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HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

WRIT TAX No. - 77 of 2024

M/s B.L. Agro Industries Limited , Bareilly Thru. Mr. Amit Kumar Authorised Signatory
.....Petitioner(s)

Versus

Union of India Ministry of Finance Deptt. Revenue Govt. of India New Delhi Thru. Secy. and others
.....Respondent(s)

Counsel for Petitioner(s)	:	Kavita Jha, Anjali Pandey, Aahuti Agarwal, Abhishek Khare, Navneet Yadav, Shailesh Verma
Counsel for Respondent(s)	:	A.S.G.I., Dr. Ravi Kumar Mishra, Kushagra Dikshit, Neerav Chitravanshi, Ravi Kumar Mishra

Along with :

1. **Writ Tax No. 177 of 2024:**
   Ghanshyam Khandelwal
   Versus
   Union of India Ministry of Finance Deptt. of Revenue India Govt. New Delhi Thru. Secy. and others

2. **Writ Tax No. 178 of 2024:**
   Ashish Khandelwal
   Versusp
   Union of India Ministry of Finance Deptt. of Revenue

India Govt., New Delhi Thru. Secy. and others

Court No. - 3

HON'BLE SHEKHAR B. SARAF, J.
HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Shekhar B. Saraf, J. : The present writ petitions has been filed under Article 226 of the Constitution of India for quashing the order dated October 30, 2023 under Section 245D(4) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') as well as consequential order dated December 15, 2023 under Section 254D(6B) of the Act passed by Interim Board for Settlement-VII, Chennai (hereinafter referred to as 'IBS-VII, Chennai') for allegedly being *non rest*, *void ab initio* and contrary to the express provisions of Section 254D(4) of the Act. As the issues involved in the connected writ petitions are intricately linked to the leading writ petition, the Court is conjointly dealing with all the three petitions in the present judgment.

FACTS

2. The facts of the leading writ petition bearing Writ Tax No.77 of 2024 are delineated below:-

a. A search and seizure was conducted on October 4, 2018 as per Section 132 at the premises of B.L. Agro Industries limited, a private limited company (hereinafter referred to as the 'petitioner') wherein some incriminating transactions were found between the petitioner and its three sister concern.

b. Pursuant to the aforesaid search, a notice under Section 153A was issued for Assessment Year 2009-2010 to 2018-2019 and notice under Section 143(2) of the Act was issued for Assessment Year 2019-2020 being the search year.

c. Petitioner sought to settle the above proceedings in accordance with the provisions of Chapter XIX-A of the Act but in the interregnum, the Income Tax Settlement Commission was abolished by Finance Act, 2021 with restrospective effect from February 1, 2021. Therefore, the statutory right to file settlement applications after January 31, 2021 was consequenty barred by virtue of first proviso to Section 245B (1) and Section 245(c).

d. Aggrieved by the extinguishment of the remedy of settlement, the petitioner filed W.P(C) No. 6021 of 2021 before this Court, whereby the Court vide order dated March 19, 2021, granted liberty to the petitioner to file a settlement application before the Income Tax Settlement

Commission by March 23, 2021, directing that if such application is filed, the same shall be received by the Commission.

e. In compliance with the aforesaid order, the petitioner filed its settlement application before the Income-tax Settlement Commission, New Delhi on March 23, 2021.

f. Thereafter, the Central Board of Direct Tax (CBDT) passed an order dated September 28, 2021 directing that settlement applications filed between 01.02.2021 and 30.09.2021 shall be treated as ‘pending applications’ within the meaning of Section 245A(eb) of the Act. Consequently, giving the petitioner’s application a statutory character of a pending application liable to be dealt with under Chapter XIX-A of the Act.

g. In the interregnum, CBDT constituted the Interim Board for Settlement (IBS) vide notification date November 1, 2021 assume the Settlement Commission’s power for pending applications.

h. The Central Government subsequently notified the e-Settlement Scheme, 2021 on November 1, 2021 to process pending income tax settlement applications.

Clause 3 of the said scheme provides that it shall apply only to ‘pending applications’ allotted or transferred to an Interim Board in respect of which the applicant has not exercised the option under Section 245M(1) of the Act, and clause 6 prescribes the procedure for disposal of such applications.

i. In view of the above notification, the application stood allotted to Interim Board of Settlement, Delhi (hereinafter referred to as the ‘IBS-III, Delhi’), by order dated March 7, 2022, the IBS-III, Delhi exercised powers under Section 245D(3) read with paragraph 6(ii) of the e-Settlement Scheme, 2021 and directed respondent Nos. 3 and 4 to furnish a report under Rule 9 of the Income Tax Settlement Commission(Procedure) Rules, 1997 (hereinafter referred to as the ‘Rule 9 report’) in respect of the petitioner's pending application. On April 22, 2022 and June 15, 2022, respondent No. 3 sought extension of time for submission of the Rule 9 Report.

j. The CBDT administratively transferred the petitioner's pending application vide order dated June 13, 2022 from IBS-III, Delhi to IBS-VII, Chennai.

k. Thereafter, IBS-VII, Chennai proceeded with the hearing and passed the impugned order dated October

30, 2023 under Section 245D(4) rejecting the petitioner's settlement application.

l. Aggrieved by the impugned order dated October 30, 2023, the petitioner preferred rectification applications dated November 16, 2023, December 4, 2023 and December 6, 2023 under Section 245D(6B), specifically raising the jurisdictional objection that the mandatory period prescribed under Section 245D(4A) had expired and that the impugned order was consequently barred by limitation, without jurisdiction and non est in law.

m. IBS-VII, Chennai vide order dated December 15, 2023, dismissed the petitioner's rectification applications without adjudicating the jurisdictional objection founded upon the statutory bar of limitation, which is the subject matter of challenge in the present writ petition.

CONTENTIONS ON BEHALF OF PETITIONER

3. Mrs. Kavita Jha, Senior Advocate, appearing on behalf of petitioner has made the following submissions:

a. The settlement application acquired the statutory status of a pending application under Chapter XIX-A and was statutorily required to be disposed of by the Interim Board in accordance with Sections 245D, 245M and the e-Settlement Scheme, 2021. The Interim Board, therefore, merely inherited an already pending application and did not receive or entertain a fresh settlement application.

b. The mandatory period of 18 months does not commence on which the already pending application was administratively transferred from IBS-III, Delhi to IBS-VII, Chennai as such an erroneous construction of the statutory scheme, conflates the first allotment of the pending application to an Interim Board with a subsequent administrative transfer of proceedings between two Interim Boards, though the two operate in distinct statutory fields.

c. A conjoint reading of Sections 245M(3) and 245M(4) makes the legislative intent explicit. The expression "transferred to another Interim Board subsequently" in Section 245M(4) demonstrates that a subsequent Interim Board transfer is distinct from the initial allotment of a pending application to an Interim Board and, therefore, cannot restart the limitation prescribed under Section 245D(4A).

d. The order dated March 7, 2022 passed by IBS-III, Delhi calling for Rule 9 Report in terms of paragraph 6(ii) of the e-Settlement Scheme, 2021 unequivocally acknowledges that the pending application had already stood allotted to, and was being dealt with by, IBS-Delhi under the Scheme. Consequently, even assuming that the precise date of allotment is not discernible from the record, the earliest possible date from which the statutory fiction contained in Section 245D(9)(iii) read with Section 245M(2) could operate is November 1, 2021, that is, the date of notification of scheme in the Official Gazette. Upon computation from the end of the month in which such allotment is deemed to have taken effect, the mandatory period prescribed under Section 245D(4A) expired on April 30, 2023. The impugned order dated October 30, 2023 is, therefore, ex facie barred by limitation.

e. The exercise of jurisdiction under Section 245D(3) necessarily presupposes that the petitioner's application had already stood allotted to the Interim Board, had crossed the statutory stages contemplated under Sections 245D(1), 245D(2C) and 245D(2D), and had become ripe for further enquiry. Consequently, the proceedings before IBS-III, Delhi could not have attained the stage contemplated under Section 245D(3) unless the petitioner's pending application had already come within its exclusive jurisdiction.

f. The invocation of Section 245D(3), therefore, necessarily postulates that the Interim Board had already assumed jurisdiction over the petitioner's pending application and was seized of the proceedings for its adjudication. The order to furnish the Rule 9 Report, is thus not the source of jurisdiction; rather, it constitutes that the petitioner's application had already stood allotted to IBS-Delhi and that the Board had assumed exclusive jurisdiction over the pending application.

g. The proviso to Section 245D(1) of the Act engrafts a statutory fiction by providing that where no order is passed within the prescribed period, the application shall be deemed to have been allowed to be proceeded with. It is an admitted position that no order rejecting the petitioner's application under Section 245D(1), nor any order declaring the application invalid under Section 245D(2C), was ever passed. Consequently, by operation of the statutory fiction enacted by Parliament, the petitioner's application stood deemed to have been allowed to be proceeded with. Such statutory fiction must receive its full legal effect and cannot be disregarded while construing the limitation prescribed under Section 245D(4A).

h. A plain reading of Paragraph 6(ii) leaves no manner of doubt that the exercise of jurisdiction under Section 245D(3) is subsequent to, and not contemporaneous with, the allotment or transfer of the pending application. In other words, the Scheme itself proceeds on the premise that allotment or transfer is a condition precedent for invoking Section 245D(3).

i. Section 245M was inserted in the Act via Finance Act, 2021 to give option to assessee to withdraw pending application. If the said option was not exercised, the pending application was deemed to be allotted or transferred to IBS as per sub-section(2) and sub-section(3) of Section 245M of the Act.

j. By usage of the word 'transferred' in sub-section(2) to Section 245M, the legislature intended that the date on which a pending application which was filed before Settlement Commission, was transferred to a newly constituted IBS, would be deemed to be the date of receipt of such an application by the IBS for the purpose of chapter XIX-A of the Act. The usage of 'transferred' in sub-section (2) of Section 245M of the Act is to allow such applications which were filed at the time the Settlement Commission was in existence but was subsequently abolished by Finance Act 2021, to be 'transferred' to IBS for deciding such applications.

k. Sub-section (4) of section 245M, provides that in case a pending application is transferred from one IBS to another, then all the records shall be transferred to such IBS and the records so transferred shall be deemed to be records before it for all purposes. It is submitted that by usage of the phrase "shall be deemed to be the records before it for all purposes", the legislature has created a deeming fiction in order to ensure continuity of proceedings.

l. The specified time limit of 18-month as provided under sub-section (4A) of section 245D of the Act is mandatory and the subsequent transfer envisaged under section 245M(3) cannot be applied to dilute the same.

m. Clause (iiia) of Section 245HA(1) is attracted only where a valid order under Section 245D(4) is passed within the period statutorily prescribed by Section 245D(4A). An order rendered beyond the mandatory period of limitation is without jurisdiction and non est in the eyes of law; such an order cannot constitute the foundation for attracting the consequences contemplated under Section 245HA(1)(iiia).

n. It is a settled principle that there can be no estoppel against statute, nor can consent, acquiescence or participation confer jurisdiction where none exists. The issue raised by the petitioner pertains to the statutory bar of limitation and goes to the very root of the jurisdiction of the Interim Board. Such a pure question of law can neither be waived nor defeated on the principles of approbation and reprobation. The petitioner's bona fide participation in the settlement proceedings, with a view to resolving the dispute, cannot validate an order which is otherwise ex facie barred by limitation.

o. To buttress the aforesaid arguments counsel has placed reliance on the following cases:

I. <u>Jurisdiction under Section 245D(3) is exercisable only after the settlement commission has assumed exclusive seisin over the proceedings:</u>

i. **Major Metals Ltd. vs. Union of India**[1];

ii. **Omaxe Ltd. vs. ACIT**[2];

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1 **(2013) 359 ITR 450 (Bom.)**
2 **(2012) 254 CTR 370 (Delhi)**

iii. **CIT vs. Express Newspapers Ltd.**[3];

iv. **Thomas Phillip vs. Interim Board for Settlement**[4];

II. Legislative intent behind Section 245M

v. **Jain Metal Rolling Mills vs. UOI**[5];

vi. **Sar Senapati Santaji Ghorpade Sugar Factory Ltd. vs. ACIT**[6];

vii. **Megha Engineering and Infrastructure Ltd. vs. Income-tax Settlement Commission**[7];

III. Time limit of 18 month is mandatory not directly

viii. **Star Television News Ltd. vs. UOI**[8];

ix. **RNS Infrastructure Ltd. vs. Income-tax Settlement Commissioner**[9];

x. **Akshar Builders vs. Principal Commissioner of Income Tax**[10];

IV. Once limitation starts, it continues unless intervened by Court

xi. **Re: Hindustan Lever Mazdoor Sabha vs.**

3 **(1994) 206 ITR 443 (SC)**
4 **in WP(C) No. 1175 of 2024**
5 **[2024] 461 ITR 423 (Madras)**
6 **[2024] 161 taxmann.com 166 (Bombay)**
7 **[2025] 481 ITR 356 (Delhi)**
8 **[2009] 317 ITR 66 (Bombay)**
9 **[2017] 77 taxmann.com 103 (Karnataka)**
10 **2019: GUJHC :21662-DB**

Hindustan Lever Ltd.[11];

V. No authority, much less a quasi-judicial authority, can confer jurisdiction upon itself by erroneously deciding a jurisdictional fact

xii. **Raza Textiles Ltd. vs. Income Tax Officer, Rampur**[12];

CONTENTIONS ON BEHALF OF RESPONDENTS

4. Mr. Neerav Chitravanshi appearing on behalf of Income Tax Department has made the following submissions:

a. A combined reading of provisions of aforesaid sub-sections (2) and (3) of section 245M, makes clear that the deemed date of receiving the pending application by the IBS shall be the date on which such application is either allotted to the Interim Board or transferred from one Interim Board to another interim Board by the order of the CBDT.

b. In the case of the petitioner, the deemed date of receipt of application by the Hon'ble IBS VII, Chennai shall be June 13, 2022, which is falling in the month of June, 2022 and therefore, eighteen months period for

11 **(1998) 8 SCC 349**
12 **(1973) 87 ITR 539 (SC)**

passing order IBS under section 245D(4) shall expire on December 31, 2023. Accordingly, the order u/s 245D (4) was passed by the Ld. IBS VII, Chennai on October 30, 2023, which is well within the due date as prescribed in section 245D(4A)(iii) of the Act. Hence, the contention of the petitioner that the order dated October 30, 23 is barred by limitation is misconceived.

c. A perusal of Section 245HA makes it apparent that the case of the petitioner falls under the clause(iiia) of section 245HA(1) of the Act since the application of the petitioner has been rejected under section 245D(4) of the Act for not providing the terms of settlement. Thus, the plea of the petitioner that the settlement proceedings before the IBS became time barred under section 245D(4A)(iii) and (9)(iii) as well as Section 245M(2) of the Act and accordingly, the said proceedings also did not abate u/s 245HA of the Act has no significance and is completely baseless.

d. The petitioner cannot be allowed to approbate and reprobate at the same time. On the one hand the petitioner itself has taken time for filing replies and willingly participated in the proceedings before the IBS and no objection regarding limitation was raised and once the decision of the IBS did not favour the petitioner it started raising the alleged plea of limitation, which is not at all legally permissible.

e. The contention of the petitioner that since the proceedings before IBS stood abated on account of the fact that the IBS could not pass final orders within the limitation prescribed under Section 245D(4A)(iii) and hence, adverse material voluntarily tendered during proceedings before IBS should not be used by assessing officer while making assessment is misconceived and contrary to the provisions of Section 245HA(3) that entitles the Assessing Officer to use all the material and other information produced before the Settlement Commission upon abatement of proceedings.

f. The only exception for not using the produced material is consciously created by the legislature by incorporation of the provisions of second proviso to Section 245M(5), when the application submitted by the assessee under Section 245C is withdrawn by it under Section 245M(1) of the Act, then in such an eventuality the Assessing Officer cannot use the material voluntarily submitted by the assessee before the IBS in its application under Section 245C which is not applicable in the case of the petitioner.

g. It is settled law that a taxing statute is to be strictly interpreted and when the language of the statute is plain and unambiguous then the same is to be read as it is and nothing can be added or substituted while interpreting the provision of the statute.

h. To buttress the aforesaid arguments counsel has placed reliance on the following cases:

(i) **Checkmate Services (P.) Ltd. vs. Commissioner of Income Tax 1[13];**

(ii) **Ajmera Housing Corpn. vs. Commissioner of Income Tax[14];**

(iii) **Mathuram Agarwal vs. State of Madhya Pradesh and others[15];**

(iv) **Star Television News Ltd. vs. UOI[16];**

ISSUE

5. On the basis of the submissions canvassed by the learned counsel for the parties, the following questions fall for consideration:

Whether period of 18 months as prescribed under

13 **(2022) 143 taxmann.com 178 (SC)**
14 **(2010) 193 taxmann.com 193 (SC)**
15 **(1999) 8 SCC 667**
16 **[2009] 317 ITR 66 (Bombay)**

Section 245 (D)(4A)(iii) read with Section 245(D)(9)(iii) and 245(M)(2) of the Act had expired prior to the passing of the impugned order and whether such period is mandatory or directory in nature?

DISCUSSION AND ANALYSIS

6. I have heard the submissions canvassed by the parties and perused the documents placed on record.

7. One may keep in mind the fact that the Income Tax Settlement Commission was constituted in 1976 by means of the Taxation Laws (Amendment) Act, 1975 (41 of 1975) with the aim and objective of settling the tax evasion issues by virtue of disclosure of undisclosed income by tax offender. The said amendment was brought as per the recommendation of the Direct Taxes Enquiry Committee popularly known as 'Wanchoo Committee'. The Settlement Commission was designed to be a robust settlement mechanism under Chapter XIX-A of the Act, which is titled as 'Settlement of Cases'. The Income Tax Settlement Commission was later on abolished by the Finance Act, 2021 and subsequently CBDT established the Interim Board for Settlement vide notification dated August 10, 2021 for deciding pending applications.

8. The learned counsel appearing on behalf of the petitioner vehemently contended that the order dated October 30, 2023 passed by IBS-VII, Chennai under Section 245D(4) and the consequential order thereto is passed beyond the statutory period of 18 months as prescribed under Section 245(D)(4A)(iii) of the Act. Hence, the order is barred by limitation and consequently the proceedings shall not abate under Section 245HA of the Act. Furthermore, the period of 18 months is to be calculated from the date of allotment of settlement application to IBS III, Delhi by CBDT and not from the date on which it got transferred to IBS VII, Chennai and such limitation prescribed under the said provision is mandatory, not directory in nature.

9. Per contra, the learned counsel appearing on behalf of respondents refuting the contentions of petitioner, submitted that the order passed by Interim Board is within the time limit provided under Section 245(D)(4A)(iii) of the Act. Furthermore, it has been submitted that the limitation prescribed under Section 245(D)(4A)(iii) of the Act is directory and not mandatory and even if the order is passed beyond the period of limitation, the proceedings shall abate under Section

245HA(1)(iii).

10. The limited controversy for resolving the legal issue framed in the present writ petition is computation of limitation period of 18 months as prescribed under Section 245D(4A)(iii) read with Section 245D(9)(iii) and Section 245M(2) of the Act, that is, whether such period commenced when the petitioner's application first stood allotted to IBS-III, Delhi or when it was administratively, transferred to IBS-VII, Chennai by CBDT while exercising its power under Section 119(b) of the Act.

11. Before proceeding further, it is pertinent to look into Sections 245D(3), 245D(4A)(iii), 245D(9)(iii) and 245M(2) of the Act, which are extracted hereinbelow:-

> "**245D. Procedure on receipt of an application under section 245C.**
>
> **(3)** The Settlement Commission, in respect of—
>
> (i)an application which has not been declared invalid under sub-section (2C); or
>
> (ii)an application referred to in sub-section (2D) which has been allowed to be further proceeded with under that sub-section,
>
> may call for the records from the Principal Commissioner or Commissioner and after examination of such records, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the Principal Commissioner or Commissioner to make or cause to be made such further enquiry or investigation and furnish

a report on the matters covered by the application and any other matter relating to the case, and the Principal Commissioner or Commissioner shall furnish the report within a period of ninety days of the receipt of communication from the Settlement Commission:

Provided that where the Principal Commissioner or Commissioner does not furnish the report within the aforesaid period, the Settlement Commission may proceed to pass an order under sub-section (4) without such report.

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

(i) sub-section (2B) or sub-section (3), or

(ii) the provisions of sub-section (1) as they stood immediately before their amendment by the Finance Act, 2007,

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

(4A) The Settlement Commission shall pass an order under sub-section (4),—

(i) ..

(ii) ..

[(iii) in respect of an application made on or after the 1st day of June, 2010, **within eighteen months from the end of the month in which the application was made**."

***

(9) On and from the 1st day of February, 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 following modifications, namely:—

(i)....

(ii)....

(*iii*) for the purposes of this section, the date referred to in sub-section (2) of section 245M shall be deemed to be date on which the application was made under section 245C and received by the Interim Board;

***

245(M) Option to withdraw pending application

(2) Where the option under sub-section (1) is not exercised by the assessee within the time allowed under that sub-section, the pending application shall be deemed to have been received by the Interim Board on the date on which such application is allotted or transferred to the Interim Board under sub-section (3).

(3) The Board may, by an order, allot any pending application to any Interim Board and may also transfer, by an order, any pending application from one Interim Board to another Interim Board."

(Emphasis added)

12. The law with regard to limitations provided in Section 245D(4A) of the Act is well settled by the judgment of the Karnataka High Court delivered by *L. Narayana Swamy, J.* [17], which was upheld by the Division Bench[18] and vindicated by the Supreme Court[19] in **RNS Infrastructure** (Supra), which was also relied upon by the counsel appearing on behalf of the petitioner, wherein

17 **[2017] 77 taxmann.com 103 (Karnataka)**
18 **[2022] 136 taxmann.com 309 (Karnataka) : [2022] 286 Taxman 509 (Karnataka) : [2022] 442 ITR 417 (Karnataka)**
19 **[2024] 164 taxmann.com 630 (SC) : [2024] 300 Taxman 101 (SC) : [2024] 469 ITR 29 (SC)**

the Court had quashed the order passed beyond limitation. The relevant paragraphs of the judgment of the Division Bench[20] affirming the judgment of the learned single judge are quoted hereinbelow:-

> "**4.** Settlement Commission passed an order dated 27-5-2016 under section 245D(4) of the Act, determined the total income and computed the tax liability. Respondent No. 1 - assessee filed an application for rectification of the said order before the Settlement Commission which came to be rejected by order dated 11-8-2016. The respondent No. 1 - assessee challenged the aforesaid orders of Settlement Commission in *RNS Infrastructure Ltd.* (*supra*) which came to be allowed. Hence, this writ appeal by the Revenue.
>
> **5.** Learned counsel Sri. K.V. Aravind appearing for the Revenue submitted that the writ Court committed an error in deciding the writ petition on merits sans issuing notice to the Settlement Commission, more particularly when statement of objections was filed by the appellants only to the interim prayer sought and the arguments were heard only on the interim prayer. The order of the learned Single Judge is in violation of principles of natural justice since no reasonable opportunity was provided to the appellants to address the arguments on the merits of the case. Inviting the attention of the Court to section 245D(4A) and 245HA(1)(*iv*) of the Act, it was submitted that limitation provided under section 245D(4) is directory and not mandatory. Reference was made to the judgment of the Hon'ble High Court of Bombay in the case of *Star Television News Ltd.* v. *Union of India* [2009] 184 Taxman 400/317 ITR 66 which has been confirmed by the Hon'ble Apex Court in support of his contentions. Thus, the learned counsel sought for setting aside the order of the learned Single Judge allowing the writ appeal.
>
> ***
>
> **13.** Thus, the Hon'ble Court has held that the Settlement Commission must fulfil its mandatory

20 **constituting Mrs. S. Sujatha and Hanchate Sanjeevkumar, JJ.**

> statutory duty in disposing of such applications as are referred to in section 245D(4A)(*i*) by the date specified therein except where prevented from doing so due to any reason attributable on the part of the applicant, and that an application in respect of which the Settlement Commission has been prevented from fulfilling the aforesaid mandatory statutory duty due to any reasons attributable on the part of the applicant shall abate on the specified date under section 245HA(1)(*iv*). It is declared that in this manner, both section 245D(4A)(*i*) and section 245HA(1)(*iv*) will have applicability, meaning and effect.
>
> **14.** A comprehensive reading of this order with the relevant provisions of the Act as it stood then, it is clear that the ruling of *Star Television News Ltd.*, *supra*, would be applicable only to the cases where the application was made to the Settlement Officer before 1-6-2007. The said order has been upheld by the Hon'ble Apex Court *Union of India* v. *Star Television News Ltd.* [2015] 57 taxmann.com 305/231 Taxman 341/373 ITR 528 observing that the Hon'ble High Court of Bombay having found sections 245HA(1)(*iv*) and 245HA(3) to be violative of Article 14 *etc.*, but did not invalidate the same as the Hon'ble High Court was of the opinion that it is possible to read down the said provisions in particular to avoid holding the said provisions as unconstitutional. Thus, the Hon'ble Apex Court has held that the said judgment of the Hon'ble High Court of Bombay does not call for any interference being a well considered judgment.
>
> ***
>
> **17.** .... In the circumstances, we find no jurisdictional error in the order of the learned Single Judge in allowing the writ petition filed by the assessee."

13. In the aforesaid judgment, the court has categorically observed that Settlement Commission should dispose the application within the limitation period prescribed under Section 245D(4A) except when prevented due to reasons attributable to applicant otherwise the proceedings would be abated by operation

of Section 245HA(1)(iv). Furthermore, it was observed that such limitation is mandatory not directory in nature.

14. The aforesaid judgment of the Division Bench went into appeal before the Supreme Court wherein the Supreme Court dismissed the S.L.P.

15. Learned counsel for the respondents have relied upon a judgment of Bombay High Court in **Star Television News Ltd.** (Supra) to buttress their arguments that 18 months period is not mandatory in nature and the same should be treated as directive only.

16. It is to be noted that the judgment of Bombay High Court as affirmed by the Supreme Court[21] in the **Star Television News Ltd.** (Supra) was specifically with regard to the abatement of proceedings on account of reason attributable to the applicant and moreover this judgment was passed prior to the Finance Act, 2010, wherein there was no 18 months period prescribed in the Statute Books. Furthermore, the judgment in **Star Television News Ltd.** (Supra) dealt with an arbitrary cut off date, wherein all pending settlement applications had to be disposed of. In light of the same, the facts of the case in **Star Television News Ltd.** (Supra) are

21 **[2015] 57 taxmann.com 305 (SC): [2015] 231 Taxman 341 (SC): [2015] 373 ITR 528 (SC):[2015] 279 CTR 531 (SC)**

distinguishable and do not come to the assistance of the department.

17. From a perusal of the facts in the present case, it clearly emerges that the settlement application filed by the petitioner pursuant to the order dated March 19, 2021 was treated as a valid application and directed to be processed as a ‘pending application’ within the meaning of Section 245A(eb) of the Act. This application was pending before the IBS-III, Delhi. Furthermore, IBS-III, Delhi by order dated March 7, 2022 exercised powers under Section 245D(3) read with para 6(ii) of the e-Settlement Scheme, 2021 and directed respondent Nos.3 and 4 to furnish the Rule 9 report with regard to the pending application of the petitioner. It is only subsequent to the above order passed by the IBS-III, Delhi that the CBDT vide order dated June 13, 2022, transferred the petitioner’s application from IBS-III, Delhi to IBS-VII, Chennai.

18. Even the e-Settlement Scheme, 2021 makes it categorical that only after the allocation or transfer, the Interim Board would have called for the records from the Principal Commissioner under Rule 9. The relevant clause of the aforesaid scheme is quoted hereinbelow:

"6. Procedure for settlement. The procedure for settlement of pending applications allotted or transferred in Interim Board shall be as per the following, namely:-

(i) ......

(ii) the Interim Board may call for the records from the Principal Commissioner or the Commissioner referred to in paragraph 7 to the Principal Commissioner or the Commissioner and direct it to may forward the necessary make or cause to be made further enquiry or investigation and furnish a report in accordance with and within the time allowed under sub-section (3) of section 245D of the Act;"

19. Furthermore, the CBDT order dated June 13, 2022 substantiates that the pending settlement application was transferred from transferor IBS-Delhi to transferee IBS-Chennai which is extracted hereinbelow:

"Subject: Allocation of cases to Interim Boards for Settlement.-reg.

Kindly refer to the above subject.

2 In connection to the above, I am directed to inform you that DG (Systems) has allocated the pending settlement applications to newly constituted Interim Boards for Settlement (IBsS) as per the e-Settlement Scheme,2021. As per allocation, the applications pending betore IBS as mentioned in column (2) of the table below have been allocated to IBS as mentioned in column (3) of the said table.

Sr. No. (1)	Transferor IBS (2)	Transferee IBS (3)
1	...	...
2	...	...
3	IBS-III, Delhi	IBS-VII Chennai

I am further directed to state that procedure as mentioned in e-Settlement Scheme, 2021 may be followed.”

20. Upon perusal of Section 245D(4A)(iii) of the Act and the e-Settlement Scheme, 2021, it is palpable that the Settlement Commission shall pass an order under sub-section (4A) of Section 245D in respect of the application made on or after 1st June 2010 within 18 months from the end of the month in which the application was made. The application was made on March 23, 2021 which was subsequently allotted to IBS-III, Delhi via e-Settlement scheme, 2021 on November 1, 2021, the respondent ought to have passed the order on or before May 30, 2023. Arguendo, even if the date of allotment is computed from the date of inviting Rule 9 report in view of Section 245D(3) of the Act, the respondent ought to have passed the order on or before September 30, 2023. However, the order was passed on October 30, 2023, much beyond the period of limitation.

21. The argument of the petitioner that the statutory period as provided in Section 245D(4A) of 18 months either commenced from the date of allotment to IBS-III, Delhi or at most could extend to commence from the date of calling for Rule 9 report appears to be correct in law while the argument made out by the respondent that the period of 18 months would start from the date of

transfer/allotment by the CBDT vide order dated June 13, 2022 under Section 245M(2) is falacious. The argument of the respondents if accepted, would result in an extension of the statutory period of 18 months on each allotment/transfer from one IBS to the other.

22. This argument, in our view, is not sustainable as the period prescribed under Section 245D(4A)(iii) cannot be extended once the Interim Board takes cognizance of the interim application pending before it.

23. Furthermore, the moment the Interim Board IBS-III, Delhi passed an order under Section 245D(4A)(iii) calling for the Rule 9 report, it would automatically mean that the IBS-III, Delhi had been allotted the said file. If one would look into the e-Settlement Scheme, 2021 it would be clear that directions could only have passed by the Interim Board after the allotment had taken place.

24. Furthermore, it is to be noted that the respondents in its counter affidavit has also admitted the fact that allotment to Interim Board was done on November 1, 2021. The relevant paragraph of the counter affidavit is extracted below:-

> "That the contents of Para No. 13 are accepted to the

> extent that the petitioner's application was transferred from the Hon'ble IBS, Delhi Branch to the Learned IBS-VII, Chennai vide CBDT order dated 13.06.2022 and rest of the content of paras are denied. However, the contention of the petitioner that no proceeding pertaining to the petitioner and subject AYs were pending under section 153A of the Act for the purposes of section 245HA(2) of the Act is against the established law. It is significant to mention here that the petitioner has filed the application in March 2021 which was duly accepted after being allowed by the Hon'ble High Court of Allahabad and allotted to the Hon'ble IBS, Delhi Bench vide Gazette Notification dated 01.11.2021 which was later on transferred and allotted to Learned IBS-VII Chennai vide CBDT letter dated 13.06.2022. Thus, considering the provisions of section 245D(9) (iii) and 245M(2) of the Act introduced w.e.f. 01.02.2021 it is evident that the proceedings carried out in the case of the petitioner are well within the time limit as prescribed in the Income Tax Act. Thus, neither settlement proceedings nor assessment proceedings were time barred in the case of the petitioner. Also, the petitioner has contended that the CBDT order dated 13.06.2022 speaks of only transfer of cases and not allotment to IBS as per Gazette notification dated 01.11.2021."

(Emphasis added)

25. We agree with the argument of the petitioner that any interpretation suggesting that the petitioner's application was first received by an Interim Board, that is, only upon the administrative transfer dated June 13, 2022 would render the entire proceedings undertaken by the IBS-III, Delhi under Section 245D(3) wholly without jurisdiction and would render the time bound manner of settlement of cases redundant.

26. With regard to the period of 18 months being

mandatory, the judgment in **R.N.S. Infrastructure Ltd.** (Supra) settled the law wherein it is categorically stated that the period of 18 months is mandatory and any order passed beyond 18 months would be time barred and a nullity. This judgment was affirmed by the Division Bench of the Karnataka High Court in **CIT v. RNS Infrastructure Ltd.**[22], and thereafter, the SLP filed before the Hon'ble Supreme Court[23] was dismissed.

27. In light of the above, we are of the view that the order passed by IBS-VII, Chennai is beyond the period of limitation period of 18 months as prescribed under Section 245(D)(4A)(iii) read with Section 245D(9)(iii) and Section 245M(2) of the Act. Furthermore, the period precribed under Section 245D(4A)(iii) for disposing the settlement application is mandatory and such period commences when the petitioners application first stood allotted to and was acted upon by IBS-III, Delhi.

28. Accordingly, the order dated October 30, 2023 as well as consequential order dated December 15, 2023 of the Act passed by IBS-VII, Chennai are quashed and set aside accordingly the writ petition is allowed.

29. We clarify herein that we have only addressed

22 **2022 (442) ITR 417**
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the issue of limitation for disposing the settlement application and have not ventured into the issue as to whether the proceedings would abate or not as well as consequences of abatement as the petitioner had extensively argued with regard to the issue of limitation and the prayer of the petitioner is also with respect to quashing the order passed under Section 245D(4) and the consequential order passed under Section 245D(6B) of the Act.

30. We also clarify that since we have not gone into the issue in relation to the consequences of abatement, the principles of res judicata/constructive res judicata would not apply to the same.

(Shekhar B. Saraf, J.)

I agree

(Abdhesh Kumar Chaudhary, J.)

August 10, 2026

Ashutosh