

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL WRIT PETITION NO. 1681 OF 2021

Kailash Wasudeorao Girolkar

-Vs-

Union of India, through its Secretary, Deptt. of Revenue and others.

AND

CIVIL WRIT PETITION NO. 1682 OF 2021

Rameshwar Shivprasad Gaggad

-Vs-

Union of India, through its Secretary, Deptt. of Revenue and others.

AND

CIVIL WRIT PETITION NO. 1683 OF 2021

Subhash Nanakram Talda

-Vs-

Union of India, through its Secretary, Deptt. of Revenue and others.

AND

CIVIL WRIT PETITION NO. 1684 OF 2021

M/s Balaji Developers through authorised Partner Gopal Narayandas Panpaliya

-Vs-

Union of India, through its Secretary, Deptt. of Revenue and others.

AND

CIVIL WRIT PETITION NO. 1685 OF 2021

Vijay Nanakram Talda

-Vs-

Union of India, through its Secretary, Deptt. of Revenue and others.

AND

CIVIL WRIT PETITION NO. 1686 OF 2021

Sanjay Shankarlal Batra

-Vs-

Union of India, through its Secretary, Deptt. of Revenue and others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. S.V.Manohar, Senior Advocate for the petitioners in all petitions.
Mr. Anand Parchure, counsel for the respondent Nos.1 and 2 in all petitions.
Mr. U.M.Aurangabadkar, ASGI for respondent no.3 in all petitions.

**CORAM : SUNIL B.SHUKRE &
S.M.MODAK, JJ.**

DATE : 22.04.2021.

1. Hearing was conducted through video conferencing and the learned counsel agreed that the audio and video quality was proper.

2. Heard Shri. S.V.Manohar learned Senior Advocate appearing for the petitioners in all the writ petitions, Shri. Anand Parchure, learned Advocate for respondent nos.1 and 2 and Shri U. M. Aurangabadkar, learned ASGI for respondent No.3.

3. The sum and substance of the submissions made across the bar on behalf of the petitioners is as follows:

There is a remedy provided under Section 245-C of Income Tax Act, 1961 (hereinafter referred to as “the Act, 1961”) as it stood before the enactment of Finance Act, 2021, which was passed by Lok-Sabha and Rajya-Sabha respectively on 23rd March 2021 and 24th March 2021 and which has received assent of the President of India on 28th March 2021, to an assessee to have his case settled by filing an application for settlement of his liability to pay tax before the Settlement Commission.

Under Section 245-D, a duty has been cast upon the Settlement Commission to issue a notice to the applicant within seven days from the date of receipt of the application calling upon him to explain as to why the application made by him be allowed to be proceeded with. This Section further lays down that upon hearing the applicant, the Settlement Commission shall, within a period of 14 days from the date of the application, by an order in writing, either reject the application or allow the application to be proceeded with. There is also a proviso appended to sub-section (1) of Section 245-D which says that in a case, where no order has been passed within the period of 14 days by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with. According to the learned Senior Advocate, in the present case, as no order either allowing or rejecting the application came to be passed within the stipulated period of 14 days from the date of the application, the application has been deemed to be allowed to be proceeded with by the Settlement Commission. It is further submitted that in the present case, the applications were filed on dates, which were before 23rd March 2021 and the deemed admission of the applications for hearing had taken place also before 23rd March 2021.

Under Section 245-F of the Act, 1961 in respect of the applications allowed to be proceeded with, the Settlement Commission acquires exclusive jurisdiction regarding exercising the powers and

performing the functions of Income Tax Authority under the Act in relation to the case and that would mean that in such an admitted application, it would be the Settlement Commission which can issue any assessment notice or pass any order which otherwise would have been passed by the Assessing Authority.

As regards the applications of the petitioners filed under Section 245-C of the Act, 1961, no abatement of the proceedings thereof has taken place for the reason that none of the conditions prescribed in Section 245HA of the Act, 1961 has been fulfilled.

When the applications have already been filed much before the Finance Act, 2021 came into being, no show cause notice which is impugned here could have been issued by the Assessing Authority and if at all any such notice was to be issued, the power was exclusively vested with the Settlement Commission.

Section 67 of Finance Act, 2021 which amends Section 245-C of the Act, 1961 has no application to a pending application filed under Section 245-C of the Act, 1961 for the reason that what has been sought to be achieved by the amending section 67 of Finance Act, 2021 is prohibition of filing of an application under Section 245-C of the Act, 1961 on or after the 1st day of February 2021 and not the abatement or cancellation of the proceedings in relation to an application already filed before the Finance Act, 2021 came into being.

All these grounds make out a case for grant of an interim relief and it has been sought on behalf of the petitioners by the learned Senior Advocate.

4. Shri. Anand Parchure, learned counsel, who appears by waving notice for the respondent nos.1 and 2 in all the petitions, strongly opposes grant of interim relief to the petitioners. He invites our attention to the reply filed in detail by respondent nos.1 and 2 in Writ Petition No.1683 of 2021 and requests that this reply be read in all other petitions as the issues involved in all these petitions are identical.

5. We accept the submission as regards reading of the reply filed in Writ Petition No.1683 of 2021 as the reply in other petitions, with the similarity of issue involved in all of them. We would, however, request the respondents to file a copy of this reply in other petitions, which may be done on or before the next date.

6. Shri. Parchure, learned counsel appearing for the respondent Nos. 1 and 2, submits that even though the Finance Act, 2021 came into being after 28th March 2021 and even though the amending Section 67 came into force with effect from 1st April 2021, the amending Section has given retrospective effect to the amendment it introduces to Section 245-C of the Act, 1961. He submits that by giving retrospective effect to the amendment made to this provision in clear terms, the

right of filing of a settlement application before the Settlement Commission has been taken away retrospectively and it is the law that right vested in a person before the amendment could be taken away by subsequent amendment, if the legislature expresses its intention clearly or by necessary implication to take away the vested right by retrospectivity and such clear intention can be easily seen in Section 67 of the Finance Act, 2021. Therefore, he submits that no case could be said to be *prima facie* made out for grant of interim relief to the petitioners.

7. So far as concerned the principle that substantive rights already vested in persons cannot be taken away by giving retrospective effect to the subsequent legislation, we must say that this principle comes with a condition. The condition is that if a subsequent legislation contains an express provision giving retrospective effect to it, the substantive rights already vested by virtue of earlier legislation can be taken away. In the case of *Himachal Pradesh State Electricity Regulatory Commission and anr. Vs. Himachal Pradesh State Electricity Board* reported in **(2014) 5 SCC 219**, in para No.25, the Hon'ble Supreme Court has stated this principle succinctly, when it said that although it is a well settled proposition of law that enactments dealing with substantive rights are primarily prospective, the principle would stand modified when the subsequent legislation, by express or by necessary implication, manifests the intention of the legislature to

give retrospective effect to it. This would make it clear that if the intention of the legislature is to give retrospective effect to a particular provision taking away the vested right and such intention is expressed clearly or by necessary implication, substantive right giving rise to substantive remedy can be taken away by subsequent legislation.

8. In the present case, in our opinion, however, different questions are involved. They are not about the power to take away a substantive right to file settlement application under Section 245-C of the Act, 1961 by giving retrospective effect to the amendment. They are certainly about a bar on filing of such application after 1st April, 2021 and about the fate of applications already made before 1st April 2021. The reason why do we say so lies in language employed in the amending section. So, it would be useful for us to reproduce the relevant provision of the amending section and it reads thus:-

“67. In section 245C of the Income-tax Act, after sub-section (4), the following sub-section shall be inserted and shall be deemed to have been inserted with effect from the 1st day of February, 2021 namely.–

(5) No application shall be made under this section on or after the 1st day of February, 2021.”

9. On plain reading of the amended section, it can be, *prima facie*, seen that intention to give retrospective effect to the amendment is unambiguously expressed and so no grievance can be, *prima facie*, raised about taking away of vested right to make settlement

application by giving retrospective effect to the amending provision. But, this section also shows, *prima facie*, that it does not affect the pending applications as the prohibition imposed is upon filing or making of the applications and not upon the jurisdiction of the Settlement Commission to proceed with the pending applications which are admitted for hearing by it, in accordance with the procedure prescribed under Section 245-C of the Act, 1961.

10. This makes us find that the issues raised in these petitions would require consideration by this Court and as such, interim relief would also have to be granted to the petitioners. As regards the question of limitation, we are of the further view that it can also be taken care of by qualifying our interim order.

11. Accordingly, we direct that there shall be interim stay to the effect and operation of the impugned notice, until further order subject to the condition that no limitation period shall run from the date of filing of the applications till date of final decision of these petitions.

12. With this, these petitions deserve to be admitted for final hearing.

13. **Admit.**

14. Learned Advocate Shri. Anand Parchure

waives notice for respondent Nos.1 and 2 on merits.

15. Learned ASGI Shri U.M.Aurangabadkar
waives notice for respondent No.3 on merits.

16. Stand over to eight weeks.

JUDGE

JUDGE