* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgement delivered on*: 06.10.2025*

\+ **W.P.(C) 3479/2021**

MEGHA ENGINEERING AND INFRASTRUCTURE LTD.
..... PETITIONER

versus

INCOME TAX SETTLEMENT COMMISSION & ORS.
..... RESPONDENTS

\+ **W.P.(C) 3710/2021**

WESTERN UP POWER TRANSMISSION CO LTD
....PETITIONER

versus

INCOME TAX SETTLEMENT COMMISSION & ORS.
..... RESPONDENTS

Advocates who appeared in this case

For the Petitioner	:	Mr. Parag P. Tripathi, Sr. Adv. with Ms. Sanam Tripathi, Mr. Srinivasan, Mr. Ramaswamay, Mr. Dheeresh K. Dwivedi & Mr. Harjeet Singh, Advs.
For the Respondents	:	Mr. Sanjay Kumar, SSC with Ms. Monica Benjamin and Ms. Easha, JSCs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT

V. KAMESWAR RAO, J.

1. The captioned petitions have been filed with prayers *inter alia* seeking

directions to the respondent No.1 Income Tax Settlement Commission ('ITSC', for short) to receive the applications filed by the respective petitioners and their related entities under Section 245-C of Income Tax Act, 1961 ('the Act', hereinafter) and process the same as per Chapter XIX-A of the Act uninfluenced by the provisions of the Finance Act, 2021.

2. As similar issues and questions of law arise in both these Writ Petitions, we shall decide the same together.

3. The petitioner in W.P.(C) 3479/2021 is a company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of execution of large scale EPC/Turnkey Water Management Projects all over India. On 11.10.2019, a search and seizure was conducted by the Income Tax authorities at the office of the petitioner. On 02.03.2021, the Deputy Commissioner of Income Tax, ('DCIT', for short), Central Circle-19 issued notices under Section 153-A upon the petitioner for the Assessment Year ('AY', for short) 2014-15 till 2019-20 based on the search. Thereafter, the petitioner engaged a consultant to prepare its application under Section 245 C of the Act to be filed before the ITSC for the said Assessment Years. However the petitioner then learnt that in light of the provisions of the Finance Bill, 2021, the ITSC was not accepting any application under Section 245 C of the Act. Hence, the petitioner filed the writ petition before this Court on 16.03.2021. On 17.03.2021, this Court passed an interim order directing the ITSC to accept and process the application of the petitioner in accordance with the provisions of the Act as the Finance Bill, 2021 had not morphed into a statute as of that date. The interim order was made absolute by this Court *vide* order dated 25.03.2021, during the pendency of the

petition.

4. Pursuant thereto, the petitioner filed an application under Section 245 C on 22.03.2021 along with an amount of ₹30.04 crore by way of tax and interest on the income disclosed in the said application as statutorily required. The petitioner had informed the Assessing Officer ('AO', for short) about the application before the ITSC. However, no action was taken by the ITSC despite the direction by this Court to receive and process the application.

5. On 29.06.2021 and 30.06.2021, the petitioner received notices under Section 143(2) of the Act for the AY 2020-21 and AYs 2014-15 to 2019-20 respectively. Thereafter, on 05.08.2021, another notice under Section 142(1) of the Act was received for AYs 2014-15 to 2019-20.

6. Since the Finance Bill 2021, received the assent of the President and became the Finance Act, 2021 the petitioner filed an amended writ petition with the following prayers:-

> *"a. Issue an appropriate writ, order or direction to Respondent No. 1 directing it to receive the application filed by the Petitioner under Section 245-C of the Income fax Act, 1961, and to process the same as per Chapter XIX-A of the Income Tax Act, 1961, as presently in force and uninfluenced by the provisions o f the Finance Bill, 2021;*
> *b. Issue an appropriate writ, order or direction to the Respondent Nos. 2-3, directing them to stay all further actions in relation to the Petitioner for assessment years 2014-2015 till 2020-21, during the pendency of this writ petition or till the Petitioner's application is accepted by the Respondent No. 1 under Section 245-C;*

c. Issue an appropriate writ, order or direction to the Respondent Nos. 2-3, directing them not to take any further steps in pursuance of the notices dated 02.03.2021 issued by Respondent No. 2 to the Petitioner under Section 153 A of the Income Tax Act, 1961 for AY 2014-15 till 2019-2020 during the pendency of this writ petition or till the Petitioner's application is accepted by the Respondent No. 1 under Section 245-C;

cc. Issue an appropriate writ, order or direction declaring Sections 62 to 73 of the Finance Act, 2021 as unconstitutional, as they have been passed by the Parliament as a money bill even though they do not fulfil the criteria of a money bill as specified in Article 110 of the Constitution of India;

dd. Issue an appropriate writ, order or direction declaring that the Petitioner is not required to file a fresh application under Section 245C and that the application filed by it on 22.03.2021 shall be considered to be a 'pending application' as defined in Section 245 (eb) of the Income Tax Act, 1961;

ee. Issue an appropriate writ, order or direction declaring that in light of the press release issued by the Central Board of Direct Taxes, dated 07.09.2021, the Petitioner is not required to file a fresh application under Section 245C and that the application filed by it on 22.03.2021 shall be considered to be a 'pending application as defined in Section 245 (eb) of the Income Tax Act, 1961;

ff. Issue an appropriate writ, order or direction clarifying that the Respondent No. 1 continued to exist and function till 01.04.2021, as per the provisions of the Income Tax Act, 1961, then in force, unaffected by the provisions of the Finance Act, 2021;

gg. Issue an appropriate writ, order or direction declaring the proviso to Section 245B(1), the proviso to Section 245BC, the proviso to Section 245BD and Section 245C(5) of the Income Tax Act, 1961, as

inserted by the Finance Act, 2021, to the extent that it applies w.e.f 01.02.2021, as unconstitutional and in violation of inter alia, Articles 14, 19 (l)(g), 20, 21 and 300A of the Constitution of India and consequently directing the Respondents to treat the application filed by the Petitioner No.1 before Respondent No. 1 on 22.03.2021 as a 'pending application' as defined in Section 245A(eb) of the Income Tax Act, 1961;

hh. In the alternate, issue an appropriate writ, order or direction reading down the proviso to Section 245B(1), the proviso to Section 245BC, the proviso to Section 245BD and Section 245C(5) of the Income Tax Act, 1961, as inserted by the Finance Act, 2021, to hold that the said provisions will be effective from 01.04.2021 and not from 01.02.2021 and consequently directing the Respondents to treat the application filed by the Petitioner No.1 before Respondent No.1 on 22.03.2021 as a 'pending application' as defined in Section 245A(eb) of the Income Tax Act, 1961; ii. Issue an appropriate writ, order or direction in the nature of certiorari quashing the notices dated 29.06.2021 and 30.06.2021 issued by Respondent No. 2 to the Petitioner under Section 143(2) of the Income Tax Act, 1961;

jj. Issue an appropriate writ, order or direction in the nature of certiorari quashing the notices dated 05.08.2021 issued by Respondent No. 2 to the Petitioner under Section 142(1) of the Income Tax Act, 1961;

kk. Issue an appropriate writ, order or direction in the nature of prohibition to Respondent Nos.2-3, prohibiting them from taking any steps against the Petitioner No. 1 under the provisions of the IT Act, 1961, including with respect to the notices dated 29.06.2021 and 30.06.2021 issued by the Respondent No. 2 to the Petitioner under Section 143 (2) of the Income Tax Act, 1961 and the notices dated 05.08.2021 issued by the Respondent No. 2 to the

Petitioner under Section 142 (1) of the Income Tax Act, 1961, during the pendency of the present writ petition or till the final adjudication of the application dated 22.03.2021 filed by the Petitioner No. 1 before the Respondent No.1;"

7. The petitioner in W.P.(C.) 3710/2021 is also a company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of transmission and distribution of electricity in the state of Uttar Pradesh. On 11.10.2019, a search and seizure was carried out by the Income Tax authorities at the office of the petitioner. Thereafter, on 18.03.2021, the DCIT, Central Circle-19, Delhi, issued notices under Section 153 C upon the petitioner for the AYs 2014-15 till 2019-20 and under Section 143(2) for the AY 2020-21. As the petitioner learnt that the ITSC was not accepting any application, it approached this Court by way of the Writ Petition, pursuant whereto, this Court passed an interim order directing the ITSC to accept and process the application of the petitioner in accordance with the provisions of the Act as the Finance Bill, 2021 had not morphed into a statute as of that date. On 25.03.2021, this Court made the interim order absolute, during the pendency of the petition. On 30.06.2021, the petitioner received notices under Section 143(2) of the Act for AYs 2014-15 to 2019-20.

8. The prayers made in the amended petition are the following:-

"a. Issue an appropriate writ, order or direction to Respondent No.1 directing it to receive the application filed by the Petitioner under Section 245-C of the Income Tax Act, 1961, and to process the same as per Chapter XIX-A of the Income Tax Act, 1961, as presently in force and uninfluenced by the provisions of the Finance Bill, 2021;

b. Issue an appropriate writ, order or direction to the

Respondent Nos.2-3, directing them to stay all further actions in relation to the Petitioner for assessment years 2014-2015 till 2020-21, during the pendency of this writ petition or till the Petitioner's application is accepted by the Respondent No. 1 under Section 245-C;

c. Issue an appropriate writ, order or direction to the Respondent Nos. 2-3, directing them not to take any further steps in pursuance of the notices dated 18.03.2021 issued by Respondent No. 2 to the Petitioner under Section 153-C IT Act for AY 2014-2015 till 2019- 2020 and under Section 143(2) IT Act for AY 2020-21 during the pendency of this writ petition or till the Petitioner's application is accepted by the Respondent No. 1 under Section 245-C;

cc. Issue an appropriate writ, order or direction declaring Sections 62 to 73 of the Finance Act, 2021 as unconstitutional, as they have been passed by the Parliament as a money bill even though they do not fulfil the criteria of a money bill as specified in Article 110 of the Constitution of India;

dd. Issue an appropriate writ, order or direction declaring that the Petitioner is not required to file a fresh application under Section 245C and that the application filed by it on 22.03.2021 shall be considered to be a 'pending application' as defined in Section 245 (eb) of the Income Tax Act, 1961;

ee. Issue an appropriate writ, order or direction declaring that in light of the press release issued by the Central Board of Direct Taxes, dated 07.09.2021, the Petitioner is not required to file a fresh application under Section 245C and that the application filed by it on 22.03.2021 shall be considered to be a 'pending application' as defined in Section 245 (eb) of the Income Tax Act, 1961;

ff. Issue an appropriate writ, order or direction clarifying that the Respondent No. 1 continued to exist and function till 01.04.2021, as per the provisions of

the Income Tax Act, 1961, then in force, unaffected by the provisions of the Finance Act, 2021;

gg. Issue an appropriate writ, order or direction declaring the proviso to Section 245B(1), the proviso to Section 245BC, the proviso to Section 245BD and Section 245C(5) of the Income Tax Act, 1961, as inserted by the Finance Act, 2021, to the extent that it applies w.e.f 01.02.2021, as unconstitutional and in violation of inter alia, Articles 14, 19 (l)(g), 20, 21 and 300A of the Constitution of India and consequently directing the Respondents to treat the application filed by the Petitioner No. 1 before Respondent No. 1 on 22.03.2021 as a 'pending application' as defined in Section 245A(eb) of the Income Tax Act, 1961;

hh. In the alternate, issue an appropriate writ, order or direction reading down the proviso to Section 245B(1), the proviso to Section 245BC, the proviso to Section 245BD and Section 245C(5) of the Income Tax Act, 1961, as inserted by the Finance Act, 2021, to hold that the said provisions will be effective from 01.04.2021 and not from 01.02.2021 and consequently directing the Respondents to treat the application filed by the Petitioner No. 1 before Respondent No. 1 on 22.03.2021 as a 'pending application' as defined in Section 245A(eb) of the Income Tax Act, 1961;

ii. Issue an appropriate writ, order or direction in the nature of certiorari quashing the notices dated 30.06.2021 issued by Respondent No. 2 to the Petitioner under Section 143(2) of the Income Tax Act, 1961;

jj. Issue an appropriate writ, order or direction in the nature of prohibition to Respondent Nos. 2-3, prohibiting them from taking any steps against the Petitioner No. 1 under the provisions of the IT Act, 1961, including with respect to the notices dated 30.06.2021 issued by the Respondent No. 2 to the Petitioner under Section 143 (2) of the Income Tax Act, 1961, during the pendency of the present writ

petition or till the final adjudication of the application dated 22.03.2021 filed by the Petitioner No. 1 before the Respondent No.1;"

9. On 01.02.2021, the Finance Bill of 2021 (Bill No.15 of 2021) was introduced in the Parliament, Clauses 55-65 whereof were to amend Section 245A to 245M of the Act and envisaged replacing the ITSC with a body known as the Interim Board of Settlements ('the Interim Board', hereinafter).

10. As per Clause 55 of the Finance Bill, 2021, from 01.02.2021, the ITSC is to be replaced by the Interim Board. As per Clauses 56 to 59, the ITSC will cease to operate from 01.02.2021 and applications cannot be made before it after 01.02.2021. As per Clauses 61 to 64 the functions exercisable by the ITSC prior to 01.02.2021 will be exercised *mutatis mutandis* by the Interim Board. Clause 65 deals with how cases pending before the ITSC prior to 01.02.2021 are to be adjudicated.

11. Mr. Parag P. Tripathi, learned Senior Counsel appearing for the petitioners in both the matters, at the outset provided a contextual background of the establishment of ITSC. It was constituted on the recommendation of the Wanchoo Committee w.e.f. 01.04.1976 as an alternative tax-dispute resolution mechanism. The *raison d'etre* of the ITSC was to provide a scope for compromise and settlement between the state and its tax payers, so as to raise revenue of the state by providing a one time opportunity to defaulting tax payers to make a true and full disclosure of their income tax liabilities by filing an application for settlement. Therefore, while entertaining an application for settlement before the ITSC, a liberal

approach ought to be taken.

12. His challenge is to Sections 62 to 73 of the Finance Act, 2021 which came into force on 01.04.2021 on the ground that they are arbitrary to the extent they retrospectively abolished the ITSC w.e.f. 01.02.2021. While he conceded that there can be no filing before the ITSC after 01.04.2021, there cannot be a complete vacuum between 01.02.2021 and 01.04.2021 as the law does not contemplate the same. Therefore the question that needs to be answered by this Court is, whether the petitioners, having already made settlement applications on 22.03.2021, at which point there was no amendment of the statute, can be denied acceptance/processing of the said applications by way of a retrospective amendment.

13. He submitted that this issue is no longer *res integra* and has been squarely dealt with by the Bombay High Court in ***Sar Senapati Santaji Ghorpade Sugar Factory v. ACIT, 2024 SCC OnLine Bom 981*** which was delivered in the backdrop of identical factual circumstances, i.e., on 25.07.2019, a search under Section 132 of the Act was conducted on the petitioner therein, and a notice was received under Section 153 A on 05.02.2021, which was after the Finance Bill, 2021 was introduced but before the Finance Act, 2021 came into force. The petitioner therein had filed an application before the ITSC on 18.03.2021. The Bombay High Court rejected the submissions of the Revenue *vide* order dated 21.08.2023, and held that though the State had the power to bring amendment with retrospective effect, it cannot take away the vested rights of the petitioners therein, unless the statute provides for the same expressly or by necessary intendment.

14. A Special Leave Petition (SLP, for short) bearing Diary No. 54328/2024 was filed by the Revenue challenging the judgment of the Bombay High Court and the same was tagged along with a batch of matters led by ***ACIT v. Sanman Trade Impacts Ltd***, ***SLP (C) Diary No. 49100/2024*** decided on 06.01.2025. The SLP was disposed of by the Supreme Court *vide* order dated 06.01.2025 holding that the matters stood squarely covered by its judgment dated 03.01.2024 in ***Union of India v. Rajeev Bansal***, ***2024 SCC OnLine SC 2693***, where, the issues before the Supreme Court, as can be seen from paragraph 18 of the judgment, were principally the following:

1. Whether the Taxation and Other Loss (Relaxation and Amendment of Central Provisions) Act, 2020 and the notification issued under it will also apply to reassessment notices issued after 01.04.2021.

2. Whether the reassessment notices issued under Section 148 of the new regime between July and September, 2022 are valid.

15. It is his submission that the judgment in ***Sar Senapati Santaji Ghorpade Sugar Factory (supra)*** has not been interfered with or set aside by the Supreme Court, and is squarely applicable to the present case.

16. That apart, a vested right accrued to the petitioners when the search and seizure was conducted on their premises on 11.10.2019 and also when they received notices under Sections 153A, 153C and 143(2), and also when the applications were filed before the ITSC. So long as the notices were issued prior to 01.04.2021, the petitioners have a right to approach the ITSC because it existed factually until 01.04.2021, and was only removed retrospectively, as has been held by the Bombay High Court in ***Sar Senapati***

Santaji Ghorpade Sugar Factory (supra).

17. The same issues have come up for consideration before several other High Courts as well, wherein reliefs were granted to similarly placed parties i.e., parties who have received notices after 01.02.2021 and those who applied to the ITSC. Reliance in this regard is placed on the judgment of the High Court of Madras in ***Jain Metal Rolling Mills v. Union of India (2024) 461 ITR 423,*** which according to Mr. Tripathi, has read down Section 245C(5). The SLP preferred by the Revenue against the judgment bearing SLP(C) No. 16226/2024 has been dismissed, leaving the question of law, if any, open.

18. He has also referred to the judgment of the High Court of Gujarat in ***Vetrivel Infrastructure v. DCIT, (2024) 468 ITR 665***. The SLP preferred by the Revenue against the judgment bearing SLP (C) Diary No. 9862/2024 has also been dismissed leaving the question of law, if any, open.

19. A reference is also made to the judgment of the High Court of Calcutta in ***Pradeep Kumar Naredi v. Union of India : 2024 SCC OnLine Cal 11543,*** wherein, the appellant was subjected to search and seizure under Section 132 on 16.01.2020. Notices under Section 153A were issued on 02.02.2021 and the appellant therein preferred an application before the ITSC on 17.03.2021. The Court, while setting aside the impugned judgment of the Single Judge, relied upon the judgments in ***Sar Senapati Santaji Ghorpade Sugar Factory, Jain Metal Rolling Mills,*** and ***Vetrivel Infrastructure (supra)***, and directed the Interim Board to consider the application of the appellant.

20. Mr. Tripathi submitted that the Revenue is now seeking to re-agitate the same issue despite categorical findings by multiple High Courts on the issue. There is no conceivable reason as to why a different yardstick is to be applied to the petitioners herein, as it would create grave arbitrariness because such persons against whom the Revenue has issued notices under Section 153 A before 01.02.2021 will be at an advantage, whereas others like the petitioners herein would be remediless.

21. He stated that if the stand of the Revenue is to be accepted it would create a position where, regardless of whether the notice was issued before 01.02.2021 or between 01.02.2021 & 31.03.2021, the valuable vested right to get the matter adjudicated by the ITSC will be taken away.

22. He further submitted that the settlement applications filed by the petitioners are 'pending applications' under Section 245A(eb) of the Act and therefore are liable to be adjudicated by the Interim Board as provided under Section 245AA of the Act. Section 245A(eb) of the Act as amended defines 'pending application' as an application which

a. was not declared invalid under Section 245D(2C), and

b. was not rejected under Section 245D(4) on or before 31.01.2021.

23. The applications preferred by the petitioners fulfilled both of these conditions and therefore are 'pending applications' as defined under Section 245D of the Act. He highlighted the fact that Section 245A(eb) does not say that an application filed after 31.01.2021 will not be treated as a pending application. The only condition for an application to be considered as a

pending application are those mentioned in Section 245A(eb).

24. Without prejudice to the above, he submitted that the applications filed by the petitioners are 'pending applications' in light of the Central Board of Direct Taxes (CBDT) press release dated 07.09.2021 and its order dated 28.09.2021, which clarified that, if

a. the assessee was eligible to file an application on 31.01.2021, and

b. assessment proceedings of the assessee were pending on the said date,

then such settlement applications shall be deemed to be 'pending applications' for the purpose of Section 245A(eb) of the Act.

25. It is his submission that the said order must be given an interpretation which would benefit the tax payers, i.e., the conjunction '*and*' appearing in paragraph 4 of the order should be read as '*or*' which would make it clear that the application filed on or before 30.09.2021 are to be treated as 'pending applications' and are to be decided by the Interim Board. Any other interpretation will render the order redundant and otiose.

26. His contention is that the impugned provisions and the press release dated 07.09.2021 along with the order dated 28.09.2021 seek to create an artificial distinction between assessees in respect of whom notices under Section 153A where issue prior to 01.02.2021 and such assessees to whom notices were issued after 01.02.2021. Thus to fix 01.02.2021 as the cutoff date is arbitrary and has no rational nexus to the object sought to be achieved, namely, dismantling the ITSC w.e.f. 01.04.2021.

27. He submitted that in ***Star Televisions News Ltd. v. Union of India:*** Writ Petition No. 952 of 2008, the Bombay High Court was concerned with the *vires* of the Finance Act, 2007 which provided that applications made before 01.06.2007 that are pending before the ITSC as on 31.03.2018 shall abate. The Court held that such a classification is arbitrary and thus, read down Section 245HA(1) of the Act. This has been upheld by the Supreme Court.

28. It is his contention that the retrospective applicability of the impugned provisions is unconstitutional, being patently arbitrary and placing an unreasonable burden on the petitioners and others similarly placed. The retrospective application of legislation is a species of arbitrariness that, if present, vitiates a law and renders it contrary to Article 14 of the Constitution of India. The retrospective application of the Finance Act, 2021 is contrary to the general principle that fiscal legislation by which the conduct of mankind is to be regulated deals with future acts and ought not to change the character of past transactions carried out with faith under existing laws. To buttress this argument, he has referred to the judgment of the Supreme Court in the case of ***Commissioner of Income Tax v. Essar Technologies Ltd : (2018) 3 SCC 253(2J)***.

29. Mr. Tripathi would submit that even when the legislation has been specifically made retrospective, there must be strong, cogent and compelling reasons for doing so, such as considerations of public interest or remedying an existing mischief etc. Reliance in this regard is placed on the judgments in ***Tata Motors Ltd. v. State of Maharashtra : (2004) 5 SCC 783*** and ***RC Tobacco v. Union of India : (2005) 7 SCC 725***. The Finance Act, 2021 does

not meet any of this criteria as no reason or rationale whatsoever has been provided to justify the retrospective and arbitrary cutoff date. This is also contrary to the settled custom that statutes affecting financial arrangements are typically brought in force from the beginning of the new financial year. This is so since the financial year holds a certain sanctity in income tax laws and tax payers conduct their affairs with the legitimate expectation that there will be no drastic changes in the middle of a financial year. The Revenue has not been able to provide any justification whatsoever so as to show why the date of 01.02.2021 was set as the cutoff date, which is simply a date that has been randomly plucked out of thin air. In this regard, he has relied upon the judgments in ***Star Television News Ltd. (supra)*** and ***Vatika Farms Pvt. Ltd. v. Union of India & Ors : 2008 (102) DRJ 356***.

30. That apart, since the petitioners have made a full and true disclosure of all the facts and incomes which have not been subjected to assessments and has also paid hefty amounts along with interest while filing the settlement application, various admissions made therein could now be considered by the income tax authorities separately, which would severely prejudice the petitioners, further subjecting them to severe penalties. The declaration of the application of the petitioners as *non'est* would have disastrous consequences for the petitioners as on one hand, the application filed before the ITSC would be dismissed *in limine* having been filed invalidly, and on the other hand the respondents would be free to use the information contained in the said application in the normal course of assessment to the detriment of the petitioners, as if the applications of the petitioners, though filed validly, were declared invalid or rejected in terms of

Section 245D of the Act. This would result in the violation of the rule against self incrimination enshrined in Article 20 (3) of the Constitution of India. Additionally, since the petitioners have filed the applications pursuant to orders of this Court dated 17.03.2021 and 22.03.2021, such a course of action would be contrary to the settled principle contained in the maxim *actus curiae neminen gravabit,* i.e., no person ought to be prejudiced by an order passed by a Court. Reliance in this regard is placed on the judgments in the cases of ***Indrachand Jain (dead) through LRs. V. Motilal (dead): (2009) 14 SCC 663*** and ***Odisha Forest Development v. M/s Anupam Traders & Anr. : (2020) 15 SCC 146.***

31. In any case, from 01.02.2021 till 01.04.2021 only a few applications would have been filed and no prejudice would be caused to the respondents if these applications are considered, but severe prejudice would be caused to the petitioners if the converse is done.

32. That apart, he submitted that even the Mumbai Bench of the ITSC continued to accept applications even after 01.02.2021 till the end of March 2021, *dehors* any direction by any Court. Even other benches of the ITSC were functioning and the officers and staff were being paid their salaries till 28.03.2021, i.e., when the Finance Bill, 2021 received the assent of the President.

33. Yet another submission of Mr. Tripathi is that as per the proviso to Section 245(D) of the Act, if an application filed before the ITSC is not accepted, and an order under Section 245(D)(1) is not passed within a period of 14 days, the application would be deemed to have been accepted. Since

no order was passed by the ITSC, despite a direction by this Court to receive and process the application and since the ITSC was very much in existence at least until 31.03.2021, the applications of the petitioners should be deemed to have been accepted.

34. He has also submitted that it is a settled law that penal statutes cannot be retrospective. The effect of abolishing the ITSC with effect from 01.02.2021 will have penal consequences for the petitioners and also for other persons and entities that had approached the ITSC, more so, in view of the fact that any information disclosed in these applications can be used by the income tax authorities for initiating penal and even criminal proceedings.

35. Though Mr. Tripathi has raised an argument that the impugned provisions of the Finance Act, 2021 could not have been enacted as a Money Bill under Article 110 of the Constitution of India, as the said issue has been referred by the Constitution Bench of the Supreme Court to a larger Bench in ***Rojer Mathews v. South Indian Bank Ltd. : (2020) 6 SCC 1***, after noticing the judgment in ***K. S. Puttaswamy v. Union of India : (2019) 1 SCC 1***, he would not press the argument.

36. *Per contra*, Mr. Sanjay Kumar, learned Senior Standing Counsel appearing for the respondents - the Revenue, would contest the stand of the petitioners and submit that the ITSC is a creation of a statute having been set up under Chapter XIX-A of the Act by the Taxation Laws (Amendment) Act, 1975, w.e.f. 01.04.1976. The ITSC provides for an alternative dispute resolution forum to assesses, wherever any assessment is pending, to approach it by making a full and true disclosure and settle the additional tax

liabilities at the time of filing of settlement application. However, the Parliament, in its legislative wisdom, decided that the ITSC was no longer necessary, and through the Finance Act, 2021 discontinued the ITSC w.e.f. 01.02.2021 and constituted the Interim Board for settling pending applications of those persons who were eligible to make an application as on 01.02.2021. He has referred to the judgment of the Supreme Court in ***B.N. Bhattacharjee (supra)*** to contend that primary purpose of constitution of the ITSC was to ensure accelerated recovery of taxes in arrears by the State from tax evaders.

37. He submitted that the claim of the petitioners that prior to the amendment, Sections 245A to 245M granted valuable statutory rights to the petitioners which have been taken away as a result of the impugned amendments is without any basis and unsustainable. The fact that the assessee does not have any vested right of consideration of its application before the ITSC as is evident from a perusal of Section 245D which reads as under:-

> *"245D. (1) On receipt of an application under section 245C, the Settlement Commission shall, within seven days from the date of receipt of the application, issue a notice to the applicant requiring him to explain as to why the application made by him be allowed to be proceeded with, and on hearing the applicant, the Settlement Commission shall, within a period of fourteen days from the date of the application, by an order in writing, reject the application or allow the application to be proceeded with:"*

38. It is his submission that the petitioners cannot claim to have any vested right in pursuing an application before the ITSC, in view of the fact

that the ITSC was empowered under Section 245D(1) to reject any application received under Section 245C. Also, the ITSC was empowered to declare the application as invalid under Section 245D(2C) on the basis of the report received under Section 245D(2B). Therefore, even prior to the amendments brought about by the Finance Act, 2021, the ITSC exercised complete discretion and autonomy in respect of the applications received by it under Section 245C. The process of settlement as was provided under Chapter XIX-A of the Act was merely an opportunity granted to tax evaders to come clean and make full and true disclosure.

39. He further submitted that it is to enhance efficiency, transparency and accountability by overhauling of the processes that require interface with the taxpayer, that the existing scheme of settlement was discontinued and the ITSC ceased to exist with effect from 01.02.2021 and the Interim Board for settlement of pending applications were proposed to be constituted. The specific date of 01.02.2021 is a legislative choice and a policy decision and therefore not amenable to the jurisdiction of this Court under Article 226 of the Constitution of India. He has laid stress on the fact that the Finance Bill, 2021 was laid before the Lok Sabha on 01.02.2021.

40. Mr. Kumar submitted that it is a settled position of law that legislation can be held invalid on the ground of discrimination only when equals are treated unequally or unequals are treated as equals. If there is equality and uniformity within each group, the law cannot be discriminatory. In the present case, the petitioners have failed to prove as to how the Finance Act, 2021 fails to provide for equality and uniformity within each group and hence the same cannot be held to be discriminatory.

41. He has referred to the judgment of the Supreme Court in ***Union of India and Ors. v. VKC Footsteps India Pvt. Ltd. (2022) 2 SCC 603***¸ where the Court, while dealing with the *vires* of a provision of refund under the CGST Act, 2017, relied on the reasoning given in ***Union of India and Ors. v. Nitdip Textile Processors Pvt. Ltd. and Ors. [2011] 15 taxmann.com 59 (SC)*** to observe as under:

> *"76…. Parliament is entitled to make policy choices and adopt appropriate classifications, given the latitude which our constitutional jurisprudence allows it in matters involving tax legislation and to provide for exemptions, concessions and benefits on terms, as it considers appropriate."*

42. He further submitted that in cases of legislation providing any cutoff date, there would always be some cases which are adversely affected by being in proximity of the cutoff date, but that alone will not render the provision arbitrary. He has placed reliance on the judgment of the Supreme Court in ***R.K. Garg v. Union of India, 133 ITR 239 (SC)*** to contend that while considering the constitutional validity of a statute to be in violation of Article 14 of the Constitution of India, the laws relating to economic activities should be viewed with a greater latitude than the laws relating to civil rights and personal liberty. It was further held that there is a presumption in favour of the constitutionality of a statute passed by the Parliament and the burden is upon him who attacks it to show that there is a clear transgression of constitutional principles.

43. Mr. Kumar, while conceding that multiple High Courts including the Madras High Court in ***Jain Metal Rolling Mills (supra)*** have decided the instant issue against the Revenue, stated that this Court is yet to decide the

issue. Further, it is his case that the Madras High Court erred in holding that assessees even after the cutoff date of 01.02.2021 were eligible to approach the ITSC. Having held that the Parliament had the competence to make retrospective legislation regarding abolition of the ITSC, there was no occasion for the Court to hold that the ITSC was obligated to accept applications made after the cutoff date of 01.02.2021 but before 31.03.2021 as valid applications.

44. He further substantiated his stand by stating that nothing has been brought on record to even suggest that the Supreme Court has approved the findings of various High Courts by way of any speaking order on the merits of the issue while dismissing the SLPs filed by Revenue in those cases. All the dismissals were *in-limine*, except in the case of ***Interim Board for Settlement and Ors. v. Krushang Parakashbhai Soni, SLP (Civil) No. 9862/2025***, wherein the question of law was left open. According to Mr. Kumar, thus, the judgments of various High Courts relied upon by Mr. Tripathi are not binding on this Court.

45. On the aspect of the Finance Act, 2021 being passed as a Money Bill, Mr. Kumar submitted that Article 110 of the Constitution of India mandates that a Money Bill may be passed in the Lok Sabha with respect to "*the imposition, abolition, remission, alteration or regulation of any tax*". The functioning of the ITSC would qualify as an 'imposition', 'remission', 'alteration' or 'regulation' of a tax. The provisions for ITSC provide for regulation of income tax in a certain manner and hence any amendment thereto can be validly brought in by way of a Money Bill in view of the mandate of Article 110 of the Constitution of India.

46. He has sought dismissal of the petitions.

ANALYSIS

47. Having heard the learned counsel for the parties, the common issue arising for consideration in these petitions is whether the petitioners are entitled to the relief as sought in the petitions for consideration of their settlement applications under Section 245-C of the Act.

48. There is no dispute that in both the cases, searches were conducted in the year 2019. The notice under Section 153-A of the Act in W.P.(C.) 3479/2021 and the notices under Sections 153-C and 143(2) of the Act in W.P.(C.) 3710/2021 were issued on 02.03.2021 and 18.03.2021 respectively.

49. The issue revolves around the amendments introduced by the Union Government to the Act, more specifically Sections 245-A to M thereof, through the Finance Act, 2021 laid before the Lok Sabha on 01.02.2021. The Bill received the assent of the President on 01.04.2021, and thereupon morphed into the Finance Act, 2021.

50. The pre-existing Section 245-C contemplated that assessees can approach the ITSC for settlement of their cases. The Finance Act, 2021 contemplated abolition of the ITSC itself and the settlement of pending cases by the Interim Board that was to be constituted for that purpose. The petitioners had initially filed the Writ Petitions contending that because of the introduction of the Finance Bill, 2021, the respondents were not accepting applications for settlement under the old dispensation. It is

necessary to state here that this Court as an interim measure, directed the respondent no. 1 i.e. the ITSC to accept and process the applications of the petitioners, subject to the outcome of the petitions. The said interim measure has been made absolute *vide* order dated 25.03.2021. The contention is that no action has been taken by the respondents pursuant to the interim orders passed by this Court.

51. Be that as it may, Mr. Tripathi has heavily relied upon the judgment in the case of ***Jain Metal Rolling Mills (Supra)*** wherein the High Court of Madras has dealt with the issue in detail, and while holding that the act of the State in abolishing the ITSC with effect from a cut-off date *per se* cannot be illegal or *ultra vires* the Constitution of India, has read down the last date mentioned for filing applications in Section 245C(5) of the Act as 31.03.2021, while providing the following reasoning:

> *"40. At the material time, i.e., during the interregnum period of February 1,2021 up to March 31,2021, the petitioners had a "case" within the definition of section 245A(b). Their applications were very much pending applications as per the definition of section 245A(eb). As a matter of fact, their applications were dealt with as per section 245D and on a perusal of section 245M, it can be seen that these applications were also to be transferred to the Interim Board to be dealt with in accordance with the procedure laid down to the Board. But, however, without amending the definition of case pending applications etc., section 245C(5) simply provides that no application shall be made under the section on or after the 1st day of February, 2021.* ***The right to file application before the Income-tax Settlement Commission is very much existent and has been exercised till March 31, 2021****. The retrospective legislation by way of legal fiction attempts*

to make it as if it is unavailable.

….

Therefore, when we consider the instant case, ***the purpose of the retrospective legislation is to make the ITSC inoperative right from the date of the introduction of the Bill and to send all the pending applications to the Interim Board. Therefore, fixing the last date for filing the applications alone travels beyond the purpose and results in more retrospectivity than which is needed and thus, runs counter to the other parts of the Act****. As a matter of fact, as per the principle of lex prospicit non respicit (law looks forward not back) it can be seen that the purport of the legislation is only to do away with the policy of resolution through ITSC. As a matter of fact, the Central Government has to make a Scheme for the purposes of Settlement in respect of pending applications by the Interim Board as per Section 245D(11) and such scheme had to be placed before the Parliament.* ***Thus, neither there is any intent nor it is within the purpose to do away with the 'pending applications' in respect of matters in which the 'cases' arose from 01.02.2021 to 31.03.2021. Thus, we find that it is just and necessary to read down the last date mentioned for filing applications in Section 245C(5) as 31.03.2021 and consequently the last date mentioned in paragraph No.4(i) of the Circular should also read as 31.03.2021****.*
….."

(emphasis supplied)

52. Similarly, the High Court of Bombay also in the case of ***Sar Senapati Santaji Ghorpade Sugar Factory (Supra)*** following the judgment in ***Jain Metal Rolling Mills (Supra)*** has held as under:-

"20 The amendments made by the Finance Act, 2021, despite being retrospective in nature by their insertion

being with effect from 1st February 2021, would not affect the vested right of petitioner to have the assessment of petitioner being settled as per the procedure prescribed in Chapter XIX-A of the Act. Section 245C(5) of the Act provides that "No application shall be made under this section on or after 1 st February 2021." The words "shall be made" can only be interpreted as having effect from the date of its notification and cannot apply from an earlier date. The sub-section refers to a prohibition on an assessee from taking action, i.e., prohibition on filing an application under Section 245C of the Act. However, when an action has already been performed, the retrospective amendment cannot set at naught or prohibit the performance of the action, as, admittedly, the action has already been performed and now, cannot be taken back. Petitioner having already made an application on 18th March 2021, at which point of time, the amendment not having been on the statute, cannot by way of a retrospective amendment, be prohibited from making an application. If the legislature wanted to treat the applications, which have been filed between 1st February 2021 and 1st April 2021 as invalid and bad in law, the legislature would have instead provided that "Any application filed under this section on or after 1st February 2021, shall be treated as null and void." The provisions, as presently worded, cannot apply to a completed act of an assessee and hence, the application of the assessee cannot be treated as invalid.

21. In any view of the matter, the application having been validly filed, a vested right has accrued to petitioner and such vested right cannot be taken away by the legislature unless the same is done expressly or by necessary implication. It has not been so done by the amendments introduced by the Finance Act, 2021. The Hon'ble Apex Court in Shah Sadiq & Sons (Supra) was concerned with the issue of allowability of carry forward and set off speculation loss. As per the Income Tax Act, 1922, set off of the loss was allowed indefinitely. In the Income Tax

Act, 1961, however, a time limit had been prescribed for such set off of carry forward loss. The Hon'ble Apex Court held that assessee had a vested right in the year of loss to carry it forward and set it off against subsequent business profit and such vested right has not been taken away in the subsequent amendment, either by express words or by necessary implication. The Hon'ble Apex Court, accordingly, held that assessee would be entitled to set off of the earlier speculation loss against the profits even after the 1961 Act. In our view, Shah Sadiq & Sons (Supra) supports the view that a right which had accrued to approach the Settlement Commission till the notification of the Finance Act, 2021 on 1st April 2021 stood vested in the eligible assessees and the said rights continued to be capable of being enforced not with standing the amendment of the relevant provisions. In the present case also, assessee (petitioner) having filed a valid application, has a vested right to be entitled to the process of settlement for determination of income of petitioner for the years of which such application has been made. Therefore, the amendment in Chapter XIX would not render the application of petitioner invalid or bad in law. Further it is not the case of petitioner that petitioner has a vested right to be adjudicated by the Settlement Commission as per the erstwhile provisions. Petitioner's case is that as the application of petitioner has been validly filed, petitioner has a vested right to the extent that petitioner's application being treated as a valid and pending application, which should be considered and adjudicated as per the amended law by the Interim Board.

…..

23. The contention on behalf of State that the settlement itself is concession and therefore, petitioner cannot claim any vested right [as held in Jain Metal Rolling Mills (Supra)] cannot be accepted. ***The orders passed by IBSC or the Settlement Commission may have the trappings of***

a concession, but the same is exercised by the State through a statutory regime, with the assessees being entitled to approach the authority seeking such a concession. The assessees have a statutory right to approach the Settlement Commission. Therefore, in our view, though the State had the power to bring amendment with retrospective effect, it cannot take away vested right, unless the statute expressly or by necessary intendment took away the right.*"*

24. As regards the notification dated 28th September 2021 issued by the CBDT under Section 192(2)(b) of the Act, the date for making application has been extended by the said notification to 30th September 2021, which is clearly within the scope of the powers of the CBDT under Section 119 of the Act. Section 119 of the Act provides that the Board may Gauri Gaekwad 26/35 WP-5862-2021.doc from time to time, issue such orders, instructions and directions to other Income Tax Authorities as it may be deemed fit for proper administration of this Act. The provisions of the section have been interpreted by the Hon'ble Apex Court in UCO Bank (Supra) to mean that the Board is entitled to tone down the rigours of law by issuing circulars under Section 119 of the Act and such circulars would be binding on Income Tax Authorities. A circular, however, cannot impose on a taxpayer a burden higher than what the Act itself, on a true interpretation, envisages. Therefore, the Board had power to extend the time limit for making an application to 30th September 2021.

However, to the extent it lays down an additional condition, i.e., assessee should be eligible to file an application for settlement on 31st January 2021 in paragraphs 2 and 4(i) of the impugned notification, in our view, is beyond the scope of the power of CBDT as per Section 119 of the Act. There is no provision in the Act providing a cut off date with respect to an assessee being eligible to make an application under Section

245C of the Act. Hence, such a condition in the impugned notification is clearly invalid and bad in law.

The date on which an assessee becomes eligible to make an application and the date on which the assessee makes an application are two different things and the Act only provides a cut off date for the latter and not the former. Section 245C of the Act as amended by the Finance Act, 2021, provides that an application shall not be made after 1st February 2021, i.e., cut off date for making an application. However, there is no provision in the Act with respect to the cut off date for an assessee to be eligible to make an application. ***Further, there is no amendment to the definition of "case" in Section 245A(b) read with the Explanation, which would affect the eligibility of petitioner to file an application before the Settlement Commission between the period 1st February 2021 and 31st March 2021. Hence, the impugned notification, to that extent, is invalid and bad in law****.*

25 As the Board does not have the power to provide an additional condition of date of eligibility for making application for settlement (because no such date is prescribed in the Act), ***paragraphs 2 and 4(i) of the impugned notification to the extent that it provides that only those assessees, who are eligible to file applications on 31st January 2021 can make an application up to 30th September, 2021 is invalid and bad in law.***

26 Sections 245AA, 245D(9) and 245M(2) of the Act as amended by the Finance Act, 2021 make it clear that all pending applications shall be settled by the Interim Board*.*

27. The eligibility of petitioner was dependent upon the notice being issued by respondent no.1 under Section 153A of the Act. Respondent no.1 is not entitled to take benefit of his own delay in issuing the notice to the assessee so as to take away the right of petitioner to file

an application under Section 245C. The search in petitioner's case took place on 25th July 2019 and ended on 29th August 2019. Thereafter, respondent no.1 delayed issuing the notice under Section 153A of the Act for a period of almost 18 months. Respondent no.1 issued notice under Section 153A only on 5th February 2021. Hence, as respondent no.1 has delayed issuing the notice under Section 153A of the Act which entitled petitioner to approach the Settlement Commission, such right of petitioner to approach the Settlement Commission cannot be taken away by respondents by issuing a circular under Section 119 of the Act. If the notice under Section 153A of the Act would have been issued on or before 31 st of January 2021, petitioner would have been eligible to make an application. Therefore, when the eligibility is dependent on the action of respondent no.1 to issue a notice and when respondent no.1 issues a notice after inordinate delay from the search, respondent no.1 should not be entitled to claim that petitioner has lost its right to approach the Settlement Commission on account of such delayed action of respondent no.1 itself. Hence, even otherwise, on the facts of the present case, respondent no.1 should be estopped from contesting/ contending that petitioner is not eligible for approaching the interim board for having its application settled by the appropriate authority."

(emphasis supplied)

53. It may be stated here that the Supreme Court has dismissed the challenge made to both the above judgments of the High Court of Madras and the High Court of Bombay.

54. The High Court of Gujarat while dealing with the same issue, has in ***Vetrivel Infrastructure (supra)*** held as under:

"23.It is pertinent to note that when the Finance Bill came

into force and became the law with effect from April 1, 2021, the provisions of section 245C(5) of the Act, which provides that no application shall be made under this section on or after February 1, 2021 cannot obliviate, the applications already filed by the petitioners as on the date of filing of the application for settlement, amendment of section 245C(5) of the Act was not a statute and therefore by retrospective amendment, the petitioners cannot be prohibited from making an application because if the Legislature intended to make applications filed between February 1, 2021 and April 1, 2021 as invalid and bad in law, it would have instead provided that such application would be treated as null and void. ***Therefore the provisions of Section 245C(5) of the Act cannot be placed into service to invalidate the applications filed between February 1,2021, and March 31, 2021.****"*

(emphasis supplied)

55. At this stage, it is apposite to state that Mr. Sanjay Kumar has heavily relied upon order of the Supreme Court in the case of ***Krushang Parakashbhai Soni (supra)***, which is an SLP against the judgment of a Division Bench of the High Court of Gujarat, wherein the Supreme Court specifically observed "*We are not inclined to interfere in the matter. However, the question of law, if any, shall remain open.*". According to Mr. Sanjay Kumar, as the question of law has been left open, the judgments in ***Jain Metal Rolling Mills*** and ***Ser Senapati Santaji Ghorpade Sugar Factory (supra)*** have no applicability on the issue which arises for consideration in this case. On this, the submission of Mr. Tripathi is that the Supreme Court leaving the question of law open would only mean that the Supreme Court has not decided the issue which falls for consideration.

56. Though the parties submitted in unison that the SLPs preferred against

both the judgments in ***Jain Metal Rolling Mills*** and ***Sar Senapati Santaji Ghorpade Sugar Factory Ltd. (supra)*** have been dismissed by the Supreme Court, no such orders have been placed on record. In any case, the Supreme Court leaving the question of law open only means that the issue has not been settled by the Supreme Court, and would not mean that the judgments passed by the High Courts have been set aside.

57. At this juncture, we may refer to the decision dated 28.06.2025 of the High Court of Kerala in the case of ***Union of India and Ors. vs. Aayana Charitable Trust & Ors., W.A. Nos. 2042, 2106 of 2024 and 161, 162, 180, 183, 184 and 408 of 2025*** wherein, while dealing with settlement applications submitted before the Interim Board, the Court by referring to the judgments in ***Jain Metal Rolling Mills*** and ***Sar Senapati Santaji Ghorpade Sugar Factory Ltd. (supra)*** has in paragraphs 8 to 15 held as under:-

> *"8. On a consideration of the rival submissions, we find that the grievance of the assessees was essentially on account of the amendments that were brought about to the I.T. Act through the Finance Act, 2021. Prior to that, the major amendments effected to the provisions of Chapter XIX-A, that governed the eligibility of an assessee to approach the Settlement Commission for a settlement of their cases, and the procedure to be followed for the same, were in 2010, 2014 and 2015 through the respective Finance Acts of those years. Thereafter, the substantive provisions governing eligibility of an assessee to approach the Settlement Commission remained unchanged for over five years when the Finance Act, 2021 was enacted, that provided for the abolition of the Settlement Commission itself, and the settlement of pending cases*

by an Interim Board for Settlement that was constituted solely for that purpose.

9. On a reading of the statutory provisions as they stood during the relevant time, it is unambiguously clear that in terms of Section 245C, an assessee could, at any stage of a case relating to him, approach the Settlement Commission for a settlement of his case. The eligibility condition for approaching the Settlement Commission was the existence of a case relating to him, at the time of preferring the application for settlement before the Commission. 'Case' for the purposes of the Chapter meant any proceedings for assessment under the I.T. Act, of any person, in respect of any assessment year or assessment years, which was pending before an assessing officer on the date on which the application for settlement was made. The word 'pending' had to be seen as referring to the status of a 'case' during the period between its commencement and its conclusion or final resolution. Towards this end, Explanation (iiia) to the definition of 'case' under Section 245A(b) indicated both the termini - the stages of commencement and conclusion - in relation to proceedings under Sections 153A/153C, by clarifying that a proceeding for assessment or re-assessment for any assessment years referred to in Section 153A or Section 153C would be deemed to have commenced only on the date of issuance of the notice initiating such proceedings and concluded on the date on which the assessment was made. Thus, in the case of an assessee who was served with a notice under Section 153A or Section 153C, he could approach the Settlement Commission with an application for settlement, at any time after the receipt of the said notice but before the completion of the assessment. More importantly, such an assessee could not approach the Settlement Commission before the receipt of a notice under Sections 153A/153C for he

would not satisfy the criteria of having a 'case' that was 'pending' before an assessing officer on that date.

10. The only change that occurred in 2021 was the proposal to abolish the Settlement Commission, which fructified through the enactment of the Finance Act, 2021, whereby Section 245C was amended to insert sub-section (5) thereof, to clarify that no application for settlement could be made under Section 245C on or after 1st February, 2021. A simultaneous amendment to the I.T. Act, inserted Section 245AA that constituted the Interim Board for Settlement for the settlement of pending applications. Thus, the Finance Act, 2021 brought to an end, the option that was hitherto available to an assessee under the I.T. Act to settle cases thereunder. The Interim Board for Settlement was constituted solely to 'tie up any loose ends' by completing the exercise of settlement in cases that were pending as on the date of abolition of the Settlement Commission.

11. For the sake of completion, it needs to be noticed that there was litigation that ensued at the instance of assessees, who found that their vested right to opt for settlement under the I.T. Act had been taken away with effect from a date that was anterior to the date of coming into force of the Finance Act, 2021 viz. 01.04.2021. The said issue was resolved through the judgment of the Madras High Court in Jain Metal Rolling Mills (supra) that held that those amendments to the I.T. Act could take effect only from 01.04.2021, and hence the assessees could file applications for settlement upto 31.03.2021. The above declaration of law has since attained finality through the dismissal of further proceedings carried by the Revenue before the Supreme Court.

12. While so, through an order passed under Section 119(2)(b) of the I.T. Act, the CBDT clarified that applications for settlement could be filed upto

30.09.2021. However, the said relaxation was hedged in with a condition that the eligibility requirement of having a 'case' that was 'pending' before an assessing officer, had to be satisfied as on 31.01.2021 (postponed to 31.03.2021 on account of the ruling in Jain Metal Rolling Mills (supra)). In the context of the present litigation, it is the above CBDT Circular that is really the cause for concern for the assessees before us, all of whom have been served with notices under Sections 153A/153C before 30.09.2021, but after 31.03.2021 - the cut-off date prescribed in the CBDT order - for satisfying the eligibility conditions for approaching the Interim Board for Settlement.

….

14. In our view, the only question that arises for consideration in these cases is whether the assessees who received their notices under Sections 153A/153C after 31.03.2021, but before 30.09.2021, can maintain their applications for settlement of cases before the Interim Board for Settlement? Although this aspect was raised by the assessees in the writ petitions, it was not considered by the learned Single Judge in the impugned judgment. To resolve that issue, we need only consider the legality of the conditions imposed by the CBDT while extending the last date for filing applications for settlement to 30.09.2021. It is significant, in this context, that a Division Bench of the Bombay High Court in Sar Senapati Santaji Ghorpade Sugar Factory Ltd. v. Asst. Commissioner of Income Tax - [MANU/MH/2202/2024 : 2024:BHC-AS:15659-DB] held as follows in a writ petition that was filed challenging the provisions of the said CBDT order, to the extent it laid down an additional condition that the assessee should satisfy the eligibility requirements as on 31.01.2021, as ultra vires its power under Section 119(2)(b) of the I.T. Act;

"24. As regards the notification dated 28th September 2021 issued by the CBDT under Section 119(2)(b) of the Act, the date for making application has been extended by the said notification to 30th September 2021, which is clearly within the scope of the powers of the CBDT under Section 119 of the Act. Section 119 of the Act provides that the Board may from time to time, issue such orders, instructions and directions to other Income Tax Authorities as it may be deemed fit for proper administration of this Act. The provisions of the section have been interpreted by the Hon'ble Apex Court in UCO Bank (supra) to mean that the Board is entitled to tone down the rigours of law by issuing circulars under Section 119 of the Act and such circulars would be binding on Income Tax Authorities. A circular, however, cannot impose on a taxpayer a burden higher than what the Act itself, on a true interpretation, envisages. Therefore, the Board had power to extend the time limit for making an application to 30th September 2021.

However, to the extent it lays down an additional condition, i.e., assessee should be eligible to file an application for settlement on 31st January 2021 in paragraphs 2 and 4(i) of the impugned notification, in our view, is beyond the scope of the power of CBDT as per Section 119 of the Act. There is no provision in the Act providing a cut off date with respect to an assessee being eligible to make an application under Section 245C of the Act. Hence, such a condition in the impugned notification is clearly invalid and bad in law.

The date on which an assessee becomes eligible to make an application and the date on which the assessee makes an application are two different things and the Act only provides a cut off date for

the latter and not the former. Section 245C of the Act as amended by the Finance Act, 2021, provides that an application shall not be made after 1st February 2021, i.e., cut off date for making an application. However, there is no provision in the Act with respect to the cut off date for an assessee to be eligible to make an application. Further, there is no amendment to the definition of "case" in Section 245A(b) read with the Explanation, which would affect the eligibility of petitioner to file an application before the Settlement Commission between the period 1st February 2021 and 31st March 2021. Hence, the impugned notification, to that extent, is invalid and bad in law."

15. We find ourselves in complete agreement with the said view taken by the Bombay High Court. ***When Section 245C does not prescribe any prior cut-off date for an assessee to satisfy the requirements for filing an application before the Interim Board for Settlement, and the only statutory requirement is that the assessee should have a pending 'case' at the time of filing the application for settlement, then so long as the assessee had a 'live and un-adjudicated' notice under Sections 153A/153C as on the date of filing the application, the application had to be considered on merits by the Board. The CBDT order issued under Section 119(2)(b), purportedly to relax the rigours of a statutory provision, could not have merely extended the time limit for filing an application while, simultaneously, denying the benefit of such extension to a class of assessees. The said clause in the CBDT order has to be seen as invalid, and bad in law, as declared by the Bombay High Court in the decision referred above.****"*

(emphasis supplied)

58. From a perusal of the judgment, it is clear that the High Court of Kerala, though while dealing with assessees whose applications for

settlement were made before the Interim Board, held that the assessees had a vested right to opt for settlement under the Act, and held that those amendments to the Act could take effect only from 01.04.2021 and hence, the assesses could file applications for settlement up to 31.03.2021.

59. A detailed reading of the above discussed judgments would reveal the following:

a. The power of the Parliament to enact Amendment Acts with retrospective application cannot be curtailed.

b. The ITSC being a creature of statute, and in view of Section 245C, the assessees had a vested right to have their applications decided.

c. Such rights of the assessees cannot be said to have been taken away, in absence of any express words or necessary implication in the Finance Act, 2021 to that effect.

d. The order dated 28.09.2021 limiting the extension of time for filing the application to only those assessees who were eligible to file applications as on 31.01.2021 is bad in law.

e. Even the settlement applications of the assessees filed between 01.02.2021 and 31.03.2021 are held to be validly filed and need to be decided.

60. In the matters at hand, the cases of the assessees commenced with the issuance of notice under Sections 153A, 153C and 143(2) in the month of March, 2021, and the settlement applications were made on 22.03.2021,

pursuant to the orders passed by this Court. As such the applications were validly filed before the ITSC which legally and factually existed, i.e., much before the Finance Act, 2021 was promulgated on 01.04.2021. It cannot be disputed that at the time of filing of the applications, they had a pending case against them, which made them eligible to approach the ITSC.

61. In fact, in ***Jain Metal Rolling Mills (Supra),*** it was observed as under:

> *"8.But, at the same time, the ITSC did exist legally and factually until 31.03.2021. Every eligible assessee had a right to approach the ITSC, if they had a 'case' pending against them. The definition of 'case' as per Section 245-A(eb) is also extracted above. Therefore, even if any proceeding for assessments/reopening is issued after 01.02.2021 upto 31.03.2021, the assessee had a 'case' to approach the Commission and if they had submitted an application and if no final order has been passed under Sub-Section 4 of 245(D) on or before 31.01.2021, then the said application is treated as a 'pending application'. The very purpose of the legislation was to abolish the ITSC and to establish an Interim Board to deal with the pending applications. It can be seen that in respect of the case of the petitioners whose matters had arisen before the notification of the Act on 01.04.2021, but, after the cut-off date of 01.02.2021, were also very much eligible to approach the ITSC. The decisions relied upon by both (batch cases) sides in respect of retrospective legislation referred to supra, unequivocally hold that if the retrospective legislation takes away a vested right, it must do so by providing expressly or by necessary intendment. We step back and read the Amending Act namely, the Finance Act, 2021 carefully.* ***While the ITSC is made inoperative with effect from 01.02.2021 and an Interim Board is set up, provisions are made to transfer pending applications, absolutely, the Amending Act or the entire Chapter XIX-A as it stands after the amendment, does not***

expressly deal with or provide anything by necessary intendment regarding those applications which are made or the eligible cases in the interregnum. This being so, the ratio of the Judgment of the Hon'ble Supreme Court of India, in Commissioner of Income Tax -Vs- Shah Sadiq & Sons (cited supra) would apply in all force that a right which had accrued to approach the ITSC till the notification of the Finance Act, 2021 on 01.04.2021 stood vested in the eligible assessees and the said rights continued to be capable of being enforced notwithstanding the amendment of the relevant provision*."***

(emphasis supplied)

62. The submission of Mr. Tripathi is that the ITSC being a creation of statute, and also in view of Section 245C of the Act, the petitioners had a vested right to have their applications filed and considered. Mr. Sanjay Kumar would oppose this by stating that in view of the reading of Section 245D of the Act, the petitioners have no vested right to approach ITSC, and even if it is assumed for the sake of argument that they have some vested rights, they can be taken away by the legislature if it deems fit to do so.

63. Suffice it to state, the ITSC (or the Interim Board) being a creation of a statute, the assessees do have a statutory right to approach the same, seeking concession. As held by the High Court of Bombay in ***Sar Senapati Santaji Ghorpade Sugar Factory (supra),*** though the orders of the ITSC may have the trappings of a concession, the same is exercised by the State through a statutory scheme. Whether or not the concession is granted, the assessees are, in fact, vested with a right to apply for the same to the ITSC.

64. It is settled law that the right of the Parliament to make a retrospective amendment cannot be disputed. However, if any vested right is to be taken

away by the legislature, it should be done by express words or by necessary implication. However, no such intent can be gathered from the provisions of the Finance Act, 2021. In the amending provisions, there are neither any express words nor any indication that the intent of the legislature was to take away existing rights of the assessee to file such applications between 01.02.2021 to 31.03.2021. As such the rights cannot be said to have been taken away, though the Act has been given a retrospective effect. The purpose of the amendments is in fact, to abolish the ITSC with effect from 01.02.2021 and bring all pending settlement applications before the newly constituted Interim Board for adjudication.

65. Moreover, it cannot be disputed that the ITSC was in existence till 31.03.2021. In that sense, the assessees were well within their rights to file applications before it, and the applications filed before 31.03.2021 should be construed to be validly filed.

66. It is necessary at this stage to refer to the press release dated 07.09.2021 and the subsequent order under Section 119(2)(b) of the Act dated 28.09.2021 issued by the respondents, wherein it was clarified that the assessees, who were eligible to file an application for settlement on or before 31.01.2021, but could not file the same due to the cessation of the ITSC, could file their applications till 31.09.2021 before the Interim Board, provided the following criteria is fulfilled:-

> *"i. The assessee was eligible to file application for settlement on 31.01.2021 for the assessment years for which the application is sought to be filed (relevant assessment years); and*
> *ii. all the relevant assessment proceedings of the assessee are pending as on the date of filing the application for settlement."*

67. In fact, as would become apparent from the judgments discussed above, the High Court of Madras, the High Court of Bombay and the High Court of Kerala have all considered the effect of said order and held that as it was purportedly passed to relax the rigors of a statutory provision, it could not have merely extended the time limit for filing an application while simultaneously denying the benefit of such extension to a class of assessees. That apart, the purpose of the amendment being to make ITSC inoperative and bring the pending applications before the Interim Board, it cannot be said that the legislature had any intent to do away with pending applications in respect of cases that arose between 01.02.2021 and 31.03.2021.

68. We are in complete agreement with the conclusion drawn by the three High Courts on this issue. Following the ratio laid down by the three High Courts, paragraph 4 (i) the order of the respondents dated 28.09.2021 has to be read down, inasmuch as the date of 31.01.2021 mentioned therein shall be read as 31.03.2021.

69. Insofar as the judgments relied upon by Mr. Sanjay Kumar in the case of ***VKC Footsteps India Pvt. Ltd., Nitdip Textile Processors Pvt. Ltd. and Ors.,*** and ***R. K. Garg (supra)*** are concerned, while there cannot be any dispute to the propositions of law laid down therein, but in view of our above discussion, and in view of the peculiar facts of this case, they would not come to the aid of his arguments.

70. From the bedrock of the above discussed judicial pronouncements, we deem it appropriate to allow these writ petitions. The settlement applications of the petitioners, even if filed after 01.02.2021, on 22.03.2021, shall be

treated as pending applications to be considered by the Interim Board.

71. The prayers in the petitions also include a challenge to the notices issued under Sections 143(2) and 142(1) of the Act in W.P.(C.) 3479/2021 and notices under Section 143(2) of the Act in W.P.(C.) 3710/2021. Suffice it to state, as a necessary corollary to our conclusion above, these notices are liable to be stayed till the applications dated 22.03.2021 are decided by the Interim Board. We order accordingly.

72. Both the petitions are allowed in the above manner.

V. KAMESWAR RAO, J

VINOD KUMAR, J

OCTOBER 06, 2025
sr/rt