases :

" (i) Whether or not paragraph 4 (i) of the circular, dated September 28, 2021 ([2021] 438 ITR (St.) 5) is bad in law inasmuch as it imposes a condition of eligibility to file application for settlement as on January 31, 2021 ?

(ii) Whether or not the Finance Act, 2021 ([2021] 432 ITR (St.) 52) is unconstitutional inasmuch as it has given retrospective application with effect from February 1, 2021 ?

(iii) To what reliefs, the petitioners are entitled ?"

9. The aforesaid Question no. (i) was answered in **Jain Metal** (supra) by holding that when the Income Tax Settlement Commission itself has been made inoperative with effect from 01.02.2021, it cannot be said that Clause 4(i) of the circular runs counter or imposes an additional condition to the statute. It was held thus -

"35. The impugned circular is issued in the exercise of power under section 119(2) of the Act. The offending clause 4 (i) is extracted supra in paragraph No. 6 above. On a consideration of the decisions relied on by both sides and submissions made, to answer the question in the present context of the case, it is clear that a circular issued by the respondents under section 119 of the Act : (i) would be binding on the Departmental authorities ;(ii) it is issued to ensure uniform and proper administration and the application of the Income-tax Act ; (iii) it cannot add any new condition or anything contrary to the statute; (iv) but, in order to mitigate the rigour of the

provisions for the benefit of the assesses in certain specified circumstances, it can even travel beyond so as to grant administrative relief to the taxpayer, but, it shall not impose any new burden on him.

36. In that conspectus, with the Finance Act, 2021, in the background as such, it can be seen that by virtue of the proviso to section 245B, the Income-tax Settlement Commission is made inoperative with effect from February 1, 2021. Similarly, section 245C(5) also plays an embargo that no application shall be made under the section on or after February 1, 2021. The proviso to section 245D(2C) deems that if no order is passed as on January 31, 2021 under the section, the application is deemed to be valid. The powers of the Income-tax Settlement Commission under sections 245DD, 245F, 245G, 245H are all specifically entrusted to be exercised by the Interim Board with effect from February 1, 2021. Further, sections 245D(9), stipulates that from February 1, 2021, the provisions of sub-sections (1), (2), (2B), (2C), (3), (4), (4A), (5), (6) and (6B) shall apply to pending applications allotted to Interim Board with the modifications mentioned therein. In this background, the circular can only grant administrative relief to the assesses. Therefore, considering the fact that the Finance Act, 2021 ([2021] 432 ITR (St.) 52) was retrospective in nature, those who have had a right to approach the Income-tax Settlement Commission, i.e., those who had a case pending against them would have missed the bus in not actually filing the application before the Income-tax Settlement Commission as the same was retrospectively made inoperative. Only for the said action of filing the application, the circular extend the date by September 30, 2021, even though as per the Act, it was only February 1, 2021. In that context, when paragraph No. 4 categorically states that only those assesses who are eligible to file an application for settlement as on January 31, 2021, it cannot be said that it introduces an additional clause of eligibility which is not found in the statute. On the other hand, if only such clause 4(i) is not there, it would render violence to the Finance Act, 2021. Therefore, we are unable to accept the contentions on behalf of the writ petitioners that the circular imposes an additional condition of eligibility which is not there in the statute. Even though there is no specific provision regarding eligibility, the right to approach the Income-tax Settlement Commission can be exercised so long as the Income-tax Settlement Commission is operational in law. When the Income-tax Settlement Commission itself has been made inoperative with effect from February 1, 2021, it cannot be said that clause 4 (i) of the circular runs counter or imposes an additional condition to the statute. Accordingly, question No. (i) is answered." (emphasis supplied)

10. Question no. (ii) was answered by the Hon'ble Division Bench by observing that it is just necessary to read down the last date mentioned for filing application in Section 245C(5) as 31.03.2021 and consequently the last date mentioned in paragraph 4(i) of the circular should be read as 31.03.2021.

11. In view of the findings rendered in respect of question nos. I and II formulated by the Hon'ble Division Bench of the Madras High Court, it was held that all applications in respect of the petitioners even in respect of the cases arising between 01.02.2021 to 31.03.2021 shall be deemed as pending applications for the purpose of consideration by the Interim Board and wherever they are rejected on the ground that they did not have a case pending as on 31.01.2021, such orders shall stand set aside and the applications shall be deemed to be pending applications for the consideration by the Interim Board if otherwise in order and eligible and shall be dealt with in accordance with law on merits as per the scheme that may be framed by the Central Government as in respect of the other cases which arose prior to 31.01.2021. The Conclusions were summarised in Paragraph 42 of the said reports which is extracted hereinafter-

"42. In the result, these writ petitions are partly allowed and are disposed of on the following terms :

(i) Section 245C(5) of the Income-tax Act, 1961 (as amended by the Finance Act, 2021) is read down by removing the retrospective last date of 1st day of February, 2021 as 31st day of March, 2021 ;

(ii) Consequently the last date of eligibility mentioned in paragraph 4(i) of the impugned circular dated September 28, 2021 shall also be read as March 31, 2021 ;

(iii) all the applications in respect of the petitioners even in respect of the cases arising between February 1, 2021 to March 31, 2021 shall be deemed to be pending applications for the purposes of consideration by the Interim Board;

(iv) Wherever they are rejected on the ground that they did not have a case pending as on January 31, 2021, such orders shall stand set aside and the applications shall be deemed to be pending applications for the consideration by the Interim Board, if otherwise in order and eligible, and shall be dealt with in accordance with law on the merits in accordance with the scheme that may be framed by the Central Government as in respect of the other cases which arose prior to January 31, 2021 ;

(v) No costs. Consequently all miscellaneous applications shall stand closed."

12. An SLP (Civil) Diary No. 21948 of 2024 was preferred against the judgment dated 17.11.2023 passed in a batch of writ petitions and one of which is **Jain Metal** (supra). The Hon'ble Supreme Court by an order dated 09.07.2024 dismissed the Special Leave Petition.

13. The Hon'ble Division Bench of Bombay High Court in the case of **Sar Senapati Santaji Ghorpade Sugar Factory Ltd. vs. Assistant Commissioner of Income-tax** reported at **(2024) 161 taxmann.com 166 (Bombay)** after noting the decision of the Madras High Court in **Jain Metal** (supra) held that retrospective legislation cannot affect the vested rights. It was further observed that the purport of subsection 5 of Section 245(C) is not to make an application already filed after 01.02.2021 as invalid but it should be read as no application shall be made after 01.02.2021 once the assent of the Hon'ble President of India has been received. Any application made by the assessee before the grant of assent will not be hit by Subsection 5 of Section 245(C) of the Act. The Hon'ble Division Bench of Bombay High Court held as follows-

"34. Retrospective legislation cannot affect the vested rights. When the Department has extended the last date from 1st February 2021 to 30th September 2021, it can only extend the deadline but cannot introduce a new concept of eligibility as on 1st February 2021 which is not there in the Act itself. Though the CBDT relaxed the rigours of the provisions of the Act for the benefit of assessees, it is not open to the CBDT to put in new rigours or impediments to the rights of an assessee in a Press Release or a notification which is contrary to the provisions of the Act. Though the legislature has the power to make laws with retrospective effect, that power cannot be used to deprive a person of an accrued right vested in him under a statute or under the Constitution.

Sub-section (5) of Section 245C of the Act, even though inserted with retrospective effect from 1st February 2021, can be given effect to only after the date when the assent of the Hon'ble President of India was received to promulgate the Finance Act, 2021. Subsection (5) of Section 245C of the Act provides that no application shall be made under this section on and after 1st February 2021. Petitioner had already made the application on 18th March 2021 when sub-section (5) was not in the statute and hence, petitioner had made the valid application as per the provisions of the Act. The purport of sub-section (5) is not to make an application already filed after 1st February 2021 as invalid but it should be read as no application shall be made after 1st February 2021 once the assent of the Hon'ble President of India has been received. But before receipt of the assent any application made by an assessee will not be hit by sub-section (5) of Section 245C of the Act. (emphasis supplied)

14. The Division Bench of the Gujarat High Court in **Vetrivel Infrastructure vs. Deputy Commissioner of Income-tax** reported at **(2024) 164**

taxmann.com 123 (Gujarat) after taking note of the decision in **Jain Metal** (supra) held that when the petitioners have filed their applications before 31.03.2021 the date on which the Finance Act 2021 did not come into effect, the petitioners had vested right of preferring the application in absence of any statute prohibiting the said application. The Kerala High Court in the case of **New Hope Foundation vs. Union of India** reported at **(2024) 167 taxmann.com 474(Kerala)** also relied upon the decision in **Jain Metal** (supra).

15. In the case on hand the petitioners applied before the Settlement Commission on 17.03.2021 i.e., prior to the date when the assent of the Hon'ble President of India has been received. The decision in the case of **Jain Metal** (supra) shall squarely apply to the case on hand.
16. For all the reasons as aforesaid the order of the learned Single Judge dated 23.02.2022 as well as the order impugned in the writ petition dated 14.01.2022 passed by the Income Tax Settlement Commission are set aside and quashed. The application of the petitioner dated 17.03.2021 filed before the Income Tax Settlement Commission stands restored to the file of the Settlement Commission. The Interim Board is directed to consider the said application in accordance with the scheme that may be framed by the Central Government as in respect of the cases which arose prior to 31.01.2021 and to decide the same in accordance with law and on merits.
17. The appeals accordingly stand allowed. There shall be, however, no order as to costs.
18. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(Harish Tandon, J.)

(Hiranmay Bhattacharyya, J.)