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WA Nos. 979/2018 & 2811/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

W.A.Nos. 979 of 2018 and 2811 of 2021
and
C.M.P. Nos. 8348 of 2018 & 18588 of 2021

W.A. No. 979 of 2018

The Chief Commissioner of Income Tax-I
121, Mahatma Gandhi Road
Chennai - 600 034
(Presently Commissioner of Income Tax (International Taxation)
Room No.401, IV Floor, Tower-1
BSNL Building, No.16, Greaves Road
Chennai - 600 006 .. Appellant

Versus

M/s. Van Oord ACZ Marine Contractors BV
formerly called as Van Oord ACZ BV
having its registered office at
Jan Blankenweg 2, 4207 MN Gorinchem
The Netherlands
C/o. CNGEN & Associates, Chartered Accountants
"Agastiar Manor"
New No.20, Old No.13, Raja Street
T. Nagar, Chennai - 600 017 .. Respondent



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W.A. No. 2811 of 2021

1. Commissioner of Income Tax-VI

No.121, M.G. Road
Chennai - 600 034

2. The Assistant Commissioner of Income Tax

Business Ward-III
No.121, M.G. Road
Chennai - 600 034

.. Appellants

Versus

1. Mr. John Baptist Lasrado

No.26, 3rd Seaward Road
Valmiki Road
Thiruvanmiyur
Chennai - 600 041

2. Income Tax Settlement Commission

Additional Bench
No.640, Anna Salai, Nandanam
Chennai - 600 035

.. Respondents

W.A. No. 979 of 2018:- Appeal filed under Clause 15 of Letters Patent against the Order dated 03.01.2018 passed in W.P. No. 14165 of 2009 on the file of this Court.

W.A. No. 2811 of 2021:- Appeal filed under Clause 15 of Letters Patent against the Order dated 27.11.2017 passed in W.P. No. 18472 of 2009 on the file of this Court.

For Appellant : Mrs. Hema Muralikrishnan for
WA.No.979/2018
Mr.A.P.Srinivas for WA.2811/2021
Senior Standing Counsel

For Respondents : Mr. R.Sivaraman in both WAs



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COMMON JUDGMENT

WEB C **R.MAHADEVAN, J.**

Both these appeals are filed by the appellants / Revenue, assailing the separate orders dated 03.01.2018 and 27.11.2017 passed by the learned Judge in the respective writ petitions viz., WP.Nos.14165 of 2009 and 18472 of 2009.

2.As the issues arise for consideration in both the appeals are common, they were taken up for hearing together and disposed of by this common judgment.

Facts relating to WA No. 979 of 2018 (WP No. 14165 of 2009)

3.1. The respondent herein, a non-resident company registered in Netherlands, is engaged in the business of dredging and marine contractors. According to them, during the course of such business, in the year 1996, Chennai Port Trust floated a tender for the Break Water Construction at Ennore Port titled "Ennore Coal Port Project". The respondent participated in the said tender as a joint venture company along with an Indian company known as Hindustan Construction Company Limited. The bid offered by the respondent was accepted by Chennai Port Trust and the contract was awarded



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in their favour. For the purpose of execution of the project, the respondent opened a project office in India with the permission of the Reserve Bank of India dated 23.01.1998. The entire contractual work was completed during the year 2000 and the profit derived thereof have been shared by the respondent with their business partner as per the agreement and receipt of such payment is protected under Section 195 of the Income Tax Act, 1961 (in short, “the Act”). Subsequently, the respondent made an application under Section 195 of the Act on 05.11.1998 to the Deputy Commissioner of Income Tax, Company Circle, in Form 15D with a request that no tax be deducted from the payments made by Chennai Port Trust, since the respondent is adopting the completed contract method of accounting. Alternatively, it was also requested that suitable direction be given to Chennai Port Trust to withhold income at 1.55% from the payments made in respect of the contract bills furnished for the work done by the respondent. In response, a letter dated 15.12.1998 was addressed to Chennai Port Trust calling upon them to make payment to the respondent for the contractual work completed by them, after deducting Tax Deducted at Source (TDS) at the rate of 7.1% thereon under Section 195 of the Act. However, Chennai Port Trust, by their letter dated 30.01.1999 informed that the contract has been taken up by HCC Oord ACZ JV of which M/s. HCC is the domestic company and lead partner of the joint venture. Therefore,



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payments were made only to the lead partner as per the contract and necessary tax was deducted at source while making payment to the Joint Venture. It was also stated that the TDS if applicable to the respondent is to be done by the joint venture company.

3.2. According to the respondent, as per Article 23 of the Joint Venture, the profits earned by the respondent was taxable in its own hands and no income was taxable in the status of joint venture. However, contrary to Article 23, Chennai Port Trust deducted tax only in the status of joint venture and refused to deduct tax at source for the profits earned by the respondent. In such circumstances, the respondent was forced to file an application under Section 245Q of the Act to the Authority of the Advance Ruling (AAR) during the year 1999. The ARR by order dated 14.09.2000 in A.R. No. 469 of 1999 concluded that the respondent is liable to be assessed on its own profits separately and not in the status as AOP. Thus, the ARR held that the income of the respondent has to be assessed in its own hands and not in the status of joint venture. Pursuant to the said order dated 14.09.2000, the respondent submitted its return of income for the assessment year 2000-2001 on 23.10.2000, by paying self-assessment tax of Rs.1,60,73,205/- under Section 140A. Such return was processed under Section 143 (1) of the Act on 28.03.2002 and the Assessing Officer also accepted the return of income disclosed by the



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respondent. However, the Assessing Officer concluded that for non-payment of advance tax and deferred advance tax, interest has to be paid under Section 234B and 234C of the Act to the tune of Rs.23,55,882/- and Rs.12,17,545/-. On such demand, the respondent submitted an application for waiver of the interest on 26.02.2003 before the appellant. However, the appellant, without appreciating the background facts of the case, passed an order dated 09.02.2009, rejecting the application of waiver of interest and directed the Assessing Officer to collect interest from the respondent. Aggrieved by the same, the respondent filed this writ petition to quash the order dated 09.02.2009 passed by the appellant herein and consequently direct the appellant to waive the interest under Sections 234B and 234C of the Act.

4. A counter affidavit was filed by the appellant, *inter alia* stating that the non-payment of advance tax, especially when most of the contract receipts, after tax deduction, were received by the respondent well before 31.03.2000, would liable them to pay interest. According to the appellant, the respondent has filed the application seeking waiver only to cover up their default in making advance payments for the relevant assessment year. When the respondent is fully aware of their obligation to pay advance tax, the non-payment of the same cannot be justified on any count. As per Section 44BBB



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of the Act, in case of a foreign company engaged in any business in India, a sum equal to ten per cent of the contract receipts, shall be deemed to be profits and such amount is chargeable to tax. When there is no justification on the part of the respondent in tendering the advance tax, they are liable to pay interest. Therefore, the appellant prayed for dismissal of the writ petition.

Facts of the case in WA No. 2811 of 2021 (WP No. 18472 of 2009)

5.1. The first respondent is employed in a Multinational company called Columbia Sportswear (Inc) of USA, which has a liaison office at Chennai, where he was posted as the Head of Indian Operations of the company. According to this respondent, a part of salary was received by him in India, while the other part has been received outside India. For the salary received in India, tax was deducted at source by his employer, but the same was not done insofar as it relates to the salary which he received outside India. For a portion of salary payable to him out of India, his employer has granted stock option, as per which shares will be purchased for and on behalf of the respondent in American Stock Exchange and they were also sold by the respondent on various dates.

5.2. For the assessment years 1996-1997 to 2005-2006, the first respondent filed his returns disclosing only the amount which he earned in



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India and not the earnings received outside India, though the same are also liable to be taxed. On coming to know about the requirement to pay tax for the entire earnings received in India as well as out of India, he had approached the Settlement Commission and offered all income which he earned in India as well as out of India by way of salary. The aggregate income offered by the respondent for various years worked out to Rs.9,45,27,328/-. Considering the application submitted by the respondent, the Settlement Commission, by order dated 16.06.2006, admitted the application. Subsequently, the said application was taken up for final disposal and after hearing both sides, the Commission passed an order dated 05.02.2008 accepting the additional income offered by the respondent herein under Section 245D(4) of the Act. However, while passing the order dated 05.02.2008, the Commission directed the respondent to pay interest under Section 234B on the excess of the assessed tax over and above the advance tax for all the assessment years.

5.3. On receipt of the said order, the respondent filed a Miscellaneous Petition on 31.12.2008 praying to modify the order dated 05.02.2008, stating that he is not liable to pay interest under Section 234B of the Act. The Commission, by order dated 06.07.2009, rejected the said Miscellaneous Petition. Challenging the same, the respondent filed this writ petition, to quash the order dated 06.07.2009 passed by the Settlement Commission and



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consequently direct the first appellant to delete the levy of interest under Section 234B of the Act for the block period in question.

6. Opposing the writ petition, the appellants filed a counter affidavit stating that the additional income offered by the respondent before the Settlement Commission has never suffered tax, either by way of TDS or by way of advance tax. The respondent is fully aware of the liability to pay tax in respect of his earnings outside India for his employment in India. A substantial part of the additional income offered before the Commission, is therefore, liable to be taxed together with interest. The respondent is duty bound to pay advance tax and his failure to do so would only render him liable to pay interest as contemplated under Section 234B of the Act. Stating so, the appellants prayed for dismissal of the writ petition.

7.1. The learned Judge, on consideration of the rival submissions, concluded that the issue relating to levy of interest under Sections 234 (A), 234 (B) and 234 (C) of the Act is covered by the decision of the Special Division Bench in *Sumit Bhattacharya v. Asstt. CIT [2008 (300) ITR 347 (Mumbai) (SB) (AT)]* wherein it was held that interest charged under Section 234B of the Act is compensatory in nature and not as a penalty and the very same view holds good for Section 234C of the Act. The learned Judge also



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placed reliance on various other decisions and held that the Settlement Commission is not justified in directing the assessee to pay interest for non-payment of advance tax and such a view is erroneous. Accordingly, the learned Judge allowed WP No.18472 of 2009 on 27.11.2017, which is impugned in Writ Appeal No.2811 of 2021.

7.2. By referring to the order dated 27.11.2017 passed in WP No.18472 of 2009, mentioned supra, the learned Judge allowed the writ petition viz., WP No.14165 of 2009 on the same lines on 03.01.2018, which is the subject matter of challenge in W.A.No.979 of 2018.

Submissions of the counsels

8.1. Mrs.Hema Muralikrishnan, learned Senior Panel Counsel for the appellant in W.A.No.979 of 2018 would contend that the respondent / assessee filed an application seeking waiver of interest under Section 234B and 234C of the Act. Such an application for waiver was dismissed on 09.02.2009. However, the learned Judge placing reliance on the decision of the Division Bench of this Court in the case of **Chennai Port Trust v. ITO, TDS VIII [(2012) 25 Taxmann.com 261 (Mad.)]** held that there was conflict and confusion persisting till the Advance Ruling Authority passed an order and



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therefore, the respondent/assessee is not liable to pay interest under Section 234B and 234C of the Act. While so, the learned Judge failed to take note of the fact that the respondent/assessee is now attempting to hide under the smoke screen of confusion and conflict to escape from the consequences of default and from payment of interest. The liability of payment of interest under Section 234B of the Act by the tax payer is towards delay in paying the advance tax. The respondent was fully aware of their obligations to pay advance tax, but they have not chosen to pay. The respondent/assessee was also aware that TDS was not deducted on their total income and therefore, they are liable to pay advance tax. Besides this, they were also aware of the fact that Chennai Port Trust has been deducting tax only to the extent of 2% on payments made to it. However, they deliberately did not make payment of advance tax with an intention to conceal income and evade payment of tax. When Chennai Port Trust had made it clear that it had deducted tax at source only at 2%, much before the due date for payment of advance tax, it was the duty of the respondent-assessee to have paid appropriate amount towards advance tax. In such circumstances, the respondent company is not liable to get immunity from their liability to pay interest under Section 234B of the Act, which is mandatory in nature and ascertained on the basis of default in payment of advance tax.



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8.2. Referring to Sections 234A, 234B and 234C of the Act, the learned Senior Panel Counsel would submit that these are three types of interest receivable from a tax payer. According to him, Section 234A relates to payment of interest for belated filing of returns, Section 234B provides for payment of interest for belated remittance of advance tax. Similarly, Section 234C of the Act also provides for payment of interest for deferred advance payment of tax. In the present case, the respondent company did not pay advance tax and therefore, they squarely fall within the scope and ambit of Section 234B of the Act. Thus, levy of interest under Sections 234A, 234B and 234C of the Act is mandatory and waiver of interest can be considered only in those circumstances, which are enumerated in the notifications / circulars issued by the Central Government from time to time. In this context, the learned Senior Panel Counsel placed reliance on the decision of the Division Bench of this Court in ***Chief Commissioner of Income Tax v. Rajanikant and sons [2017 (83) Taxmann.com 179]*** wherein it was held that the discretion available to the Chief Commissioner of Income Tax for waiving interest under Sections 234A, 234B and 234C is confined to the circumstances, adverted to in paragraph 2(a) to 2(d) of the Circular issued by the Central Government and if the case does not fall within the parameters laid down therein, then no waiver of interest can be granted.



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8.3. As regards the decision relied on by the learned Judge in the case of ***DIT v. NGC Network Asia LLC [313 ITR 187]***, the learned Senior Panel counsel would submit that as against the said judgment, an appeal was preferred and it was dismissed by the Hon'ble Supreme Court at the admission stage itself and therefore, the said judgment ought not to have been relied on by the learned Judge. Similarly, in the case of ***G.E. Energy Parts Inc., [(2015) 56 Taxmann.com 190]*** relied on by the learned Judge, an appeal has been filed as against the said Judgment in C.A.No.7325 of 2016 and it was admitted and pending before before the Hon'ble Supreme Court. Therefore, the reliance placed by the learned Judge on the said decisions is not proper. Therefore, the learned Senior Panel Counsel prayed for allowing this appeal.

9. Mr.A.P.Srinivas, learned senior panel counsel for the appellants in W.A.No.2811 of 2021, submitted that the respondent/assessee is an employee in India earning income from India and also from abroad. The respondent did not disclose the income earned in foreign countries for the block period in question. Ultimately, he filed an application before the Income Tax Settlement Commission and disclosed his income for the assessment years from 1996-1997 to 2005-2006 and the Settlement Commission directed him to pay the tax together with interest. The respondent/assessee filed a miscellaneous



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application to modify the order relating to interest under Section 234B. The said application was rejected by the Settlement Commission on the ground that the Settlement Commission can only rectify a mistake, which is apparent on the face of record and cannot adjudicate on debatable issues after discussing the provisions and recording its interpretations. When the order passed by the Settlement Commission was challenged before the learned Judge, reliance was placed on the decision of *Hindustan Coca Cola Beverage (P) Limited vs. Commissioner of Income Tax [2017 (293) ITR 226 (SC)]* as well as various other judgments. However, the learned Judge, placed reliance on those judgments without regard to the fact that those judgments are factually and legally distinguishable. The judgments relied on by the respondent relates to a case where amounts have been received by non-residents, which are subject to 100% tax deduction at source. In the present case, the respondent / assessee's status is 'resident-individual' and the employer failed to deduct any tax at source. In any event, the respondent / assessee was aware that TDS is not deducted nor made advance payment of tax on major part of his income. While so, the respondent ought to have remitted advance tax in time and non-payment of advance tax would render him liable to pay interest. Therefore, the learned Senior Panel Counsel prayed this Court to allow this Writ Appeal by setting aside the order of the learned Judge.



10.1. Per contra, Mr.R.Sivaraman, learned counsel for the respondent(s)/assessee(s) would contend that the issue involved in these writ appeals centres around the question as to whether the respondents/assessees are eligible for waiver of interest levied under Section 234B and 234C of the Act. In this context, reliance was placed on the decision of the Delhi High Court in the case of ***Director of Income Tax v. Jacobs Civil Incorporated/Mitsubishi Corporation [2010 (194) Taxman 495 (Delhi)]*** which gives a fitting answer to this issue. In that decision, it was held as follows:-

"7. Section 2 (1) of the Act defines 'advance tax' to mean the advance tax payable in accordance with the provisions of Chapter XVII-C of the Act. These provisions are contained from Section 207 onwards. Section 209 falls under this Chapter. Sub-section (1) thereof deals with four situations under which the advance tax payable by the assessee is to be computed. Admittedly, these cases do not concern with clauses (a) to (c). Clause (d) of sub-section (1) of Section 209, which is relevant reads as under:-

.....
8. This clause categorically uses the expression 'deductible or collectible at source' and it is this clause which is incorporated by the Uttranchal High Court in the said judgment (supra) in the manner already pointed above. The scheme of the Act in respect of non-residents is clear. Section 195 of the Act puts an obligation on the payer, i.e., any person responsible for paying to a non-resident, to deduct income-tax at source at the rates in force from such payments excluding those incomes which are chargeable under the head 'salaries'. Therefore, the entire tax is to be deducted at source which is payable on such payments made by the payee to the non-resident. Section 201 of the Act lays down the consequences of failure to deduct or pay. These consequences include not only the liability to pay the amount which such a person was required to deduct at source from the payments made to a non-resident but also penalties etc., Once it is found that the liability was that of the payer and the said payer has defaulted in deducting the tax at source, the Department is not remedy-less and, therefore, can take action against the payer under the provisions of Section 201 of the Income-tax Act and compute the amount accordingly. No



doubt, if the person (payer) who had to make payments to the non-resident had defaulted in deducting the tax at source from such payments, the non-resident is not absolved from payment of taxes thereupon. However, in such a case, the non-resident is liable to pay tax and the question of payment of advance tax would not arise. This would be clear from the reading of Section 191 of the Act along with section 209 (1) (d) of the Act. For this reason, it would not be permissible for the revenue to charge any interest under Section 234B of the Act."

10.2. The learned counsel for the respondent(s)/assessee(s) also placed reliance on the decision of the Bombay High Court in the case of ***Commissioner of Income Tax, Pune vs. Emillio Ruiz Berdejo [(2010) 186 Taxman 390 (Bombay)]*** in which also, the right of the Department to demand interest was considered and rejected in para Nos. 24 and 25, as follows:-

"24. The Apex Court also had an occasion to consider the very same question with regard to the nature of liability of interest in the case of *Dr. Prannoy Roy (supra)*, wherein the Apex Court was pleased to hold that interest charged under Section 234A of the Act is not by way of penalty. It is levied to compensate revenue in order to avoid from being deprived of payment of tax on the due date. Interest held to be payable where the tax had not been deposited prior to the due date of filing of the income tax return. In other words, it was held that where tax already paid by the assessee was not less than the tax payable on the return income which was accepted, the question of levy of interest under Section 234A does not arise."

10.3. By pointing out the above decisions and the decision of this Court in ***Commissioner of Income-tax v. Madras Fertilisers Ltd [(1985) 20 taxman 349 (Mad)]***, the learned counsel for the respondent(s)/ assessee(s) would submit that issue involved in these writ appeals is no longer res integra. The learned Judge also, on appreciation of the factual as well as legal position, rightly allowed the writ petitions filed by the respondent(s)/ assessee(s) and



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therefore, interference of this Court to the orders impugned herein, is not required.

11. We have heard the learned counsel for both sides and perused the materials placed on record.

12. The appeal in W.A 979/2018 arises out of decision on a waiver application before the appellant and the appeal in W.A 2811/2021 arises out of decision in a miscellaneous petition before the Income Tax Settlement Commission to rectify the mistakes. Both the appeals carry a common question of law viz., whether interest is to be paid under Section 234B of the Act, when no advance tax is payable by the assessee and when the deductor/ the employer abroad, had not deducted tax at source, but has subsequently paid the tax with interest and whether the assessee/payee can be charged with interest?. The Learned Judge has colossally considered the Judgments in (i) *Hindustan Coca Cola Beverage (P) Ltd v. Commissioner of Income Tax, [(2007) 293 ITR 226 (SC)]*, (ii) *Commissioner of Income Tax v. Emilio Ruiz Berdejo & Ors [(2010) 320 ITR 0190 (Bombay)]*, (iii) *Director of Income Tax v. Jacobs Civil Incorporated [(2011) 330 ITR 0578 (Delhi)]*, (iv) *Chennai Port Trust v. Income Tax Officer [(2012) 25 taxmann.com 261*



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(Mad)] (v) CIT v. Sedco Forex International Drilling Company Ltd [(2003)

264 ITR 320 (Uttaranchal)] and referred to the judgments in (vi) **DIT**

(International Taxation) v. NGC Network Asia [(2009) 18 DTR 203 (Bom)]

and ultimately held that no interest is chargeable under Section 234B. The

point that the interest under Sections 201 and 234B operate under different

circumstances and on different persons, has also been considered and held in

favour of the assessee. The judgment of the Division Bench of the Delhi High

Court in **Director of Income Tax, International Taxation v. GE Packaged**

Power Inc. [(2015) 56 taxmann.com 190 (Delhi)] also addresses the same

issue in favour of the assessee. The civil appeal in C.A No 7325 of 2016

preferred against the order of the Delhi High Court has been dismissed as

withdrawn and the connected Civil Appeal in C.A.No.1354 of 2016 was also

dismissed on 28.02.2020. Further, the view of the Bombay High Court in

NGC Network Asia and the Uttaranchal High Court in **Sedco Forex**

International Drilling Co.Ltd has been upheld by the Hon'ble Apex Court by

order dated **17.09.2021 in C.A.No 1262 of 2016 (Batch), Director of Income**

Tax, New Delhi v. Mitsubishi Corporation by holding as under:

“13. The main point argued on behalf of the Revenue relates to the interpretation of Section 209 (1) (d) of the Act, with stress on the words “deductible or collectible at source”. The contention of the Revenue is based on the fact that an assessee, who has received any payment without the payer deducting tax on such payment, cannot be permitted to escape liability in payment of advance tax and consequent interest for such non-payment under Sections 191 and 234B of the Act. It was contended that as



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all the Assesses in the matters before us were fully aware of the receipt of amounts without deduction of taxes at source, they should not be allowed to then rely on Section 201 of the Act to reduce their advance tax liability. In this connection, it was submitted by the Revenue that the expression “would be deductible or collectible” would not include amounts, which had not been deducted at the time of payment and, in fact, were paid to the assessee by the payer.

14. *The primary issue before us pertains to the interpretation of Section 209 (1) (d). A proviso was inserted to Section 209 (1) (d) by the Finance Act, 2012, which reads as under:*

“Provided that for computing liability for advance tax, income-tax calculated under clause (a) or clause (b) or clause (c) shall not, in each case, be reduced by the aforesaid amount of income-tax which would be deductible or collectible at source during the said financial year under any provision of this Act from any income, if the person responsible for deducting tax has paid or credited such income without deduction of tax or it has been received or debited by the person responsible for collecting tax without collection of such tax.”

15. *Notes to the memorandum explaining the provisions in the Finance Bill, 2012 are as under:*

*“Liability to pay advance tax in case of non- deduction of tax
Under the existing provisions of section 209 of the Income-tax Act, the amount of advance tax payable is computed by reducing the amount of income-tax which would be deductible or collectible during the financial year from income- tax on estimated income. Therefore, in cases where the assessee receives or pays any amount (on which the tax was deductible or collectible) without deduction or collection of tax, it has been held by courts that he is not liable to pay advance tax to the extent the tax is deductible or collectible from such amount.
In order to make an assessee liable for payment of advance tax in respect of income which has been received or paid without deduction or collection of tax, it is proposed to amend the aforesaid section to provide that where a person has received any income without deduction or collection of tax, he shall be liable to pay advance tax in respect of such income.*

This amendment will take effect from the 1st April, 2012 and would, accordingly, apply in relation to advance tax payable for the financial year 2012- 13 and subsequent financial years.”

16. *The proviso is in the nature of an exception to Section 209 (1) (d), as an assessee, who has received any income without deduction or collection of tax, is made liable to pay advance tax in respect of such income. It is relevant to note that the amendment was brought into effect from 1st April, 2012 and was made applicable to cases of advance tax payable in the financial year 2012-13 and thereafter. All the appeals before us pertain to the period prior to assessment year 2013-14.*



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17. In **Cape Brandy Syndicate v. I.R.C.**, Lord Sterndale M.R. had said:

*“I think it is clearly established in **Attorney General v. Clarkson** that subsequent legislation may be looked at in order to see the proper construction to be put upon an earlier Act where that earlier Act is ambiguous. I quite agree that subsequent legislation if it proceeded on an erroneous construction of previous legislation cannot alter that previous legislation; but if there be any ambiguity in the earlier legislation, then the subsequent legislation may fix the proper interpretation which is to be put upon the earlier Act”.*

18. This Court in **State of Bihar v. S.K. Roy....** had upheld the well-recognised principle that in dealing with matters of construction, subsequent legislation may be looked at in order to see what is the proper interpretation to be put upon the earlier Act, where the earlier Act is obscure or ambiguous or readily capable of more than one interpretation. While construing sub-section 2(b) of Section 80-HHC of the Act, as it stood prior to its amendment and thereafter, this Court in **Gem Granites v. Commissioner of Income Tax, T.N.** held as follows:

*“13. The introduction of the phrase “other than” in clause (b) of sub-section (2) of Section 80-HHC in 1991, in our opinion, indicates the carving out of a specific class from the generic class of “minerals and ores”. This means that were it not for the exception, the specified processed minerals and ores would have been covered by the words “minerals and ores”. It also indicates that only the minerals and ores subjected to the process of cutting and polishing would be entitled to the benefit of Section 80-HHC meaning thereby that all other species of processed minerals and ores would continue to be covered by the general exclusion applicable to the generic class. The 1991 amendment to Section 80-HHC thus conclusively demonstrates that the words “minerals and ores” must be construed widely and in an unrestricted manner. As has been held in **Municipal Committee v. Manilal** [(1967) 2 SCR 100 : AIR 1967 SC 1201] and **Pappu Sweets and Biscuits v. Commr. of Trade Tax** [(1998) 7 SCC 228] subsequent legislation may be looked into to fix the proper interpretation to be put on the statutory provisions as they stood earlier. The benefit of Section 80-HHC has been extended by the amendment to a specific kind of mineral and was introduced for the first time in 1991. If we were to hold that the word “minerals” in sub-section (2)(b) never included processed minerals then the 1991 amendment excepting processed minerals from the exclusionary effect of the sub-section would be rendered meaningless and an exercise in futility.*

19. The dispute relating to the interpretation of the words “would be deductible or collectible” in Section 209 (1) (d) of the Act can be resolved by referring to the proviso to Section 209 (1) (d), which was inserted by the Finance Act, 2012. The proviso makes it clear that the assessee cannot



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reduce the amounts of income-tax paid to it by the payer without deduction, while computing liability for advance tax. The memorandum explaining the provisions of the Finance Bill, 2012 provides necessary context that the amendment was warranted due to the judgements of courts, interpreting Section 209 (1) (d) of the Act to permit computation of advance tax by the assessee by reducing the amount of income-tax which is deductible or collectible during the financial year. If the construction of the words “would be deductible or collectible” as placed by the Revenue is accepted, the amendment made to Section 209 (1) (d) by insertion of the proviso would be meaningless and an exercise in futility. To give the intended effect to the proviso, Section 209 (1) (d) of the Act has to be understood to entitle the assessee, for all assessments prior to the financial year 2012-13, to reduce the amount of income- tax which would be deductible or collectible, in computation of its advance tax liability, notwithstanding the fact that the assessee has received the full amount without deduction.

20. *We do not find force in the contention of the Revenue that Section 234B should be read in isolation without reference to the other provisions of Chapter XVII. The liability for payment of interest as provided in Section 234B is for default in payment of advance tax. While the definition of “assessed tax” under Section 234B pertains to tax deducted or collected at source, the pre-conditions of Section 234B, viz. liability to pay advance tax and non- payment or short payment of such tax, have to be satisfied, after which interest can be levied taking into account the assessed tax. Therefore, Section 209 of the Act which relates to the computation of advance tax payable by the assessee cannot be ignored while construing the contents of Section 234B. As we have already held that prior to the financial year 2012-13, the amount of income-tax which is deductible or collectible at source can be reduced by the assessee while calculating advance tax, the Respondent cannot be held to have defaulted in payment of its advance tax liability. We uphold the view adopted in the impugned judgement of the Delhi High Court in Civil Appeal No. 1262 of 2016 as well as by the Madras High Court in the **Madras Fertilizers** case (supra), that the Revenue is not remediless and there are provisions in the Act enabling the Revenue to proceed against the payer who has defaulted in deducting tax at source. There is no doubt that the position has changed since the financial year 2012-13, in view of the proviso to Section 209 (1) (d), pursuant to which if the assessee receives any amount, including the tax deductible at source on such amount, the assessee cannot reduce such tax while computing its advance tax liability.*

21. *As we have dealt with the submissions relating to Section 209 and Section 234B of the Act, we do not deem it necessary to deal with other contentions that have been raised on behalf of the Revenue. We have not dealt with the facts of each case before us, in view of our interpretation of the provisions of the Act germane to the question of law herein.*

22. *Accordingly, the Appeals filed by the Revenue are dismissed.”*



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After dismissing the appeal filed by the revenue, the appeals of the Assesseees on the same issue were allowed referring to the above judgment. Therefore, this is no longer res integra and the claim of the assesseees thus stands vindicated.

13. Insofar as the contention regarding maintainability of the miscellaneous petition is concerned, as rightly held by the learned Judge, no appeal has been preferred by the Revenue against the finding in paragraph 8 of the order by the Income Tax Settlement Commission, even though ultimately the petition came to be dismissed, after discussing the law and on interpretation by the Income Tax Settlement Commission, which view as seen above, is no longer good law. It is pertinent to mention here that the revenue had all along contended that there was no error apparent and that, the dispute regarding interest under Section 234B was not raised in the original proceedings. Even in ground (h) of the memorandum of grounds of appeal filed before this Court, the revenue has conceded to the jurisdiction of the settlement commission by contending that the Commission would have powers under Section 245F(1) read with Section 154 to rectify any mistake apparent on the face of the record and cannot adjudicate of debatable issue, which in the view of this Court, is contrary to the ratio laid down in ***Brij Lal v. CIT, (2011)***

1 SCC 1 .



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14. However, as held by us above, the revenue has not challenged the findings in paragraph 8 of the order in the Miscellaneous Petition dated 06.07.2009, as referred to in paragraphs 7 and 8 of the orders of the Learned Judge and no plea regarding the authority of the Income Tax Settlement Commission to review its earlier order, is raised even before this Court. Since the law on the point is already settled in favour of the assessee in C.A No.1262/2016, we do not deem it fit to interfere at this stage by *suo motu* taking up and deciding the issue of maintainability of the miscellaneous petition. In view of the same, W.A No.2811 of 2021 is liable to be rejected and hence rejected.

15. Insofar as the other appeal viz., WA.No.979 of 2018 is concerned, though the issue as to charge of interest is settled in favour of the assessee, it is necessary to consider the contentions of the revenue regarding the conditions to be satisfied under the notification issued by the Board. The application for waiver of interest was filed on 26.02.2003, when the Notification in F.NO400/234/95-IT(B) dated 23-5-1996 issued under Section 119 of the Act was in force. As per the above notification, the Chief Commissioner and the Director General of Income Tax may reduce or waive the interest charged under Section 234A or Section 234B or Section 234C of the Act in the classes



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of cases or classes of Income specified in paragraph 2 of the order for the period and to the extent the Chief Commissioner of Income tax/Director General of Income Tax deems fit. The relevant clause that has been relied upon by the assessee is clause 2 (e), which reads as follows:

“(e) Where a return of income could not be filed by the assessee due to unavoidable circumstances and such return of income is filed voluntarily by the assessee or his legal heirs without detection by the Assessing Officer.”

16. A clarification was issued by way order in F.NO400/234/95-IT(B) dated 30.01.1997, wherein, paragraph No.2 of the order dated 23-05-1996 has been clarified as follows:-

“2.In partial modification of this para of the Order, the Central Board of Direct Taxes has decided that there shall be no condition that the decision of the High Court or the Supreme Court, as referred to therein, must be given in the assessee’s own case. Also the condition that any retrospective amendment of law or the decision of the Supreme Court or the jurisdictional High Court must have been made after the end of the relevant year stands withdrawn.”

17. During the pendency of the application for waiver, a new Notification in F.NO400/29/2002-IT(B) dated 26-06-2006 was issued under Section 119 of the Act, whereby clause 2 (d) of the new notification is parimateria to clause 2 (e) of the earlier notification. However, by clause 3, the applicability of clause 2(d), which talks about “unavoidable circumstances” was made applicable only to cases under Section 234A. It is on the strength of this Notification, the learned counsel for the revenue has contested that the application for waiver of Interest under Section 234B and



234C was not maintainable, since the earlier notifications have been superseded by the 2006 notification and that the Learned Judge erred in relying upon the wrong notification to grant the relief. The judgment in **Chief Commissioner of Income Tax v. Rajanikant and sons [2017 (83) Taxmann.com 179]** has been relied upon by the revenue, wherein it has been held as under :

“12. Be that as it may, given the facts and circumstances emerging in the present appeals, and those found by the Chief Commissioner in his order dated 04.01.2010, it is quite clear that the instant case does not fall in any of the circumstances, adverted to in paragraph 2(a) to 2(d) of the Circular dated 26.06.2006.

12.1. As indicated above, the Division Bench of the Bombay High Court in De Souza Hotels Private Limited V. Chief Commissioner of Income Tax and Others, (2012) 253 CTR 0541, has come to the conclusion, with which, we are in complete agreement, that unless the Assessee's case comes within the ambit and scope of the Circular dated 26.06.2006, the Chief Commissioner would have no power to reduce or waive interest under Sections 234A, 234B and 234C.

12.2. In our view, the order dated 01.04.2010, passed by the first appellant deals with waiver petitions on merits, and therefore, the judgements of the learned Single Judge setting aside the same and remitting the matter for reconsideration was not called for. Furthermore, we may also indicate that in so far as the judgment of the Division Bench of this Court in N.Haridas & Co. V. Chief Commissioner of Income Tax and another, (2008) 296 ITR 246 (Mad) is concerned, it was passed in peculiar facts and circumstances of the case. In that case, waiver/reduction of interest was sought on the ground that the tax, which was required to be paid under the Voluntary Disclosure of Income Scheme 1997, could not be paid, in time, by the Managing Partner, even though, he had made a declaration as required, since, he was diagnosed with blood cancer, and to which, he succumbed shortly thereafter.

12.3. Furthermore, what is not evident upon a perusal of the said judgment as to the what were the contents of the order of the Chief Commissioner, whereby, the request for waiver/reduction of interest was rejected. It appears that the order was perfunctory, which is why, the Division Bench in paragraph 7 observed that the impugned order of the Chief Commissioner merely observed that the condition prescribed in Notification dated 23.05.1996 was not satisfied.



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12.4. We may indicate herein that the notification/circular dated 23.05.1996 precedes the circular in issue, i.e., Circular dated 26.06.2006. Circular dated 26.06.2006 supersedes the earlier circular dated 23.05.1996. We are, thus, concerned only with Circular dated 26.06.2006.

12.5. For all these reasons, we are of the view that the judgment in the matter of : *N.Haridas & Co. (cited supra)* cannot help the cause of the respondent in this case. Therefore, the appeal will have to be allowed.”

18. On the other hand, the respondent/assessee has relied upon the judgment of another Division Bench of this Court in *N.Haridas & Co. v. Chief Commissioner of Income Tax and another*, [(2008) 296 ITR 246 (Mad)] and the Gujarat High Court in *Bhanubhen Panchal and Chandrikabhen Panchal v. Chief Commissioner of Income Tax and another* [(2004) 269 ITR 27 (Guj)].

19. Upon consideration of the facts and judgments, we are of the view that the judgments in the above referred cases by the assessee as well as the revenue cannot be blindly applied to the case on hand as because either the orders that were subject matter in the above cases, were passed before the circular dated 26-06-2006 came into force or there is no specific discussion on the scope and applicability of the notification dated 26-06-2006 to the applications that were filed earlier based on the provisions then existing and pending on the date when the orders were passed. In the judgment relied upon by the revenue in *Rajanikant & sons case*, much reliance has been placed upon the judgment of Bombay High Court, wherein the primary challenge was



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to the *vires* of the Notification dated 26-06-2006, which was upheld. Even in the said Judgment, the scope and applicability of the notification dated 26-06-2006 was not the subject matter as because the order impugned therein was an order dated 19/03/2009 passed in the waiver application. Hence, we have decided to venture in the applicability of the notification dated 26-06-2006 on the applications that were filed, when the 1996 notification was in vogue.

20. It is relevant to note that the circulars/notifications issued by the Board as in the form of delegated legislation deriving its authority from Section 119 of the Income Tax Act and is hence a “law” falling within Article 13 of the Constitution of India. Both the notifications dated 23-05-1996 and 26-06-2006 lay down the classes and circumstances under which an application for waiver of Interest under Sections 234A, 234B and 234C can be entertained. The notifications lay down the substantive law. It is only if the case of the assessee falls in any of the categories mentioned therein, an application can be entertained. As per the notification dated 23-05-1996, the reason of “unavoidable circumstances” was available to the assessee in clause 2 (e) when waiver is sought under any of or all the provisions referred above. The said notification was superseded by the notification dated



26-06-2006, whereby the reason of “unavoidable circumstances” was excluded from applicability, when waiver is sought under Sections 234B and 234C, which, in the view of this Court, is not clarificatory as it introduces a new condition taking away a vested right under the earlier notification. In fact, the notifications are beneficial legislations. Hence, it can be applied only to cases, where an application is filed after 26.06.2006. Though the notification claims to be superseding the earlier notifications, the fact that it states in paragraph 4 that if an application has been rejected earlier, it can be reopened to grant any relief and if any relief granted cannot be undone by this notification, fortifies our view that a right once vested, cannot be undone by subsequent replacement of the provision. The right to reopen is also restricted only to grant a benefit. Further, it contains no express provisions relating to applicability to pending cases. Under these circumstances, Section 6 of the General Clauses Act, 1897, which saves the substantive rights of the parties and the applicability of the law in force when such right accrued or proceedings commenced before amendment/repeal/insertion came into force will be applicable. Section 6 of the General Clauses Act, 1897 reads as follows:

“6 Effect of repeal. Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not



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- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.”

21. At this juncture, it will be useful to refer to the following judgments to analyse the impact of an amendment/new law and its applicability:

(a) **CIT v. Vatika Township (P) Ltd. [(2015) 1 SCC 1 : 2014 SCC**

OnLine SC 712]

“29. The obvious basis of the principle against retrospectivity is the principle of “fairness”, which must be the basis of every legal rule as was observed in L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd. [(1994) 1 AC 486 : (1994) 2 WLR 39 : (1994) 1 All ER 20 (HL)] Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later.

30. We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on



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the public generally, and where to confer such benefit appears to have been the legislators' object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In Govt. of India v. Indian Tobacco Assn. [(2005) 7 SCC 396], the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in Vijay v. State of Maharashtra [(2006) 6 SCC 289]. It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature. However, we are (sic not) confronted with any such situation here.

31. *In such cases, retrospectivity is attached to benefit the persons in contradistinction to the provision imposing some burden or liability where the presumption attaches towards prospectivity. In the instant case, the proviso added to Section 113 of the Act is not beneficial to the assessee. On the contrary, it is a provision which is onerous to the assessee. Therefore, in a case like this, we have to proceed with the normal rule of presumption against retrospective operation. Thus, the rule against retrospective operation is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. Dogmatically framed, the rule is no more than a presumption, and thus could be displaced by outweighing factors.*

32. *Let us sharpen the discussion a little more. We may note that under certain circumstances, a particular amendment can be treated as clarificatory or declaratory in nature. Such statutory provisions are labelled as “declaratory statutes”. The circumstances under which provisions can be termed as “declaratory statutes” are explained by Justice G.P. Singh [Principles of Statutory Interpretation, (13th Edn., LexisNexis Butterworths Wadhwa, Nagpur, 2012)] in the following manner:*

“Declaratory statutes

The presumption against retrospective operation is not applicable to declaratory statutes. As stated in Craies [W.F. Craies, Craies on Statute Law (7th Edn., Sweet and Maxwell Ltd., 1971)] and approved by the Supreme Court [Ed.: The reference is to Central Bank of India v. Workmen, AIR 1960 SC 12, para 29] : ‘For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not



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invariably, such an Act contains a Preamble, and also the word “declared” as well as the word “enacted”.’ But the use of the words ‘it is declared’ is not conclusive that the Act is declaratory for these words may, at times, be used to introduced new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is ‘to explain’ an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language ‘shall be deemed always to have meant’ is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law which the Constitution came into force, the amending Act also will be part of the existing law.”

The above summing up is factually based on the judgments of this Court as well as English decisions.

33. *A Constitution Bench of this Court in KeshavlalJethalal Shah v. Mohanlal Bhagwandas [AIR 1968 SC 1336 : (1968) 3 SCR 623] , while considering the nature of amendment to Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act as amended by Gujarat Act 18 of 1965, observed as follows: (AIR p. 1339, para 8)*

“8. ... The amending clause does not seek to explain any pre-existing legislation which was ambiguous or defective. The power of the High Court to entertain a petition for exercising revisional jurisdiction was before the amendment derived from Section 115 of the Code of Civil Procedure, and the legislature has by the amending Act not attempted to explain the meaning of that provision. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act.”

34. *It would also be pertinent to mention that assessment creates a vested right and an assessee cannot be subjected to reassessment unless a provision to that effect inserted by amendment is either expressly or by necessary implication retrospective. (See CED v. M.A. Merchant [1989 Supp (1) SCC 499 : 1989 SCC (Tax) 404] .)*

<https://www.mhc.tn.gov.in/jug> **35.** *We would also like to reproduce hereunder the following observations*



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made by this Court in *Govind Das v. ITO* [(1976) 1 SCC 906 : 1976 SCC (Tax) 133] , while holding Section 171(6) of the Income Tax Act to be prospective and inapplicable for any assessment year prior to 1-4-1962, the date on which the Income Tax Act came into force: (SCC p. 914, para 11)

“11. Now it is a well-settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that ‘all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.’”

(emphasis supplied)

36. In *CIT v. Scindia Steam Navigation Co. Ltd.* [AIR 1961 SC 1633 : (1962) 1 SCR 788] , this Court held that as the liability to pay tax is computed according to the law in force at the beginning of the assessment year i.e. the first day of April, any change in law affecting tax liability after that date though made during the currency of the assessment year, unless specifically made retrospective, does not apply to the assessment for that year.

Answer to the reference

37. When we examine the insertion of the proviso in Section 113 of the Act, keeping in view the aforesaid principles, our irresistible conclusion is that the intention of the legislature was to make it prospective in nature. This proviso cannot be treated as declaratory/statutory or curative in nature.”

(b) ***Videocon International Ltd. v. SEBI*, [(2015) 4 SCC 33 : 2015**

***SCC OnLine SC 24]* :**

“29. According to the learned counsel, a perusal of the above judgment in *DhadiSahu* case [*CIT v. DhadiSahu*, 1994 Supp (1) SCC 257] revealed, that change of forum could be substantive or procedural. It would be procedural when the remedy has yet to be availed of. But where the remedy had already been availed of (under an existing statutory provision), the right crystallised into a vested substantive right. In the latter situation, according to the learned counsel, unless the amending provision, by express words or



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by necessary implication mandates, the transfer of pending proceedings to the forum introduced by the amendment, the forum postulated by the unamended provision, has the jurisdiction to adjudicate upon pending matters (filed before the amendment).

30. According to the learned counsel, his submission also flows from the mandate contained in Section 6 of the General Clauses Act, 1897. For this, the learned counsel placed reliance on *Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal and Co.* [*Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal and Co.*, (2001) 8 SCC 397] In the above-cited judgment, the respondent landlord had filed an eviction petition on 13-9-1985 against the appellant, under Section 14(1)(b) of the Delhi Rent Control Act. When the above petition was pending, Section 3(c) was brought in through an amendment with effect from 1-12-1988. By the above amendment, the jurisdiction of the Rent Controller, with respect to tenancies which fetched a monthly rent exceeding Rs 3500, was excluded. Consequent upon the aforesaid amendment, the appellant tenant contended, that the civil court alone, had the jurisdiction to entertain the claim raised by the landlord, and that, the eviction petition filed under the provisions of the Delhi Rent Control Act, was no longer maintainable.

31. While adjudicating the aforesaid dispute, this Court held as under: (*Ambalal case* [*Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal and Co.*, (2001) 8 SCC 397] , SCC pp. 409-10 & 415, paras 24-27 & 34-36)

“24. We may quote here Section 6 of the General Clauses Act, 1897:

‘6.Effect of repeal.—Where this Act, or any Central Act or regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.’



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25. *The opening words of Section 6 specify the field over which it is operative. It is operative over all the enactments under the General Clauses Act, Central Act or regulations made after the commencement of the General Clauses Act. It also clarifies in case of repeal of any provision under the aforesaid Act or regulation, unless a different intention appears from such repeal, it would have no affect over the matters covered in its clauses viz. (a) to (e). It clearly specifies that the repeal shall not revive anything not in force or in existence or affect the previous operation of any enactment so repealed or anything duly done or suffered or affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed statute, affect any penalty, forfeiture or punishment incurred in respect of any offence committed under the repealed statute and also does not affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid. Thus the central theme which spells out is that any investigation or legal proceeding pending may be continued and enforced as if the repealing Act or regulation had not come into force.*

26. *As a general rule, in view of Section 6, the repeal of a statute, which is not retrospective in operation, does not prima facie affect the pending proceedings which may be continued as if the repealed enactment were still in force. In other words, such repeal does not affect the pending cases which would continue to be concluded as if the enactment has not been repealed. In fact when a lis commences, all rights and obligations of the parties get crystallised on that date. The mandate of Section 6 of the General Clauses Act is simply to leave the pending proceedings unaffected which commenced under the unrepealed provisions unless contrary intention is expressed. We find clause (c) of Section 6, refers the words ‘any right, privilege, obligation ... acquired [Ed.: The words have been emphasised in original.] or accrued [Ed.: The words have been emphasised in original.]’ under the repealed statute would not be affected by the repealing statute. We may hasten to clarify here, mere existence of a right not being ‘acquired’ or ‘accrued’, on the date of the repeal would not get protection of Section 6 of the General Clauses Act.*

27. *At the most, such a provision can be said to be granting a privilege to the landlord to seek intervention of the Controller for eviction of the tenant under the statute. Such a privilege is not a benefit vested in general but is a benefit granted and may be enforced by approaching the Controller in the manner prescribed under the statute. On filing the petition of eviction of the tenant the privilege accrued with the landlord is not effected by repeal of the Act in view of Section 6(c) and the pending*



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proceeding is saved under Section 6(e) of the Act.

34. Thus we find Section 6 of the General Clauses Act covers a wider filed and saves a wide range of proceedings referred to in its various clauses. We find two sets of cases, one where Section 6 of the General Clauses Act is applicable and the other where it is not applicable.

35. In cases where Section 6 is not applicable, the courts have to scrutinise and find, whether a person under a repealed statute had any vested right. In case he had, then pending proceedings would be saved. However, in cases where Section 6 is applicable, it is not merely a vested right but all those covered under various clauses from (a) to (e) of Section 6. We have already clarified that right and privilege under it is limited to those which is 'acquired' and 'accrued'. In such cases pending proceedings are to be continued as if the statute has not been repealed.

36. In view of the aforesaid legal principle emerging, we come to the conclusion that since proceeding for the eviction of the tenant was pending when the repealing Act came into operation, Section 6 of the General Clauses Act would be applicable in the present case, as it is landlord's accrued right in terms of Section 6. Clause (c) of Section 6 refers to 'any right' which may not be limited as a vested right but is limited to be an accrued right. The words 'any right accrued' in Section 6(c) are wide enough to include landlord's right to evict a tenant in case proceeding was pending when repeal came in. Thus a pending proceeding before the Rent Controller for the eviction of a tenant on the date when the repealing Act came into force would not be affected by the repealing statute and will be continued and concluded in accordance with the law as existed under the repealed statute."

(emphasis supplied)

Based on the above determination, it was the contention of the learned counsel, that in addition to the existence of a vested right, Sections 6(c) and (e) make it abundantly clear, that a pending legal proceeding or remedy, before the amendment altered the forum, would continue to be available for the adjudication of the matter, unless the amending provision by express words or by necessary implication expressed otherwise.

38. First and foremost, we shall determine the veracity of the contention advanced at the hands of the learned counsel for the appellant, that the remedy of second appeal provided for in the unamended Section 15-Z of the SEBI Act remained unaffected by the amendment of the said provision; and on the basis of the above assumption, the learned counsel's submission, that the present controversy relates to an amendment which envisaged a mere change of forum. Insofar as the instant aspect of the matter is concerned, it



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would be pertinent to mention, that a right of appeal can be availed of only when it is expressly conferred. When such a right is conferred, its parameters are also laid down. A right of appeal may be absolute i.e. without any limitations. Or, it may be a limited right. The above position is understandable, from a perusal of the unamended and amended Section 15-Z of the SEBI Act. Under the unamended Section 15-Z, the appellate remedy to the High Court, against an order passed by the Securities Appellate Tribunal, was circumscribed by the words “... on any question of fact or law arising out of such order”. The amended Section 15-Z, while altering the appellate forum from the High Court to the Supreme Court, curtailed and restricted the scope of the appeal, against an order passed by the Securities Appellate Tribunal, by expressing that the remedy could be availed of “... on any question of law arising out of such order”. It is, therefore apparent, that the right to appeal, is available in different packages, and that, the amendment to Section 15-Z, varied the scope of the second appeal provided under the SEBI Act.

39. As illustrated above, an appellate remedy is available in different packages. What falls within the parameters of the package at the initial stage of the lis or dispute, constitutes the vested substantive right of the litigant concerned. An aggrieved party, is entitled to pursue such a vested substantive right, as and when, an adverse judgment or order is passed. Such a vested substantive right can be taken away by an amendment, only when the amended provision, expressly or by necessary intendment, so provides. Failing which, such a vested substantive right can be availed of, irrespective of the law which prevails, at the date when the order impugned is passed, or the date when the appeal is preferred. For, it has repeatedly been declared by this Court, that the legal pursuit of a remedy, suit, appeal and second appeal, are steps in a singular proceeding. All these steps, are connected by an intrinsic unity, and are regarded as one legal proceeding.

40. Where the appellate package, as in the present case, is expressed differently at the “pre” and “post” amendment stages, there could only be two eventualities. Firstly, the pre-amendment appellate package, could have been decreased by the amendment. Or alternatively, the post-amendment package, could have been increased by the amendment. In the former situation, all that was available earlier, is now not available. In other words, the right of an individual to the appellate remedy, stands reduced or curtailed. In the latter situation, the amendment enhances the appellate package. The appellate remedy available prior to the amendment, stands included in the amendment, and some further addition has been made thereto. In the latter stage, all that was available earlier continues to subsist. The two situations contemplated hereinabove, will obviously lead to different consequences, because in the former position, the amendment would adversely affect the right, as was available earlier. In the latter position, the amendment would not affect the right of appeal, as was available earlier, because the earlier package is still included in the



amended package.

41. In the facts and circumstances of this case, it is apparent that Section 15-Z of the SEBI Act prior to the amendment, postulated that the appellate remedy would extend to "... any question of fact or law arising out of such order". Whereas, the appellate remedy was curtailed consequent upon the amendment, whereunder the appellate right was limited to, "... any question of law arising out of such order". Accordingly, by the amendment, the earlier appellate package stands reduced, because under the amended Section 15-Z, it is not open to an appellant, to agitate an appeal on facts. That being the position, it is not possible for us to accept the contention advanced at the hands of the learned counsel for the appellant, that the amendment to Section 15-Z of the SEBI Act, envisages only an amendment of the forum, where the second appeal would lie. In our considered view, the amendment to Section 15-Z of the SEBI Act, having reduced the appellate package, adversely affected the vested appellate right of the litigant concerned. The right of appeal being a vested right, the appellate package, as was available at the commencement of the proceedings, would continue to vest in the parties engaged in a lis, till the eventual culmination of the proceedings. Obviously, that would be subject to an amendment expressly or impliedly, providing to the contrary. Section 32 of the Securities and Exchange Board of India (Amendment) Act, 2002, which has been extracted in para 13 hereinabove reveals, that the "repeal and saving" clause, neither expressly nor impliedly, so provides. Thus viewed, we are constrained to conclude, that the assertion advanced at the hands of the learned counsel for the appellant, that the instant amendment to Section 15-Z of the SEBI Act, does not affect the second appellate remedy, but merely alters the forum where the second appellate remedy would lie, is not acceptable.

42. Having concluded that the remedy of second appeal vested in the respondent has not been preserved, in the same format as it was available to the respondent at the time of initiation of the lis between the parties; and also having concluded, that the scope of the appellate remedy has been diminished by the amendment, we are satisfied in holding, that amendment to Section 15-Z of the SEBI Act adversely affected the respondent, of a vested substantive appellate right, as was available to the respondent, at the commencement of the lis or dispute between the rival parties. Having recorded the aforesaid conclusion, based on the judgments relied upon by the learned counsel for the appellant, as also, by the learned counsel for the respondent, it is inevitable to conclude, that the appellate remedy available to the respondent prior to the amendment of Section 15-Z of the SEBI Act, must continue to be available to the respondent, despite the amendment. We accordingly hold, that all the appeals preferred by the Board, before the High Court, were maintainable in law."

(c) **CIT v. Essar Teleholdings Ltd., (2018) 3 SCC 253 : 2018 SCC**

**OnLine SC 59:**

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“44. There cannot be any dispute to the proposition that machinery provision of a taxing statute has to give effect to its manifest purposes. But the applicability of the machinery provision whether it is prospective or retrospective depends on the content and nature of the statutory scheme. In the above case, the Court was not considering the question of prospectivity or retrospectivity of the machinery provision, hence the above case also does not help the appellant in the present case.

45. The Constitution Bench in CIT v. Vatika Township (P) Ltd. [CIT v. Vatika Township (P) Ltd., (2015) 1 SCC 1] , after noticing the principle of statutory interpretation, as noted above, has laid down the following in paras 36, 37 and 39: (SCC p. 25)

“36. In CIT v. Scindia Steam Navigation Co. Ltd. [CIT v. Scindia Steam Navigation Co. Ltd., AIR 1961 SC 1633] , this Court held that as the liability to pay tax is computed according to the law in force at the beginning of the assessment year i.e. the first day of April, any change in law affecting tax liability after that date though made during the currency of the assessment year, unless specifically made retrospective, does not apply to the assessment for that year.

Answer to the reference

37. When we examine the insertion of the proviso in Section 113 of the Act, keeping in view the aforesaid principles, our irresistible conclusion is that the intention of the legislature was to make it prospective in nature. This proviso cannot be treated as declaratory/statutory or curative in nature.

Reasons in support

39. The first and foremost poser is as to whether it was possible to make the block assessment with the addition of levy of surcharge, in the absence of proviso to Section 113? In Suresh N. Gupta [CIT v. Suresh N. Gupta, (2008) 4 SCC 362] itself, it was acknowledged and admitted that the position prior to the amendment of Section 113 of the Act whereby the proviso was added, whether surcharge was payable in respect of block assessment or not, was totally ambiguous and unclear. The Court pointed out that some assessing officers had taken the view that no surcharge is leviable. Others were at a loss to apply a particular rate of surcharge as they were not clear as to which the Finance Act, prescribing such rates, was applicable. It is a matter of common knowledge and is also pointed out that the surcharge varies from year to year. However, the assessing officers were indeterminate about the date with reference to which rates provided for in the Finance Act were to be made applicable. They had four dates before them viz.: (Suresh N. Gupta case [CIT v. Suresh N. Gupta, (2008) 4 SCC 362] , SCC p. 379, para 35)

(i) Whether surcharge was leviable with reference to the rates provided for in the Finance Act of the year in which the search was initiated; or

(ii) the year in which the search was concluded; or



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- (iii) the year in which the block assessment proceedings under Section 158-BC of the Act were initiated; or
- (iv) the year in which block assessment order was passed.”

46. As noted above, that Rule 8-D has again been amended by the Income Tax (Fourteenth Amendment) Rules, 2016 w.e.f. 2-6-2016, by which Rule 8-D sub-rule (2) has been substituted by a new provision which is to the following effect:

“8-D. (2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely—

(i) the amount of expenditure directly relating to income which does not form part of total income; and

(ii) an amount equal to one per cent of the annual average of the monthly average of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income:

Provided that the amount referred to in clause (i) and clause (ii) shall not exceed the total expenditure claimed by the assessee.”

47. The method for determining the amount of expenditure brought in force w.e.f. 24-3-2008 has been given a go-by and a new method has been brought into force w.e.f. 2-6-2016, by interpreting Rule 8-D retrospective, there will be a conflict in applicability of 5th & 14th Amendment Rules which clearly indicates that the Rule has a prospective operation, which has been prospectively changed by adopting another methodology.

48. One of the submissions raised by the learned counsel for the assessee also needs to be noticed. The learned counsel for the assessee submits that it is well settled that subordinate legislation ordinarily is not retrospective unless there are clear indication to the same. Reliance has been placed on the judgment of this Court in *State of Jharkhand v. Shiv KarampalSahu* [*State of Jharkhand v. Shiv KarampalSahu*, (2009) 11 SCC 453 : (2009) 2 SCC (L&S) 640] . In para 17, following has been stated: (SCC pp. 459-60)

“17. Ordinarily, a subordinate legislation should not be construed to be retrospective in operation. The Circular Letter dated 7-5-2003 was given a prospective effect. The father of the respondent died on 19-5-2000. There is nothing to show that even the Circular dated 9-8-2000 had been given retrospective effect. In any view of the matter, as the State of Jharkhand in the Circular Letter dated 7-5-2003 adopted the earlier circular letters issued by the State of Bihar only in respect of cases where death had occurred after 15-10-2000 i.e. the date from which the State of Jharkhand came into being, the High Court [*Shiv KampalSahu v. State of Jharkhand*, 2005 SCC OnLineJhar 507 : (2006) 2 AIR Jhar R 148] , in our opinion, committed a serious error in giving retrospective effect thereto indirectly which it could not do directly. Reasons assigned by the High Court, for the reasons aforementioned, are unacceptable.”

<https://www.mhc.tn.gov.in/jud> There is no indication in Rule 8-D to the effect that Rule 8-D intended to



apply retrospectively.

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49. Applying the principles of statutory interpretation for interpreting retrospectivity of a fiscal statute and looking into the nature and purpose of sub-section (2) and sub-section (3) of Section 14-A as well as purpose and intent of Rule 8-D coupled with the Explanatory Notes in the Finance Bill, 2006 and the Departmental understanding as reflected by Circular dated 28-12-2006, we are of the considered opinion that Rule 8-D was intended to operate prospectively.”

(d) In a recent judgment in **Neena Aneja v. Jai Prakash Associates Ltd.**, [(2022) 2 SCC 161 : 2021 SCC OnLine SC 225], the Apex Court while considering the effect of amendment to Consumer Protection Act, whereby the pecuniary jurisdiction was altered, terming the question of the Forum to be procedural, went on to hold that the pending proceedings would have to continue in the existing Forums. The relevant paragraphs of the said decision are extracted below:

“82. Section 6 of the General Clauses Act provides governing principles with regard to the impact of the repeal of a central statute or regulation. These governing principles are to apply, “unless a different intention appears”. Clause (c) of Section 6 inter alia stipulates that a repeal would not affect “any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed”. The right to pursue a validly instituted consumer complaint under the 1986 Act is a right which has accrued under the law which was repealed. Clause (e) of Section 6 stipulates that the repeal will not affect, inter alia, any “legal proceeding or remedy in respect of any such right ... as aforesaid”. Any such legal proceedings may be continued as if the repealing legislation had not been passed. Clause (c) of Section 6 has the effect of preserving the right which has accrued. Clause (e) ensures that a legal proceeding which has been initiated to protect or enforce “such right” will not be affected and that it can be continued as if the repealing legislation has not been enacted. The expression “such a right” in clause (e) evidently means the right which has been adverted to in clause (c). The plain consequence of clause (c) and clause (e), when read together is twofold : first, the right which has accrued on the date of the institution of the consumer complaint under the 1986 Act (the repealing law) is preserved; and second, the enforcement of the right through the



instrument of a legal proceeding or remedy will not be affected by the repeal.

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83. Having stated the above position, we need to harmonise it with the principle that the right to a forum is not an accrued right, as discussed in Part C of this judgment. Simply put, while Section 6(e) of the General Clauses Act protects the pending legal proceedings for the enforcement of an accrued right from the effect of a repeal, this does not mean that the legal proceedings at a particular forum are saved from the effects from the repeal. The question whether the pending legal proceedings are required to be transferred to the newly created forum by virtue of the repeal would still persist. As discussed, this Court in *New India Assurance Co. Ltd. v. Shanti Misra*, (1975) 2 SCC 840] and *Maria Cristina [Maria Cristina De Souza Sodder v. AmriaZurana Pereira Pinto*, (1979) 1 SCC 92] has held that forum is a matter pertaining to procedural law and therefore the litigant has to pursue the legal proceedings at the forum created by the repealing Act, unless a contrary intention appears. This principle would also apply to pending proceedings, as observed in *Ramesh Kumar Soni [Ramesh Kumar Soni v. State of M.P., (2013) 14 SCC 696 : (2014) 4 SCC (Cri) 340]*, *Hitendra Vishnu Thakur [Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602 : 1994 SCC (Cri) 1087]* and *Sudhir G. Angur [Sudhir G. Angur v. M. Sanjeev, (2006) 1 SCC 141]*. In this backdrop, what is relevant to ascertain is whether a contrary intent to the general rule of retrospectivity has been expressed under the 2019 Act to continue the proceedings at the older forum.

84. Now, in considering the expression of intent in the repealing enactment in the present case, it is apparent that there is no express language indicating that all pending cases would stand transferred to the fora created by the 2019 Act by applying its newly prescribed pecuniary limits. In deducing whether there is a contrary intent, the legislative scheme and procedural history may provide a relevant insight into the intention of the legislature.

86. In this backdrop, something specific in terms of statutory language — either express words or words indicative of a necessary intendment would have been required for mandating the transfer of pending cases. One can imagine the serious hardship that would be caused to the consumers, if cases which have been already instituted before Ncdrc were required to be transferred to ScdrCs as a result of the alteration of pecuniary limits by the 2019 Act. A consumer who has engaged legal counsel at the headquarters of Ncdrc would have to undertake a fresh round of legal representation before Scdrc incurring expense and engendering uncertainty in obtaining access to justice. Likewise, where complaints have been instituted before Scdrc, a transfer of proceedings would require consumers to obtain legal representation before the District Commission if cases were to be transferred. Such a course of action would have a detrimental impact on the



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rights of consumers. Many consumers may not have the wherewithal or the resources to undertake a fresh burden of finding legal counsel to represent them in the new forum to which their cases would stand transferred.

87. It would be difficult to attribute to Parliament, whose purpose in enacting the 2019 Act was to protect and support consumers with an intent that would lead to financial hardship, uncertainty and expense in the conduct of consumer litigation. Ironically, the objection which has been raised in the present case to the continued exercise of jurisdiction by Ncdrc in regard to the consumer complaint filed by the appellant is by the developer who is the respondent herein. It is a developer who opposed the continuation of the proceedings before Ncdrc on the ground that under the new consumer legislation the pecuniary limits of the jurisdiction exercisable by Ncdrc have been enhanced and the complaint filed by the appellant which was validly instituted under the erstwhile law should be transferred to Scdrc. Such a course of action will result in thousands of cases being transferred across the country, from Ncdrc to Scdrcs and from Scdrcs to the District Commission.

F. Summation

91. For the above reasons, we have come to the conclusion that proceedings instituted before the commencement of the 2019 Act on 20-7-2020 would continue before the fora corresponding to those under the 1986 Act (the National Commission, State Commissions and District Commissions) and not be transferred in terms of the pecuniary jurisdiction set for the fora established under the 2019 Act. While allowing the appeals, we issue the following directions:

91.1. The impugned judgment and order of Ncdrc dated 30-7-2020 [NeenaAneja v. Jai Prakash Associates Ltd., 2020 SCC OnLineNcdrc 777] and the review order dated 5-10-2020 [NeenaAneja v. Jai Prakash Associates Ltd., 2020 SCC OnLineNcdrc 778] , directing a previously instituted consumer case under the 1986 Act to be filed before the appropriate forum in terms of the pecuniary limits set under the 2019 Act, shall stand set aside.

91.2. As a consequence of 91.1 above, the National Commission shall continue hearing the consumer case instituted by the appellants.

91.3. All proceedings instituted before 20-7-2020 under the 1986 Act shall continue to be heard by the fora corresponding to those designated under the 1986 Act as explained above and not be transferred in terms of the new pecuniary limits established under the 2019 Act....”

(e) In a further recent judgment in **Shankarlal Nandani v. Sohanlal**

Jain, [2022 SCC OnLine SC 442], the Apex court held as follows:



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“29. Still further, one of the principles is that the rights of the parties have to be determined on the date when lis commences i.e., on the date of filing of the suit. The plaintiff is entitled to decree on that day when he initiated the proceedings, therefore, rights of the parties have to be examined as on the said day. Recently, this Bench in a judgment reported as ECGC Limited v. Mokul Shriram EPC JV was examining the question as to whether the condition of deposit while filing appeal under the Consumer Protection Act, 2019 would be applicable or the provisions as it existed under the Consumer Protection Act, 1986 when the complaint was filed would be applicable. This Bench considering the Constitution Bench judgments in Garikapati Veeraya v. N.Subbiah Choudhry, VitthalbhaiNaranbhai Patel v. Commissioner of Sales Tax, M.P., Nagpur and Hardeodas Jagannath v. The State of Assam held that the provisions of the Consumer Protection Act, 2019 would not be applicable to the complaints filed prior to the commencement of the 2019 Act. Therefore, the Judgment and Decree passed in the suit for possession does not suffer from any illegality.”

22. The conspicuous and irresistible conclusion that could be drawn upon reading of the above cases, are that the law as applicable on the date of the application must be applied. In the present case, the appellant had the right to apply for waiver as per the notification dated 23-05-1996 by invoking clause 2 (e) which empowered an assessee to apply for waiver, when the return could not be filed for “unavoidable reasons”, when the application was filed in 2003. Once the applicant was found eligible to apply on the date of application, his application cannot be thrown out as not maintainable because of a subsequent notification. It is one thing to say that the relief is discretionary and another to state that the application is not maintainable. The subsequent notification will not affect the consideration of the applications pending on merit. Such an interpretation would not be against the law laid down by the Apex Court, but would also be arbitrary. Therefore, the



WA Nos. 979/2018 & 2811/2021

contention of the revenue on this ground is rejected. Insofar as the merit is concerned, we have already seen that the legal issue as to chargeability till the financial year 2012-13 has been decided in favour of the assessee in ***Mitsubishi case (supra)***. Therefore, we find no ground to interfere with the findings of the Learned Judge by relying upon the Judgment in ***Chennai Port Trust case***, to exclude the period till the decision was taken by AAR. In view of the same, the appeal in W.A No.979/2018 is also rejected.

23. In the result, both the appeals are dismissed. However, it is open to the appellants / Revenue to claim any other amount due from the assessee(s) or the deductor, if they are permitted in law to do so. No costs. Consequently, miscellaneous petitions are closed.

(R.M.D., J.) (J.S.N.P., J.)

30.06.2022

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Index:Yes/no

Internet:Yes/No

To

1.The Chief Commissioner of Income Tax-I
121, Mahatma Gandhi Road
Chennai - 600 034

<https://www.mhc.tn.gov.in/judis>



WA Nos. 979/2018 & 2811/2021

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Chennai - 600 006

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R.MAHADEVAN, J.
and
J.SATHYA NARAYANA PRASAD, J.

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