IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2025

CORAM

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

WA Nos.1841, 1842 of 2021

M/s.Sri Krishna Tiles and Potteries (Madras) Pvt. Ltd,
Flat No.A-1, Kumaravijayam,
No.99, Royapettah High Road,
Mylapore, Chennai 4 : Appellant in both appeals

versus

1.Commissioner of Wealth Tax,
Chennai III
No.121, Mahatma Gandhi Road,
Chennai 600 034 : R-1 in WA No.1841 of 2021

1.Commissioner of Income Tax,
Chennai III
No.121, Mahatma Gandhi Road,
Chennai 600 034 : R-1 in WA No.1842 of 2021

2.Income Tax Settlement Commission
(Now substituted as Interim Board of
Settlement by Finance Act, 2021)
Additional Bench, Chennai,
640, Anna Salai, Nandanam,
Chennai 600 035 : Respondents

Prayer: Appeals filed against the Judgment passed by this Court in WP No.16788 of 2008 and 19364 of 2008 dated 30.04.2021.

For Appellant	:	Mr.R.V.Eswar, Senior Counsel, for Mr.R.Sivaraman
For Respondents	:	Mr.V.Mahalingam

COMMON JUDGMENT

(Judgment of the Court was delivered by the Hon'ble Chief Justice)

These appeals filed by the assessee impugn the order dated 30.04.2021 passed by a learned Single Judge of this Court, allowing the petitions that were filed by the Commissioner of Wealth Tax and Commissioner of Income Tax, viz., respondent No.1 herein.

2. Respondent No.1 had challenged the order passed by the Settlement Commission under Section 245D(4) of the Income Tax Act, 1961 and also Section 22D(4) of the Wealth Tax Act. Both provisions are identical.

3. Much after the petitions were filed and the impugned orders were delivered and even after the present appeals were filed by the assessee, the scope of challenge by the Department to the decision of the Settlement Commission came up for consideration before a Division Bench of the Bombay High Court, of which one of us (Chief Justice) was a party. The Division Bench in the case of ***Commissioner of Income Tax, Central II vs. Income Tax Settlement Commission***[1] ***(M/s. Kanakia Spaces Pvt. Ltd.***), and in ***WP No.432 of 2020 (Principal Commissioner of Income Tax (Central-3) vs. Income Tax Settlement Commission (ITSC) and others, dated 25.04.2024 (unreported)*** as also ***in Principal Commissioner of Income Tax (Central-3) vs. Income Tax Settlement Commission (ITSC) and others, (Wadhwa Group Holding Pvt. Ltd), order dated 18.04.2024 in WP No.1830 of 2019*** dealt with similar issues.

4. Paragraph Nos.7 to 15 of ***Wadhwa Group Holding Pvt Ltd. (supra)***, read as under:

> *"7. The Apex Court in Jyotendrasinhji Vs. S. I. Tripathi has discussed the scope of challenge to orders passed by the*

1 ***[2024] 161 taxmann.com 495 (Bombay)***

ITSC. The Apex Court has held that after examining such further evidence as it may be placed before it, the ITSC may, in accordance with the provisions of this Act, pass suchorder as it thinks fit. The Apex Court also held that the scope of enquiry is restricted to whether the order passed by the ITSC is contrary to any of the provisions of the Act and if so, apart from ground of bias, fraud and malice which, of course, constitute a separate and independent category, has it prejudiced the assessee. The Apex Court has held that the order of the ITSC is in the nature of a package deal and that it may not be ordinarily possible to dissect its order and accept what is favourable and reject what is not. Moreover, it is open to the ITSC to accept an amount of tax by way of settlement and to prescribe the manner in which it is to be paid. The Apex Court further held that the ITSC has the discretion to condone the defaults, penalties or prosecution, where it thinks appropriate. Thus, the sole limitation upon the ITSC is to act in accordance with the provisions of the Act. The ITSC, as held in Jyotendrasinhji (supra), need not even give reasons. The Apex Court further held that even if the interpretation placed by the ITSC on documents is not correct, it would not be a ground for interference since a wrong interpretation of documents cannot be said to be a violation of the provisions of the Act. The Apex Court has held that the scope of enquiry by the High Court under Article 226 should be restricted to i) whether the ITSC has acted in accordance to the provisions of the Act and ii) whether the order passed by it has prejudiced assessee apart from the ground of bias, fraud and malice which constitute a separate and independent category. For ease of reference, paragraphs no. 14 and 15 of Jyotendrasinhji (supra) reads as under:

> "14. The first question we have to answer is the scope of these appeals preferred under Article 136 against the orders of the Settlement Commission. The question is whether all the questions of fact and law as may have been decided by the Commission are open to review in this appeal. For answering this question one has to have regard to the scheme of Chapter XIX-A. The said chapter was inserted by the Taxation Laws (Amendment) Act, 1975 with effect from 1-4-1976. A

somewhat similar provision was contained sub-sections (1A) to (1D) of Section 34 of the Income Tax Act, 1922 introduced in the year 1954. The provisions of Chapter XIX-A are, however, qualitatively different and more elaborate than the said provisions in the 1922 Act. The proceedings under this chapter commence by an application made by the assessee as contemplated by Section 245C. Section 245D prescribes the procedure to be followed by the commission on receipt of an application under Section 245C. Sub-section (4) says: 'after examination of the records and the report of the commissioner received under sub-section (1), and the report, if any, of the commissioner received under sub-section (3), and after giving an opportunity to the applicant and to the commissioner to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the settlement commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the commissioner under sub-section (1) or sub-section (3)." Section 245E empowers the Commission to reopen the completed proceedings in appropriate cases, while Section 245F confers all the powers of an Income Tax authority upon the Commission. Section 245H empowers the Commission to grant immunity from penalty and prosecution, with or without conditions, in cases where it is satisfied that the assessee has made a full disclosure of his income and its sources. Under Section 245HA the Commission can send back, the matter to assessing. officer, where it finds that the applicant is not cooperating with it. Section 245-I declares that every order of settlement passed under Sub Section (4) of Section 245D shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in, Chapter XIX-A, be re- opened in any proceeding under the Act or under any other law for the time being in force. Section 245L declares that any proceedings under chapter XIX-A before the settlement commission shall be deemed to be a judicial proceeding within the meaning of Section 193 and 228 and for the purposes of Section 196 of the Indian Penal Code.

15. It is true that the finality clause contained in Section 245I does not and cannot bar the jurisdiction of the High Court under Article 226 or the jurisdiction of this court under Article 32 or under Article 136, as the case may be. But that does not mean that the jurisdiction of this Court in the appeal preferred directly in this court is any different than what it would be if the assessee had first approached the High Court under Article 226 and then come up in appeal to this court under Article 136. A party does not and cannot gain any advantage by approaching this Court directly under Article 136, instead of approaching the High Court under Article 226. This is not a limitation inherent in Article 136; it is a limitation which this court imposes on itself having regard to the nature of the function performed by the Commission and keeping in view the principles of judicial review. May be, there is also some force in what Dr. Gauri Shankar says viz., that the order of commission is in the nature of a package deal and that it may not be possible, ordinarily speaking, to dissect its order and that the assessee should not be permitted to accept what is favourable to him and reject what is not. According to learned counsel, the Commission is not even required or obligated to pass a reasoned order. Be that as it may, the fact remains that it is open to the Commission to accept an amount of tax by way of settlement and to prescribe the manner in which the said amount shall be paid. It may condone the defaults and lapses on the part of the assessee and may waive interest, penalties or prosecution, where it thinks appropriate. Indeed, it would be difficult to predicate the reasons and considerations which induce the commission to make a particular order, unless of course the commission itself chooses to, give reasons for its order. Even if it gives reasons in a given case, the scope of enquiry in the appeal remains the same as indicated above viz., whether it is,contrary to any of the

provisions of the Act. In this context, it is relevant to note that the principle of natural justice (and alteram partem) has been incorporated in Section 245D itself. The sole overall limitation upon the Commission, thus, appears, to be that it should act in accordance with the provisions of the Act. The scope of enquiry, whether by High Court under Article 226 or by this Court under Article 136 is also the same whether the order of the Commission is contrary to any of the provisions of the Act and if so, has it prejudiced the petitioner/appellant apart from ground of bias, fraud & malice which, of course, constitute a separate and independent category. Reference in this behalf may be had to the decision of this Court in Sri Ram Durga Prasad v. Settlement Commission 176 I.T.R. 169, which too was an appeal against the orders of the Settlement Commission. Sabyasachi Mukharji J., speaking for the Bench comprising himself and S.R. Pandian, J. observed that in such a case this Court is "concerned with the legality of procedure followed and not with the validity of the order.' The learned Judge added 'judicial review is concerned not with the decision but with the decision-making process." Reliance was placed upon the decision of the House of Lords in Chief Constable of the N.W. Police v. Evans, [1982] 1 W.L.R.1155. Thus, the appellate power under Article 136 was equated to power of judicial review, where the appeal is directed against the orders' of the Settlement Commission. For all the above reasons, we are of the opinion that the only ground upon which this Court can interfere in these appeals is that order of the Commission is contrary to the provisions of the Act and that such contravention has prejudiced the appellant. The main controversy in these appeals relates to the interpretation of the settlement deeds though it is true, some contentions of law are also raised. The commission has interpreted the trust deeds in a particular manner. Even if the interpretation placed by the commission the said deeds is not correct, it would not be a ground for interference in these appeals, since a wrong interpretation of a deed of trust cannot be said to be a violation of the provisions of the Income Tax Act. It is equally clear that the interpretation placed upon the said deeds by the Commission does not bind the authorities under the Act in proceedings relating to other assessment years. In view of the above, though it is not necessary, strictly speaking, to go into the correctness of the interpretation placed upon the said deeds by the commission, and it is enough if we confine ourselves to the question whether the order of the Commission is contrary to the provisions of the Act, we propose to, for the sake of completeness, examine also whether the order of Commission is vitiated by any such wrong interpretation?"

8. In N. Krishnan vs. Settlement Commission And Others, it is held that the ITSC is the forum for self surrender and seeking relief and not a forum for challenging the legality of assessment order or orders passed in any other proceedings. The Karnataka High Court held that the power conferred on the settlement commission is so wide that it can take any view on any questions of law, which it considers appropriate having regard to the facts and circumstances of a case including giving immunity against prosecution or imposition of penalty. The Karnataka High Court further held that it is in the nature of statutory arbitration to which a person may submit himself voluntarily and the scope of interference is much more restricted than the power of the court to interfere with an arbitration award.

9. A similar matter came to be considered by this court in the Commissioner of Income Tax,Central-II Vs. Kanakia Spaces Pvt Ltd. This court after considering all the judgments cited, noted that in R. B. Shreeram Durga Prasad & Fatechand Nursing Das (Supra) the court held that any challenge to the orders of the Settlement Commission, the High Court should be concerned with the legality of the procedure followed and not with the validity of the order. The judicial review should be concerned not with the decision but with the decision making process. Thus, the Court could not interfere with the order if otherwise proper on the ground that the decision appeared erroneous. The decision wrong or right was binding, if it is reached fairly after giving adequate opportunity to the parties to place their case in the manner provided by the Act.

Unless grave procedural defect such as violation of the mandatory procedural requirements of the provisions of Chapter XIX-A and/or violation of rules of natural justice is made out or if it is found that there is no nexus between the reasons given and the decision taken only then the court may interfere. Thus, it is clear that the powers conferred on the ITSC is so wide that it has the discretion to take any view on any question of law, which it considers appropriate, having regard to the facts and circumstances of the case. The High Court ought not to sit in appeal as to the sufficiency of the material and particulars placed before the ITSC.

10. In Kanakia Spaces (Supra) the court has held that Section 292C(1) (ii) and Section 132(4A) of the Act mandates that the contents of seized documents are true. Where any books of accounts or other documents are or is found in possession or control of any person in the course of a search it may be presumed that the contents of such books of account and other documents are true. The issue of income revised percentage of profit, cash loans, bogus purchases from Dwish Enterprise, etc., came up for consideration before the ITSC on the basis of documents found during the search under Section 132 of the Act. The revenue cannot raise any grievance on the acceptance of entries in the documents by the ITSC because once the contents of documents are accepted as correct, then no further inquiry was required to be carried out. Moreover, inquiry under Section 245D(3) of the Act was subject to discretion of the ITSC as it relates to question of fact and is not amenable to the jurisdiction of this court. Moreover, as held in Jyotendrasinhji (supra), even if the interpretation placed by the ITSC on the documents seized is not correct, it would not be a ground for interference since a wrong interpretation of documents cannot be said to be a violation of the provisions of the Act. Further, as held in Kotak Mahindra Bank Ltd. vs. Commissioner of Income Tax & Anr. 6 sufficiency of the material and particulars placed before the Commission based on which the Commission proceeded to pass its orders are beyond the scope of judicial review. As held by the Apex Court in Brij Lal And Others vs. Commissioner of Income Tax7 the High Court should not scrutinize an order or *proceeding of the ITSC as an appellate court.*

11 Therefore, in our view, ITSC was entitled to exercise discretion while passing the impugned order and has exercised its discretion. In our view, there is neither violation of any mandatory procedure prescribed under any of the sections of Chapter XIX-A of the Act nor any violation of any of the Rules of natural justice. Further, it cannot be said that the reasons assigned by the ITSC for granting relief sought for by assessee have no nexus to the decision taken.

12 As held by the Apex Court in Kotak Mahindra Bank Ltd. (supra), unsettling reasoned orders of the ITSC, and in the present case order runs into almost 170 pages, may erode the confidence of bonafide assessee thereby leading to multiple litigation where settlement is possible and this larger picture has to be borne in mind. Moreover, the members of the ITSC have been appointed by Central Government in accordance with Section 245B(3) of the Act for their integrity and outstanding ability and for special knowledge and experience in, problems relating to direct taxes and business accounts. The members of the ITSC, therefore, cannot be questioned for their decision or for exercising their discretion.

13. It will be useful to reproduce, at this stage, paragraphs 28, 29, 30 and 31 of Kanakia Spaces (Supra), which read as under:

> "28. As held in N. Krishnan (supra), the ITSC is the forum for self surrender and seeking relief and not a forum for challenging the legality of assessment order or orders passed in any other proceedings. This is evident from the provisions of the Act because it even prevents the application made from being withdrawn. The power conferred on the settlement commission is so wide that it can take any view on any questions of law, which it considers appropriate having regard to the facts and circumstances of a case including giving immunity against prosecution or imposition of penalty. Therefore, the scope of interference against a decision of the Settlement Commission is very narrow. As observed in N. Krishnan (supra), it is in the nature of statutory arbitration to which a person may submit

himself voluntarily and the scope of interference is much more restricted than the power of the court to interfere with an arbitration award.

29. Unsettling reasoned orders of the Settlement Commission, as noted by the Hon'ble Apex Court in Kotak Mahindra Bank Ltd. (supra), may erode the confidence of bona fide assessee, thereby leading to multiplicity of litigation where settlement is possible and this larger picture has to be borne in mind.

30. Moreover, we also should note that Section 245B(3) of the Act provides that Chairman, Vice Chairman and other members of the Settlement Commission shall be appointed by the Central Government from amongst persons of integrity and outstanding ability, having special knowledge of, and, experience in, problems relating to direct taxes and business accounts. Therefore, the members of the ITSC have been appointed because of their integrity and outstanding ability and for the special knowledge and experience in problems relating to direct taxes and business accounts. It is rather unfortunate that the Central Government questions the findings of the ITSC without explicitly and in detail explaining how the order of the Commission is contrary to the provision of the Act or there was miscarriage of justice or order has been passed without jurisdiction. More so when bias or fraud or malice is not alleged in the petition against the members of the ITSC. In the case at hand we are not satisfied that the order of the ITSC is contrary to the provisions of the Act. It is rather unfortunate that the Commissioner who has filed the Writ Petition is sitting in appeal over findings of the members of the ITSC. Chapter XIX-A was inserted to enable an assessee, at any stage of a case relating to him, to make an application containing a full and true disclosure of his income which has not been disclosed before the A.O., the manner in which such income has been derived, the additional tax payable on such income and such other particulars as may be prescribed, to the ITSC to have the case settled. When such an application is made and the ITSC is satisfied that there has been a full and true disclosure, the department cannot raise any grievance. Unless a case of bias or fraud or malice is alleged, not

being a bald allegation, but with details, no petition by Revenue impugning an order by the ITSC should be entertained. We say this because the Central Government has appointed the persons who are members of the Commission as they are persons of integrity and outstanding ability, having special knowledge of, and, experience in, problems relating to direct taxes and business accounts. Or the order impugned must be so perverse that no person would pass such an order, like for e.g., it is said the sun rises in the west. An assessee may have a little more leeway as per the scope prescribed in Jyotendrasinhji (supra).

31. As observed by the Hon'ble Apex Court in Kotak Mahindra Bank Ltd. (supra), interference with the orders of the ITSC should be avoided, keeping in mind the legislative intent. The scope of interference is very narrow and certainly the High Court should not scrutinize an order of the ITSC as an appellate court. Unsettling reasoned orders of the ITSC may erode the confidence of assessees. This larger picture has to be kept in mind."

14. As observed in Kanakia Spaces (Supra), petitioner is in effect sitting in appeal over the decision and wisdom of the members of the ITSC. As held in Commissioner of Income Tax (Central) Vs. B. N. Bhattacharjee & Anr, that Chapter XIXA makes it clear that the ITSC exercises many powers which affect all the rights of the parties before it and vests in it powers to grant immunity from prosecution and penalty, to investigate into many matters and to enjoy conclusiveness regarding its orders or settlement. It is further stated Chapter XIXA was inserted on the basis of recommendation by the Wanchoo Committee which was mindful of the benefits of a policy of collection of tax without protracted litigation through the machinery of the Settlement Commission. So it expressed the view that it was of paramount importance that only persons who are known for their integrity and high sense of justice and fairness are selected for appointment on the

Commission. The gravity of this public policy cannot be undermined by the revenue itself by challenging the reasoned orders of the Settlement Commission.

15 In the circumstances, as it is evident from Section 245 of the Act that the Central Government has appointed the members as their representatives to settle the disputes with assesee, which reflects the confidence they had in the members because the persons appointed are of integrity and known for their outstanding ability and expertise and for the special knowledge and experience in problems relating to direct taxes and business accounts. Therefore, these members have been authorised to settle the disputes on behalf of the Government and it does not lie in the mouth of the Government to challenge the decision taken by their own representatives without making allegations of bias or fraud or malice."

5. Therefore, as is evident from Section 245 of the Act, the Central Government has appointed the members of Income Tax Settlement Commission (ITSC) as their representatives to settle the disputes with assesee, and it reflects the confidence they had in the members because the persons appointed are of integrity and known for their outstanding ability and expertise and for the special knowledge and experience in problems relating to taxes and business accounts. These members, therefore, have been authorised to settle the disputes on behalf of the Government and it would not lie in the mouth of the Government to challenge the decision

taken by their own representatives without making allegations of bias or fraud or malice.

6. As noted in Kanakia Spaces Pvt. Ltd (supra), original petitioner, viz., respondent No.1 herein, is in effect sitting in appeal over the decision and wisdom of the members of the ITSC. It is clear, as held in ***CIT (Central) Vs. B. N. Bhattacharjee & Anr***[2], the ITSC exercises many powers which affect all the rights of the parties before it and vests in it powers to grant immunity from prosecution and penalty, to investigate into many matters and to enjoy conclusiveness regarding its orders or settlement. Therefore, if the ITSC has passed the order, the members, for the reasons mentioned in the provision, knew what exactly they were doing. Admittedly, there is also no allegation of bias or fraud or malice.

7. It may be true that when the impugned orders were passed, judgment of the Bombay High Court was not in place. But it is well settled that a judicial decision acts retrospectively as held in Blackstonian Theory. It is not the function of the Court to pronounce a 'new rule' but to maintain

2 ***(1979) 4 SCC 121***

and expound the 'old one'. Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. Even where an earlier decision of a Court operated for quite some time, the decision rendered later on would have retrospective effect, clarifying the legal position which was earlier not correctly understood.

8. Paragraph No.14 of a judgment of a Division Bench of the Bombay High Court, of which one of us (Chief Justice) was a party, in ***Indusind Bank Ltd. vs. Income Tax Settlement Commission and Others***[3], reads as under:

> *14. Mr. Suresh Kumar had also submitted that the judgment of the Bombay High Court in Credit Suisse First Boston (Cyprus) Ltd. (supra) was a later judgment, delivered much after the Settlement Commission passed the impugned order. Mr. Suresh Kumar also stated that the judgment of the High Court relied upon by Mr.Thakkar as also the orders passed by ITAT for subsequent Assessment Years from 1998-99 onwards were passed after the order of the Settlement Commission. These submissions of Mr. Suresh Kumar are not acceptable. The Hon'ble Apex Court in Assistant Commissioner of Income Tax, Rajkot vs. Saurashtra Kutch Stock Exchange Ltd.7 has held that a judicial decision acts retrospectively. The Judges do not make law, they only discover or find the correct*

3 ***2023 SCC OnLine Bom 1326***

law. The law has always been the same and if a subsequent decision alters the earlier one, the later decision does not make a new law. It only discovers the correct principle of law which has to be applied retrospectively. The Hon'ble Apex Court held that even an earlier decision of the court operated for quite sometime, the decision rendered later on would have retrospective effect, clarifying the legal position which was earlier not correctly understood. Paragraph no. 40 to 44 of the said judgment read as under :

> 40. The core issue, therefore, is whether non-consideration of a decision of Jurisdictional Court (in this case a decision of the High Court of Gujarat) or of the Supreme Court can be said to be a "mistake apparent from the record"? In our opinion, both – the Tribunal and the High Court - were right in holding that such a mistake can be said to be a "mistake apparent from the record" which could be rectified under Section 254(2).
>
> 41. A similar question came up for consideration before the High Court of Gujarat in Suhrid Geigy Ltd.'s case (supra). It was held by the Division Bench of the High Court that if the point is covered by a decision of the Jurisdictional Court rendered prior or even subsequent to the order of rectification, it could be said to be "mistake apparent from the record" under Section 254(2) of the Act and could be corrected by the Tribunal.
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> 42. In our judgment, it is also well-settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the Court to pronounce a 'new rule' but to maintain and expound the 'old one'. In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the Court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood.

> 43. Salmond in his well-known work states;
> "(T)he theory of case law is that a judge does not make law; he merely declares it; and the overruling of a previous decision is a declaration that the supposed rule never was law. Hence any intermediate transactions made on the strength of the supposed rule are governed by the law established in the overruling decision. The overruling is retrospective, except as regards matters that are res judicataor accounts that have been settled in the meantime".
> 44. It is no doubt true that after a historic decision in Golak Nath v. State of Punjab AIR 1967 SC 1643, this Court has accepted the doctrine of 'prospective overruling'. It is based on the philosophy: "The past cannot always be erased by a new judicial declaration". It may, however, be stated that this is an exception to the general rule of the doctrine of precedent."

9. We are informed that Special Leave Petition filed against the above judgment has also been dismissed by the Apex Court vide order dated 04.11.2024 in SLP (Civil) Diary No.43412 of 2024.

10. In the circumstances, the appeals are allowed. The order passed by the learned Single Judge on 30.4.2021 is quashed and set aside. There will be no order as to costs. Consequently, all the interim applications also stand disposed of.

(K.R.SHRIRAM, CJ.) (SUNDER MOHAN, J.)

10.06.2025

Index : Yes
Neutral Citation : Yes
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THE HON'BLE CHIEF JUSTICE
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