Commissioner Of Income Tax (Central) ... vs B. N.Bhattacharjee & Anr on 4 May, 1979

Equivalent citations: 1979 AIR 1725, 1979 SCR (3)1133, AIR 1979 SUPREME COURT 1725, 1979 TAX. L. R. 1180, (1979) 1 TAXMAN 348 (SC), (1979) 1 TAXMAN 348, 1979 2 ITJ 415, 1979 SCC (TAX) 297, 1979 UPTC 1244, (1979) 4 TAX LAW REV 1 (SC), 1979 (4) SCC 121, (1979) 53 TAXATION 76, (1979) 118 ITR 461, (1979) 10 CURTAXREP 354

Author: V.R. Krishnaiyer

Bench: V.R. Krishnaiyer, V.D. Tulzapurkar

PETITIONER:
COMMISSIONER OF INCOME TAX (CENTRAL) CALCUTTA

Vs.

RESPONDENT:
B. N.BHATTACHARJEE & ANR.

DATE OF JUDGMENT04/05/1979

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
TULZAPURKAR, V.D.

CITATION:
1979 AIR 1725 1979 SCR (3)1133
1979 SCC (4) 121
CITATOR INFO :
R 1984 SC 420 (38)
MV 1985 SC 150 (30)
RF 1989 SC1038 (1)

ACT:
Income Tax Act, 1961 (43 of 1961)-Ss. 245A-245M-Scope, purpose and object of-procedure and powers of Settlement Commission-Settlement Commissioner whether a tribunal.
Words & Phrases-'Preferred an appeal'-S.245M(1) proviso Income Tax Act. 1961-Meaning of.
'Interpretation of Statutes-Fiscal philosophy and interpretation technology to be on same wave length for legislative policy to find fulfilment in the enacted text.

HEADNOTE:

A large sum of Rs. 30 lakhs in cash having been recovered from the respondent in pursuance to a search by the Income Tax officials his assessments for the years 1962-63 to 1972-73 were reopened by the Department. The total tax burden on the respondent was over Rs. 30 lakhs and an additional sum of Rs. 35 lakhs was assessed for the year 1973-74. The respondent was also prosecuted under s 277 of the Income Tax Act.

Appeals by the respondent to the Appellate Assistant Commissioner brought down the assessable income by about Rs. 10 lakhs.

The respondent and the department both appealed to the Income Tax Appellate Tribunal, the former filing 12 appeals and the latter 10 appeals.

The respondent moved the Settlement Commission for composition under s. 245M. The assessee withdrew his appeals and the revenue declared their assessments and appeals 'weak' and withdrew them.

The Settlement Commission on receipt of the application under s. 245C acted under s. 24SD(l) and called for a report from the appellant. The appellant reported that prosecution proceedings for concealment of income and also false verification in the return by the respondent were pending against the respondent in the Magistrate's Court and that it was not a fit case to be proceeded with by the Commission.

The Settlement Commission after some correspondence with the respondent and without giving a hearing informed him that as the appellant had objected under s. 245D (I), the Settlement Commission did not allow the application to be proceeded with.

The appellant thereupon moved the Income Tax Appellate Tribunal for restoration of its appeals although no specific provision enable such a restoration, the asssessee being entitled to apply for restoration under s. 245M.

The respondent urged the Settlement Commission to review its order as no hearing as such was given to him. The Settlement Commission yielded to his

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submission, reached the reverse conclusion that the appellant's opposition to the composition notwithstanding, the application for settlement be considered on merits.

The core controversy in the appeals to this Court were whether in view of the withdrawal of the departmental appeals before the Income Tax Appellate Tribunal, the Commissioner is estopped from making a report under s. 245D(1) proviso 2 to the Settlment Commission objecting to the application from being proceeded with.

On behalf of the appellant it was contended that (a) there was no power of review for the Commission, since it had declined to proceed with the application for settlement

and consequently the re-opening of the Settlement proceedings was invalid, (b) even though the C.T.T. had withdrawn his appeals and thus facilitated the filing of an application under s. 245C no bar of estoppel could be spelt out to forbid the Commissioner from exercising his statutory power of withholding consent to the settlement proceedings and (c) the C.l.T's veto was not subject to review or invalidation by the Settlement Commission

Allowing the appeals:

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HELD 1. The Settlement Commission should be inhibited from proceeding with the application of the assessee and the appeals by the assessee before the Income Tax Appellate Tribunal must be revived and disposed of expeditiously. [1164F1

2. The departmental appeals, having been admitted by the Commissioner of Income Tax himself to be very weak and frivolous, should not be revived as it will be only a waste of public time and money. [iy]

3. If the Department files an appeal which it drops to enable an application before the Commission, then the proviso to s. 245M(1) does not debar the motion for settlement. [1156C]

4. Functionally speaking, Chapter XIXA in the Income Tax Act, 1961, enacted by the Taxation Laws (Amendment) Act, 1975, engrafted in partial implementation of the Wanchoo Committee Report, provides for settlement of huge tax disputes and immunity from criminal proceeding by a Commission to be constituted by the Central Government when approached without objection from the Tax Department. [1138E]

5. Fiscal philosophy and interpretation technology must be on the same wavelength if legislative policy is to find fulfilment in the enacted text. [1138 H]

6. The mechanics of s. 245D provides that the application for settlement, when filed, shall be forwarded to the Commissioner for a report and is only on the basis of the material contained in such report that the Settlement Commission may allow the application to be proceeded with or reject the application. To reject an application is to refuse relief outright and affect the applicant adversely. So it is provided "that an application shall not be rejected unless an opportunity has been given to the applicant of being heard." An applicant before the settlement Commission is therefore entitled to a hearing before his application for composition is rejected [1146G-H]

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7. The rule of fairplay incorporated in the first proviso to s. 245D(l) A obligates the Commission to hear the applicant before rejection. Even apart from any specific provision, it is legal fairplay not to hurt any party without hearing him unless the Act expressly excludes it. Nothing is lost by hearing a petitioner whose application

for settlement is being rejected and much may be gained by such hearing in properly processing the application in the spirit of Chapter XIXA. S 245D (1) does. not negate natural justice and in the absence of an express exclusion of the rule of audi alteram partem, it is fair, indeed fundamental, that no man is prejudiced by action without opportunity to show to the contrary. Law leans in favour of natural justice where statutory interdict does not forbid it. [1147A-D, F]

Mohinder Singh Gill v Chief Election Commissioner, [1978] 1 SCC 405; Maneka Gandhi v. Union of India, [1978] 1 SCC 248 referred to.

In the instant case, the Settlement Commission in the first instance rejected the application because the Commissioner of Income Tax objected to it. The rule of fairplay incorporated in the first proviso to s. 245(1) obligates the Commission to hear. the applicant, before rejection. The Settlement Commission's decision to re-hear and pass a de novo order cannot, therefore, be said to be illegal. [1147E]

8. The second proviso to s. 245D (1) is compulsive in tune and import, for it mandates "that an application shall not be proceeded with under this sub-section if the Commissioner objects to the application being proceeded with on the ground that concealment of particulars of income on the part of the applicant or perpetration of fraud by him for evading any tax....has been established or is likely to be established by any income tax authority, in' relation to the case." There is little diffculty in holding that the application for settlement, having been rejected by the Commissioner, could not be proceeded with. The veto of the Commissioner was the Waterloo of the application.

[1147G-1148A, D]

9. Section 245H is of great moment from the angle of public interest and public morals at it immunises white collar offenders against criminal prosecutions and, in unscrupulous circumstances, becomes a suspect instrument of negotiable corruption. More than the prospect of monetary liability and mounting penalty is the dread of traumatic prison tenancy that a tax-dodging F tycoon is worried about. And if he can purchase freedom from criminal prosecution and incarceratory sentence he may settle with the Commission, and towards this end, try to lay those who remotely control the departmental echelons whose veto or green signal, opens the prosecutions. Thus, s. 245H, which clothes the Commission with the power to grant immunity from prosecution for "any offence under this Act or under the Indian Penal Code or under any other Central Act...." is a magnet which attracts large tax-dodgers and offers, indirectly an opportunity to the highest departmental and political authorities a suspect power to bargain. [1150C-E]

1O Section 245M enables certain persons who have filed appeals to the Appellate Tribunal to make applications to

the Settlement Commission. The section (a) enables withdrawal of appeals before tribunals by assessee as condition precedent to applications for composition by the Settlement Commission, (b) applies, by a legal fiction, Section 245C and to such applications, and (c) where the proceedings before the Commission is not entertained, allows revival of the withdrawn appeals thus restoring the Status quo ante.

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The proviso to s.. 245M(l) places an embargo on the right of the assessee to move the Commission where the income tax officer has preferred an appeal under sub-s.(2) of s. 253 against the order to which the assessee's appeal relates. The proviso interdicts entertainment of a settlement application if - departmental appeals are filed. [IISOF, 1151G, 1152C, 1153F]

11. Purposefully interpreted preferring an appeal means. more than formally filing it but effectively pursuing it. If a party retreats before the contest begins it is as good as not having entered the fray. After all, Chapter XIXA is geared to promotion of settlement and creation of road-blocs in reasonable composition. The teleological method of interpretation leads to the view that early withdrawal of the I.T.O's appeal removed the bar of the proviso.

[1153C-D]

12. The purpose of substituting the method of investigative negotiation, just settlement and early exigibility by a high powered Commission for a tier-upon-tier of long protracted litigation, where victory may be phyrrhic and futile, is ill-served by keeping out cases solely for the reasons that departmental appeals have been filed. [1153H-1154A]

13. The obvious object of the clause, "the assessee shall not be deemed to have withdrawn the appeal from the appellate tribunal," is to restore the parties to status quo ante, and in fairness, must apply to the Department as to the assessee. This non-discriminatory import can be reasonably read into the clause if we construe the expression "the assessee in wider way so as to include all parties affected by the subject matter of the assessment. In that case, the clause may mean that no one who is aggrieved by the assessment shall be deemed to have withdrawn the appeal from the appellate tribunal." An equitable and purpose oriented construction of the clause means that the assessee will be put back in the same position vis-a-vis his appeals and if, to facilitate his moving the Commission the I.T.O. has withdrawn the depart mental appeals, the Commission's rejection of the application shall not pre judice the Revenue. Actus curie neminem gravabit is the principle of wider import and is a tool of construction too. This perhaps may be making up for a lacuna by a restructuring of the clause so as to work out justice to the Department. [1154E-G]

14. The scheme of s. 253(4) contemplates filing of memorandum of cross objections by the ITO on receipt of notice of the appeal by the assessee. So much so it is also possible, alternatively to read into s. 245 (7) the right of the department to file an appeal de novo on receipt of notice of the revival of the assessee's appeal, within the period specified in s. 253 (4) . This does not do violence to the language of s. 245M(7) and affords equitable relief to the Department by enabling it to bring its appeal back to life notwithstanding the earlier withdrawal, when the assesses's appeal reincarnates s. 245M(7).

[1154H-ll55B]

15. The judicial process does not stand helpless. with folded hands but engineers its way to discern meaning when a new construction with a view to rationlisation is needed. [1155C]

Seaford Court Estates Ltd. v. Asher, [1949] 2 KB 481, referred to.

16. A casual perusal of Chapter XIXA convinces the discerning eye that the Settlement Commission exercises many-powers which affect, for good or otherwise, the rights of the parties before it And vests in it power to grant
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immunity from prosecution and penalty, to investigate into any matters and to A enjoy conclusiveness regarding its orders or settlement. Section 245L declares all proceedings before the Settlement Commission to be judicial proceedings. Settlement Commission are therefore tribunals. [ll57D-E, ll56E]

Associated Cement Companies Ltd. v. P. N. Sharma and another [1962] 2 SCR 266; referred to.

17. The Commissioner has a duty to the public Revenue and more importantly, a duty to object to any assessee who is prima facie guilty of grave criminal conduct in the shape of concealment of income or perpetration of fraud getting away with it by invoking chapter XIXA. The gravity of this public policy cannot be undermined by interpretative softness of second puroviso to s. 245D(l). To whittle down the imperative nature of this veto power is to undo the expectations of the Wanchoo Committee and amounts to stultify the rule of law, an integral part of which is that the law shall not let the greater felon loose. [1158E; 1158H-1159A]

18 Section 245D by the 2nd Proviso, casts a public duty on the Commissioner of Income Tax to consider in the light of the case made out in the assessee s application whether "concealment of particulars of income on the part of the applicant or prepetration of fraud by him for evading any tax or other sum chargeable or imposable under the Indian Income Tax Act, 1922 (11 of 1922). Or under this act, has been established or is likely to be established by any Income-Tax authority, in relation to the case," and exercise his veto power to prevent escape of macro-criminals prima

facie guilty of grave economic crimes. He cannot bargain over this interdict in advance or barter away a legal mandate in anticipation. He may permit or even assist the filing of a. conciliation motion of the assesse'e but when the Commission intimates him under s. 245D(l) he shall, with statutory seriousness. exercise his discretion. He cannot enter into a 'deal' over this power without betraying the statutory trust. The plea that the Commissioner of Income-Tax, by conduct and understanding has 'irredeemably mortgaged' his statutory duty to object if the case deserves such objection has to be negatived. Estoppel then is both odious and omnius and discretion the door to corruption [1160D-G]

19. In the instant case, the CIT withdrew the appeals but it is not correct that he made representations to the assessee to act in a particular manner with a provision of doing something to his advantage leading to the assessee in turn acting to his own prejudice by withdrawing his appeals His withdrawal of the appeals was independently decided upon by him so that he could move the Commission. Thereafter he moved the department to withdraw its appeals so as to entitle him to make an application to the Commission. The canons that govern the application of the principle of estoppel contradict its 'extension to a. situation like the present. The plea of estoppel which has found favour with the Commission has therefore to be over-ruled. The objection raised by the CIT is a potent interdict on the jurisdiction of the Commission. [1163H-1164A, C]

20. The policy of the law as. disclosed in Chapter XIXA is not to provide a rescue shelter for big tax-dodgers who indulge in criminal activities by approaching the Settlement Commission The Settlement Commission will certainly take due note of the gravity of economic offences on the wealth of the nation which the Wanchoo Committee has emphasised and will exercise

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its power of immunisation against criminal prosecutions by using its power only sparingly and in deserving cases, otherwise such orders may become vulnerable if properly challenged. [1164 E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 454-465 of 1979.

Appeals by Special Leave from the order dated 9-5-1978 of the Settlement Commissioner (I.T. & W.T.) Govt of India, New Delhi in Application No. 7/1/20-77-II.

S. T. Desai, J. Ramamurthi and Miss A. Subhashini for the Appellant.

A. K. Sen, Dinesh Vyas, Manulal, P. H. Parekh, C. B. Singh, M. Mudgal, and N. Mundal for the Respondent No. 1 The Judgment of the Court was delivered by KRISHNA IYER, J. A nascent Chapter (Chapter XIXA) in the Income Tax Act, 1961, enacted by the Taxation Laws (Amendment) Act, 1975, whose beneficiaries are ordinarily those whose tax liability is astronomical and criminal culpability perilous, falls for decoding by this Court in this appeal by the C.l.T.(1) (Central), Calcutta, against an adverse order made by the Settlement Commission. Functionally speaking, this Chapter, engrafted in partial implementation of the Wanchoo Committee Report, provides for settlement of huge tax disputes and immunity from criminal proceedings by a Commission to be constituted by the Central Government when approached without objection from the Tax Department. It is based on the debatable policy, fraught with dubious potentialities in the context of Third World conditions of political peculium and bureaucratic abetment, That com position and collection of public revenue from tycoons is better than prosecution of their tax-related crime and litigation for total revenue recovery. A social audit of the working of this Chapter in action and its fall- out may benefit the nation by information about who the true beneficiaries of this legislation are and whether there is more than meets the eye. The Wanchoo Committee which recommended this step titled its Chapter meaningfully as "Black Money and Tax Evasion" and the Act itself was passed and brought into force during the era of Emergency which was marked by speed and silence and hushed politico-official operations.

Be that as it may, fiscal philosophy and interpretative technology must be on the same wavelength if legislative policy is to find fulgilment in the enacted text. That is the challenge to judicial resourcefulness the present appeals offer, demanding, as it does, a holistic perspective and (I) Commissioner of Income Tax harmonious construction of a whole chapter, especially a complex provision therein, so that a balance may be struck between purpose and result without doing violence to statutory language and social values. 'The Chapter is fresh and the issue is virgin; and that makes the judicial adventure hazardous, compounded by the involved and obscure drafting of the bunch of provisions in Chapter XIXA.

A few facts must be narrated and the anatomy of the Chapter projected at this stage, so that a hang of the controversy may be got and its just resolution sought.

The respondent, an elderly but apparently immense businessman, was the cynosure of suspicion of the Income Tax officials which led to search and seizure of around Rs. 30 lakhs in cash from him. A chain reaction set in and assessments from 1962-63 to 1972-73 were re-opened. The total tax burden so fixed ran into well over Rs. 60 lakhs plus around Rs. 35 lakhs assessed for 1973-74. The stakes thus ran into a crore or so plus awesome prosecutions under s. ''77 of the Act with unpredictable prospects of sentences. The respondent- assessee and his version or explanation had hopes of averting the Waterloo; but the Income Tax officer (I.T.O) rejected his case. Indeed, we are neither called upon nor disposed to examine the merits of either side and, maybe, the assessee has a presentable case. Appeals to the Appellate Assistant Commissioner (A.A.C.) were carried by the assessee against the colossal imposts, which marginally brought down the assessable income by around Rs. 10 lakhs. Both the dissatisfied assessee and the partially injured Department appealed to the Income Tax Appellate Tribunal (I.T.A.T.) against the A.A.C's decisions. During their pendency, prudence dawned on the respondent to seek sanctuary before Settlement Commission abandoning

his appeal to the Tribunal attended with litigative uncertainties and penal potentialities. At seventy, with understandable high blood pressure to boot, he preferred negotiated peace to judicial justice heartful of quest for quiet although hopeful of winning his cases. These motivations do not call for our comment but are being mentioned as part of the narrative which ostensibly induced him to go before the Commission under Chapter XIXA.

To compress the long story without crippling the foundational facts, what happened after the assessee decided upon offering himself to the Settlement Commission was to prepare the ground to enable him to institute a proceeding in this behalf.

The deck had to be cleared before moving the Settlement Commission. The conditions for entitlement to make an application to the Settlement Commission are set out in s. 245M. We may have to examine closely the connotation of the expressions used in this Section but for the nonce it is sufficient to state that it is obligatory for the assessee to withdraw any appeal that may be pending at his instance before being qualified to make an application to the Settlement Commission. Another condition stipulated in the same Section is that an assessee shall not be entitled to make an application "in a case where the I.T.O. has preferred an appeal under sub-section (2) of section 253 against the order to which the assessee's appeal relates." Without meticulous dissection of the provision, we may broadly draw the conclusion that the assessee must withdraw his appeal before the Tribunal before moving the Settlement Commission. Likewise, the I.T.O. should not have preferred an appeal. Therefore, the respondent-assessee engaged himself in complying with these conditions. He expected to achieve this objective by moving for withdrawal of his own 12 appeals before the Tribunal and by persuading the Income Tax Department to withdraw its 10 appeals pending before the Tribunal. At the moment, we do not discuss the finer issue of crucial significance as to whether an appeal preferred by the Revenue but later withdrawn by it would have the effect of total obliteration so as to fulfil the condition of no appeal having been preferred by the Income-Tax Department. 'the narrative alone need be continued. On 23-8-1976 the assessee addressed a letter to the Appellate Tribunal seeking to withdraw his appeals under s. 245M of the Act. On the same day he moved Mr. Kuruvilla, Member, Central Board of Direct Taxes requesting the Board to instruct the concerned officer of the Department to withdraw all the pending appeals filed by the Department before the Tribunal. The letter stated:

> "Though I am sure that I shall win all these appeals filed by me with the Court of the Appellate Tribunal but just to buy peace at my old age. I wanted to place myself in the hands of the Settlement Commission and seek full justice and mercy. In view of all these facts explained above I pray for undernoted point for your kind consideration and necessary action. l shall be grateful, if you would kindly ask your Department to withdraw all the pending applications filed by the Department with the l.T.A.T."

(emphasis added) The somewhat ambivalent terminology and incongruous stances taken in the letter are striking. For instance, he asserted that he was sure to win all his appeals but still he sought mercy from the Commission. He put forward old age and hypertension for desisting from litigation and gratefully desired the Department to cooperate with him by withdrawing its appeals. Before knowing the open response of the Department, he addressed the Tribunal for withdrawal of his

appeal which, perhaps, suggests that he was sure of the reaction of the Department or did not loss much by withdrawing his appeals. However, when the I.T.A.T. posted the withdrawal application for hearing on "4th September, 1976, the assessee wrote a letter asking for adjournment wherein he stated:

> "With regard to the above I beg most respectfully to submit that one petition was filed for withdrawing all the above appeals only to have those cases settled before the Settlement Commission, New Delhi but the Department had also preferred appeals for those years. Unless the Department also withdraws their appeals there will be no purpose for our withdrawal of appeals. As such my client is pursuading the Central Board of Direct Taxes to do something effectively in the matter, but for consultations with their councils, etc, it would take at least two months' time."

Probably the assessee felt that the Central Board could be persuaded "to do something effectively in the matter", given some time. The anticipations of the assessee were not belied because the addressee Member of the Central Board, with celerity, consulted the Commissioner, who, in turn, sought and got affiramative reports from those below him and at the end of this rapid departmental exercise, reached the conclusion in October/November (i.e. in about a month) that the appeals of the Departments were very weak, even frivolous(') and that, therefore, nothing was lost by withdrawing them from the Tribunal. In keeping with this conclusion, the tempo was accelerated by the Board Member issuing necessary instructions to withdraw its appeals, and the C.I.T. hastened to write to the assessee-respondent in December, 1976.

> "I am to inform you that the Departmental appeals pending before the Income-tax Appellate Tribunal, Calcutta against you will be withdrawn provided all the appeals filed by you for the assessment year 1962-63 to 1973-74 are with- drawn by you."

(1) See para 5.2 and 5.3 of the Settlement Commission's order.

A consequential representation was made before the I.T.A.T. "I have been directed to withdraw the above Depart mental appeals on condition that the assessee's appeals for the assessment years 1962-63 to 1973-74 are also with drawn."

I.T.A.T. was persuaded to pass orders dismissing the appeals from both sides as withdrawn. The obvious purpose of the Department's withdrawal of its appeals was to enable the assessee to move the Settlement Commission. From the Member of the Central Board down to the I.T.O. they conveniently discovered, at this critical stage late in 1976, that their appeals were weak and frivolous.

The plea of the appellant that the decision to withdraw the appeals by the Revenue was independent of the respondent's request that he be helped to move the Commission needs for its acceptance a degree of naivete which we do not possess, as we will later show.

We revert to the further factual developments to catch up with the legal questions argued before us. On the Tribunal dismissing all the appeals as withdrawn, the assessee-respondent applied to the Settlement Commission on January 6, 1977 under s. 245C. The Commission its order, has recorded that as a prelude to this application:

> "the Commissioner of Income Tax and the applicant had arrived at an understanding or an arrangement, mutually satisfactory and in the public interest to settle the tax liability in a forum where decisions would be conclusive and not drag on for years."

Secret understandings between high tax officials and big assessee businessmen are potential pollutants and convert Settlement Commissions into cover-ups-a consummation farthest from the Wanchoo Commitee's intentions and Parliament's expectations! It is not demoralising that the heirarchy of officials in the Income Tax Department declared` their assessments and appeals 'weak' and self- condemned themselves before the Commission by confessing that the Central Government's appeals were frivolous ? "But if the salt hath lost its savour wherewith shall it be salted?"

> once the statutory operation for settlement was switched on, the machine moved on. The Settlement Commission, on receipt of the application under s. 245C, acted under-s. 245D(l) and called for a report from the Commissioner, mindless of the movement of the calender. For, the ides of March came in the meanwhile and the C.I.T., for reasons we do not know, took a stiff look at the case and reported on 1st April, 1977.
>
> "that prosecution proceedings for concealment of m come and also false verification in the return were already pending before the Chief Metropolitan Magistrate, and that he did not. consider this as a fit case to be proceeded with by the Settlement Commission".

After some correspondence with the applicant, and without geving hearing, the Settlement Commission by its order dated the 3rd February, 1978 informed the applicant that, as the Commissioner had n objected under section 245D(l), Settlement Commission did not allow the application to be proceeded with.

Parenthetically though, it must be stated that on the first rejection of the application by the Settlement Commission, the Revenue moved the I.T.A.T. for restoration of its appeals although no specific provision enables such a restoration. The assessee can apply for restoration of his appeals since s. 245M enables it.

This order of the Commission shows that some correspondence with the applicant' did take place before the order not to proceed with his composition petition. No hearing as such was given to him though, before making this adverse decision of February 3, 1978. The assessee urged that the order be reviewed as natural justice had not been complied with. The Settlement Commission yielded to this submission and, after elaborate argument and reasoning, reached the reverse conclusion that

the C.I.T's opposition to the composition not- withstanding, the application for settlement shall be considered on the merits.

The Union of India, through the C.I.T. concerned, has challenged the Settlement Commission's decision on jurisdictional and other legal grounds. The statutory scheme, the semantics of the expressions used, the jurisdictional limitations of the Settlement Commission and allied issues, have been debated at the bar and the declaration of law on these aspects has seminal significances because it relates to a sensitive area where Big Business may operate at high politico-official levels and the court must invigilate so that the law keeps its promises.

This perspective of the litigation brings into focus the high points of the debate before us, largely reflected in the Tribunal's long order Sri S. T. Desai, for the appellant-Revenue concentrated his fire on three vulnerable aspects of the judgment under attack. There was no power of review for the Commission, once it had declined to proceed with the application for settlement. Therefore, he argued that the reopening of the Settlement proceedings was invalid. Secondly, he submitted that even though the C.I.T. had withdrawn his appeals and thus facilitated the filing of an application under s. 245C no bar of estoppel could at all be spelt out to forbid the Commissioner from exercising his statutory power of with- holding consent to the settlement proceedings. Thirdly, he pressed the position that the C.I.T.'s veto was not subject to review or invalidation by the Settlement Commission and so the order under appeal was bad and beyond power. Of course, subsidiary issues did crop up and Shri A. K. Sen, appearing for the respondentassessee, not only joined issue with Shri Desai but also took a preliminary objection that Art. 136 was unavailable against an order of the Settlement Commission. It is necessary to mention that an argument which was mooted at our instance as the arguments proceeded viz.. that withdrawal by the Revenue of an appeal once filed did not have the effect of not preferring an appeal, was not pursued by the appellant before us but we are not bound by counsel pressing or cold-shouldering a point of law if attention of the advocates has been drawn thereto, as in this case it was.

The scheme of Chapter XIXA must be grasped before we embark on the discussion.

The incarnation of Chapter XIXA was in the wake of the Wanchoo Committee Report. The vampirish vices of black money and colossal tax evasion, both together using money power to prevent action against white-coller offender, had been a terrible menace to the health and wealth of the nation.

In particular, black money, whose constant companion was tax evasion, posed a challenge to the country's economy and the Wanchoo Committee was appointed to make recommendations with a view to arrest this evil. That Committee made a wealth of recommendations, but we are concerned only with Chapter 2 of the Report which, under the title "Black Money and Tax Evasion", proposed a compromise measure of a statutory settlement machinery where the big evader could make a disclosure, disgorge what the Commission fixes and thus buy quittance for himself and accelerate recovery of taxes in arrears by the State, although less than what may be fixed after long protracted litigation and recovery proceedings. We are not concerned with the merits of the recommendation except to state that if it works according to plan, it may "ensure that the settlement is fair, prompt

and independent", given "a high level machinery for administering the provisions". The risk of adverse criticism of escape by tax dodgers was adverted to by the Committee, but was silenced by the counter-argument that if the Commission was composed of officers with integrity, wide knowledge and experience and high status and emoluments, the A risk was minimal. A precautionary step against possible misuse by evaders of the settlement machinery was thought of by the Wanchoo Committee which made the circumspect observation.

However, we wish to emphasize that the Tribunal will proceed with the petition filed by a taxpayer only if the Department raises no objection to its being so entertained . We consider that this will be salutary safeguard because otherwise the Tribunal might become an escape route for tax evadors who have been caught and who are likely to be heavily penalised or prosecuted.

('The Tribunal', in the Wanchoo Committee Report was rechristened 'the Settlement Commission' in the Act when it was passed by Parliament). The Commission was vested with full power to investigate cases on its jurisdiction being invoked and to quantify the amount of tax, penalty and interest that it may eventually fix as payable. A strategic provision which held out fascination for the criminal tax evaders was contained in the report. The Wanchoo Committee recommended conferment on the Settlement Commission of a discretion to "grant immunity from criminal prosecution in suitable cases". The detailed mechanics of application, investigation, consideration, bearing and disposal are contained in the report and have eventually been translated into statutory provisions in Chapter XIXA.

This legislative history leads us on to a broad unfoldment of the actual provisions of ss. 245A to 245M which constitute a fasciculus of provisions designed for settlement of taxes in dispute. Section 245A is the definition clause even as . 245B is the clause constituting the Settlement Commission. Applications for settlement of cases by assessees are regulated by s. 245C which reads 245C. Application for settlement of cases. (1) An assessee may, at any stage of a' case relating to him, make an application in such form and in such manner and containing such particulars as may be prescribed to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided.

(2) ..... (3) .... 17-409SCI/79 Its meaning can be understood fully only when we read the defenition of "case". According to the definition in 6. 245A(a)), a 'case means any proceeding under the income tax law in connection with the assessment or reassessment of any person which may be pending before an income tax authority on the date of application under section, 245C(1). It is common knoledge that I.T.A.T. is not an income authority, which expression, it is settled includes the I.T.O and A.A.C. and others. Therefore, when an appeal pends before the Tribunal, it cannot be said that a case pends before an income tax authority. In the present case, we are concerned with a stage when appeals are pending before the Tribunal. Section 245C(1) may not enable an assessee to move the Commission in such cases but for the provision in s. 245M. Indeed, we are intimately concerned with the express provisions in and implications of s. 245M which specifically deal with persons who have filed appeals to the Appellate Tribunal and seek to apply to the Settlement Commission. Sub-section (6) of s. 245M is a deeming provision. An application under s. 245M will be deemed to be an application under s. 245C(l) and all provisions of Chapter

XIXA [except s. 245D(7)] shall apply such proceedings.

The question then arises whether and subject to what conditions can an assessee take advantage of s. 245M and move the Commission. only if he can validly move the Commission under s. 245 can his application be processed under s. 245C, 245D and other Sections of the Chapter. An intensive examination of s. 245M(l) to (S) and (7) thus becomes imperative.

Any assessee may make an application to have his case settle, but it is one thing to make an application proceeded with. For, on receipt of an application the Commission is not empowered automatically to proceed with it. The mechanics of s. 245D must be remembered in this context. The application for settlement, when filed, shall be forwarded to the Commissioner for a report and it is only on the basis of the material contained in such report that the Settlement Commission may allow the application to be proceeded with or reject the application. To reject an application is to refuse relief outright and affects the applicant adversely. So it is provided 'that an application shall not be rejected unless an opportunity has been given to the applicant of being heard." We are clearly of the view that an applicant before the Settlement Commission is entitled to a hearing before his application for composition is rejected. In the present case, on the facts stated earlier, the Settlement Com mission in the first instance rejected the application because the C.I.T. Objected to it. Maybe, the objection of the Commissioner A has lethal potency but the rule of fairplay incorporated in the first proviso to s. 245D(l) obligates the Commission to hear the applicant before rejection. Even apart from any specific provision, it is legal before not to hurt any party without hearing him unless the Act expressly excludes it. One may conceive of many reasons why a hearing, even at this stage, may be useful. The Commissioner or his representative may, in the light of the circumstances which the applicant may point out, withdraw his objection. Likewise, the applicant may point out that what appears to the Settlement Commission to be an objection by the Commission is not an objection to proceed with the application, but only a clarification of some aspect or other. Nothing is lost by hearing a petitioner whose application or settlement is being rejected and much may be gained by such hearing in properly processing the application in the spirit of Chapter XIXA. Anyway, s. 245D(l) does not negate natural justice and in the absence of an express exclusion of the rule of audi alteram partem, it is fair, indeed fundamental, that no man is prejudiced by action without opportunity to show to the contrary. Without expounding any inflexible rule of natural justice of universal validity we cannot fault the Settlement Commission for what it has done. We take the view that, having regard to the rulings of this Court in M. S. Gill case(l) and Maneka Gandhi case(2), the Settlement Commission's decision to re-hear and pass a de novo order cannot be said to be illegal. The Commissioner's. Objection to the application being proceeded with may prove fatal or may not, but without entering into that controversy we think it correct to hold that the Settlement Commissioner did not act without jurisdiction by affording a hearing and passing a fresh order in the presence of both parties. Whether that fresh order is valid or not depends on the consideration of the merits which we will presently examine. Law leans in favour of natural justice where statutory interdict does not forbid it.

The question now arises as to the course of the exercise of the Settlement Commission on receipt of all application for composition. The second proviso to s. 245D(l) is compulsive in ton and import for it mandates "that all application shall not be proceeded with under this sub-section if the

Commissioner objects to the application being proceeded with on the ground that concealment of particulars of income on the part of the applicant or perpetration of fraud by him (1) Mohinder Singh Gill v. Chief Election Commissioner [1978] 1 S.C.C.405.

(2) Maneka Gandhi v. Union of India [1978] 1. S.C.C.

248. for evading any tax.. has been established or is likely to be established by any income tax authority, in relation to the case." In the present case, the Commission did raise an objection on April 1, 1977 that " ....prosecution proceedings for concealment of income and also false verification in the returns were pending before the Chief Metropolitan Magistrate and that in the circumstances he did not consider this as a fit case to be proceeded with by the Settlement Commission."

This objection was in the normal course neither foolish nor futile but fatal, being in functional fulfilment of the requirements of the second proviso to s. 245D(l). Indeed, when we observe that the C.I.T. had, with full responsibility, prosecuted the assessee in a number of cases then pending for offences which attract the conditions required by the second proviso, there is little difficulty in holding that the application for settlement, having been rejected by the Commissioner, could not be proceeded with. The veto of the Commissioner the Waterloo of the application.

The Settlement Commission, however, took the view that the Commissioner was estopped from exercising his power to object and for this reason ignored the veto of the Commissioner and proceeded to process the application in terms of sub-ss. (2) to (S) of s. 245D. The core controversy in this appeal is as to whether the view of the Settlement Commission that the veto is unavailable for the Commissioner in view of his earlier stand in regard to the withdrawal of appeals is valid or not.

After setting out the course of events and earlier readiness of this Department to withdraw its appeals to enable the Commission to be moved by the assessee notwithstanding the pendency of the criminal cases and having regard to the absence of any new material, having been discovered justifying a reversal of the C.I.T's stand, the Commission took the view that the rule of estoppel forbade the appellant from objecting to the Commission's proceedings with the application of this assessee. It argued itself in to that conclusion thus:

> In this particular case, in view of the withdrawal of the Departmental appeals before the Income Tax Appellate Tribunal, the Commissioner is estopped from making a report under section 245D(l) Proviso 2 to the Settlement Com mission objecting to the application from being proceeded with. The objection raised by the Commissioner is thus in- A valid in law and any objection which is invalid in law, for the reason discussed earlier, is no objection under the second proviso to section 245D(l) and the Commissioner is competent to ignore it applying the principles of law, equity and natural justice. The Settlement Commission, is therefore, entitled to proceed with the application.
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> In this case it is not shown before us nor it is the Department's case that between 24th December, 1976 and 7th January, 1977, the Commission had brought on record

any fresh materials to come to the conclusion under which he could legitimately raise the objection under the second proviso to section 245D(l) once having entitled the assessee to make the application under s. 245M(l) proviso. Filing of a complaint for launching a prosecution earlier is not a relevant matter for the exercise of jurisdiction under the second proviso to section 245D(l) at this stage in the light of the facts brought before us and elaborately discussed in the earlier paragraphs. This is a clear case in which the applicant was prevailed upon to withdraw the appeals for the additional two assessment year 1972-73 and 1973-74 where very large and substantial sums were involved compared to the ten assessments' from 1962-63 to 1971-72 where cross appeals were agreed to be withdrawn by either side. On the admission of the learned Departmental Representative himself, the Departmental appeals were frivolous and not likely to succeed on appeal. We are, therefore, of the opinion that for a harmonious construction of the statute, in a case falling under Section 245M the second proviso to section 245D(l) cannot be read in isolation but only in conjunction with the 1st proviso to Section 245M(l). Under Section 245D(l) the Commission has to decide the admission on the basis of the materials contained in the report of the Commissioner and having regard to the nature and circumstances of the case or the complexity of investigation involved therein. The entire facts of the case clearly indicate that the Revenue came to an understanding with the applicant to have the subsequent exercise of the power under the second proviso to Section 245D(l) without any fresh material is, 11 therefore, no ground to dislodge the right of the assessee to come before the Commission.

We have earlier clarified that an I.T.A.T. is not an Income-Tax authority and proceedings pending before such tribunals are not cases. But s. 245M takes care of assessees whose appeals pend before the I.T.A.T. but are anxious to square up their litigation through the Settlement Commission. A close-up of this provision is necessitous and a reading of its full range of meaning is decisive of the subject of this appeal.

We may skip ss 245E, and but dwell for a moment on s. 245H which is of great moment from the angle of public interest and public morals as it immunises white collar offenders against criminal prosecutions and, in unscrupulous circumstances, becomes a suspect in strument of negotiable corruption. More than the prospect of monetary liability and mounting penalty is the dread of traumatic prison tenancy that a tax-dodging tycoon is worried out. And if he can purchase freedom from criminal prosecution and incarceratory sentence he may settle with the Commission; and, towards this end, try to buy those who remotely control the departmental echelons whose veto or green signal closes or opens the jurisdiction of the Settlement Commission and hushes or pushes the prosecutions. Thus, s. 245H, which c1othes the Commission with the power to grant immunity from prosecution for 'any offence under this Act or under the Indian Penal Code or under any other Central Act.. ' is a magnet which atracts large tax-dodgers and offers, indirectly an opportunity to the highest departmental and political authorities a suspect power to bargain.

We may now move straight on to s. 245M which we reproduce:

245M. Certain persons who have filed appeals to the Appellate Tribunal entitled to make application tc the Settlement Commission.-

(1) Notwithstanding anything contained in this Chapter, any assessee who has filed an appeal to the Appellate Tribunal under this Act which is pending before it shall, on withdrawing such appeal from the Appellate Tribunal, be entitled to make an application to the Settlement Commission to have his case settled under this Chapter:

Provided that no such assessee shall be entitled to make an application in a case where the Income tax officer has preferred an appeal under sub-section (2) of section 253 against the order to which the asses see's appeal relates.

(2) Any assessee referred to in sub-section (1) may A make an application to the Appellate Tribunal for per mission to withdraw the appeal.

(3) On receipt of an application under sub-

section (2), the Appellate Tribunal shall grant permission to withdraw the appeal. B (4) Upon the withdrawal of the appeal, the proceeding in appeal immediately before such withdrawal shall, for the purposes of this Chapter, be deemed to be a proceeding pending before an Income-tax authority.

(5) An application to the Settlement Commission under this section shall be made within a period of thirty days from the date on which the order of the Appelate Tribunal permitting the withdrawal of the appeal is communicated to the assessee.

(6) An application made to the Settlement Commission under this section shall be deemed to be an appli cation made under sub-section (1) of section 245C and the provisions of this Chapter (except sub-section (7) of section 245(D) shall apply accordingly.

(7) Where an application made to the Settlement Commission under this section is not entertained by the Settlement Commission, then, the assessee shall not be deemed to have withdrawn the appeal from the Appellate Tribunal and the provisions contained in section 253, section 254 and section 255, shall, so far as may be, apply accordingly. Briefly, the section (a) enables withdrawal of appeals before Tribunals by assessees as condition precedent to applications . for composition by the Settlement Commission,

(b) applies, by a legal fiction, ss. 245C and to such applications and (c) where the proceeding before the Commission is not entertained, allows revival of the with- drawn appeals thus restoring the status quo ante. This is but fair because the assessee should not suffer if the Settlement Commission bars ib doors.

The facts of our case show that the assessee had filed appeals before the Tribunal and had later moved for their withdrawal in terms of s. 245M(1), (2) and (3). Sub-s. (4) thereupon opened and by virtue of sub-s. (6) the mechanics of ss. 245C and spraing into action. It would have been smooth sailing but for the proviso to s. 245M(l), which runs thus:

> Provided that no such assessee shall be entitled to make an application in a case where the Income-tax Officer has preferred an appeal under sub-section (2) of section 253 against the order to which the assessee's appeal relate.

Thus there is an embargo on the right of the assessee to move the Commission 'where the Income-tax officer has preferred an appeal under sub s. (2) of 6. 253 against the order to which the assessee's appeal relates'. The Revenue had preferred appeals here but later withdrawn them. Does such withdrawal amount to not having preferred an appeal at all ?

The crucial question, therefore, is as to whether the assessee is disentitled altogether to make an application before a Commission because the Income Tax officer has already preferred an appeal to the I.T.A.T. although he has subsequently withdrawn it.

Does filing the appeal ipso facto imply that the die is cast and withdrawal thereof cannot whittle down its preventive impact? We will presently discuss this point.

We must clarify that this legal bar to the Settlement Commission's jurisdiction contained in the proviso to s. 245M was not urged by the applicant's counsel before us consistently with the stand the Department had throughout taken in this case. But law, as laid down by this Court, transcends the facts of a given case or stances of parties or counsel Here the Department did file appeals and later withdrew them be fore the application for settlement was made. At the time the application before the Settlement Commission was moved no departmental appeal was pending. Indeed, the documents in this case clearly point to the assumption by the C.I.T. and the assessee that if the Revenue withdrew its appeal the disentitlement in the proviso would disappear. Even so, when an appeal is filed by the I.T.O., does not the prohibition operate? This turns on the meaning of the words "preferred an appeal". "Preferred" is a word of dual import:

> its semantics depend on the scheme and the context; its import must help, not hamper, the object of the enactment even if liberty with language may be necessary.

There is good ground to think that an appeal means an effective appeal.(l) An appeal withdrawn is an appeal non est as judicial thinking suggests.(2-3) Black's Law Dictionary gives the following meaning: PREFER: To bring before; to prosecute; to try to proceed with. Thus, preferring an indictment signifies prosecuting or trying an indictment.

To give advantage, priority, or privilege; to select for first payment, as to prefer one creditor over others.

Thus it may mean 'prosecute' or effectively pursue a proceeding or merely institute it. Purposefully interpreted, preferring an appeal means more than formally filing it but effectively pursuing it. If a party retreats before the contest begins it is as good as not having entered the fray. After all, Chapter XIXA is geared to promotion of settlement and creation of road-blocs in reasonable compositions. The teleological method of interpretation leads us to the view that early withdrawal of the I.T.O's appeal removes the bar of the Proviso.

The problem that troubles us arises from s. 245M(7). If a settlement application is not entertained and is rejected in limine there is a statutory revival of the assessee's appeal before the I.T.A.T. because of the deeming provision, but what happens to the appeal of the I.T.O. which he withdraws to enable the I.T.O to file an application before the Commission ? Literally read, s. 245M(7) covers the revival of the assessee's appeals but not the I.T.O's appeals. The inference from this omission is that no occasion arises for revival of the I.T.O's appeals because once he files an appeal no application for settlement can be made. That is to say, the proviso to s. 245M(l) interdicts entertaiment of a settlement application if departmental appeals are filed.

This interpretation narrows the benign amplitude of the Chapter of attracting as many big assessees with disputed claims as are ready to settle their liabilities through the Commission. There may be cases where the A.A.C. has given partial relief to the assessee and both sides may be aggrieved. Both sides may have filed appeals. There is no understandable ground to exclude the possibility of such cases being settled merely because the I.T.O. has, perhaps for good reasons, filed an appeal. The purpose of substituting the method of investigative negotiation, just settlement and early exigibility by a high-powered (1) 31 S.T.C. 434.

(2) 21 S.T.C. 154,52 I.L.R. 780;

(3) 1973 31 S.T.C. 434.

Commission for a tier-up-tier of long-protracted litigation, where victory may be phyrrhic and futile, is ill-served by keeping out cases solely for the reason that departmental appeals have been filed. To truncate the operation of the salutary provisions of Chapter XIXA more substantial reasons must be present. Of course, if no alternative interpretation is possible, it is not for the court to explore intendment of the legislation beyond the language in which the Section is couched.

However, there is an alternative meaning which reconciles the rationale of settlement with the embargo of the Proviso. If we read into the words "prefer an appeal"

the sense of effectively prosecuting an appeal, then mere institution followed by withdrawal will cancel the effect result in non-prosecution and obliteration of the appeal, which is the same as not preferring an appeal. The meaning of "prefer" as given in the Black's law Dictionary supports This construction. Among available semantic options law prefers that which furthers the statutory objective.

The possible obstacle in adopting this interpretation is that while the assessee's appeal gets revived when the Commission rejects an application, the I.T.O.'s appeal is not resuscitated under s. 245M(7). Even this is more imaginery than real and depends on over-emphasis on verbalism. After all, the clause we have to decode is "the assessee shall " be deemed to have withdrawn the appeal from the appellate tribunal". The obvious object of this clause is to restore the parties to status quo ante, and in fairness, must apply to the Department as to the assessee. This non-discriminatory import can be resonably read into the clause if we construe the expression the "assessee" in a wider way so as to include all parties affected by the subject matter of the assessment. In that case, the clause may mean that no one who is aggrieved by the assessment shall "be deemed to have withdrawn the appeal from the appellate tribunal." An equitable and purposeoriented construction of the clause means that the assessee will be put back in the same position vis-a-vis his appeals and if, to facilitate his moving the Commission, the l.T.O. has withdrawn the departmental appeals, the Commission's rejection of the application shell not prejudice the Revenue. Actus curie neminem gravabit is the principle of wider import and is a tool of construction too. This perhaps may be making up for a lacuna by a restructuring of the clause so at to work out justice to the Department. The scheme of s. 253(4) contemplates filing of memorandum of cross objections by the I.T.O. On receipt of notice of an appeal by the assessee. So much so, it is also possible, alternatively, to read into s. 245M(7) the right of the Department to file an appeal de novo on receipt of notice of the revival of the assessee's appeal, within the period specified in s. 253(4). This does not do violence to the language of Is. 245M(7) and affords eequitable relief to the Department by enabling it to bring its appeal back to life notwithstanding the earlier withdrawal, when the asses- see's appeal reincarnates under s. 245M(7).

We are mindful that a strictly grammatical construction is departed from in this process and a mildly legislative flavour is imparted by this interpretation. The judicial process does not stand helpless with folded hands but engineers its way to discern meaning when a new construction, with a view to rationalisation is needed. Lord Denning, in his recent book "The Discipline of Law"(l) made a seminal observation on "Ironing out the creases" by quoting a passage from Seaford Court Estates Ltd. v. Asher(2).

"Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The

> English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have beer, guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and he must do this not only from the language of the statute, but also from a consideration of the social conditions which give rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature. That was clearly laid down by the resolution of the judges in Heydon's case, and it is the safest guide today. Good practical advice on the subject was given about the same time (1) p. 12.
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> (2) (1949) 2 K. B. 481.

by Plowden....Put into homely metaphor it is this:

> judge should ask himself the question: If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out ? He must then do as they would have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases The upshot of the discussion is to hold that if the Department files an appeal which it drops to enable an application before the Commission, then the Proviso to s. 245M(l) does not debar the motion for settlement.
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> The preliminary objection raised by Shri A. K. Sen need not detain use because we are satisfied that the amplitude of Art. 136 is wide enough to bring within the jurisdiction orders passed by the Settlement Commission. Any judgment, decree, determination, sentence or order in any case or matter passed or made by any court or tribunal, comes within the correctional cognizance and review power of Art. 136. The short question, then, is whether the Settlement Commission cannot come within the category of "Tribunals". To clinch the issue, s. 245L declares all proceedings before the Settlement Commission to be judicial proceedings. We have hardly any doubt that it is a tribunal. Its powers are considerable; its determination affects the rights of parties; its obligations are quasi-judicial; the orders it makes at every stage have tremendous impact on the rights and liabilities of parties. WHERE a body is created by statute and clothed with authority to determine rights and duties of parties and to impose pains and penalties on them it satisfies the test laid down in Associated Cement Co. case(l). A Constitutional Bench of this Court in that case has indicated the quintessential test in this regard and we need only extract a portion of the head-note relevant to this aspect:

"In considering the question about the status of any body or authority as a tribunal under the article, the con sideration about the presence of all or some of the trappings of a court is really not decisive. The presence of some of the trappings may assist the determination of the question as to whether the power exercised by the authority which possessed the said trappings, is the judicial power of the State or not. The main and basic test, however, is whether the adjudicating power which a particular authority is empowered to exercised has been (1) Associated Cement Co. Ltd. v. P. N. Sharma & Anr. [1965] 2 S. C. R. 366 conferred on it by a statute and can be described as, a part of the State's inherent power exercised in discharging its judicial function."(1) The expanding jurisprudence of administrative tribunals to which some eminent judges, cradled in Dicean concepts in the early days of English law, has come to stay whether we call it the new despotism or the pragmatic instrumentality of dispensing justice untrammelled by the complexities and mystiques which are part of the processual heredity of courts. The Franks Committee rightly said :(2) "Reflection on the general social and economic changes of recent decades convinces us that tribunals as a system for adjudication have come to stay."

"The advantage which tribunals had over courts" states Seervai in his classic work on the Constitution of India "lay in cheapness, accessibility, freedom from technicality expedition and expert know- ledge of their particular subject."(') A casual perusal of Chapter XIXA convinces the discerning eye that the Settlement Commission exercises many powers which affect, for good or otherwise, 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. In short, Settlement Commissions are Tribunals. The preliminary point fails and we proceed to consider the triple substantial questions set out earlier.

The two gut issues that must now engage us take us to the turn of events surrounding the withdrawal of appeals by both sides. To complete the story-and this fact has a bearing on one of the legal questions-it must be stated that when the Settlement Commission first acted under the Second Proviso to s. 245D(l), the Department, even like the assessees, applied to the I.T.A.T. for revival of its appeals although s. 245M(7) does not make any such provision for revival of the I.T.O's appeals.

In ordinary circumstances the 2nd Proviso to s. 245D(l) is easy of construction and the exercise is also simple. The assessee applies to the Commission, thereupon the Commission shall call for a report from the Commissioner. The Commissioner may object to the appli-

(1) Ibid. p. 366 (2) Franks Committee on Administrative Tribunals and Enquiries p. 8 (3) Franks Committee Report, p. 9, quoted by Seervai in his Constitutional Law of India p. 1226.

cation being proceeded with on the grounds specified in the second Proviso to sub-s. (1) of s. 245D. If he so objects the application "shall not be proceeded with". This is express, explicit and mandatory. Where an application is allowed to be proceeded with under subs. (1), the Settlement Commission may call for the relevant records from the Commissioner and hold further enquiry. Thus, the Commissions power to proceed with the application can be paralysed by the Commissioner objecting to the application being proceeded with. In our case the Commission called for a report from the Commissioner and the Commissioner objected to the application being proceeded with whereupon the Commission declined to proceed with the application But on the assessee's motion for review of that order which was passed without hearing him, fresh consideration after hearing both sides followed and the Commission decided to proceed with the application holding that the Commissioner was estopped from objecting. The crucial question is whether the Commissioner's statutory power to object to the Settlement proceedings on the ground of the presence of grave deviances mentioned in Proviso 2 to s. 245D(l) can be nullified by the doctrine of estoppel and if it can be whether there are grounds to hold that a plea of estoppel is sustainable in the circumstances We must realise that the Commissioner has a duty to the public Revenue and, more importantly, a duty to object to any assessee who is prima facie guilty of grave criminal conduct in the shape of concealment of income or prepetration of fraud getting away with it by invoking Chapter XIXA. The Wanchoo Committee was mindful of the benefits of a policy of collection of tax without pro tracted litigation through the machinery of the Settlement Commission but the potential for escape by the big whales of economic crime by resort to the Settlement Commission engaged the Committee conscience. 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 Tribunal (Settlement Commission). This was a pious wish and the Committee went further to guard against fraud and to uphold the paramount principles, more important than physical gains and losses, of economic offenders being punished by arming the Commissioner with the right to object to the very entertainment of the application. "We consider that this will be a salutary safeguard, because otherwise the Tribunal (Settlement Commission) might become an escape route for tax evaders who have been caught and who are likely to be heavily penalised or prosecuted." The gravity of this public policy cannot he undermined by interpretative softness of Second Proviso to s.245D(1) To whittle down the imperative nature of this veto power is to undo the expectations of the Wanchoo Committee and amounts to stultify the rule of law an integral part of which is that the law shall not let the greater felon loose. Can the rule of estoppel override a statutory mandate of a prohibitory character calculated to inhibit/escape from the coils of the law crime?

Moreover, we to have to examine, assuming the application of the rule of estoppel, where the basics of that rule of a clear representation having been made by A to B and the latter on the face of representation action to his detriment can be spun out of the circumstances before us.

Now we come to the meat of the matter-the plea of estoppel or its variants. The C.I.T.'s objection to the jurisdiction of the Commission to proceed with the matter has been shot down by the artillery of estoppel. The order under appeal proceeds to hold that a conspectus of the circumstances of the case compels the conclusion that an understanding had been reached between the assessee and the C.I.T., evidenced by mutual withdrawal of their respective appeals before the I.T.A.T., that the

Commission would be permitted to explore a settlement; and so, the statutory veto available to the C.I.T. to interdict the enquiry by the Commission could not be exercised because he was estopped from so doing, resiling from his earlier stand. The argument has an attractive veneer or cosmetic charm but law is more than skin-deep and courts peep beneath to see the principle of equity and justice thereby promoted.

What, in essence, is estoppel? Estoppel is a rule of equity which forbids truth being pleaded or representation, on which faith another has acted to his deteriment, being retracted. Even extending the rule into the new-fangled empire of promissory estoppel, it cannot go beyond the limits of the Law Revision Committee in England which Lord Denning allowed to blossom in the High Trees case.(1) "We therefore recommend that a promise which the promisor knows, or reasonably should know, will be relied upon by the promisee, shall be enforceable if the promisee has altered his position to his detriment in reliance on the promise."

The soul of estoppel is equity, not facility for inequity. Nor is estoppel against statute permissible because public policy animating a statutory provision may then become the casualty. Halsbury has 11 noted this sensible nicety.

(1) [1947] 1 KB 130-also see "Discipline of Law" by Lord Denning, p. 202.

> "Where a statute, enacted for the benefit of a section of the public, imposes a duty of a positive kind, the person charged with the performance of the duty cannot by estoppel be prevented from exercising his statutory powers."(l) "A petitioner in a divorce suit cannot obtain relief simply because the respondent is estopped from denying the charges, as the court has a statutory duty to inquire into the truth of a petition."(2) The luminous footnote cites rulings and states that "This rule probably also applies where the statute bestows a discretion rather than imposing a duty."(3) To sum up, where public duties cast by statute are involved, private parties cannot prevent performance by invoking estoppel. We do not discuss further since the facts here exclude estoppel.
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> In the present statutory situation s. 245D by the 2nd Proviso, casts a public duty on the Commission of Income Tax to consider, in the light of the case made out in the assessee's application, whether "concealment of particulars of income on the part of the applicant or perpetration of fraud by him for evading any tax or other sum chargeable or imposable under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act, has been established or is likely to be established by any Income-tax authority, in relation to the case", and exercise his veto power to prevent escape of macro-criminals prima facie guilty of grave economic crimes. He cannot bargain over this interdict in advance or barter away a legal mandate in anticipation. He may permit or even assist the filing of a conciliation motion by the assessee but when the Commission intimates him under s. 245D (1) he shall, with statutory seriousness, exercise his discretion. He cannot enter into a 'deal' over this power without betraying the statutory trust. We cannot therefore accept the plea that the

> Commissioner of Income Tax, by conduct and 'understandings' has 'irredeemably mortgaged' his statutory duty to object, if the case deserves such objection. Estoppel then is both odious and ominous and discretion the door to corruption.

Even otherwise, there must be an active representation proceeding from the functionary sought to be muzzled by estoppel and the (1) Maritime Elec. Co Ltd v. General Diaries Ltd. [1937] AC 610 and Halsburys Laws of England para 1515. (2) Hudson v. Hudson [1948] p. 292 and Halsburys Law of England para 1515.

(3) Halsbury, 4th Edn. p. 1019.

pleading party must have acted to his detriment on the faith of the said representation or futuristic promise. Here, the C.I.T. made no representation to the assessee. He merely yielded to the latter's persuasion. Nor did the assessee act on any representation of the C.I.T. The withdrawal of his appeal was not because of or induced by the C.I.T. The Commissioner never asked him to withdraw his appeals but when asked by the assessee to withdraw the departmental appeals did so on condition that the other also withdrew his appeals. Granting that the C.I.T. did facilitate the motion before the Commission, it did not mean that the assessee did anyhing to his detriment. Moreover, there was and could not be any representation or even negotiation, (except illicit) regarding the exercise of the statutory function under the 2nd Proviso in advance of the filing of the application for settlement.

Even on grounds of public policy, it will be lending legal colour to hushing up prosecutions of high-placed offenders by an unjust extension of the rule of estoppel. Bargaining between tax authorities and big assessees over criminal prosecutions and the like is beset with corrupt potential that a court of conscience cannot succumb to such a rule of estoppel.

Apart from the jural untenability of the contention let us see if the factual matrix supports the claim. A close look at the foundational facts will reveal the fallacy of the plea of estoppel.

Is mere 'understanding' or ambiguous conduct the stuff of which the fabric of estoppel is made? We find the case of the respondent a rope of sand, a route to fraud, a permit for non-performance of public duties. The assessee takes the initiative and beseeches the In- come Tax Department to help him, move the Settlement Commission by withdrawing its appeals. The story, when unfurled, shows how the assessee acted on his own independently of the Department, never had any blanket assurance from the latter about non-objection to the later stages of the application whatever be the guilt of the assessee vis-a-vis the 2nd proviso to s. 245D(l), defeating the statutory efficacy of the provision.

It all begins chronologically with the assessee respondent representing to I.T.A.T. On 23-8-1976, the following:

> Re: I.T. appeals in the name of Sri B. N. Bhattacharjee for the Asst. years 1962-63, 63-64, 64- 65, 65-66, 66-67, 67-68, 68-69, 69-70, 70-71, 71-72, 72-73 and 73-74.

18-409SCI/79 Sub: Prayer u/s 245M of the I.T. Act, 1961 for withdrawal of appeals.

With regard to the above I beg to submit that all the above appeals I have filed on 12-9-75 but now I like to have my cases settled by the settlement Commission and as such I may kindly be allowed to with draw all the above twelve appeals u/s 245M of the I.T. Act, 1961. The matter is very much urgent and the settlement petition is to be filed within a day or two before the Settlement Commission, New Delhi.

Pray that an early order of the appellate Tribunal permitting the withdrawal of all the above appeals may kindly be issued to me and for this act of kindless I shall ever pray.

Dt. 23-8-76.

sd. S. N. Mandal At this time the Department had done nothing to induce him to withdraw his appeals or move the Commission to that effect. It was a unilateral act of his and if the I.T.A.T. allowed him to withdraw, that was not because of the C.I.T's conduct but the compulsion of s. 245M(3). If at all, the assessee was chasing the Department and falling at its feet seeking mercy and praying for withdrawal of its appeals as is evident from Annexure which runs thus:

Dear Sir.

I have instructed my counsel to withdraw all my Tribunal appeals to enable me to file petition before the Settlement Commission stop l seek your mercy and sympathy by with drawing APPEAL FILE by the Department so that I can file my Settlement Petition here for settlement stop I assure you my full co-operation and I want settlement bonafide and I am acting in good faith stop I pray for your kind consideration and cooperation stop 25-5-76. Esteem Regards B. Bhattacharjee Camp: New Delhi How can this craven attitude be converted into a conduct induced by the Department detrimental to the assessee's interest? Even the latter letter to Shri Kuruvilla, Member Central Board of Direct Taxes is plaintive and supplicative and not indicative of any representation by the Department to the assessee leading to the latter's action to his Own prejudice. In fact, Annexure F dated September 10, 1976 winds up:

"1. I shall be grateful, if you would kindly ask your department to withdraw all the pending appeals filed by the Department with I.T.A.T. Lastly if the Department find any technical difficulties I am prepared to swear my affidavit to protect the interests of the department. I assure you my full cooperation with the department in arriving at a reasonable settlement of the cases. I am writing this in a good faith. I am enclosing herewith the photostat copies of the correspondences for your kind and benign consideration."

We have earlier recounted the further developments and all that has happened is a communication from the C.I.T. to the assessee dated December 16, 1976 which is cryptic in terms:

> "I am to inform you that the departmental appeals pending before the Income-tax Appellate Tribunal, Calcutta against you will be withdrawn provided all the appeals filed by you for the assessment year 1962-63 to 1973-74 are withdrawn by you."

It is incredible that the tone, sequence and the context and pouring subjective wine into the vessel of words used, the Commission should interpret this communication to reflect an understanding of words a representation by the department to the assessee to do a thing to his prejudice whereupon he acted that way laying the basis for a plea of estoppel. Far from the Revenue making any positive representation to the assessee it was a case of concession shown to him to his chance before the Commission. This is clear from the assessee's petition to the Tribunal dated 17-12-76 wherein he states-

> "... now the learned C.I.T., Central, Calcutta has very kindly agreed to withdraw their Departmental appeals for the assessment years 1962-63 to 1971-72 on condition that your petitioner would also withdraw all the appeals for 1962-63 to 73-74 assessments."

It is true that the C.I.T. withdrew the appeals of the Department, but it is not true that he made any representations to the assessee to act in a particular manner with a promise of doing something to his advantage leading to the assessee in turn acting to his own prejudice by withdrawing his appeals. His withdrawal of the appeals was in-

dependently decided upon by him so that he could move the Corn mission. Thereafter he moved the Department to withdraw its appeals so as to entitle him to make an application to the Commission. The order of the I.T.A.T. dated 24-12-76 makes it clear that it granted permission to withdraw appeals because:

> "The learned departmental representative Shri Narayanan also had no objection to permission being granted for withdrawal of the appeal."

We need not overload this judgment with more extracts from letters and petitions because it is abundantly clear that the basics of equitable estoppel are blissfully absent and the canons that govern the application of the principle contradict its extension to a situation like the present. We, therefore, overrule the plea of estoppel which has found favour with the Commission and hold that the objection raised by the C.I.T. is a potent interdict on the jurisdiction of the commission.

It is not inappropriate to state that the policy of the law as disclosed in Chapter XIXA is not to provide a rescue shelter for big tax-dodgers who indulge in criminal activities by approaching the Settlement Commission. The Settlement Commission will certainly take due note of the gravity of economic offences on the wealth of the nation which the Wanchoo Committee had emphasised and will exercise its 15 power of immunisation against criminal prosecutions by using its power only

sparingly and in deserving cases; otherwise such orders may be come vulnerable if properly challenged.

Thus, a holistic perspective in the correct statutory setting makes the conclusion irresistible that the appeal must be allowed, that the Settlement Commission should be inhibited from proceeding with the application of the assessee and the appeals by the assessee before the I.T.A.T. must be revived and disposed of expeditiously. The departmental appeals, having been admitted by the C.I.T. himself to be very weak and frivolous, should not be revived as it will be only a waste of public time and public money. The appeals are allowed, but in the circumstances of the case, the parties will bear their costs.

N.V.K. Appeals allowed.