23.02.2022.
p.b.
Sl. No.42.

W.P.A. 3048 of 2022
With
W.P.A. 3049 of 2022

(Through Video Conference)

Shri Pradeep Kumar Naredi
Vs.
Union of India & Ors.

Mr. R.V Easwar,
Ms. P. Bansal,
Mr. Saumya Kejriwal,
Ms. Ananya Ram,
Mr. G. S. Gupta.
........for the petitioner.
Mr. Y. J. Dastoor (ASG),
Mr. Debasish Chowdhury,
Mr. Soumen Bhattacharjee.
........for the UOI,

In this matter, petitioner has challenged the impugned order dated 14th January, 2022 passed by the respondent Income Tax Settlement Commission rejecting the application of the petitioner filed on 17th March, 2021 under Section 245C of the Income Tax Act, 1961. The aforesaid rejection by the Commissioner was made in view of Finance Act, 2021 amending the provisions of Income Tax Act, 1961 inter alia that the Income Tax Settlement Commission shall not operate with effect from 1st February, 2021 and that no application for settlement shall be filed on or after the date of tabling of the Finance Bill, 2021 before the Lok Sabha i.e. 1st February, 2021.

Admittedly, in this case, application for settlement under Section 245C(1) of the Act was filed on 17th March, 2021 while the Settlement Commission had ceased to operate w.e.f. 1^{st} February, 2021 in view of the aforesaid Finance Act, 2021 amending the provisions of the Act.

Petitioner in support of his contention that his aforesaid application should have been accepted or entertained by the Settlement Commission since assessment proceeding shall be deemed to have been commenced only after issuance of notice under Section 153A of the Act which was issued in case of the petitioner on 2^{nd} February, 2021 that is the date when the Settlement Commission had ceased to operate w.e.f. 1^{st} February, 2021 in view of the aforesaid amended Finance Act and it is also not the case of the petitioner that on the day when notice was issued under Section 153A which is 2^{nd} February, 2021 petitioner on the very same day had filed the application under Section 245C of the Act. It is admitted fact that he has filed the application for settlement on 17^{th} March, 2021 which is long after the Settlement Commission was ceased to operate. Petitioner in support of his contention relies on order of the Central Board of Direct Taxes, dated 28^{th} September, 2021 bearing P. No.299/22/2021-Dir (Inv. III) issued under Section 119 (2) (b) of the Income Tax Act, 1961 and submits that it has relaxed time for such type of applicant who could not file any application for settlement after 1^{st} of February, 2021.

The said order of the Board is quoted hereunder for the sake of convenience:-

"Subject: Order under section 119(2)(b) of the Income Tax Act, 1961 for filing applications for settlement before the Interim Board for Settlement – reg.

The Finance Act, 2021 has amended the provisions of the Act to inter alia provide that the Income-tax Settlement Commission (ITSC) shall cease to operate with effect from 01.02.2021. Further, it has also been provided that no application for settlement can be filed on or after 01.02.2021, which was the date on which the Finance Bill, 2021 was laid before the Lok Sabha. In order to dispose of the pending settlement applications as on 31.01.2021, the Central Government has constituted Interim Board for Settlement (hereinafter referred to as the "Interim Board"), vide notification No.91 of 2021 dated 10.08.2021.

2. Meanwhile, in order to avoid genuine hardship to number of taxpayers who were in the advanced stages of filing their application for settlement before the ITSC as on 01.02.2021 and also due to the hardship faced during the covid pandemic by the tax payers, the Central Board of Direct Taxes (referred to as the "Board") had provided relief vide Press Release dated 07.09.2021 thereby allowing assessees eligible to file application for settlement on 31.01.2021 to file such applications till the extended period of 30.09.2021.

3. In view of the above, the Board in exercise of its power under clause (b) of sub-section (2) of Section 119 of the Income-tax Act, 1961 (the Act), in order to avoid genuine hardship to assessees authorizes the Commissioner of Income-tax, posted as Secretary to the Settlement Commission prior to 01.02.2021, to admit an application for settlement on behalf of the Interim Board filed after 31.01.2021, which is the date mentioned in sub-section (5) of Section 245C of the Act for filing such application, and before 30.09.2021 and treat such applications as valid and process them as "pending application" as defined in clause (eb) of Section 245A of the Act.

4. The above relaxation is available to the applications filed:-

i) by the assessees who were eligible to file application for settlement on 31.01.2021 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."

On perusal of the aforesaid order of the Board dated 28th September, 2021, and on plain reading of paragraph 2 of the said order of the Board it appears to me that the benefit of extension of time to file application for settlement has been granted to those who were eligible to file application for settlement on 31st March, 2021 and in their cases time to file such application was extended till the period 30th September, 2021 and it is definitely not applicable to the case of the petitioner who was not eligible to file on 31st March, 2021 and who has filed the said application before the settlement commission on 17th March, 2021 and in view of this admitted position of the petitioner himself that notice under Section 153A of the Act was issued to the petitioner on 2nd February, 2021 which according to the petitioner is the date of commencement of assessment proceeding, question of petitioner being eligible to file settlement application on 31st January, 2021 by virtue of said order of the Board does not arise since the case of the petitioner is not covered by the aforesaid order of the Board upon which the petitioner wants to rely to take benefit which was issued by the Board on 28th September, 2021 which is much after 1st February, 2021 and had the Board intended to consider the difficulties in respect of the cases like of the petitioner the aforesaid order would have covered it. The writ court is only to see that every statutory authority acts within the four corners of law and that the law is properly implemented and it is not the duty of the Court to legislate the law or to issue any circular, notification of like nature or to take such type of policy decision granting relief to the petitioner beyond the scope of the aforesaid order of the Board amounting to amend the aforesaid order of the Central Board of Taxes acting under the power conferred upon under Section 119 of the Income Tax Act, 1961.

In view of the discussion made above, I hold that the impugned order dated 14th January, 2022 passed by the Settlement Commission is in accordance with law and is legal and valid and in rightful exercise of the jurisdiction conferred upon it. I do not find any legal infirmity in the said impugned order of the Commission and accordingly I am not inclined to interfere with the aforesaid impugned order dated 14th January, 2022.

So far as challenged to the legality and validity of the order of the aforesaid order of Central Board of Direct Taxes dated 28th September, 2021, on the ground of discrimination in exercise of power under Section 119 (2) (b) of the Income Tax Act, 1961 is concerned, I hold the said order of the Board as constitutionally valid and legal and is perfectly within the power conferred upon it under the aforesaid provision of law and the same is not discriminatory for the reason that the petitioner does not stand on the equal footing as of the class of person covered under the said order of the Board.

Accordingly, this writ petition being WPA 3048 of 2022 is dismissed along with WPA 3049 of 2022 having similar facts and similar question of law.

There will be no order as to costs.

(Md. Nizamuddin, J.)