

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:18.05.2023

+ **W.P.(C) 3928/2017**

SUSHIL KUMAR GOYAL & ORS. Petitioners

versus

**PRINCIPAL COMMISSIONER OF INCOME
TAX-1 & ORS.** Respondents

Advocates who appeared in this case:

For the Petitioners : Ms Suruchi Aggarwal, Senior Advocate
with Mr Vineet Garg and Mr Ashish Garg,
Advocates.

For the Respondents : Mr Zoheb Hossain, Senior Standing Counsel
for Revenue with Mr Sanjeev Menon, Junior
Standing Counsel for Revenue.

**CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MR JUSTICE AMIT MAHAJAN**

JUDGMENT

VIBHU BAKHRU, J

1. The petitioners have filed the present petition impugning orders dated 06.02.2017 and 09.02.2017 passed by the Income Tax Settlement Commission (hereafter '**the Commission**') under Section 245D(1) of the Income Tax Act, 1961 (hereafter '**the Act**'), to the limited extent that the settlement applications filed by the petitioners under Section

245C(1) of the Act were held to be invalid for the Assessment Years 2012-13 and 2013-14.

2. The impugned order dated 06.02.2017 was passed pursuant to the applications filed by petitioner nos. 1, 3, 4, 5 and 6 and the impugned order dated 09.02.2017 is in respect of the applications filed by petitioner no.2. The Commission has held that in terms of Sub-clause (iv) of Clause (b) of Section 245A of the Act, the assessment proceedings in respect of the Assessment Years 2012-13 and 2013-14, were concluded. And, there was no ‘case’ existing in respect of the Assessment Years 2012-13 and 2013-14. Consequently, the applications for settlement of case(s) under Section 245C of the Act, in respect of those Assessment Years, was not maintainable.

3. In terms of Section 245C(1) of the Act, an assessee is entitled to make an application for settlement “*at any stage of a case relating to him*”. Thus, the question that falls for consideration of this Court is whether there was a case (or cases) relating to the petitioners, in respect of the Assessment Years 2012-13 and 2013-14.

4. Briefly stated, the controversy arises in the following context:

4.1 The petitioners had filed their respective applications under Section 245C(1) of the Act on 15.12.2016 in respect of the Assessment Years 2012-13 to 2016-17. The Commission passed an order dated 22.12.2016 under Section 245D(1) of the Act, allowing the applications to proceed in respect of the Assessment Years 2012-13 to 2016-17. The Commission also called for reports under Section 245D(2B) from the

concerned Principal Commissioner of Income Tax (hereafter 'Pr. CIT') on the question of (i) the validity of the applications for the relevant years; (ii) the correctness and adequacy of the additional tax paid by the petitioners; and (iii) the compliance as required under Section 245C(4) of the Act.

4.2 The concerned Pr. CIT furnished reports dated 23.01.2017 and 24.01.2017, which were received by the Commission on 25.01.2017. The Pr. CIT objected to the applications on two grounds. First, that the petitioners had not made a full and true disclosure as they had not disclosed the expenditure incurred by way of commission to brokers for procuring bogus short-term capital loss and long-term capital gains for reduction of the tax liability. They estimated that the petitioners would have paid commission at the rate of 2% of the short-term capital loss. Second, that there was no case in respect of the assessment years other than Assessment Year 2014-15, for which notice under Section 143(2) of the Act had been issued by the Assessing Officer.

5. Insofar as full and true disclosure is concerned, the Commission did not accept that the said objection was made out at that stage. The Commission noted that the petitioners had also disclosed the expenditure incurred on booking of short-term capital losses. It observed that the objection, to the effect that an expenditure of 2% of the short-term capital loss would have been incurred and met out of undisclosed income, was presumptuous and not founded on any material evidence. In addition, the Commission was of the view that the Income Tax Authorities were not precluded from making the necessary

Assessing Officer on the date on which an application under sub-section (1) of section 245C is made.

Explanation. — For the purposes of this clause—

- (i) a proceeding for assessment or reassessment or re-computation under section 147 shall be deemed to have commenced—
 - (a) from the date on which a notice under section 148 is issued for any assessment year;
 - (b) from the date of issuance of the notice referred to in sub-clause (a), for any other assessment year or assessment years for which a notice under section 148 has not been issued, but such notice could have been issued on such date, if the return of income for the other assessment year or assessment years has been furnished under section 139 or in response to a notice under section 142;
- (ii) ***
- (iii) a proceeding for making fresh assessment in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment shall be deemed to have commenced from the date on which such order, setting aside or cancelling an assessment was passed;
- (iiia) a proceeding for assessment or reassessment for any of the assessment years, referred to in clause (b) of sub-section (1) of section 153A in case of a person referred to in section 153A or section 153C, shall be deemed to have commenced on the date of issue of notice initiating such proceeding and concluded on the date on which the assessment is made;
- (iv) a proceeding for assessment for any assessment year, other than the proceedings of assessment or reassessment referred to in clause (i) or clause (iii) or clause (iiia), shall be deemed to have commenced from the date on which the return of income for that assessment year is furnished under section 139 or in response to a notice served under section 142 and concluded on the date on which the assessment is made; or on the expiry of two years from the end of relevant assessment year, in case where no assessment is made;”

8. A plain reading of Sub-clause (a) of Clause (i) of the Explanation to Section 245A(b) of the Act indicates that the proceedings for assessment or re-assessment under Section 147 of the Act would be deemed to commence from the date on which the notice is issued under Section 148 of the Act for any assessment year. In terms of Sub-clause (b) of Clause (i) of the Explanation to Section 245A(b), the proceedings for assessment and re-assessment would also commence from the date of the issuance of notice under Section 148 of the Act, in respect of other assessment years for which such notice could have been issued on the said date – that is, the date on which notice under Section 148 of the Act has been issued for any assessment year – but has not been issued. It is clear that a case under Section 245A(b) of the Act would be pending in respect of assessment, reassessment or re-computation under Section 147 of the Act, in respect of which no such notice has been issued, only if the following two conditions are met: first, that a notice has been issued under Section 148 of the Act in respect of any other assessment year; and second, that a notice under Section 148 could be issued if a return under Section 139 of the Act or in response to Section 142 of the Act has been filed.

9. In the facts of the present case, no notice under Section 148 of the Act was issued to the petitioners at the material time in respect of any of the assessment years; therefore, the time for making the application as well as on the date of passing the impugned order dated 06.02.2017, there were no proceedings pending for re-opening any assessment for any of the assessment years for which the applications

were made, that is, for Assessment Years 2012-13 to 2016-17. However, the applications in respect of Assessment Years 2014-15, 2015-16, and 2016-17 were maintainable because in terms of Explanation (iv) the proceedings for the said Assessment Years were not concluded as on 15.12.2016, that is, the date on which the petitioners had filed their respective applications.

10. In this view, we find no infirmity with the decision of the Commission in holding that the applications filed by the petitioners under Section 245C(1) of the Act for the Assessment Years 2012-13 and 2013-14 were invalid as there was no case pending in relation to the petitioners for the said assessment years on the date of the respective applications filed by the petitioners.

11. Ms. Aggarwal, learned senior counsel appearing for the petitioners, submitted that the provisions of Section 245A(b) of the Act must not be construed literally and that this is a fit case where the Court is required to apply the rule of purposive interpretation and modify the language of Section 245A(b) of the Act, as necessary. She submitted that the legislative history of the provisions of Section 245A(b) of the Act clearly indicates that the amendments, as introduced by the Finance Act, 2014, yielded a result that could never have been intended by the Parliament. She submits that by virtue of the Finance Act, 2007, a new proviso and an Explanation were added to Section 245A(b) of the Act. By virtue of the proviso, proceedings relating assessment or re-assessment or re-computation under Section 147 of the Act were excluded from the scope of proceedings referred to in Clause (b) of

Section 245A of the Act. The Explanation was for the purposes of clarifying the exclusionary clause – the proviso to Clause (b) of Section 245A. Whilst the proviso to Clause (b) of Section 245A of the Act was deleted by virtue of the Finance Act, 2014, the Explanation to the proviso continued to remain. She submitted that the same has led to an absurd result where the main Clause stands deleted but the Explanation of the said Clause continues to remain in force. She submits that on applying the Rule of Literal Interpretation, the Explanation would now require to be read as an Explanation to Clause (b) of Section 245A of the Act, which was not the legislative intent for introducing the said Explanation.

12. It is necessary to refer to the legislative history of Section 245A(b) of the Act for addressing the aforesaid contention. Prior to 01.06.2007, Clause (b) of Section 245A of the Act read as under:-

“245A. In this Chapter, unless the context otherwise requires,-

(b) “case” means any proceeding under this Act for the assessment or reassessment of any person in respect of any year or years, or by way of appeal or revision in connection with such assessment or reassessment, which may be pending before an income-tax authority on the date on which an application under sub-section (1) of section 245C is made:

Provided that where any appeal or application for revision has been preferred after the expiry of the period specified for the filing of such appeal or application for revision under this Act and which has not been admitted, such appeal or revision shall not be deemed to be a proceeding pending within the meaning of this clause;”

13. Clause (b) of Section 245A of the Act was substituted by the Finance Act, 2007. The said clause as substituted, reads as under:-

“245A. In this Chapter, unless the context otherwise requires.-

- (b) “case” means any proceeding for assessment under this Act, of any person in respect of any assessment year or assessment years which may be pending before an Assessing Officer on the date on which an application under sub-section (1) of section 245C is made:

Provided that-

- (i) a proceeding for assessment or reassessment or recomputation under section 147;
- (ii) a proceeding for assessment or reassessment for any of the assessment years referred to in clause (b) of section 153A in case of a person referred to in section 153A or section 153C;
- (iii) a proceeding for assessment or reassessment for the assessment year referred to in clause (b) of sub-section (1) of section 153B in case of a person referred to in section 153A or section 153C;
- (iv) a proceeding for making fresh assessment in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment, shall not be a proceeding for assessment for the purposes of this clause.

Explanation.- For the purposes of this clause-

- (i) a proceeding for assessment or reassessment or recomputation referred to in clause (1) of the proviso shall be deemed to have commenced from the date on which a notice under section 148 is issued,
- (ii) a proceeding for assessment or reassessment referred to in clause (ii) or clause (iii) of the proviso shall be deemed to have commenced on the date of initiation of the search under section 132 or requisition under section 132A;
- (iii) a proceeding for making fresh assessment referred to in clause (iv) of the proviso shall be deemed to have

commenced from the date on which the order under section 254 or section 263 or section 264, setting aside or cancelling an assessment was passed;

- (iv) a proceeding for assessment for any assessment year, other than the proceedings of assessment or reassessment referred to in clause (i) or clause (ii) or clause (iii) or clause (iv) of the proviso, shall be deemed to have commenced from the 1st day of the assessment year and concluded on the date on which the assessment is made.”

14. It is clear from the above that by virtue of proviso (i) to Clause (b) of Section 245A of the Act, the proceedings for reassessment or re-computation under Section 147 of the Act were expressly excluded from the scope of proceedings for assessment under Clause (b) of Section 245A of the Act. Thus, such proceedings would not fall within the meaning of the term ‘case’. Clause (i) of the Explanation to Clause (b) of Section 245A of the Act merely clarified that the proceedings for assessment or reassessment or re-computation under Section 147 of the Act – which was excluded from the proceedings of assessment under Clause (b) of Section 245A of the Act – would commence from the date on which the notice under Section 148 of the Act is issued.

15. Section 245A(b) of the Act was amended by the Finance Act, 2010 and proviso (ii) and (iii) as well as Explanation (ii) to Clause (b) of Section 245A of the Act were deleted. There were other amendments to the said clause, however, the same are not relevant for the purpose of the present petition. Proviso (i) to Clause (b) of Section 245A of the Act as well as Explanation (i) to Clause (b) of Section 245A of the Act remained unaltered.

16. By virtue of the Finance Act, 2014, the proviso to Clause (b) of Section 245A of the Act was deleted, however, the Explanation continued to remain. Clause (b) of Section 245A of the Act, after the Finance Act, 2014 came into force, reads as under:-

“245A. In this Chapter, unless the context otherwise requires-

(b) “case” means any proceeding for assessment under this Act, of any person in respect of any assessment year or assessment years which may be pending before an Assessing Officer on the date on which an application under sub-section (1) of section 245C is made.

[***]

Explanation-For the purposes of this clause-

(i) a proceeding for assessment or reassessment or recomputation under section 147 shall be deemed to have commenced from the date on which a notice under section 148 is issued;

(ii) [***]

(iii) a proceeding for making fresh assessment in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment shall be deemed to have been commenced from the date on which such order, setting aside or cancelling an assessment was passed.

(iiia) a proceeding for assessment or reassessment for any of the assessment years, referred to in clause (b) of sub-section (1) of section 153A in case of a person referred to in section 153A or section 153C, shall be deemed to have commenced on the date of issue of notice initiating such proceeding and concluded on the date on which the assessment is made.

(iv) a proceeding for assessment for any assessment year, other than the proceedings of assessment or reassessment referred to in clause (i) or clause (iii) or clause (iiia), shall be deemed to have commenced from the 1st day of the assessment year and concluded on the date on which the assessment is made.”

17. By deletion of the proviso, the exclusionary clause clarifying that the assessment or reassessment or re-computation under Section 147 of the Act would not be considered as the proceedings for assessment, stood deleted. Thus, the expression “*any proceeding for assessment under this Act*” as used in Clause (b) of Section 245A of the Act, would now require to be construed in wider terms. However, Explanation (i) to Clause (b) of Section 245A of the Act, clarified that the proceedings for assessment or reassessment or re-computation under Section 147 of the Act would commence only from the date on which the notice under Section 148 of the Act is issued. Thus, it is erroneous to suggest that proceedings for reassessment or re-computation would be considered as pending even though the period for framing an assessment pursuant to the returns filed under Section 139 of the Act or in response to a notice issued under Section 142 of the Act, had expired and no notice had been issued under Section 148 of the Act.

18. In *Commissioner of Income Tax v. Income Tax Settlement Commission: W.P.(C) No.213/2012* decided on 20.11.2012, a Coordinate Bench of this Court had explained the qualitative difference between assessment proceedings pursuant to returns filed under Section 139 of the Act and pursuant to a notice under Section 148 of the Act. In respect of assessment proceedings under Section 143 of the Act, the Assessing Officer has the jurisdiction to examine the returns and pass an assessment order within a period of two years from the end of the relevant assessment years. However, in cases where income has escaped the assessment, the same can be reopened only upto a specified

period and subject to certain conditions being satisfied. However, the possibility that proceedings for assessment, reassessment or re-computation of income may be initiated under Section 147 of the Act, after an assessment has been framed or the period of framing assessment has lapsed, cannot be construed to mean that a case is pending under Clause (b) of Section 245A of the Act. In *Commissioner of Income Tax v. Income Tax Settlement Commission (supra)*, this Court had explained the above in the following words.

“9. The expression “pending” in this case, has to be viewed contextually. In plain terms, it would mean when some case, cause or controversy is actually pending consideration before the assessment officer. In the facts of this case, the assessee filed its returns for four successive years; no notice under Section 143 (3) was issued. The AO lost jurisdiction to deal with those matters on the expiry of 21 months' period reckoned from the date(s) when the returns were filed. In *Calcutta Discount Company Limited vs. ITO*, AIR 1961 SC 372, the Supreme Court had ruled that an assessment proceeding commences from the date when the assessee files its return. The *terminus quo* therefore would be the last date by which the Assessing Officer can legally pass an order. Once that period lapses, the officer loses jurisdiction and authority to issue any order. The possibility of his issuing a notice under Sections 147/148 is in the realm of potential exercise of jurisdiction; till notice is actually issued, nothing is “pending” before the AO. Parliament consciously directed the tax administrators not to entertain a settlement application, in cases when a reassessment notice is issued. Parliamentary intent having been expressed in clear terms, the Courts cannot, by adopting a strained interpretation, thwart it, by holding that in case a notice is issued, the assessee had to file a return, which will be considered a fresh return, in which case, a fresh period has to be reckoned, which in turn means that a case is pending. Fortunately, such a convoluted interpretation cannot be taken, because it would do violence to the plain words of the statute.”

19. The legislative history of Section 245A of the Act clearly indicates that the proceedings for assessment, re-assessment and re-

computation under section 148 of the Act, prior to issuance of notice under Section 148 of the Act, were excluded from the scope of the definition of the term 'case'. Such proceedings have been included by virtue of the Finance Act, 2015 albeit on certain conditions being satisfied as noted hereinbefore.

20. In view of the above, we find no merit in the contention that the literal interpretation of the provision is contrary to the legislative intent. On the contrary, retaining the Explanation to Section 245A of the Act (and subsequently amending it) serves the intended purpose of sufficiently explaining the scope of Section 245A of the Act. There is no ambiguity in Section 245A of the Act that makes it necessary or apposite for the court to discard the literal interpretation of the language of Section 245A of the Act.

21. The petition is unmerited and, accordingly, dismissed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MAY 18, 2023
RK/Ch