



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.31523 OF 2023

M/s. Vishwakarma Developers

A partnership firm having its address at :

Shop No.481, C/o Hariyana Trading Co.,

Marketyard, Gultekdi, Pune – 411 037.

PAN : AALVF4641F

.... Petitioner

Vs.

1. The Central Board of Direct Taxes
Through the Secretary (Revenue),
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi – 110 001
Email : rsecy@nic.in
2. The Interim Board For Settlement-I,
New Delhi, Through Its Registrar,
9th Floor, Lok Nayak Bhawan,
Khan Market,
New Delhi – 110 003.
Email : delhi.ibs1@incometax.gov.in
3. The Principal Commissioner of
Income-Tax (Central), Pune,
Aayakar Sadan, Bodhi Towers,
Salisbury Park, Gultekdi,
Pune 411 037.
Email : pune.pcit.cen@incometax.gov.in
4. The Asst. Commissioner Of
Income-Tax, Central Circle 2(2), Pune,
Aayakar Sadan, Bodhi Towers,
Salisbury Park, Gultekdi,
Pune 411 037.
Email : pune.dcit.cen2.2@incometax.gov.in

5. The Union of India
Through the Principal Secretary,
Department of Revenue, Ministry of
Finance, Room No.128-B, North Block,
New Delhi – 110 001.
Emails : rsecy@nic.in and
judicial-dla@nic.in Respondents

Mr. Mihir Naniwadekar a/w. Ms. Insha Hanif S for the Petitioner.

Mr. Suresh Kumar a/w. Dr. Dhanalakshmi Iyer for the Respondents.

CORAM : G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.

DATE : 24 July, 2024

Oral Judgment : (Per G. S. Kulkarni, J.)

1. Rule. Rule made returnable forthwith. Respondents waives service. By consent of the parties, heard finally.
2. This Writ Petition under Article 226 of the Constitution of India although has prayed for number of reliefs, the only reliefs being pressed by Mr. Naniwadekar, learned Counsel for the Petitioner are Prayer Clauses (c) & (d), which read thus :-

“(c) Issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, order or direction under Article 226 of the Constitution of India, quashing the Impugned Settlement Order passed u/s. 245D(4) of the Act by Respondent No.2 on 26 September 2023 (Exhibit L), and the Impugned Notices issued by Respondent No.4 u/s. 142(1) of the Act for Ays 2015-16 to 2020-21 (Exhibit M-1 to Exhibit M-12) as being wholly without jurisdiction, illegal and

arbitrary;

(d) Issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, order or direction under Article 226 of the Constitution of India, directing Respondent No.2 to proceed with the adjudication and consideration of the Petitioner's Settlement Application dated 25 March 2021 bearing No.MH/PUCC/097/2020-21/IT on its merits and in accordance with law, without reference to the issue of eligibility raised by Respondent No.3 in relation to the Impugned CBDT Order issued by Respondent No.1."

3. The relevant facts are required to be noted. On 22nd November, 2019, search was conducted at the premises of the Petitioner's partners. On 23rd March, 2021, notices under Section 153C of the Income Tax Act, 1961 ("***the Act***") for the Assessment Years 2015-16 to 2019-20 and a notice under Section 143(2) of the Act for the Assessment Year 2020-21 were issued to the Petitioner. In these circumstances, on 25th March, 2021 the Petitioner was entitled to file a Settlement Application for the Assessment Years 2015-16 to 2020-21.

4. It is the case of the Petitioner that on 28th March, 2021, Finance Act, 2021 was enacted, as a consequence of which the Settlement Commission came to be abolished, consequent to which the jurisdiction of such Commission to deal with pending applications was transferred to the Interim Board of Settlement. The Interim Board came to be constituted by the Central Government on 10th August, 2021 by a Notification No.91 of 2021.

5. It is contended that the CBDT issued a Press Release dated 7th September, 2021, in view of the orders passed by the High Courts informing the public at large that a settlement application could be filed even after 1st February, 2021, being the date when the Finance Bill was introduced. It was also informed that the settlement application could be filed by taxpayers till 30th September, 2021.

6. On such backdrop on 22nd September, 2021, the Petitioner re-filed the Settlement Application pursuant to such press release and paid additional interest for the period of March 2021 to September 2021.

7. On 28th September, 2021, the CBDT however issued another Order under Section 119(2)(b) of the Act, which was also subject matter of the press release, in which two additional conditions were incorporated in Para 4, in the context of Section 245C(5), to the effect that applications could be filed by the assesses, who were eligible, to make an application as on 31st January, 2021 and who had assessment proceedings pending on the date of filing of the settlement application.

8. The Petitioner contends that during the period August 2022 to September 2023, settlement proceedings were conducted

by the Interim Board of Settlement (for short “**IBS**”) constituted by the Central Government vide a Notification dated 10th August, 2021 (supra). The petitioner’s application was placed before the IBS. The Petitioner from time to time pursued the said proceedings before the IBS as also submissions on behalf of the Petitioner were filed.

9. The IBS passed final/impugned orders on the Petitioner’s application on 26th September, 2023, which held that the Petitioner was not eligible for applying for settlement. The basis for such view was that as per Order dated 28th September, 2021 was of the CBDT under Section 119 of the Act, the eligibility in terms of the pending proceedings was determined as on 31st January, 2021, and in the Petitioner’s case as the proceedings were initiated on 23rd March, 2021 by issuance of notice under Section 153C, the Petitioner’s application was held to be not maintainable.

10. The Petitioner has contended that as the Petitioner’s settlement application was rejected by the IBS, on 13th October, 2023 and 1st November, 2023, the Assessing Officer issued to the Petitioner a notice under Section 142(1). It is in these circumstances, the present Petition was filed on 4th November, 2023, which also prays for a relief that the Order dated 28th

September, 2021 passed by the CBDT under Section 119(2)(b) of the Act (supra) be quashed and set aside and a writ of mandamus be issued to direct the IBS to adjudicate the Petitioner's settlement application.

11. Mr. Naniwadekar, Learned Counsel for the Petitioner, at the outset, would submit that the Order dated 28th September, 2021 passed by the CBDT, insofar as, it incorporated Condition No.4, was subject matter of challenge before this Court in the case of ***Sar Senapati Santaji Ghorpade Sugar Factory Ltd. Vs. Assistant Commissioner of Income-tax***¹. In such decision the Court struck down Paragraph 4 of the CBDT's Order dated 28th September, 2021, declaring it to be *ultra vires* of the parent Act, as it incorporated additional eligibility conditions for filing Settlement Applications which were as under:-

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

(i) by the assesseees who were eligible to file application for settlement on 31.01.2021 for the assessemnt years for which the application is sought to be filed (relevant assesement years); and

(ii) where the relevant assesement proceedings of the assessee are pending as on the date of filing the application for settlement.”

12. Mr. Naniwadekar would submit that in view of the decision of this Court in *Sar Senapati Santaji Ghorpade Sugar Factory Ltd. (supra)*, the challenge as raised by the Petitioner to the CBDT Order dated 28th September, 2021 would stand concluded. He would also submit that the effect of such pronouncement of this Court is to the effect that the Petitioner's application which was re-filed by the Petitioner on 27th September, 2021 would be valid, to be so considered by the Respondent. It is submitted that in these circumstances, the Petitioner's application dated 25th March, 2021 along with application dated 27th September, 2021 which are stated to be clubbed, were thus eligible for consideration. For such reasons, it is submitted that the impugned order passed by the IBS, to the extent it rejects the Petitioner's application, would be required to be held to be bad in law and illegal and contrary to the decision of this Court in the case of *Sar Senapati Santaji Ghorpade Sugar Factory Ltd. (supra)*. Mr. Naniwadekar would hence submit that the Petitioner would be entitled for reliefs in terms of prayer clauses (c) & (d).

13. On the other hand, Mr. Suresh Kumar, Learned Counsel for the Respondents-Revenue would not dispute as to what has been held by this Court in *Sar Senapati Santaji Ghorpade Sugar Factory Ltd. (supra)* insofar as Para No.4 of the Order dated 28th

September, 2021 being quashed and set aside by this Court. He would not dispute that considering the decision of this Court, the Petitioner's application would become eligible for consideration, as also to the fact and that the impugned order being passed prior to the decision of this Court in *Sar Senapati Santaji Ghorpade Sugar Factory Ltd. (supra)*, to that extent the impugned order would be contrary to the said decision of this Court. Mr. Suresh Kumar however has submitted that not only the decision of this Court in *Sar Senapati Santaji Ghorpade Sugar Factory Ltd. (supra)*, but also two other decisions, one of the Madras High Court in *Jain Metal Rolling Mills Vs. Union of India*² as also the decision of the Gujarat High Court in *Vetrival Infrastructure Vs. DCIT*³ are subject matter of challenge by the Revenue before the Supreme Court and the proceedings are pending.

14. Mr. Naniwadekar has also brought to our notice that the conclusion of the Division Bench of this Court in striking down paragraph 4 of the CBDT's Order dated 28 September, 2021 as reached by this Court in *Sar Senapati Santaji Ghorpade Sugar Factory Ltd. (supra)* is also the view of the Madras High Court in *Jain Metal Rolling Mills (supra)* and Gujarat High Court in *Vetrival Infrastructure (supra)*.

² [2023] 156 taxmann.com 513 (Mad)

³ [2024] 164 taxmann.com 123 (Guj)

15. Having heard Learned Counsel for the parties and having perused the record, we are in agreement with Mr. Naniwadekar that the impugned order would be required to be held to be illegal being contrary to the decision of this Court in *Sar Senapati Santaji Ghorpade Sugar Factory Ltd. (supra)*.

16. As noted above in *Sar Senapati Santaji Ghorpade Sugar Factory Ltd. (supra)*, the Court, considering the provisions of Section 192 of the Act as also the other relevant provisions of the Act, has held that the Notification dated 21st September, 2021 issued by the CBDT under Section 119(2)(b) of the Act, although was issued within the powers as conferred on the CBDT, however, to the extent it laid down additional conditions in Para 4 that the assessee should be eligible to file an application for settlement on 21st January, 2021, was held to be beyond the scope of powers of the CBDT under Section 119 of the Act. The Court observed that there was no provision in the Act empowering the CBDT to impose such eligibility conditions in regard to extending the cut-off date to make an application under Section 245C of the Act. Hence, such condition in the impugned notification which offered the statutory mandate was held to be invalid and bad in law. It was held that the assessee in such case, therefore, had become eligible to make an application. The relevant observations of the

Court are required to be noted, which read thus :-

24 *As regards the notification dated 28th September 2021 issued by the CBDT under Section 192(2)(b) of the Act, the date for making application has been extended by the said notification to 30th September 2021, which is clearly within the scope of the powers of the CBDT under Section 119 of the Act. Section 119 of the Act provides that the Board may from time to time, issue such orders, instructions and directions to other Income Tax Authorities as it may be deemed fit for proper administration of this Act. The provisions of the section have been interpreted by the Hon'ble Apex Court in UCO Bank (Supra) to mean that the Board is entitled to tone down the rigours of law by issuing circulars under Section 119 of the Act and such circulars would be binding on Income Tax Authorities. A circular, however, cannot impose on a taxpayer a burden higher than what the Act itself, on a true interpretation, envisages. Therefore, the Board had power to extend the time limit for making an application to 30th September 2021.*

However, to the extent it lays down an additional condition, i.e., assessee should be eligible to file an application for settlement on 31st January 2021 in paragraphs 2 and 4(i) of the impugned notification, in our view, is beyond the scope of the power of CBDT as per Section 119 of the Act. There is no provision in the Act providing a cut off date with respect to an assessee being eligible to make an application under Section 245C of the Act. Hence, such a condition in the impugned notification is clearly invalid and bad in law.

The date on which an assessee becomes eligible to make an application and the date on which the assessee makes an application are two different things and the Act only provides a cut off date for the latter and not the former. Section 245C of the Act as amended by the Finance Act, 2021, provides that an application shall not be made after 1st February 2021, i.e., cut off date for making an application. However, there is no provision in the Act with respect to the cut off date for an assessee to be eligible to make an application. Further, there is no amendment to the definition of "case" in Section

245A(b) read with the Explanation, which would affect the eligibility of petitioner to file an application before the Settlement Commission between the period 1st February 2021 and 31st March 2021. Hence, the impugned notification, to that extent, is invalid and bad in law.

25 As the Board does not have the power to provide an additional condition of date of eligibility for making application for settlement (because no such date is prescribed in the Act), paragraphs 2 and 4(i) of the impugned notification to the extent that it provides that only those assesseees, who are eligible to file applications on 31st January 2021 can make an application up to 30th September, 2021 is invalid and bad in law.

26 Sections 245AA, 245D(9) and 245M(2) of the Act as amended by the Finance Act, 2021 make it clear that all pending applications shall be settled by the Interim Board.

27 The eligibility of petitioner was dependent upon the notice being issued by respondent no.1 under Section 153A of the Act. Respondent no.1 is not entitled to take benefit of his own delay in issuing the notice to the assessee so as to take away the right of petitioner to file an application under Section 245C. The search in petitioner's case took place on 25th July 2019 and ended on 29th August 2019. Thereafter, respondent no.1 delayed issuing the notice under Section 153A of the Act for a period of almost 18 months. Respondent no.1 issued notice under Section 153A only on 5th February 2021. Hence, as respondent no.1 has delayed issuing the notice under Section 153A of the Act which entitled petitioner to approach the Settlement Commission, such right of petitioner to approach the Settlement Commission cannot be taken away by respondents by issuing a circular under Section 119 of the Act. If the notice under Section 153A of the Act would have been issued on or before 31st of January 2021, petitioner would have been eligible to make an application. Therefore, when the eligibility is dependent on the action of respondent no.1 to issue a notice and when respondent no.1 issues a notice after inordinate delay from the search, respondent no.1 should not be entitled to claim that petitioner

has lost its right to approach the Settlement Commission on account of such delayed action of respondent no.1 itself. Hence, even otherwise, on the facts of the present case, respondent no.1 should be estopped from contesting/contending that petitioner is not eligible for approaching the interim board for having its application settled by the appropriate authority.

(emphasis supplied)

17. In the light of the above discussion, in our opinion, the impugned order passed by the Interim Board of Settlement rejecting the Petitioner's application on the ground that the conditions as incorporated in Para 4 of the CBDT's Order dated 28th September, 2021 issued under Section 119(2)(b) of the Act would become applicable, is required to be held illegal and will be required to be quashed and set aside. The Petitioner certainly was eligible for its Settlement Application to be considered by the Interim Board of Settlement for appropriate orders to be passed on it in accordance with law.

18. We accordingly allow the Petition in terms of prayer clauses (c) & (d).

19. Rule is made absolute in the aforesaid terms. No costs.

[SOMASEKHAR SUNDARESAN, J.]

[G. S. KULKARNI, J.]