BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
( Special Original Jurisdiction )

Friday, the Eleventh day of June Two Thousand and Twenty One

PRESENT

The Hon`ble Mr.Justice T.S.SIVAGNANAM
and
The Hon`ble Mrs.Justice S.ANANTHI

W.M.P.(MD).Nos.7723, 7732 & 7735 of 2021
in
W.P(MD).Nos.10014, 10019 & 10020 of 2021

M/S.DHANALAKSHMI SRINIVASAN SUGARS
PRIVATE LIMITED,
REP. BY ITS MANAGING DIRECTOR,
S.JEGATHEESAN ... PETITIONER/PETITIONER
in WMP(MD) No.7723 of 2021

M/S.V V MINERAL (100% EOU),
REPRESENTED BY ITS PARTNER
S.JEGATHEESAN ... PETITIONER/PETITIONER
in WMP(MD) No.7732 of 2021

M/S.V V MINERAL,
REPRESENTED BY ITS PARTNER
S.JEGATHEESAN
... PETITIONER/PETITIONER
in WMP(MD) No.7735 of 2021

-VS-

1 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE,
3rd FLOOR, JEEVAN DEEP BUILDING,
SANSAD MARG, NEW DELHI-110001.

2 THE CENTRAL BOARD OF DIRECT TAXES,
REPRESENTED BY ITS CHAIRPERSON,
DEPARTMENT OF REVENUE-MINISTRY OF FINANCE,
GOVERNMENT OF INDIA, NEW DELHI.

3 INTERIM BOARD FOR SETTLEMENT,
REPRESENTED BY ITS SECRETARY,
REPLACING THE INCOME TAX SETTLEMENT COMMISSION
ADDITIONAL BENCH, CHENNAI
REP. BY ITS SECRETARY,
SATGURU COMPLEX, 640, ANNA SALAI,
NANDANAM, CHENNAI - 600035.

4 ASSISTANT COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE-2,
MADURAI. ... RESPONDENTS/RESPONDENTS IN ALL THE PETITIONS

Common Prayer in W.M.P.(MD).Nos.7723, 7732 & 7735 of 2021 in W.P (MD).Nos.10014, 10019 & 10020 of 2021:

Petitions filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to Direct the 3rd respondent to treat the application filed by the petitioner u/s 245C of the Income Tax Act, 1961 before the ITSC (Income Tax Settlement Commission, Chennai) on 09.03.2021 as a pending application as per the provisions amended by the Finance Act, 2021, pending disposal of this writ petitions.

Common Prayer in W.P(MD).Nos.10014, 10019 & 10020 of 2021:

Writ Petitions are filed under Article 226 of the Constitution of India, praying this Court To issue a writ , direction or order in the nature of Declaration or any other appropriate writ, order or direction, 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 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.

ORDER : These petitions coming up for orders on this day, upon perusing the petitions and the affidavit filed in support thereof and upon hearing the arguments of Mr.SIVARAMAN.R, Advocate for the petitioner in all the petitions and of Mr.H.LAKSHMI SHANKAR, Central Government Standing Counsel on behalf of the 1st Respondent in all the petitions and Mrs.S.SRIMATHI, Standing Counsel for the Respondents 2 to 4 in all the petitions, while admitting the Writ Petitions, the court made the following order:-

[Order of the Court was delivered by T.S.SIVAGNANAM,J.]

Heard, Mr.R.Sivaraman, learned counsel appearing for the petitioners.

2. There are three writ petitions filed by the three different assessees with identical prayer. The petitioners/assessees seek for writs of Declaration to declare the amendment to the Income Tax Act, 1961 in Section 245A by inserting sub-clause (da), (ea) and (eb), 245(B), 245(BC), 245(BD), proviso to 245(C), 245(D), 245(DD), 245 (F), 245(G), 245(H) and insertion of Section 245(AA) and Section 245 (M) 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 the Constitution of India, 1950, thus enforceable and unconstitutional.



3. It is not in dispute that the Union of India by notification has disbanded the Income Tax Settlement Commission and notification to the said effect has been issued giving effect to the same from 01.02.2021. The amendments made to the provisions of the Act have been challenged on various grounds.

4. Essentially, the petitioners/assessees would seek to pursue their matter before the Income Tax Settlement Commission and their case appears to be that on account of the impugned notification, the applications which were already filed are not being taken up by the Commission. The larger question would be as to whether the impugned legislation can be held to be unconstitutional on the ground that it violates fundamental rights of the citizen.

5. Settlement of Cases was introduced by Chapter XIX-A which was inserted by Taxation Laws (Amendment Act), 1975 with effect from 01.04.1976. On reading of Sections 245A to 245L of the Act, one would get a broad over view of the purpose for which the Settlement Commission was established. Essentially, it was to give a reprieve to the assessee, who comes before the Commission and makes a full and true disclosure. There are various checks and balances provided under the said Chapter and *prima facie*, we are of the view that a person does not have a vested right to get his case settled in the manner sought for by him, though there is a right for the assessee to file an application for settlement of his case before the Commission. In such circumstances, the larger question would be whether the impugned amendment affects any of the fundamental rights of the citizen. If it does not do so, a writ of declaration may not maintainable. The assessee cannot be heard to contend that the impugned legislation is devoid of jurisdiction. In fact, insertion of Chapter XXIX-A itself was pursuant to an amendment to the Taxation Laws in the year 1975. These are all issues which need to be adjudicated, after the respondents file a counter affidavit.

6. Mr.R.Sivaraman, learned counsel appearing for the petitioner would submit that in the mean time, if the assessment proceedings are completed by the respective Assessing Officer, the assessees would be put to prejudice. The learned counsel further submitted that prior to the amendment, the assessees had filed applications before the Settlement Commission and in terms of Section 245(D) of the Act, there is a time limit within which the Commission has to issue notice and in terms of proviso under Sub-Section (1) of Section 245(D), if no order has been passed within the time stipulated under Sub-Section (1), the application shall be deemed to have been allowed to be proceeded with. It is submitted that in such

a contingency, the Assessing Officer would be denude of jurisdiction, in terms of Section 245(F)(2). This issue requires to be adjudicated after the respondents are being heard.

7. Now, what we are concerned is with the prayer made by the learned counsel appearing for the petitioner to keep in abeyance the assessment proceedings. The Hon'ble First Bench of this Court had passed an interim order in W.P.No.9467 of 2021 dated 17.04.2021, by which, it was observed that the assessment proceedings and steps taken pursuant thereto will abide by the result of the writ petition. It is submitted that as against the said interim order, the assessee filed Special Leave Petition in SLP(C).No.7327 of 2021 and the Hon'ble Supreme Court, by order dated 08.06.2021, directed that the assessment proceedings may continue, no final order shall be passed during the pendency of the writ petition. Further, the Hon'ble First Bench has passed another interim order dated 19.04.2021 in W.P.No.9550 of 2021, wherein the Hon'ble First Bench has observed that it may not be appropriate to stop the assessment proceedings midstream and that the order of the assessment and steps taken pursuant thereto will abide by the result of the writ petition and in addition, the petitioner therein was granted liberty to apply the moment the order of the assessment is communicated to it.

8. It is submitted by the learned counsel for the petitioner that as against the interim order dated 19.04.2021, a Special Leave Petition has been filed, it has been numbered and to be listed shortly for hearing. The learned counsel for the petitioner has also drawn our attention to the interim orders granted by the High Court of Karnataka in W.P.No.101734 of 2021 dated 21.04.2021, the interim order granted by the High Court of Kerala in W.P.(C).No.9076 of 2021 dated 13.04.2021 and the interim order granted by the Nagpur Bench of Bombay High Court in Civil W.P.No.1681 to 1686 of 2021 dated 22.04.2021. It is further submitted that there appears to be some directions issued by the CBDT that there is a likelihood of all writ petitions being transferred to the Hon'ble Supreme Court of India.

9. Be that as it may, the Assessees has a grievance before us that if the assessment proceedings are concluded, it would greatly prejudice their rights. In fact, the interim orders which we have referred above, have all been granted/predicted on the said grievance. The common thread, which passes through all these interim orders, is that it would not be appropriate to interdict an assessment proceedings. We may also add that the prayers sought for in the present writ petitions are for writs of declaration and the settled legal principle is that there is a presumption as to the validity of the statute until it is struck down. Therefore, essentially, the interim prayer does not flow from the main prayer, but the assessees seek for interim protection on the ground of prejudice which may be caused to them, if the assessment proceeding is completed. Therefore, taking note of the interim orders referred

above, this Court is of the view that the following interim protection would meet the ends of justice. The respective Assessing Officer under whom the petitioners/assessees are granted liberty to proceed with the assessment proceedings and the petitioners/assessees are directed to cooperate with the assessment proceedings which they have willingly agreed to do so as informed by the learned counsel for the petitioner and the Assessing Officer shall proceed to conclude the assessment, pass a final order and keep the order in a sealed cover and not publish the same or implement the same.

10. The learned counsel for the petitioners submitted that Section 153(C) of the Act gives sufficient protection in this regard and the circumstances which would stand saved have been clearly spelt out in the said provision. In any event, since the Courts have held that the assessment proceedings can go on, this Court is of the view that the assessment proceedings should not be interdicted and it should proceed and passing a final order, keeping it to a sealed cover is akin to not giving effect to the assessment order. If such procedure is adopted, the interest of not only the assessee as well as the Department will be protected, when a final decision is taken on the declaratory relief sought for.

11. With the above observations, the interim applications stand disposed of. No costs.

sd/-
11/06/2021

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/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note : *In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.*

TO

1 THE SECRETARY,
UNION OF INDIA,
MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE,
3rd FLOOR, JEEVAN DEEP BUILDING,
SANSAD MARG, NEW DELHI-110001.

2 THE CHAIRPERSON,
CENTRAL BOARD OF DIRECT TAXES,
DEPARTMENT OF REVENUE-MINISTRY OF FINANCE,
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3 THE SECRETARY,
INTERIM BOARD FOR SETTLEMENT,
REPLACING THE INCOME TAX SETTLEMENT COMMISSION
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4 ASSISTANT COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE-2,
MADURAI.

+3. C.C. to M/S.M.P.SENTHIL, Advocate SR.No. 3940, 3941 & 3943

ORDER
IN
W.M.P.(MD).Nos.7723, 7732 & 7735 of 2021
in
W.P(MD).Nos.10014, 10019 & 10020 of 2021
Date :11/06/2021

SSB/PS
JM/VR/SAR I/14.06.2021/6P/8C