IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.Nos.9467, 3856, 4175, 4265, 4563, 4621, 5122, 5779, 9550, 9952, 10325, 10572, 10663, 11376, 12656, 12759, 12786, 12866, 12892, 13064, 13218, 13399, 13408, 13409, 13435, 14581, 14733, 9813, 9822, 9942, 10337, 11045, 12643, 12899, 13135, 13195, 13722, 14012, 14587, 14607, 15109, 15117 and 16159 of 2021

and

W.M.P.Nos.10057, 10059, 4421, 4766, 4872, 5196, 5260, 5705, 6377, 10148, 10149, 10150, 10562, 10563, 10564, 10904, 10905, 10908, 11161, 11163, 11165, 11275, 11279, 11280, 12039, 12042, 12045, 13451, 13453, 13454, 13555, 13556, 13559, 13586, 13587, 13588, 13672, 13673, 13674, 13698, 13699, 13700, 13866, 13868, 13870, 14020, 14021, 14022, 14248, 14249, 14250, 14261, 14262, 14263, 14265, 14266, 14264, 14265, 14266, 14302, 15472, 15473, 15474, 15633, 10447, 10448, 10450, 16627, 10455, 10456, 10457, 15509, 10556, 10558, 10599, 10918, 10919, 10920, 16629, 11689, 11693, 16799, 13431, 13434, 13435, 13705, 13706, 13707, 13942, 13944, 13945, 13998, 13999, 14001, 14563, 14566, 14878, 14879, 15478, 15479, 15480, 15485, 15486, 15488, 16005, 16007, 16008, 16015, 16020, 16021, 17096, 17097 and 17698 of 2021

W.P.No.9467 of 2021:

Pitchai Rajagopal Shiva Kumaar .. Petitioner

v.

1.Union of India,
rep. by its Secretary,
Ministry of Finance,
Department of Revenue,
3rd Floor, Jeevan Deep Building,
Sansad Marg, New Delhi – 110 001.

2.The Central Board of Direct Taxes,
rep. by its Chairperson,
Department of Revenue – Ministry of Finance,
Government of India,
New Delhi.

3.Interim Board for Settlement,
rep. by its Secretary,
Replacing the Income Tax Settlement Commission,
Additional Bench, Chennai,
rep. by its Secretary
Satguru Complex,
640, Anna Salai, Nandanam,
Chennai – 600 035.

4.Deputy Commissioner of Income Tax,
Central – 1(3)
No.46, 3rd Floor, Investigation Building,
Mahatma Gandhi Road,
Chennai-34. .. Respondents

Prayer in W.P.No.9467 of 2021: Petition under Article 226 of the Constitution of India seeking issuance of a writ of declaration declaring the amendment to the Income Tax Act, 1961 in Section 245A by inserting sub-clause (da), (ea) and (eb), 245B, 245BC, 245BD proviso to Section 245C, 245D, 245DD, 245F, 245G, 245H and insertion of new Section 245AA and 245M by way of Sections 54 to 65, Finance Act, 2021 with retrospective effect from 01.02.2021 as arbitrary, illegal and void and infringing the fundamental rights conferred under Article 14, 19(i)(g), 20, 20(2) and 21 of Constitution of India, 1950, thus unenforceable and unconstitutional.

and batch cases

For the Petitioner in W.P.No.9467 of 2021	:	Mr.R.Sivaraman
For the Respondents	:	Mr.R.Sankaranarayanan Addl. Solicitor General of India assisted by Mr.K.Ramachandramoorthy, SPC Mr.R.Rajesh Vivekananthan, Asst. Solicitor General of India Mr.S.Muthusamy, ACGSC Mr.K.Subbu Ranga Bharathi, CGC Mr.V.Chandrasekaran, SPC Mr.Venkataswamy Babu, CGSC Mr.M.Karthikeyan Mr.A.R.Sakthivel, SPC Mr.G.Ilangovan, CGSSG for Union of India

: Mr.R.Sankaranarayanan
Addl. Solicitor General of India
assisted by
Mrs.Hema Muralikrishnan, SSC

Mr.Prabhu Mukund Arunkumar
for Central Board of Direct Taxes

: Mr.R.Sankaranarayanan
Addl. Solicitor General of India
assisted by
Mr.A.P.Srinivas, SSC

Mr.ANR. Jayaprathap
for Income Tax Department

COMMON ORDER

(Order of the Court was made by
the Hon'ble Acting Chief Justice)

The batch of writ petitions has been filed to challenge the constitutional validity of the amendment to the Income Tax Act, 1961 [for brevity, "*the Act of 1961*"] in Section 245A by inserting sub-clauses (da), (ea) and (eb), and Sections 245B, 245BC, 245BD, proviso to Sections 245C, 245D, 245DD, 245F, 245G, 245H and insertion of new Sections 245AA and 245M by way of Sections 54 to 65 of Finance Act, 2021 with retrospective effect from 01.02.2021, on the ground that such amendment is arbitrary, illegal and void and infringing the fundamental rights conferred under Articles 14, 19(i)(g), 20, 20(2) and 21 of Constitution of India 1950, thus unenforceable and unconstitutional.

2. A notice was issued on these writ petitions to call upon a counter from the respondents since the constitutional validity of the amended provisions was challenged.

3. During the pendency of the writ petitions, the Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes [CBDT] came out with a press release dated 7.9.2021, followed by an order dated dated 28.9.2021. By the press release dated 7.9.2021, the CBDT allowed an assessee, who was eligible to file an application for settlement as on 31.1.2021 but could not file the same due to cessation of the Settlement Commission, to file such application till the extended period of 30.9.2021. To dispose of such applications, the Central Government has also constituted an Interim Board for Settlement.

4. In view of the press release dated 7.9.2021 and the order

dated 28.9.2021 issued by the CBDT, learned Additional Solicitor General submitted that all cases where applications were submitted on or before 30.9.2021 can be disposed of as the applications would be considered by the Interim Board for Settlement, which has been constituted by the Central Government pending these writ petitions.

5. Learned counsel for the petitioners have no objection if their writ petitions are disposed of with a direction to consider the applications which were submitted on or before 30.9.2021, but they seek a clarification that consideration of the applications would be made treating the pendency of the proceedings as on 31.1.2021.

6. Learned counsel for the Income Tax Department objected the above submission in reference to paragraph (4) of the Order dated 28.9.2021 passed by the CBDT, which is extracted below:

> "4. The above relaxation is available to the applications filed:-
> (i) by the assessees who were eligible to file application for settlement on 31.1.2021 for the assessment years for which the application is sought to be filed (relevant assessment years); and

> (ii) where the relevant assessment proceedings of the assessee are pending as on the date of filing the application for settlement."

7. It is submitted that if a notice for reopening the assessment or a notice under Section 143 of the Act of 1961 was given on or after 1.2.2021, then a direction for consideration of the application may not be given, to which a serious objection has been raised by learned counsel for the petitioners referring to Explanation (iv) to Section 254A(b) of the Act of 1961, which reads as under:

> "Section 245A. Definitions. In this Chapter, unless the context otherwise requires,-
> (a) ....
> (b) "case" means any proceeding for assessment under this Act, of any person in respect of any assessment year or assessment years which may be pending before the Assessing Officer on the date on which an application under sub-section (1) of section 245C is made.
>
> Explanation.- For the purpose of this clause-
> (i) to (iiia) ....
> (iv) a proceeding for assessment for any assessment year, other than the proceedings of assessment or

> reassessment referred to in clause (i) or clause (iii) or clause (iiia), shall be deemed to have commenced from the date on which the return of income for that assessment year is furnished under section 139 or in response to a notice served under section 142 and concluded on the date on which the assessment is made; or on the expiry of the time specified for making assessment under sub-section (1) of section 153, in case where no assessment is made."

The aforesaid Explanation stipulates the date from which the proceedings shall be deemed to have commenced.

8. We have heard learned counsel for the parties and perused the records.

9. Since during the pendency of the writ petitions, the CBDT came out with a press release dated 7.9.2021, followed by an order dated dated 28.9.2021, directing to admit all applications filed after 31.1.2021 and before 30.9.2021 and treat such applications as valid and process them as "pending applications" for consideration by the Interim Board, learned counsel for the petitioners are not pressing the writ petitions in regard to the challenge to the constitutional validity

of the amended provisions, referred to above, as all the petitioners submitted applications on or before 30.9.2021. However, learned counsel for the petitioners seek clarification about the pendency of the proceedings as on 31.1.2021.

10. It has been agreed by the parties to govern the issue aforesaid by Explanation (iv) to Section 245A(b) of the Act of 1961. The provision aforesaid has been quoted in the preceding paragraph.

11. In view of the above, we dispose of all these writ petitions with a direction to the respondents to send applications for consideration by the Interim Board, if submitted before 30.9.2021. The consideration of applications by the Interim Board would be if the proceedings were pending as on 31.1.2021. To determine the pendency of the proceedings, the Interim Board would be governed by Explanation (iv) to Section 245A(b) of the Act of 1961. The Interim Board would exercise the jurisdiction as conferred by the order dated 28.9.2021 passed by the CBDT.

There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(M.N.B., ACJ.) (P.D.A., J.)
02.02.2022

Index : Yes/No
sasi

To:

1.The Secretary,
Union of India,
Ministry of Finance,
Department of Revenue,
3rd Floor, Jeevan Deep Building,
Sansad Marg, New Delhi – 110 001.

2.The Chairperson,
Central Board of Direct Taxes,
Department of Revenue – Ministry of Finance,
Government of India,
New Delhi.

3.The Secretary,
Interim Board for Settlement,
Replacing the Income Tax Settlement Commission,
Additional Bench, Chennai,
rep. by its Secretary
Satguru Complex,
640, Anna Salai, Nandanam,
Chennai – 600 035.

4.The Deputy Commissioner of Income Tax,
Central – 1(3)
No.46, 3rd Floor, Investigation Building,
Mahatma Gandhi Road,
Chennai-34.

M.N.BHANDARI, ACJ
AND
P.D.AUDIKESAVALU,J.

(sasi)

W.P.No.9467 of 2021 etc. batch

02.02.2022