IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1423 OF 2005

Virendra Kumar R. Banthia ..Petitioner

Vs.

The Commissioner of Income Tax, Mumbai and Ors. ..Respondents

WITH

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3187 OF 2004

Tapendra Singh ..Petitioner

Vs.

The Settlement Commission (IT & WI),
Calcutta and Ors. ..Respondents

WITH

WRIT PETITION NO. 3116 OF 2004

Deependra Singh ..Petitioner

Vs.

The Settlement Commission (IT & WI),
Calcutta and Ors. ..Respondents

....

Mr. Prakash Pandit and Mrs. Prachi Pandit a/w P.C. Tripathi, Advocates for Petitioners.
Mr. Suresh Kumar, Advocate for Respondent Nos.1 to 3.

....

CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : 05 MARCH 2015

P.C.:

All these three petitions challenge orders passed by the Settlement Commission seeking to rectify the orders passed under Section 245D(4) of the Income Tax Act, 1961 (the 'Act') by invoking the provisions of Section 154 of the Act. This application for rectification was allowed so as to levy interest under Sections 234A, 234B and 234C of the Act, which has been waived by order passed under Section 254D(4) of the Act earlier.

2. The Writ Petition No. 1423/2005 was admitted on 5 April 2005 and at that time a direction was passed that this petition would be heard alongwith the Original Side Writ Petition Nos. 3187/2004 and 3116/2004. All the above matters are on board today for final disposal.

3. On 12 December 2006 when these petitions came up for hearing, this Court passed following order:

> *"The Apex Court has referred the following question to the Larger Bench.*
>
> *(i) Whether the Settlement Commission can have recourse to rectification proceedings under Section 154 so as to levy interest under Section 234A, 234B and 234C of the Income Tax Act.*
>
> *This order is passed by the Apex Court in Brijlal Vs. Commissioner of Income Tax, 279 ITR 432 (SC). The same issue is involved in the present matter.*

In view of the above, the Advocate for the petitioner is at liberty to move after decision of the Apex Court.

Interim relief granted by the Court on 05.04.2005 to continue until further order."

4. Thereafter on 8 June 2009 when the petitions were again posted for final disposal, this Court adjourned the matters with liberty to the parties to mention the petitions after Larger Bench of the Supreme Court in the case of Brijlal and Ors. Vs. Commissioner of Income Tax has been decided the issue. The Larger Bench of the Apex Court by an order dated 21 October 2010 in ***Brijlal and Ors Vs. CIT*** reported in ***328 ITR 477*** has now resolved the controversy and held that the Settlement Commission has no power to reopen a proceedings concluded by a final order under Section 245D(4) of the Act by invoking Section 154 of the Act. Thus where there is no power to rectify, the levy interest cannot be imposed by rectifying a concluded order under Section 245D(4) of the Act.

4. Accordingly, all the three petitions are allowed. No order as to costs.

[G.S. KULKARNI, J] **[M.S. SANKLECHA, J.]**