

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.34365 of 2012

and

M.P.No.1 of 2012

Commissioner of Income Tax I
No.63-A, Race Course Road,
Coimbatore 641 018. Petitioner

Vs.

1.The Income Tax Settlement Commission
Additional Bench, No.640,
Anna Salai, Nandanam,
Chennai 600 028.

2.M/s.R.C.Auto Centre (S.I),
Door No.512, Crosscut Road,
Coimbatore 641 012. Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying for the issuance of Writ of
Certiorari, to call for the records on the file of the first
respondent in S.A.No.TN/CB/1/2012-13/1/IT dated 20.06.2012 and
quash the same as illegal and without jurisdiction.

For Petitioner : Mr.A.P.Srinivas
Standing Counsel

For R2 : Mr.Pushyasita Raman, Senior Counsel
for M/s.G.Vardini Karthik

ORDER

Heard the learned counsel for the petitioner and the
learned Senior Counsel for the respondents.

2. The petitioner Commissioner of Income Tax is aggrieved
by the impugned order dated 20.06.2012 passed by the 1st
respondent Income Tax Settlement Commission (hereinafter
referred as Settlement Commission) in Settlement Application
No. TN/CB 1/2012-13/1/IT.

3. By the impugned order, the 1st respondent Settlement
Commission has held that there are no materials to hold that
the Settlement Application filed by the 2nd respondent on

27.04.2012 for settling the case for the Assessment Years 2008-09, 2010-11, 2011-12 & 2012-13 is invalid and correctness or otherwise of the quantum of income disclosed by the 2nd respondent can be examined at a later stage. Accordingly, the petitioner was directed to submit a report under Rule 9 of the Income Tax Settlement Commission (Procedure) Rule for further action within 45 days from the receipt of the order. The Secretary, Income Tax Settlement was required to take necessary action in this regard.

4. The impugned order was received by the petitioner on 05.07.2012. It appears that the present Writ Petition was prepared as early as September 2012, as it evident from the date mentioned in the affidavit and in the index to typed set of papers.

5. However, the Writ Petition was filed on 18.12.2012 and an exparte interim order was obtained staying all further proceedings on 20.12.2012 before the 1st respondent Settlement Commission.

6. Though the order was obtained on 20.12.2012, it appears that the petitioner had failed to communicate the content of exparte stay order to the 1st respondent Settlement Commission and therefore, the case was taken up for hearing on 24.12.2012 by the 1st respondent Settlement Commission. According to the 2nd respondent, the 1st respondent Settlement Commission had also passed order on 24.12.2012 unaware of the above development.

7. On 24.12.2012, the 2nd respondent had conceded for payment of an additional amount of Rs.60,00,000/- over and above the amount already offered for settlement in the application dated 27.4.2012. Accordingly, the 2nd respondent prayed as follows:-

- i. No penalty under any provision of the Income Tax Act, 1961 in respect of Settlement of assessment by the Hon'ble Settlement Commission namely AY(s) 2008-09, 2010-11, 2011-12 & 2012-13 and also no prosecution.
- ii. The tax due on the additional income shall be paid in two quarterly installments on or before 15.03.2013 and on or before 30.06.2013.
- iii. The applicant will be permitted to capitalise from out of the additional Rs.60,00,000/- an amount equal to the tax payable.

8. Since both the petitioner and the 2nd respondent were unable to furnish any copy of the order of the 1st respondent Settlement Commission purported to have been filed on 24.12.2012, the Registry was directed to call for the records from the 1st respondent Settlement Commission.

9. On its receipt of the file, the file was perused. However, on perusal of the file, there is no order of the 1st respondent Settlement Commission accepting the case of the 2nd respondent.

10. The petitioner appears to have addressed a letter dated 31.12.2012 to the Commissioner of Income Tax (DR), Settlement Commission, Chennai enclosing the copy of the order dated 20.12.2012 of this Court. The communication addressed to the Commissioner of Income Tax 9DR), Settlement Commission, Chennai, reads as under:-

GOVERNMENT OF INDIA
INCOME TAX DEPARTMENT
OFFICE OF THE COMMISSIONER OF INCOME TAX - I,
COIMBATORE

63-A, RACE COURSE, COIMBATORE - 641018
TF:0422-2220543 Fax:0422-2222743

F.No:125(1)/CIT:1-CBE/12-13 31-12-12

To
Commissioner of Income Tax (DR),
Settlement Commission
Chennai - 600 028.

Sir,

Sub: Settlement Application by M/s.R.C.Auto Centre (SI), Coimbatore - for the AY (s):08-09; 10/11; 11/12 & 12/13 - grant of Interim stay by the Hon'ble High Court of Madras --- reg.

A copy of the order dtd: 20-12-2012 (under MP No: 1 of 2012 in W.P.No.34365 of 2012) by the Hon'ble High Court of Madras granting 'Interim stay' in the case of CIT-I, Coimbatore Vs. ITSC, Additional Bench, Chennai & M/s.R.C.Auto Centre (SI), Coimbatore, is enclosed. This office is given to understand that the Hon'ble Settlement Commission (ITSC) has passed the order on 24.12.2012, which is after the "interim stay". This is being intimated to you for taking action, as deemed fit.

(D.B.Manival Raju),
Commissioner of Income - tax,
Coimbatore.

Copy with the order of the Hon'ble High Court of Madras, to the:

- i. Secretary, Income Tax Settlement Commission,
No:640, Anna Salai, Nandanam, Chennai - 600 028.
- ii. file - copy.

11. Thus, there are indications that the case was indeed settled by the 1st respondent Settlement Commission and the case was settled on 24.12.2012. However, there is no order of the 1st respondent Settlement Commission. Therefore, I shall examine the case on the assumption that no order was passed on 24.12.2012.

12. The background of the case prior to the above development are as follows:-

- i. The 2nd respondent had originally filed an application on 27.04.2012 under Section 245C of the Income Tax Act, 1961, to settle the case under the Chapter XIX-A of the Income Tax Act, 1961, for the Assessment Years 2008-09, 2010-11, 2011-12 and 2012-13.
- ii. Thereafter, an order dated 02.05.2012 came to be passed under Section 245D(1) of the Act. Thereafter, the petitioner was called upon to furnish a report under Section 245D (2B) of the Act.
- iii. The petitioner also filed a report dated 04.06.2012 before the 1st respondent Settlement Commission. It was stated that the time limit for passing regular assessment under Section 143 (3) for the Assessment Years 2008-09 and 201-11 had already lapsed and therefore, the application to settle the case for these Assessment Years were liable to be dismissed as not maintainable.
- iv. For the Assessment Year 2011-12, it was submitted on behalf of the petitioner that Assessing Officer had not issued any notice under Section 143(3) of the Act till the date of filing the application and therefore, on this count also, it cannot be stated that the proceedings were pending for these Assessment Years.
- v. Before the 1st respondent Settlement Commission, the petitioner relied on the following cases:-
 - (a) Jayalakshmi Leasing Co. Vs. CIT, (1997) 94 Taxman 236 (ITSC) (SB).
 - (b) CIT Vs. T.V.Sundaram Iyengar & Sons Ltd., (1999) 236 ITR 524 (MAD).

(c) Director of Income Tax (International Taxation) Kolkata Vs. Income Tax Settlement Commissioner, Additional Bench, Kolkata & Anr., [2012] 1 CAL LT 309: 2011 SCC OnLine Cal 5547.

vi. On behalf of the 2nd respondent (applicant) strong reliance was placed on the decision of the Settlement Commission (Special Branch) in the case of Rescuwear Corporation, In re, (2009) 177 Taxman 281 (ITSC) (SB).

vii. Reliance was also placed on the CBDT Circular No.3 of 2008 dated 12.03.2008 215 CTR (St.) 225, wherein, it was clarified as follows:-

Under the existing provisions, an assessee may make an application to the Commission at any stage of the proceedings in his case pending before any income -tax authority. After 31.05.2007, an assessee can make an application to the Commission only during the pendency of the proceedings before the Assessing Officer. It is further clarified that

(a) since intimation u/s. 143(1) is not an assessment order there will be no bar in filing an application for settlement subsequent to receipt of an intimation u/s. 143(1). It is not material whether time-limit for issue of notice u/s. 143 (2) has expired or not;

(b) the assessment shall be deemed to have been completed only on the date of assessment order to the applicant.

viii. The 1st respondent Settlement Commission considered decisions cited by the petitioner and ultimately concluded that when Returns of Income Tax were filed by the 2nd respondent (applicant) as accepted under Section 143(1) of the Act and no notice was issued under Section 143(2) of the Act, the 2nd respondent (applicant) could file Settlement Application even after the time limit for passing the regular assessment order under Section 143(3) of the Act as no assessment has been made in this case as per Clause (iv) of Section 245A of the Act.

13. While passing the impugned order, the 1st respondent Settlement Commission has also extracted a portion of report dated 16.05.2012 of the petitioner, which reads as under:-

"The assessee has filed settlement application for the A.Ys. 2008-09, 2010-11, 2011-12 and 2012-13 in S.A.No. TN/CB 1/2012-13/1/IT. In view of explanation (iv) to Section 245A of the Income-tax Act, 1961, the application for these years may be taken as valid.

14. The petitioner has also stated in report dated 04.06.2012 as follows:-

2.1. Validity of the application for the relevant years: The assessee's Income tax Return, for the AY: 2008-09, was not scrutinized; but, can be re-opened on the basis of the information obtaining for the AY: 09-10, if the 'Commission' rejects the application. The Return of Income (RI) for AY:2010-11 was not selected for scrutiny through the CASS; but, can be re-opened on the basis of the information obtaining for the AY: 09-10, if the 'Commission' rejects the application. And, there is probability of section of RI of AY: 2011-12 for scrutiny by CASS; alternatively, it can be selected manually for scrutiny, if the 'Commission' rejects the application. In view of the foregoing information the filing the Settlement Application is found valid as, as on the date, no proceedings are pending.

15. It is stated that the words "valid" appears to be typographical mistake.

16. I have considered the arguments advanced by the learned counsel for the petitioner and the learned senior counsel for the respondents.

17. Though before the 1st respondent Settlement Commission the petitioner had seemingly conceded the maintainability of the application under section 245C of the Income Tax Act, 1961, however, before this court the petitioner has taken a contra stand.

18. The petitioner has taken a categorical stand that the application filed under Section 245C of the Income Tax Act, 1961 was invalid. It is submitted that with a view to avoid delay in determining the tax liability which are caused because of factors like duplication of proceedings, absence of statutory time frame for settling the case and also with a view to streamline the proceedings before the Settlement Commission, the provision of Chapter XIX-A of the Income Tax Act, 1961 was amended, w.e.f. 01.06.2007.

19. It was stated that the prior to amendment, an assessee could file an application at any stage of proceedings in respect of the case pending before any Income Tax Authorities but however after 2007 the position was different.

20. Even though the impugned order was passed on 20.06.2012 and was received by the petitioner's office on 05.07.2012 the petitioner did not take any steps to challenge the same before this court till 18.12.2012.

21. The writ petition was filed on 18.12.2012 despite the fact that the petitioner was required to submit a report under Rule 9 of Income Tax Settlement Commission (Procedure) within a period of forty five days from date of receipt of the impugned order.

22. To this effect, there were inter-departmental deliberations and exchange of communications in the form of report of the Income Tax Officer on 27.07.2012; report of the Joint Commissioner of Income Tax on 7.08.2012 and a report of the petitioner under section 245D (2C) of the Income Tax Act, 1961.

23. Thus, having acquiesced to the impugned order, the petitioner has filed the present writ petition on 18.12.2012. Having acquiesced into the proceedings before the 1st respondent Settlement Commission, it was not open for the petitioner to challenge the impugned order.

24. It further appears that the writ petition appears to have been made ready as early 21.09.2012 but its filing was postponed to 18.12.2012 for reasons best known to the petitioner.

25. It is further noticed that though an exparte interim stay was granted by this court on 20.12.2012 the content of the order was communicated after 24.12.2012. No attempt was made to communicate the order of this Court to the 1st respondent Settlement Commission on 24.12.2012.

26. The 1st Respondent Settlement Commission proceeded to accept a memo from the 2nd respondent on the said dated. The 1st Respondent agreed to pay an additional amount of Rs.60 lakhs, i.e. Rs.10 lakhs each for the Assessment Years 2008-09 and 2010-11 and Rs.20 lakhs each for the Assessment Years 2011-12 and 2012-13.

27. Since the Writ petition has been kept pending, it would be therefore appropriate to pass order on merits after examining the rival contention of the parties.

28. The issue to be decided is whether the 1st respondent Settlement Commission was justified in admitting the case of the 2nd respondent for settlement. In other words, whether the 2nd respondent was entitled to file an application for settlement of cases under Section 245C of the Income Tax Act, 1961 as amended with effect from 01.06.2007, for the Assessment Years 2008-09, 2010-11, 2011-12 and 2012-13.

29. As per Section 245C of the Income Tax Act, 1961, an assessee may at any stage of the "case" relating to him may make an application in such form and in such manner as may be prescribed containing the full and true disclosure of his income which has not been disclosed before the Assessing Officer, the manner in which such income has been derived, additional amount of income tax payable on such income and such other particular as may be prescribed by the Settlement Commission to have the case settled and any such application shall be disposed in the manner specified therein.

30. Section 245 C of the Income Tax Act, 1961 read as under:-

245C. (1) An assessee may, at any stage of a case relating to him, make an application in such form and in such manner as may be prescribed, and containing a full and true disclosure of his income which has not been disclosed before the Assessing Officer, the manner in which such income has been derived, the additional amount of income-tax payable on such income and such other particulars as may be prescribed, to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided:

Provided that no such application shall be made unless,-

(i) in a case where proceedings for assessment or reassessment for any of the assessment years referred to in clause (b) of sub-section (1) of section 153A or clause (b) of sub-section (1) of section 153B in case of a person referred to in section 153A or section 153C have been initiated, the additional amount of income-tax payable on the income disclosed in the application exceeds fifty lakh rupees,

(ia) in a case where-

(A) the applicant is related to the person referred to in clause (i) who has filed an application (hereafter in this sub-section referred to as "specified person"); and

(B) the proceedings for assessment or re-assessment for any of the assessment years referred to in clause (b) of sub-section (1) of section 153A or clause (b) of sub-section (1) of section 153B in case of the applicant, being a person referred to in section 153A or section 153C have been initiated,

the additional amount of income-tax payable on the income disclosed in the application exceeds ten lakh rupees,

(ii) in any other case, the additional amount of income-tax payable on the income disclosed in the application exceeds ten lakh rupees, and such tax and the interest thereon, which would have been paid under the provisions of this Act had the income disclosed in the application been declared in the return of income before the Assessing Officer on the date of application, has been paid on or before the date of making the application and the proof of such payment is attached with the application.

Explanation.—For the purposes of clause (ia),—

(a) the applicant, in relation to the specified person referred to in clause (ia), means,—

(i) where the specified person is an individual, any relative of the specified person;

(ii) where the specified person is a company, firm, association of persons or Hindu undivided family, any director of the company, partner of the firm, or member of the association or family, or any relative of such director, partner or member;

(iii) any individual who has a substantial interest in the business or profession of the specified person, or any relative of such individual;

(iv) a company, firm, association of persons or Hindu undivided family having a substantial interest in the business or profession of the specified person or any director, partner or member of such company, firm, association or family, or any relative of such director, partner or member;

(v) a company, firm, association of persons or Hindu undivided family of which a director, partner or member, as the case may be, has a substantial interest in the business or profession of the specified person; or any director, partner or member of such company, firm, association or family or any relative of such director, partner or member;

(vi) any person who carries on a business or profession,—

(A) where the specified person being an individual, or any relative of such specified person, has a substantial interest in the business or profession of that person; or

(B) where the specified person being a company, firm, association of persons or Hindu undivided family, or any director of such company, partner of such firm or member of the association or family, or any relative of such director, partner or member, has a substantial interest in the business or profession of that person;

(b) a person shall be deemed to have a substantial interest in a business or profession, if—

(A) in a case where the business or profession is carried on by a company, such person is, on the date of search, the beneficial owner of shares (not being shares entitled to a fixed rate of dividend, whether with or without a right to participate in profits) carrying not less than twenty per cent of the voting power; and

(B) in any other case, such person is, on the date of search, beneficially entitled to not less than twenty per cent of the profits of such business or profession.

31. The expression "case" is used in Section 245C of the Income Tax Act, 1961. This expression is defined in Section 245A(b). It read differently when the application was filed on 27.4.2012 by the 2nd respondent before the 1st Respondent. This definition now reads differently. Both the definitions are reproduced below:—

Table :1

Section 245A(b) during 2012	As it reads now and at the time of the application
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(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 an Assessing Officer on the date on which an application under sub-section (1) of Section 245C is made:

Provided that-

(i) a proceeding for assessment or reassessment or recomputation under section 147;

(ii) [***]

(iii) [***]

(iv) a proceeding for making fresh assessment in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment,

shall not be a proceeding for assessment for the purposes of this clause.

Explanation.-For the purposes of this clause-

(i) a proceeding for assessment or reassessment or recomputation referred to in clause (i) of the proviso shall be deemed to have commenced from the date on which a notice under section 148 is issued;

(ii) [***]

(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 an Assessing Officer on the date on which an application under sub-section (1) of section 245C is made.

Explanation.-For the purposes of this clause-

(i) a proceeding for assessment or reassessment or recomputation under section 147 shall be deemed to have commenced-

(a) from the date on which a notice under section 148 is issued for any assessment year;

(b) from the date of issuance of the notice referred to in sub-clause (a), for any other assessment year or assessment years for which a notice under section 148 has not been issued, but such notice could have been issued on such date, if the return of income for the other assessment year or assessment years has been furnished under section 139 or in response to a notice under section 142;

(ii) [***]

(iii) a proceeding for making fresh assessment in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment shall be deemed to have commenced from the date on which such order, setting aside or cancelling an assessment was passed;

(iia) a proceeding for assessment or reassessment for any of the assessment years, referred to in clause (b) of sub-section (1) of section 153A in case of

32. Sine Qua Non for filing an application under Section 245C of the Income Tax Act, 1961 is pendency of a "case" before an assessing officer.

33. A plain reading of Explanation (iv) to Section 245A as it stood during the period in dispute indicates that an assessment proceeding is deemed to have commenced from the date of 1st day of assessment year and concludes on the date on the date of assessment.

34. Circular No.3 of 2008 dated 12.03.2008 was in force when the impugned order was passed. It clarified under what circumstances an application under Section 245 C of the Income Tax Act, 1961 can be filed.

35. The above clarification was modified later vide a Circular No.16/2014 [F.No.142/14/2007-TPL(PART)] dated 17.11.2014. Though both the clarifications are not binding on this Court, nevertheless relevant portion of these two circulars are referred to. They are reproduced below:-

Table : 2

Circular No.3 of 2008, dated 12.03.2008	Circular No.16/2014 [F.No.142/14/2007-TPL(PART)] dated 17.11.2014
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61.2. Under the existing provision, an assessee may make an application to the Commission at any stage of the proceedings in his case pending before any income-tax authorities. After 31st May, 2007, an assessee can make an application to the Commission only during the pendency of the proceedings before the Assessing Officer. It is further clarified that (a) since intimation under section 143(1) is not an assessment order, there will be no bar in filing an application for settlement subsequent to receipt of an intimation under Section 143(1). It is not material whether in time limit for issue of notice under section 143(2) has expired or not; (b) the assessment shall be deemed to have been completed only on the date of service of assessment order to the applicant.

"61.2 Under the existing provisions, an assessee may make an application to the Commission at any stage of the proceedings in his case pending before any Income-tax Authorities. After 31st May, 2007, an assessee can make an application to the Commission only during the pendency of the proceedings before the Assessing Officer. It is further clarified that (a) since intimation under section 143(1) is not an assessment order, there will be no bar in filing an application for settlement subsequent to receipt of an intimation under section 143(1). It is not material whether time-limit for issue of notice under section 143(2) has expired or not; (b) the assessment shall be deemed to have been completed on the date on which the assessment order is passed."

36. As per Circular No.3 of 2008 dated 12.03.2008 assessment shall be deemed to have been completed on the date of service of assessment order to the applicant.

37. However, as per Circular No.16/2014 [F.No.142/14/2007-TPL(PART)], assessment shall be deemed to have been completed on the date on which the assessment order is passed.

38. This clarification was in tune with Explanation (iv) as was in force in 2012. In 2015, Explanation (iv) to Section 245A of the Income Tax Act, 1961 was amended [see right hand column of Table: 1].

39. As per the above amendment, a proceeding for assessment for any assessment year other than three specified instances shall be deemed to have commenced -

(i) from the date on which the return of income for that assessment year is furnished under Section 139;

or

(ii) in response to a notice served under section 142.

and concluded on

(a) the date on which the assessment is made;

or

(b) on the expiry of the time specified for making assessment under sub-section (1) of section 153, in case where no assessment is made.

40. The 2015 amendment for the first time makes it very clear that an assessment proceeding shall stand concluded under the above two mentioned circumstances. In other words, if no assessment order is passed, no assessment proceeding shall be deemed to be pending after the expiry of two years.

41. The Gujarat High Court in Commissioner of Income Tax Vs. Income Tax Settlement Commission, [2013] 59 CTR 329 has observed that the statutory provisions particularly section 245A(b) which defines expression "case" was amended with effect from 01.06.2007 and that after the aforesaid amendment to the definition in Section 245A(b) of the Income Tax Act, 1961, the term "case" would cover any proceedings before an Assessing Officer on the date on which the application under section 245 C (1) is made.

42. The court further observed that large number of other proceedings, such as, arising out of assessment or reassessment under section 147 of the Act or appeal or revision pending before IT authorities would no longer be governed by newly introduced the definition of the term "case".

43. The Gujarat High Court has further interpreted the purport of Circular No.3 of 2008 dated 12.03.2008 and concluded that nowhere it brings about a situation where even by virtue of efflux of time, where it is no longer possible for the assessing officer to pass any order of assessment with respect to an assessee for a particular assessment year, a case for assessment should be deemed to be pending before the assessing officer in terms of clause (b) of section 245 A of the Act because such a case was not taken in scrutiny and was

accepted under section 143 (1) of the Income Tax Act, 1961 without passing any order of assessment.

44. The Gujarat High Court further interpreted the decision of the Special Bench of the Settlement Commission in Rescuwear referred to supra .

45. The Gujarat High Court in Commissioner of Income Tax Vs. Income Tax Settlement Commission, [2013] 59 CTR 329 followed the reasoning of the single judge of the Calcutta High Court in the case of Director of IT (International Taxation) Vs. Income Tax Settlement Commissioner and others, [2012] 1 CAL LT 309 : 2011 SCC OnLine Cal 5547, passed on 1.8.2011 which in turn followed the decision of the Gujarat High Court in Ram Bhai Jethbhai Patel Vs. CIT, [1997] 108 ITR 771 Gujarat.

46. The Court in Ram Bhai Jethbhai Patel Vs. CIT, [1997] 108 ITR 771 Gujarat held that "It is difficult to accept the submission that Explanation (iv) Section 245 A (b) is to be construed to provide that for assessment could only conclude with the passing of an assessment order of assessment and no order of assessment was made, such proceeding would be deemed to continue for a period of six years and nine months from the end of the relevant assessment years, within which period and assessment could be made under section 147 after issuing a notice under section 148".

47. Following the above ratio, the Gujarat High Court held that for the assessment years 2005-6 to 2008-09 assessment had become time-barred without any notice under section 143 (2) of the Act. Even time-limit for passing the order is even of such notices issued had expired by the time the assessee had filed application for settlement before the Settlement Commission and therefore application qua those assessment years were held not maintainable.

48. In Commissioner of Income Tax Vs. Income Tax Settlement Commission, [2012] 27 Taxmann.com 239 (Delhi), the decision of the Calcutta High Court in Director of IT (International Taxation) Vs. Income Tax Settlement Commissioner and others, [2012] 1 CAL LT 309 : 2011 SCC OnLine Cal 5547 was extracted to arrive at the conclusion.

49. The Delhi High reproduced the following paragraph from the decision of the Calcutta High Court in Director of IT (International Taxation) Vs. Income Tax Settlement Commissioner and others, [2012] 1 CAL LT 309 : 2011 SCC OnLine

Cal 5547:-

31. In the case of Rambhai Jethabhat Patel v. CIT reported in 108 ITR 771, the Gujarat High Court held that it could safely be said that a matter could be said to be pending in a Court of Justice when any proceedings could be taken in it and that was test which was required to be applied.

32. If the aforesaid test is applied proceedings could only be said to be pending for as long as any proceedings could be taken, excluding proceedings under section 147 which consciously been excluded by Parliament in its wisdom.

33. An application appended to a section, to explain the meaning of words contained in that section, should normally be read to harmonize with and clear up any ambiguity in the main section and should not be construed to widen the ambit of the section.

34. It is difficult to accept the submission that Explanation iv to section 245A(b) is to be construed to provide that proceedings for assessment could only conclude with the passing of an assessment order of assessment and if no order of assessment was made, such proceedings would be deemed to continue for a period of six years and nine months from the end of the relevant assessment year, within which period an assessment could be made under section 147 after issuing a notice under section 148.

35. Construed literally, Explanation (iv) to section 245A(b) would give rise to absurdity, for proceedings would be deemed to continue eternally, if no order of assessment were made and no notice under section 148 were issued. The interpretation suggested by Dr. Pal that proceedings would be deemed to continue for a period of six years and nine months from the end of the relevant Assessment Year, within which period as assessment might be done under section 147, upon notice under section 148 would also involve some modification of the literal meaning of the Explanation iv to section 245A(b).

36. There can be no dispute with the proposition that where a strict and literal interpretation produces an absurd and unjust result, which could never have been the intention of the legislature, the Court might modify the language used by the legislature or do some violence to it so as to achieve the

obvious intention of the legislature and produce a rational construction.

37. As held in *K.P. Varghese v. Income Tax Officer* reported in 131 ITR 597 (SC) and as held by Lord. Denning in (1969) 2 All. E.R. 912 and approved by the Supreme Court in AIR 1997 SC 1519 "whenever a statute comes up for consideration it must be remembered that it is not within the human powers to foresee the manifold sets of facts which may arise and even if it were, it is not possible to provide for them in terms free from all ambiguity. The question a Judge should ask himself is to how the makers of the Act would themselves have resolved the ruck? A Judge is not to alter material of which the Act is woven and should have to iron out the creases".

38. Since the legislature has, in its wisdom, very consciously excluded proceedings under section 147, from the purview of a settlement application, this Court ought not to interpret the expression 'case' in a manner that would in effect bring within the purview of a settlement application, something which has consciously been excluded by the legislature.

39. If two reasonable constructions of a taxing provision are possible, the construction which favours the assessee must be adopted. There can be no dispute with the proposition of law laid down by the Supreme Court in *CTT v. Vegetable Products Ltd.* reported in 88 ITR 192 (SC) 195. However, as observed above, literal construction of Explanation iv would give rise to absurdity. This Court meaningfully construes the said explanation to mean that pending assessment proceedings would conclude with an order of assessment, and where no order of assessment is made, the proceedings would lapse, when an order can no longer be made, by reason of expiry of the statutory time limit under section 153(1).

40. This Court is constrained to hold that irrespective of whether returns were filed or not, a case would be deemed to be pending but only for twenty one months from the end of the assessing year in question, i.e. the period within which an assessment could have been made. Once the aforesaid time period expires, it cannot be said that the proceedings are pending.

50. The Delhi High Court held that the Parliament had

consciously directed the tax administrators not to entertain

settlement application, in case where assessment notices were issued. It observed that "parliamentary intent having been expressed in clear terms, the court cannot, by adopting a strained interpretation, thwart it, by holding that in case a notice is issued; the assessee had to file a return, which will be considered a fresh return, in which case a fresh period has to be reckoned".

51. The court held that "it is inconceivable as to how proceeding could have been deemed to continue indefinitely, in cases where no assessment order is made under section 143/144.

52. It further observed that Explanation (iv) to Section 245A(b) cannot be construed so literally so as to leave the "proceedings" in limbo for an eternity. The rule prescribed in s. 153(1) must be given effect to despite Explanation. (iv).

53. It is clarified that Explanation. (iv) merely casts the deeming provision in respect of assessments which can still be validly made. Where by application of Section 153, an assessment order can no longer be made, the proceeding, for purposes of Section 245A, would have to be construed as terminated.

54. The court also held that after the expiry of the period for completion of assessment under section 153 of the Income Tax Act, 1961 an assessment order can no longer be made.

55. The ratio of the Calcutta High Court in Director of IT (International Taxation) referred to supra which has been quoted with approval both by the Delhi High Court and the Gujarat High Court dealt with a slightly different situation and therefore the ratio of the Calcutta High Court was misapplied.

56. The Calcutta High Court was concerned with issue where no returns were filed under Section 139 and therefore no assessment could be made except under Section 147 of the Income Tax Act, 1961. Therefore, the context in which the said decision was rendered should not be lost sight of while applying the ratio to the facts of the case.

57. To understand the conclusion in paragraphs 31 to 40 (extracted supra) in the decision of the Calcutta High Court in Director of IT (International Taxation) referred to supra, Paragraph 27 to 29 also should be read. Paragraph 27 to 29 has set the context. They are extracted below:-

27. However, a proceeding for assessment under section 147 has clearly been excluded from the purview of pending proceedings for the purpose of making a settlement application. The question is whether an application for settlement can still be filed even though returns have not been filed, and no assessment can be made, except under section 147 of the Income Tax Act, by reason of the statutory time limit under section 153(1) for making an assessment under section 143.

28. While Dr. Pal rightly argued that proceedings for assessment for any assessment year had to be deemed to have commenced from the first day of the assessment year, if no return had been filed before the date of filing of the settlement application, it is difficult to accept Dr. Pal's submission that the proceedings would be deemed to continue even after expiry of the statutory time limit for making an order of assessment and until such time as notice, if any, under section 148 were issued. After the amendment only the cases pending before the Assessing Officer on the date on which an application under subsection (1) of section 245C is made, comes within the definition of the word 'case' appearing in section 245A(b).

29. If Parliament in its wisdom excluded proceedings under section 147 from the purview of pending proceedings, Explanation iv to the definition of 'case' in section 245A(b) cannot be construed to include within the purview of pending proceedings, the requisite time period for issuance of notice for proceedings under the aforesaid section.

58. Thus, the ratio of the Calcutta High Court though correct, is not applicable to the fact of the present case. It was not applicable to the facts of the two cases of the Gujarat and Delhi High Court.

59. The Calcutta High Court was not concerned with the situation where the returns were filed but no assessment orders were passed like in the present case. The Calcutta High Court was concerned with situation where the assessee had not filed returns in time and therefore a notice under Section 148 of the Income Tax Act, 1961 was issued.

60. Therefore, the Court concluded that though proceeding commenced with the filing of return for the purpose of 147 of the Income Act 1961, yet no case was pending for the purpose of Section 245A of the Income Tax Act, 1961.

61. The last date for completing the assessment for these 3 assessment years expired only on 31.12.2012; 31.12.2013 and on 31.12.2014 for Assessment Years 2010-11, 2011-12 and 2012-13 respectively.

62. In the present case, when the application was filed on 27.4.2012 to settle the case under chapter XIX A of the Income Tax Act, 1961, case was pending.

63. Since the time for completion of assessment under section 153 of the Income Tax Act, 1961 had not expired as far as assessment years 2010-11, 2011-12 and 2012-13 when the application was filed Commission, it would be safe to hold that the case was pending before the Assessing Officer and therefore, the application was maintained under Chapter XIX-A of the Income Tax Act, 1961.

64. I am therefore of the view that there is no merits in the contention of the petitioner that the application filed for settling the case was without jurisdiction under the aforesaid Chapter of the Income Tax Act, 1951 as far as these three Assessment Years.

65. As far as Assessment Year 2008-09 is concerned, the last date for completing the assessment in terms of section 153 of the Income Tax Act, 1961 expired on 31.12.2010. However, for this Assessment Year also no assessment order was passed by Assessing Officer.

66. If Circular No.3 of 2008 dated 12.03.2008 is applied, assessment is deemed to have been completed on the date of service of assessment on the 2nd respondent applicant.

67. However, if Circular No.16/2014[F.No.142/14/2007-TPL (PART)] dated 17.11.2014 is applied, assessment shall be deemed to have been completed on the date on which the assessment order is passed.

68. If Explanation (iv) to Section 245A as it stood is applied when the application was filed, the assessment shall be deemed to have concluded on the date on which assessment is made. This is what 2014 Circular also states.

69. Only in 2015, Explanation (iv) to Section 245A was amended to state that if no assessment order is made at the expiry of two years from the end of relevant assessment years assessment it shall be deemed to be concluded. In other words, no case can be said to be pending.

70. Only after the statutory amendment in 2015, restriction have been imposed. However, such restriction cannot be retrospectively made applicable to the application filed in 2012. The fate of the application is to be decided in the light of the provision as it stood in 2012. Subsequently, though the Explanation to Section 245A of the Act was amended, it cannot be made applicable retrospectively.

71. I am therefore of the view that the 1st respondent Settlement Commission has therefore correctly entertained the application of the 2nd respondent. If the application was disposed then and there, there was no scope for confusion based on the plain reading of the provision.

72. Under these circumstances, I find no merits in the challenge to the impugned order. I therefore dispose the present writ petition and direct the 1st respondent Settlement Commission to pass appropriate order on merits and bring a closure to the application filed by the 2nd respondent under Chapter XIX-A of the Income Tax Act, 1961, within a period of six months from the date of receipt of a copy of this order. No cost. Consequently, connected Miscellaneous Petition is closed.

jas / jen

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

- 1.Commissioner of Income Tax I
No.63-A, Race Course Road, Coimbatore 641 018.
 - 2.The Income Tax Settlement Commission
Additional Bench, No.640,
Anna Salai, Nandanam, Chennai 600 028.
 3. The Section Officer,
E.R.Section, High Court, Madras-104.
- + 1 cc M/s. Arun Kurian Joseph, Advocate SR.NO..17603

W.P.No.34365 of 2012
and M.P.No.1 of 2012

NRL(CO)
EU 16.07.2020