ONE-STOP DESTINATION FOR TAXMAN AND TAXPAYER

An impossible retrospective amendment

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THE political theorist Jean-Louis de Lolme in his 1771 book on the English constitution stated, ***"Parliament can do everything but make a woman a man and a man a woman."*** The bright bureaucrats of India who draft laws for the Parliament to pass, must be having a similar opinion.

Section 245 C of the Income Tax Act deals with application for settlement of cases to the Settlement Commission to have the case settled.

> **Application for settlement of cases.**
>
> **245C.Â**(1) An assessee may, at any stage of a case relating to him, ***make an application*** in such form and in such manner as may be prescribed, and containing a full and true disclosure of his income which has not been disclosed before the Assessing Officer, the manner in which such income has been derived, the additional amount of income-tax payable on such income and such other 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:
>
> **Provided** Â that no such application shall be made unless,-
>
> xxxxx

The Finance Bill 2021 by Clause 59, proposed to amend this Section 245C, by adding a new clause

> 59. In section 245C of the Income-tax Act, after subsection (4), the following sub-section shall be inserted and ***shall be deemed to have been inserted with effect from the 1st day of February, 2021***, namely: -
>
> ***"(5) No application shall be made under this section on or after the 1st day of February, 2021.".***

This virtually abolished the Settlement Commission retrospectively with effect from 1st February 2021. See the language - no application SHALL be madeâ€¦.. What will they do if an application is made? How can they say somebody shall not make an application? Is it an offence and that too a retrospective one to make an application?

Suppose they make a law on 28th March 2021 that:

1. No application for driving licence shall be made or after the 1st day of February, 2021

2. No appeal shall be made to the Tribunal on or after the 1st day of February, 2021

3. No application shall be made for refund of GST on or after the 1st day of February, 2021

4. No application for advance ruling under GST shall be made on or after the 1st day of February, 2021

The amendment that ***No application shall be made under this section on or after the 1st day of February, 2021*** , was proposed in the Finance **Bill 2021** presented to Parliament on 1st February 2021. Lo and behold! the Settlement Commission stopped taking applications from 1st February. All those assessees who had time till 31st March 2021 to file applications before the Settlement Commission, were shocked and as the only remedy, they queued up to the High Courts.

The Telangana High Court in an order dated 16.02.2021, observed,

> From the above submissions it could be seen that the Finance Bill seeking to insert sub-section 5 to Section 245-C of the Act, prohibiting to file settlement applications after 01.02.2021, is introduced in the Lok Sabha, and as on today the bill is not passed, and it has not received the assent of the President and no notification has been issued. Therefore, Section 245-C of the Act, as it stands as on today, is applicable.

In another order dated 15.02.2021, the same High Court had observed,

> In the present case nothing has happened and the statute remains on the statute book. The 3rd respondent is obligated to receive the application as long as the statute is valid and subsisting.

And in several other orders, the High Court stayed the assessments and directed the Settlement Commission to receive the applications filed by the assessees. Fairly enough, the Settlement Commission accepted the applications from those assessees who had High Court orders directing the Commission to accept their applications. Notwithstanding the amendment proposed in the Finance Bill that ***No application shall be made under this section on or after the 1st day of February, 2021.***

On 28th March 2021, the Finance Bill became the Finance **Act 2021**, with this provision remaining identically under Section 67 of the Act.

So, as per Section 67 of the Finance Act 2021, which is LAW with full force,

> ***"No application shall be made under this section on or after the 1st day of February, 2021.".***

But the fact is that hundreds of applications have been made legally on the orders of High Courts. What will happen to them? They were filed after 1 st February 2021 and the present law prohibits that, but when they were filed, it was perfectly legal as per the law prevailing at the time of filing.

Will this have retrospective effect or is it retroactive?

In ***Jay Mahakali Rolling Mills vs Union of India*** - **2007-TIOL-139-SC-CX**, the Supreme Court observed,

> ***"Retrospective"***
> means looking backward, contemplating what is past, having reference to a statute or things existing before the Statute in question. Retrospective law means a law which looks backward or contemplates the past; one, which is made to affect acts or facts occurring, or rights occurring, before it comes into force. Retroactive statute means a statute, which creates a new obligation on transactions or considerations or destroys or impairs vested rights.

Can the Government travel back in time and change an act which had been legally done?

Should law-making be so complicated?

Until next week