***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

*** HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

AND

*** HON'BLE SMT JUSTICE T. RAJANI**

+W.P.Nos.24631, 24636, 24641, 26244, 26249, 26260, 26276, 26321, 26374, 26376 & 26380 of 2016

% Date: -04-2018

W.P.No.24631 of 2016

#**Between**:

M/s. Maa Mahamaya Industries Ltd.,
Industrial Ward, Dhamtari, Chattisgarh – 493 773
Rep. by its Chairman & Managing Director
Sri Ashok Kumar Agrawal, S/o. Sri Vidya Sagar Agrawal,
R/o. Flat No.301 & 302, Pine Wood Apartment, Jasti Sqare,
Panduranga Puram, Visakhapatnam.

… Petitioner

And

1. Income Tax Settlement Commission, Additional Bench, 640, Anna Salai, Nandanam, Chennai – 600 035.
2. Principal Commissioner of Income Tax (Central), Pratyakshakar Bhavan, 4th Floor, MVP Colony, Double Road, Visakhapatnam – 530 017.
3. The Assistant Commissioner of Income Tax, Central Circle-1, Visakhapatnam, Andhra Pradesh.

… Respondents

W.P.No.24636 of 2016

\# **Between**:

M/s. GVA Industries Pvt. Ltd.,
Industrial Ward, Dhamtari, Chattisgarh – 493 773
Rep. by its Director Sri Ashok Kumar Agrawal,
S/o. Sri Vidya Sagar Agrawal, R/o. Flat No.301 & 302,
Pine Wood Apartment, Jasti Sqare,
Panduranga Puram, Visakhapatnam.

… Petitioner

And

1. Income Tax Settlement Commission, Additional Bench, 640, Anna Salai, Nandanam, Chennai – 600 035.
2. Principal Commissioner of Income Tax (Central), Pratyakshakar Bhavan, 4th Floor, MVP Colony, Double Road, Visakhapatnam – 530 017.
3. The Assistant Commissioner of Income Tax, Central Circle-1, Visakhapatnam, Andhra Pradesh.

W.P.No.24641 of 2016

Between:

Sri Ashok Kumar Agrawal, S/o. Sri Vidya Sagar Agrawal,
R/o. Flat No.301 & 302, Pine Wood Apartment, Jasti Sqare,
Panduranga Puram, Visakhapatnam.

… Petitioner

And

1. Income Tax Settlement Commission, Additional Bench, 640, Anna Salai, Nandanam, Chennai – 600 035.
2. Principal Commissioner of Income Tax (Central), Pratyakshakar Bhavan, 4th Floor, MVP Colony, Double Road, Visakhapatnam – 530 017.
3. The Assistant Commissioner of Income Tax, Central Circle-1, Visakhapatnam, Andhra Pradesh.

…. Respondents

W.P.No.26260 of 2016

#**Between**:

Pinky Agrawal, W/o. Shri Om Praksash Agrawal,
C/o. Ramcharan Agrawal
R/o. Industrial Ward, Dhamtari (C.G.)

… Petitioner

And

1. Income Tax Settlement Commission, Additional Bench, 640, Anna Salai, Nandanam, Chennai – 600 035.
2. Principal Commissioner of Income Tax (Central), Pratyakshakar Bhavan, 4th Floor, MVP Colony, Double Road, Visakhapatnam –
3. The Assistant Commissioner of Income Tax, Central Circle-1, Visakhapatnam, Andhra Pradesh.

… Respondents

W.P.No.26276 of 2016

#**Between**:

Omprakash Agrawal
S/o. Vidyasagar Agrawal,
R/o. Industrial Ward,
Dhamtari Chattisgarh – 493 773.

… Petitioner

And

1. Income Tax Settlement Commission, Additional Bench, 640, Anna Salai, Nandanam, Chennai – 600 035.
2. Principal Commissioner of Income Tax (Central), Pratyakshakar Bhavan, 4th Floor, MVP Colony, Double Road, Visakhapatnam – 530 017.
3. The Assistant Commissioner of Income Tax, Central Circle-1, Visakhapatnam, Andhra Pradesh.

… Respondents

W.P.No.26249 of 2016

#Between:

Mrs. Santosh Agrawal, W/o. Shri Ramcharan Agrawal,
R/o. Industrial Ward,
Dhamtari, Chattisgarh – 493 773.

… Petitioner

And

1. Income Tax Settlement Commission, Additional Bench, 640, Anna Salai, Nandanam, Chennai – 600 035.

2. Principal Commissioner of Income Tax (Central), Pratyakshakar Bhavan, 4th Floor, MVP Colony, Double Road, Visakhapatnam –

3. The Assistant Commissioner of Income Tax, Central Circle-1, Visakhapatnam, Andhra Pradesh.

… Respondents

W.P.No.26260 of 2016

#**Between**:

Sharda Devi Agrawal,
W/o. Shri Ram Gopal Agrawal
R/o. Industrial Ward, Dhamtari,
Chattisgarh – 493 773.

… Petitioner

And

1. Income Tax Settlement Commission, Additional Bench, 640, Anna Salai, Nandanam, Chennai – 600 035.
2. Principal Commissioner of Income Tax (Central), Pratyakshakar Bhavan, 4th Floor, MVP Colony, Double Road, Visakhapatnam – 530 017.
3. The Assistant Commissioner of Income Tax, Central Circle-1, Visakhapatnam, Andhra Pradesh.

… Respondents

W.P.No.26321 of 2016

#**Between**:

Shri Ram Gopal Agrawal
S/o. Shri Vidya Sagar Agrawal
R/o. Industrial Ward,
Dhamtari, Chattisgarh – 493 773.

… Petitioner

And

1. Income Tax Settlement Commission, Additional Bench, 640, Anna Salai, Nandanam, Chennai – 600 035.
2. Principal Commissioner of Income Tax (Central), Pratyakshakar Bhavan, 4th Floor, MVP Colony, Double Road, Visakhapatnam – 530 017.
3. The Assistant Commissioner of Income Tax, Central Circle-1, Visakhapatnam, Andhra Pradesh.

… Respondents

W.P.No.26374 of 2016

#**Between**:

Vidyasagar Agrawal, S/o. Late Shri Ganeshi Lal Agrawal,
R/o. Industrial Ward,
Dhamtari, Chattisgarh – 493 773.

… Petitioner

And

1. Income Tax Settlement Commission, Additional Bench, 640, Anna Salai, Nandanam, Chennai – 600 035.
2. Principal Commissioner of Income Tax (Central), Pratyakshakar Bhavan, 4th Floor, MVP Colony, Double Road, Visakhapatnam – 530 017.
3. The Assistant Commissioner of Income Tax, Central Circle-1, Visakhapatnam, Andhra Pradesh.

… Respondents

W.P.No.26376 of 2016

#**Between**:

Anunay Agrawal, S/o. Ashok Kumar Agrawal,
R/o. Flat No.301 & 302, Pine Wood Apartment, Jasti Sqare,
Panduranga Puram, Visakhapatnam.

… Petitioner

And

1. Income Tax Settlement Commission, Additional Bench, 640, Anna Salai, Nandanam, Chennai – 600 035.
2. Principal Commissioner of Income Tax (Central), Pratyakshakar Bhavan, 4th Floor, MVP Colony, Double Road, Visakhapatnam – 530 017.
3. The Assistant Commissioner of Income Tax, Central Circle-1, Visakhapatnam, Andhra Pradesh.

… Respondents

<u>W.P.No.26380 of 2016</u>

#**Between**:

Anitha Agrawal, W/o. Ashok Kumar Agrawal,
R/o. Flat No.301 & 302, Pine Wood Apartment,
Jasti Sqare,Panduranga Puram,
Visakhapatnam.

… Petitioner

And

1. Income Tax Settlement Commission, Additional Bench, 640, Anna Salai, Nandanam, Chennai – 600 035.
2. Principal Commissioner of Income Tax (Central), Pratyakshakar Bhavan, 4th Floor, MVP Colony, Double Road, Visakhapatnam –
3. The Assistant Commissioner of Income Tax, Central Circle-1, Visakhapatnam, Andhra Pradesh.

… Respondents

! Counsel for the Petitioner : Mr. S. Ravi Sr. Counsel
Rep. Ch. Pushyam Kiran
Learned counsel

^ Counsel for Respondents : Ms. M. Kiranmayee
Senior Standing counsel for
The department

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? Cases referred

1) (2010) 326 ITR 642 (SC)
2) (2009) 315 ITR 328 (Mad)
3) (2002) 255 ITR 273 (SC)
4) (1993) 201 ITR 611 (SC)
5) (2000) 243 ITR 689
6) (2014) 360 ITR 407 (Delhi)
7) (2008) 306 ITR 403 (Mad)

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE SMT. JUSTICE T. RAJANI

W.P.Nos.24631, 24636, 24641, 26244, 26249, 26260, 26276, 26321, 26374, 26376 & 26380 of 2016

COMMON ORDER: *(per V. Ramasubramanian,J)*

One Public Limited Company, one Private Limited Company and the Directors of those two companies, whose applications for settlement under Section 245D of the Income Tax Act, 1961 were rejected as not being eligible to be processed further, have come up with the above writ petitions challenging the decision of the Settlement Commission not to process their applications any further.

2. We have heard Mr. S. Ravi learned Senior Counsel appearing for the petitioners and Ms. M. Kiranmayee, learned Senior Standing Counsel appearing for the respondents.

3. A search and seizure operation was carried out under Section 132 of the Income Tax Act, in the premises of the petitioners, on 19-08-2011. Thereafter, a return of income for the Assessment Year 2011-2012 was filed by the Public Limited Company under Section 115 JB of the Act, admitting a total income of Rs.7,10,82,650/-.

4. Subsequently notices under Section 153A of the Act were issued for the Assessment Years 2006-2007 to 2012-2013. The petitioners made a request that the returns filed under Section 139 may be treated as the response to the notices under Section 153A.

Thereafter, assessments were sought to be made and they were unsuccessfully challenged up to the Supreme Court.

5. At last, the petitioners filed separate applications in May, 2016 before the Settlement Commission. In May/June 2016, the Settlement Commission passed a speaking order under sub-section (1) of Section 245D, allowing the applications to be proceeded with further. As a consequence, the Secretary of the Settlement Commission called for reports from the Principal Commissioner of Income Tax. The Principal Commissioner submitted detailed reports in June, 2016 opposing the applications on various grounds including that there was no true and full disclosure.

6. On the basis of the said report and after giving an opportunity to the petitioners of being heard, the Settlement Commission passed separate orders rejecting the applications of all the petitioners as invalid. Aggrieved by the orders of rejection passed by the Settlement Commission under Section 245D (2C) of the Act, the petitioners have come up with the above writ petitions.

7. The grievance of the petitioners, as projected by Mr. S. Ravi, learned senior counsel appearing for them is (1) that once the Settlement Commission had applied its mind and decided to proceed with the enquiry into the application, the Tribunal does not have the jurisdiction to review its own order, and that too without even an application from the respondents, (2) that no power of review is conferred upon the Settlement Commission and (3) that after having admitted the applications and passed an order under

Section 245 D (1) allowing the applications to be proceeded with, the Settlement Commission could not have passed an order refusing to proceed further on the ground that there was no true and full disclosure. It is the further contention of Mr. S. Ravi, learned senior counsel that since the jurisdiction of the Settlement Commission extends even to matters not covered by the application, the Settlement Commission was not powerless to pass such order as it thinks fit under sub-section (4) and that therefore the refusal of the Settlement Commission to proceed further on the ground that there was no true and full disclosure is nothing but a facade to throw the application out at any rate.

8. A counter has been filed on behalf of the respondents 2 and 3 contending, *inter alia*, that the order under challenge was one passed under Section 245D (2C) and not a review of the order passed under Section 245 D (1); that the order passed earlier under Section 245 D (1) was a preliminary one passed on the basis of the information furnished in the application filed under Section 245C without hearing the revenue; that at the second stage, the Commission was obliged to call for the report of the Commissioner and after the receipt of the report, the Commission was entitled to declare the application as invalid under Section 245D (2C); that therefore, the order under Section 245D (2C) is an independent order from the one passed under Section 245D (1); that the Maa Mahamaya group consisting of Maa Mahamaya Industries Limited as its flagship company, is headed by Sri Ashok Kumar Agrawal;

that the company was originally floated as a Private Limited and later converted into a Public Limited Company, that M/s. GVA Industries Private Limited, Sri Maa Maha Power Limited and VSG Power and Ispat Private Limited are all investment companies; that though all the business activities of the group like procurement of raw materials, production, revenue generation, preparation of books of accounts etc., are carried on in Visakhapatnam, the group companies and the family members of the Chairman were filing returns at various places; that as per the provisions of Section 153A and 153C, the assessments in the group cases had to be completed on or before 31-03-2014; that the assessment proceedings were stalled by the assessees through Court orders until 04-04-2016; that on 04-04-2016, the Special Leave Petitions filed by the assessees were dismissed by the Supreme Court; that within 60 days from the date of the order of the Supreme Court, the assessment in all 14 cases had to be completed as per the Explanation (1) to Section 153B; that therefore, the assessment proceedings resumed with the issuance of a notice under Section 142 (1); and that it was at that time the assessees approached the Settlement Commission, Chennai, and filed applications on 18-05-2016. It is further stated in the counter affidavit that in his report dated 23-06-2016 filed under Section 245D (2B), the Principal Commissioner pointed out that the income admitted in the application of the assessee filed by the Settlement Commission was short of the income quantified/ estimated in the appraisal report on the basis of credible evidence found during the course of search and seizure and that therefore, a stand was taken that there was no full and true disclosure. It is also claimed in the counter affidavit that the Settlement Commission cannot entertain a case where the loss gets reduced to another figure of loss and that there should be additional net tax paid above the threshold limits during the settlement process and not merely a claim of tax credit.

9. In answer to the contents raised in the counter affidavit, the petitioners have also filed a reply. The focus of the reply is mainly upon the tax credit under Section 115JB. It is also claimed in the reply affidavit that the petitioners had fulfilled all the threshold conditions and that there was no material with the Settlement Commission to hold that the disclosure was not true and full.

10. We have carefully considered the above submissions.

11. Since the rival contentions revolve around Sections 245C and 245D of the Act, it may be necessary first to take note of the scheme of these provisions.

Scheme of Sections 245 C and 245 D:

12. Section 245C (1) enables an assessee to make an application to the Settlement Commission, at any stage of a case relating to him. The application is to be made in such form and in such manner as may be prescribed. Section 245C (1) mandates that the application shall contain a full and true disclosure of the income which had 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. The proviso to sub-section (1) of Section 245C enumerates the conditions, without complying which, no application may be made under Section (1) to the Settlement Commission.

13. Section 245D enumerates the procedure to be followed by the Settlement Commission upon receipt of an application under Section 245C. Broadly the procedure stipulated in Section 245D can be summarized in simple terms as follows:-

(i) Within seven days of receipt of the application, under Section 245C, the Settlement Commission should issue a notice to the applicant and hear him and pass an order in writing either rejecting the application or allowing the application to be proceeded with. If no order is passed within the period stipulated in sub-section (1) of Section 245D, the application shall be deemed to have been allowed to be proceeded with.

(ii) After passing an order under sub-section (1), which is obviously an *ex parte* preliminary order, the Settlement Commission should send a copy of the order passed under sub-section (1) to the Principal Commissioner or Commissioner and call for a report from such Commissioner under sub-section (2B).

(iii) After the receipt of the report from the Principal Commissioner or Commissioner and after giving an opportunity to the applicant, the Settlement Commission may pass an order either declaring the application as invalid or allowing the application to be proceeded with further. This is under sub-section (2C) of Section 245D.

(iv) After the second stage prescribed in sub-section (2C) is crossed, the Settlement Commission may call for the records from the Principal Commissioner or commissioner, examine the same and direct the Principal Commissioner or commissioner under sub-section (3) to make further inquiry or investigation and furnish a report on the matters not only covered by the application but also on any other matter relating to the case.

(v) After the receipt of the records and report from the Principal Commissioner or Commissioner under sub-section (3) and after examining the records, the Settlement Commission may pass, under sub-section (4), such order as it thinks fit not only on the matters covered by the application but on any other matter relating to the case not covered by the application, but referred to in the report of the Principal Commissioner or Commissioner.

(vi) Any order passed under sub-section (4) should provide for the terms of settlement including any demand by way of tax, penalty or interest, the manner in which any sum due under the settlement shall be paid and all other matters to make the settlement effective.

(vii) If the terms of such settlement prescribed in sub-section (6) are not complied with, the settlement would become void. In any case if the settlement had been found subsequently to have been obtained by fraud or misrepresentation of facts, even then, the settlement will be void as per sub-section (6).

(viii) If the amount of tax determined, pursuant to an order passed under sub-section (4) is not paid within 35 days, then the assessee will be liable to pay simple interest under sub-section (6A) at the rate of 1.25% per month.

(ix) The Settlement Commission has power to rectify any mistake apparent from the record and a power to amend an order passed by it, subject to the conditions stipulated in sub-section (6B).

14. Having indicated the scheme of Section 245D in the preceding paragraph, we shall now extract Section 245D as follows:

"Section 245D:- Procedure on receipt of application

(1) On receipt of an application under Section 245C, the Settlement Commission shall, within seven days from the date of receipt of the application, issue a notice to the applicant requiring him to explain as to why the application made by him be allowed to be proceeded with, and on hearing the applicant, the Settlement Commission shall, within a period of fourteen days from the date of the application, by an order in writing, reject the application or allow the application to be proceeded with;

Provided that where no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with.

(2) A copy of every order under section (1) shall be sent to the applicant and to the Principal Commissioner or Commissioner.

(2A) Where an application was made under Section 245C before the 1st day of June, 2007, but an order under the provisions of sub-section (1) of this Section, as they stood immediately before their amendment by the Finance Act, 2007, has not been made before the 1st day of June, 2007, such application shall be deemed to have been allowed to be proceeded with if the additional tax on the income disclosed in such application and the interest thereon is paid on or before the 31st day of July, 2007.

Explanation, -- In respect of the applications referred to in this sub-section, the 31st day of July, 2007 shall be deemed to be the date of the order of rejection or allowing the application to be proceeded with under sub-section (1).

(2B) The Settlement Commission shall, --

(i) in respect of an application which is allowed to be proceeded with under sub-section (1), within thirty days from the date on which the application was made; or

(ii) In respect of an application referred to in sub-section (2A) which is deemed to have been allowed to be proceeded with under that sub-section, on or before the 7th day of August, 2007.

call for a report from the Principal Commissioner or Commissioner, and the Principal Commissioner or Commissioner shall furnish the report within a period of thirty days of the receipt of communication from the Settlement Commission.

(2C) Where a report of the Principal Commissioner or Commissioner called for under sub-section (2B) has been furnished within the period specified therein, the Settlement Commission may, on the basis of the report and within a period of fifteen days of the receipt of the report, by an order in writing, declare the application in question as invalid, and shall send the copy of such order to the applicant and the Principal Commissioner or commissioner:

Provided that an application shall not be declared invalid unless an opportunity has not given to the applicant of being heard;

Provided further that where the [Principal Commissioner or] Commissioner has not furnished the report within the aforesaid period, the Settlement Commission shall proceed further in the matter without the report of the Principal Commissioner or Commissioner.

(2D) Where an application was made under sub-section (1) of Section 245C before the 1st day of June, 2007 and an order under the provisions of sub-section (1) of this section, as they stood immediately before their amendment by the Finance Act, 2007, allowing the application to have been proceeded with, has been passed before the 1st day of June, 2007, but an order under the provisions of sub-section (4), as they stood immediately before their amendment by the Finance Act, 2007, was not passed before the 1st day of June, 2007, such application shall not be allowed to be further proceeded with unless the additional tax on the income disclosed in such application and the interest thereon, is, notwithstanding any extension of time already granted by the Settlement Commission, paid on or before the 31st day of July, 2007).

(2) The Settlement Commission, in respect of –

(i) an application which has not been declared invalid under sub-section (2C); or

(ii) an application referred to in sub-section (2D) which has been allowed to be further proceeded with under that sub-section,

may call for the records from the Principal commissioner or Commissioner and after examination of such records, if the Settlement commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the Principal Commissioner or Commissioner to make or cause to be made such further enquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case, and the Principal Commissioner or Commissioner shall furnish the report within a period of ninety days of the receipt of communication from the Settlement Commission:

Provided that where the Principal Commissioner or commissioner does not furnish the report within the aforesaid period, the Settlement Commission may proceed to pass an order under sub-section (4) without such report.

(4) After examination of the records and the report of the Principal Commissioner or Commissioner, if any, received under –

(i) sub-section (2B) or sub-section (3), or

(ii) the provisions of sub-section (1) as they stood immediately before their amendment by the Finance Act, 2007,

and after giving an opportunity to the applicant and to the Principal Commissioner or Commissioner to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Principal Commissioner or Commissioner.

(4A) The Settlement Commission shall pass an order under sub-section (4), --

(i) in respect of an application referred to in sub-section (2A) or sub-section (2D), on or before the 31st day of March, 2008.

(ii) In respect of an application made on or after the 1st day of June, 2007 but before the 1st day of June, 2010, within twelve months from the end of the month in which the application was made;

(iii) In respect of an application made on or after the 1st day of June, 2010 within eighteen months from the end of the month in which the application was made.

(5) Subject to the provisions of Section 245BA, the materials brought on record before the Settlement Commission shall be considered by the Members of the concerned Bench before passing any order under sub-section (4) and, in relation to the passing of such order, the provisions of Section 245BD shall apply.

(6) Every order passed under sub-section (4) shall provide for the terms of settlement including any demand by way of tax, penalty or interest, the manner in which any sum due under the settlement shall be paid and all other matters to make the settlement effective and shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.

(6A) Where any tax payable in pursuance of an order under sub-section (4) is not paid by the assessee within thirty-five days of the receipt of a copy of the order by him, then, whether or not the Settlement Commission has extended the time for payment of such tax or has allowed payment thereof by instalments, the assessee shall be liable to pay simple interest at one and one-fourth per cent for every month or part of a month on the amount remaining unpaid from the date of expiry of the period of thirty-five days aforesaid.

(6B) The Settlement Commission may, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (4) –

(a) at any time within a period of six months from the end of the month in which the order was passed; or

(b) at any time within the period of six months from the end of the month in which an application for rectification has been made by the Principal Commissioner or the commissioner or the applicant, as the case may be:

Provided that no application for rectification shall be made by the Principal Commissioner or the Commissioner or the applicant after the expiry of six months from the end of the month in which an order under sub-section (4) is passed by the Settlement Commission;

Provided further that an amendment which has the effect of modifying the liability of the applicant shall not be made under this sub-section unless the Settlement Commission has given notice to the applicant and the Principal Commissioner or Commissioner of its intention to do so and has allowed the applicant and the Principal Commissioner or Commissioner an opportunity of being heard.

(7) Where a settlement become void as provided under sub-section (6), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the income tax authority concerned, may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the end of the financial year in which the settlement became void.
(8) For the removal of doubts, it is hereby declared that nothing contained in Section 153 shall apply to any order passed under sub-section (4) or to any order of assessment, reassessment or recomputation required to be made by the Assessing Officer in pursuance of any directions contained in such order passed by the Settlement Commission and nothing contained in the proviso to sub-section (1) of Section 186 shall apply to the cancellation of the registration of a firm required to be made in pursuance of any such directions as aforesaid.

15. A careful analysis of Sections 245C and 245D would show that the former deals only with the procedure to be followed by the assessee while making an application for settlement and the latter prescribes the procedure to be followed by the Settlement Commission in dealing with such applications. ***The requirements to be satisfied by an assessee while making an application for settlement, as indicated by Section 245C are :***

(1) the application should be in the prescribed form,

(2) it should contain a full and true disclosure of the income, which has not been disclosed before the Assessing Officer,

(3) it should contain the disclosure of the manner in which such income has been arrived, the additional amount of income tax payable on such income and such other particulars as may be prescribed,

(4) the application should disclose the additional amount of income tax payable to be above the threshold limits prescribed under the proviso to sub-section (1) of Section 245C.

16. Therefore, an obligation is cast statutorily upon the assessee under Section 245C (1) to make a full and true disclosure of the income, which had not been disclosed before the Assessing Officer and the manner in which such income has been derived. The requirement of a full and true disclosure stems out of the Section 245C (1) itself and hence, the application, which does not fulfill this requirement, will not qualified to be a valid application under Section 245C. Keeping this in mind, let us now take another look at Section 245D.

17. The procedure prescribed in Section 245D, as we have analyzed earlier, is actually split into four stages. They are:

(1) the receipt of an application, a preliminary scrutiny of the application and an order either rejecting or allowing the application to be proceeded with,

(2) the serving of such a preliminary order upon the Principal Commissioner or Commissioner, calling for a report from the Principal Commissioner or Commissioner and passing an order declaring the application to be invalid,

(3) calling for the records from the Principal Commissioner or Commissioner, in cases where the application has not been declared invalid in the second stage and directing the Principal Commissioner or Commissioner to make such further enquiry or investigation and to furnish a report, wherever the Commission deems it fit, after the examination of the records,

(4) hearing the applicant as well as the Principal Commissioner or Commissioner, examining the records and report of the Principal Commissioner or Commissioner as well as further evidence as may be placed and passing an order, providing the terms of settlement.

18. In simple terms, the four stage process prescribed in Section 245D can be understood in the following manner:

(1) an *ex parte* preliminary order allowing the application for settlement to be proceeded with;

(2) the confirmation or reassurance, after getting a report from the Principal Commissioner that the ex parte decision taken at the first stage is in the right direction;

(3) collection of evidence through further enquiry or investigation conducted by the Commissioner; and

(4) personal hearing where the applicant as well as the Commissioner are heard on the materials available on record as well as further evidence as may be collected and passing an order of settlement.

For easy appreciation, we would compare these four stages to what happens in a Civil Court namely (1) the passing of an ad interim *ex parte* order, (2) vacating or making absolute the interim order, (3) trial and (4) arguments and judgment. Keeping in mind this scheme of Section 245D, let us now come back to the facts of the cases on hand.

19. It appears that the group of companies and individuals filed 12 settlement applications on 18-05-2016. Out of them, nine were rejected on 31-05-2016 under Section 245D (1), on account of the short-fall in payment of additional tax and interest. However, three settlement applications filed by the Maa Mahamaya Industries Limited, GVA Industries Pvt. Ltd., and Sri Ashok Kumar Agrawal, were allowed to be proceeded with by an order of Settlement Commission dated 31-05-2016 passed under Section 245 D (1).

20. Thereafter, the nine individuals whose applications were rejected, filed fresh applications on 01-06-2016. By an order dated 13-06-2016, the Settlement Commission allowed these applications also to be proceeded with.

21. However, after the receipt of the report of the Commissioner, the applications of Maa Mahamaya Industries Ltd., GVA Industries Pvt. Ltd., and Sri Ashok Kumar Agarwal, which were allowed earlier to be proceed with by an order dated 31-05-2016 under Section 245D (1), were declared as invalid and rejected under Section 245D (2C) by an order dated 14-07-2016. As against the orders dated 14-07-2016 declaring the settlement applications as invalid under Section 245D (2C), these three applicants namely Maa Mahamaya Industries Ltd., GVA Industries Pvt. Ltd., and Sri Ashok

Kumar Agarwal have come up with three writ petitions in W.P.Nos.24631, 24636 and 24641 of 2016.

22. In the meantime, on the nine applications of the individuals, which were, by order dated 13-06-2016, allowed to be proceeded with, the Settlement Commission called for a report under Section 245D (2B). The report in respect of these nine cases was received from the Principal Commissioner of Income Tax on 11-07-2016. The copies of the reports were forwarded to the applicants and the applicants submitted replies on 21-07-2016. A personal hearing was also held on 21-07-2016 and the representatives of the applicants as well as the Departments participated. Thereafter, the Settlement Commission dismissed these applications also as invalid under Section 245D (2C), by orders dated 21-07-2016. Challenging these orders, dated 21-07-2016 rejecting the settlement applications of nine individuals, eight of them have come up with the writ petitions in W.P.Nos.26244, 26249, 26260, 26321, 26374, 26276, 26376 and 26380 of 2016.

23. Since the grounds of attack to all the orders of the Settlement Commission are common, the writ petitions were taken up together. The grounds of attack hinge both upon pure questions of law as well as upon mixed questions of fact and law.

Grounds of attack

24. The first legal issue raised by Mr. S. Ravi, learned senior counsel for the writ petitioners is that once an order is passed under Section 245D (1), allowing the application to be proceeded with, on

the ground that the application satisfied the requirements stipulated in Section 245C, the Settlement Commission is not thereafter entitled to review its own order and hold that the application cannot be proceeded with.

25. The basis on which Mr. S. Ravi, learned senior counsel for the writ petitioners raised the above ground is a factual finding recorded by the Settlement Commission, in an order passed on 13-06-2016 in respect of nine individuals under Section 245D (1), holding that there was no *prima facie* material, which warrants the conclusion that true and full disclosure has not been made by the applicants. Therefore, it is the contention of the learned senior counsel for the petitioners that in the order dated 21-07-2016 passed under Section 245D (2C), the Settlement Commission cannot record a contrary finding, as the same may tantamount to a review of the previous order.

26. In our considered view, the above contention does not merit acceptance. As we have stated above, Section 245D prescribes a four stage procedure. The first stage referable to Section 245D (1), can be compared to the stage where a Civil Court passes an ad-interim *ex parte* order of injunction under Order XXXIX Rule 1 of the Code of Civil Procedure. The law requires that even while granting an ad interim *ex parte* order of injunction, the Court should be satisfied about the existence of *prima facie* case, balance of convenience and irreparable hardship. The finding of *prima facie* case recorded at the stage of grant of an ad interim *ex parte* order,

does not attain finality, since at the stage of grant of such an order, the opponent is not heard.

27. The second stage of the process prescribed by Section 245D is the one under sub-section (2C) of Section 245D. This stage can be compared to the disposal of an application for an injunction by a Civil Court, after hearing both parties. The only difference between these two is that an order passed by a Civil Court in an interlocutory application after hearing both parties, does not terminate the proceedings in the main suit. But that is not the case with the order of the Settlement Commission. If a settlement application is declared as invalid, under sub-section (2C) of Section 245D, the main proceedings get terminated. But this distinction does not really matter because a *lis* is different from a settlement. In any case, there are also certain interlocutory applications such as those which fall under Order VII Rule 11 of the Code of Civil Procedure or under Section 8 of the Arbitration and Conciliation Act, 1996, which, if allowed, would terminate the main proceedings.

28. The point that we are trying to drive at is that the conclusion reached at the stage of Section 245D (1) without ascertaining the views of the department, does not take away the power conferred under Section (2C). Sub-section (2C) cannot be turned into a dead letter.

29. In fact, the finding recorded by the Settlement Commission in its order dated 13-06-2016 in the case of nine individuals holding that prima facie there is no material warranting the conclusion that

true and full disclosure has not been made, was a one sided conclusion, which was amenable to change after the receipt of a report from the Principal Commissioner under sub-section (2B). In fact, the two provisos under sub-section (2C) make it clear that at the second stage of the process stipulated in Section 245D, both parties are given opportunities, to make their submissions on the contents of the application as well as the stand taken by the department in the report of the Principal Commissioner. If the Principal Commissioner fails to furnish a report, then the order passed under sub-section (1) of Section 245D remains as such and the enquiry can be proceeded with, in view of the second proviso to sub-section (2C). Therefore, the contention of the learned senior counsel that the orders impugned in the writ petitions tantamount to a review of the order passed under Section 245D (1), without there being any power of review expressly conferred upon the Settlement Commission, is unacceptable.

30. As pointed out by the Supreme Court in **Ajmera Housing Corporation v. Commissioner of Income Tax[1],** full and true disclosure is a prerequisite even under Section 245C. The Supreme Court pointed out that in an application for settlement, the assessee is required to make (1) a full and true disclosure of the income, which has not been disclosed, before the Assessing Officer; (2) the manner in which such income has been derived and (3) the additional amount of income tax payable on such income. The Court

[1] (2010) 326 ITR 642 (SC)

went on to point out that full and true disclosure is a prerequisite for a "***valid application***" under Section 245C (1). In other words, an application, which does not contain true and full disclosure, is not a valid application under Section 245C (1). This is exactly the reason why the statute uses the expression "***invalid***" in sub-section (2C) of Section 245D. The entitlement of the Principal Commissioner or Commissioner to file a report under sub-section (2B) of Section 245D is for the purpose of highlighting to the Settlement Commission that the settlement application did not satisfy the requirements of Section 245C (1) and that therefore, it is liable to be rejected as invalid. Therefore, we are of the considered view that the impugned orders passed under sub-section (2C) on the ground that there was no true and full disclosure, would not tantamount to a review of the finding earlier made *ex parte* under sub-section (1) of Section 245D.

31. Drawing our attention to the observations made by the Supreme Court in Paragraph 31 of the decision reported in **Ajmera Housing Corporation**, it was contended by Mr. S. Ravi, learned senior counsel for the petitioners that even in cases where the Settlement Commission decides to proceed with the application, it is not denuded of its power to examine whether the assessee has made a full and true disclosure of his undisclosed income. In fact, Section 245F confers upon the Settlement Commission all the powers vested in an Income Tax Authority under the Act. Therefore, the Settlement Commission can make additions, deletions etc., as an Assessing Officer could do. Hence, it is contended by the learned

senior counsel for the petitioners that even if there are contentious issues with regard to certain items of income or expenditure, the Settlement Commission could decide them finally. In such circumstances, the rejection of an application under sub-section (2C) may not be appropriate in the teeth of the scheme of the chapter.

32. But as we have pointed out earlier, Section 245D formulates a four stage process of adjudication. In the first stage, the Settlement Commission passes an order under sub-section (1) allowing the application to be proceeded with, if the prerequisites of Section 245C (1) appear on the face of the record to have been fulfilled. In the second stage of the enquiry, the Settlement Commission satisfies itself under sub-section (2C), based upon the report of the Principal Commissioner, whether the requirements of Section 245C (1) are satisfied indisputably. Therefore, the *prima facie* finding recorded in an order under sub-section (1) will not bar the Settlement Commission from coming to a different conclusion under sub-section (2C).

33. As a matter of fact, the proceedings before the Settlement Commission are deemed to be judicial proceedings, within the meaning of Section 193 and 228 and for the purposes of Section 196 of the Indian Penal Code. Therefore, at every stage, truth and correctness of the particulars furnished and the evidentiary value of material relied upon, can be tested by the Settlement Commission.

34. In fact, in **Canara Jewellers v. Settlement Commission[2],** a Division Bench of Madras High Court held that when once the income disclosed by the assessees under Section 245C is not accepted as full and true disclosure, the application under Section 245C is not maintainable. The argument on the basis of Section 245F to the effect that the Settlement Commission has all the powers of the Income Tax Authority, was rejected by holding that such a power can be exercised for the purpose of procedure of settlement under Section 245C and not for reassessment of a tax of a particular year. Irrespective of the correctness of the conclusion reached by the Madras High Court with respect to Section 245F, the conclusion reached by the Madras High Court with respect to true and full disclosure, is unassailable.

35. Mr. S. Ravi, learned senior counsel for the petitioners contended that even in the reports submitted on 23-06-2016, 24-06-2016, 29-06-2016 and other dates, the Principal Commissioner has recorded satisfactory compliance with the prescriptions contained in Section 245C and that the claim that there was no full and true disclosure was not substantiated.

36. But we do not agree. In so far as Maa Mahamaya Industries Ltd., whose application was rejected by the order dated 14-06-2016, is concerned, the Settlement Commission pointed out that there was no full and true disclosure and that since the assessee had taken recourse to Section 115JB, any revision is not

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[2] (2009) 315 ITR 328 (Mad)

possible in view of the decision of the Supreme Court in **Apollo Tyres Ltd., v. Commissioner of Income Tax, Kochi**[3].

37. Though arguments were advanced on the second issue revolving around Section 115JB, we do not think that it is necessary to go into the same. At the second stage of the enquiry under Section 245D, the Settlement Commission is empowered to declare an application as invalid on the ground of failure to make true and full disclosure. Therefore, it is enough for us to see whether there was any material at all before the Settlement Commission to come to a conclusion that there was failure to make a true and full disclosure.

38. In paragraph 11.11 of its order dated 14-07-2016 in the case of Maa Mahamaya Industries Ltd., GVA Industries Pvt. Ltd., and Sri Ashok Kumar Agarwal, the Settlement Commission made the following observations

"The next question raised by the CIT (DR) or the Department was the non-disclosure of manner of earning and the genuineness of the commodity trading activity and the resultant additional income disclosed. The AR was specifically asked to file the proof of commodity trading. They have provided merely the ledger copy of the applicant. Specific question was asked whether the brokers are from Kolkata or from any other city. The AR did not answer this query though specifically questioned. The manner of earning of income as disclosed by the applicant (individual) to the extent of Rs.56.86 lacs was stated to be out of commodity trading and the

[3] (2002) 255 ITR 273 (SC)

only proof they have filed is the ledger copy of the applicant. He stated that the sums were received in cash only.”

39. From the findings recorded by the Settlement Commission as above, it is seen that the conclusion reached by the Commission that there was no true and full disclosure, cannot be termed as arbitrary or without any material worth consideration.

40. In so far as the applications of nine individuals are concerned, out of whom, eight have come up with writ petitions, the Settlement Commission rejected their applications both on the ground of deficiency in disclosure and on the ground of not crossing the threshold limits.

41. Let us presume for a moment that the finding relating to not crossing the threshold limits under Section 245C is not correct. Even then the finding with regard to non-disclosure cannot be assailed. Paragraph 16 of the order of the Settlement Commission dated 21-07-2016 in the case of these nine individuals may be usefully extracted as follows:

> “The details of the disclosure under the head “Long Term Capital Gain” made by the applicants in their returns are given below with respect to assessment years involved in this application:

		Asst. Year	Amount
(i)	Smt. Anita Agrawal	2006-07	Rs.8,38,32,853
		2010-11	Rs. 89,40,572
(ii)	Shri Anunay Agrawal	2010-11	Rs.1,24,18,818
(iii)	Shri Vidyasagar Agrawal	2006-07	Rs.1,54,05,689
(iv)	Shri Ramcharan Agrawal	2006-07	Rs.1,68,56,215
(v)	Shri Ramgopal Agrawal	2006-07	Rs.1,86,63,176
(vi)	Shri Omprakash Agrawal	2006-07	Rs.1,71,30,306
(vii)	Smt. Santhosh Agrawal	2006-07	Rs.1,95,77,877

(viii)	Smt. Sharda Devi Agrawal	2006-07	Rs.1,65,48,058
(ix)	Smt. Pinky Agrawal	2006-07	Rs.1,97,42,578

The main question arises when the applicants have disclosed the above sums in their returns as Long Term Capital Gains, how can they avoid disclosing this sum in the application made before the Settlement Commission. What has already been disclosed before the AO cannot be deleted or modified. Only additional income can be disclosed before this Commission as per provisions of Chapter XIX-A. The Return of income filed are subjected to self assessment which is in Chapter XIV i.e. "Procedure for Assessment". There is no basis for the applicants not to disclose these sums. Alternatively, the Assets and Liabilities statement and Capital accounts of the individuals have not been filed explaining the position. The commission paid to Kolkata or Delhi parties for obtaining entries (as claimed by the applicants) is also not disclosed as additional income. Hence, there is deficiency in disclosure."

42. An argument was advanced by Mr. S. Ravi, learned senior counsel for the petitioners that a provision was inserted as sub-section (1A) by Finance Act, 1979 with effect from 01-04-1979. Sub-section (1A) was amended by the Taxation Laws (Amendment) Act, 1984 with effect from 01-04-1984. But this sub-section (1A) of Section 245D was omitted by Finance (No.2) Act, 1991 with effect from 27-09-1991.

43. Sub-section (1A) of Section 245D as inserted by Finance Act, 1979 and amended by the Taxation Laws (Amendment) Act, 1984 but omitted by Finance (No.2) Act 1991 read as follows:

"Notwithstanding contained in sub-section (1), an application shall not be proceeded with under that sub-section, if the Commissioner objects to the application being proceeded with on the ground that concealment all 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 this Act has been established or is likely to be established by any Income Tax Authority, in relation to the case.

Provided that where the Settlement Commission is not satisfied with the correctness of the objection raised by the Commissioner, the Settlement Commission may, after giving the Commissioner an opportunity of being heard, by order, allow the application to be proceeded with under sub-section (1) and send a copy of its order to the Commissioner".

44. Mr. S. Ravi, learned senior counsel for the petitioner contended on the basis of the above provision that prior to its omission in 1991, sub-section (1A) enabled the Commissioner to object to an application being proceeded with, on the ground of concealment of particulars of income. But the omission of sub-section (1A) itself would show that the objection relating to concealment of particulars of income is no more available. This, according to the learned senior counsel for the petitioner, is due to the fact that as an authority exercising the powers of the Income Tax Authority, the Commission itself is empowered to make additions, deletions etc., and that therefore, the right of the Commissioner to object on the ground of concealment of particulars of income became meaningless, which is why sub-section (1A) was deleted.

45. But the above contention loses sight of one important aspect. Primarily an obligation is cast upon the assessee under Section 245C (1) to make a true and full disclosure. The obligation so cast upon the assessee has not been taken away. The right of the Commissioner to object under sub-section (1A) to the application being proceeded with, stands on a different footing from the

obligation of the assessee to make a full and true disclosure under Section 245C (1). As pointed out by the Supreme Court in **Ajmeera Housing Corporation**, the making of true and full disclosure is a prerequisite for a valid application. An application, which does not comply with this requirement, is invalid. That the application does not disclose true and full particulars, can be highlighted by the Commissioner in his report under sub-section (2B). On the basis of such report, the Settlement Commission can declare the application under sub-section (2C) to be invalid. The procedure prescribed in sub-section (2B) and sub-section (2C) are not taken away even after the deletion of sub-section (1A). Therefore, the contention revolving around sub-section (1A) does not take the petitioner anywhere.

46. As rightly contended by Mrs. M. Kiranmayee, learned senior standing counsel for the department, once this Court finds that the conclusion regarding non-disclosure is based upon some material, the enquiry under Article 226 would stop there. In **Jyotendrasinhji v. S.I. Tripati and others**[4], the Supreme Court held that where the Settlement Commission interprets a particular document, even if such interpretation is not correct, it would not be a ground for interference. Though the said decision arose out of the appeals as against the orders of Settlement Commission, the principle indicated therein would apply to judicial review under Article 226 of the Constitution.

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[4] (1993) 201 ITR 611 (SC)

47. In **Patel Desai v. Assistant Commissioner of Income Tax**[5]**,** a Bench of this Court pointed out that the decision of the Settlement Commission could be interfered with, only (1) if grave procedure and defects such as violation of mandatory requirements or violation of natural justice are made out, (2) if it is found that there was no nexus between the reasons given and the decisions taken. The Court pointed out that we cannot interfere either with the error of fact or error of law alleged to have been committed by the Settlement Commission. Therefore, we will not sit in judgment over the decision of the Settlement Commission, once we find that there are some reasons for the Settlement Commission to come to the said conclusion.

48. As a matter of fact a case of the converse nature arose before a Bench of the Delhi High Court in **Commissioner of Income Tax v. Income Tax Settlement Commission**[6]**.** In that case, an order was passed under section 245D (1), reports were called for from the Commissioner under Section 245D (2B), arguments were heard in the context of Section 245D (2C) and an order was passed to proceed further. The Commissioner of Income Tax challenged the decision of the Settlement Commission to proceed further, on the ground that in the light of the objections regarding full and true disclosure, the Settlement Commission should not have decided to proceed further.

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[5] (2000) 243 ITR 689
[6] (2014) 360 ITR 407 (Delhi)

49. In other words, the case before the Delhi High Court in **Commissioner of Income Tax v. Income Tax Settlement Commission** represented the converse of the present case. While rejecting the challenge made by the Commissioner to the orders of the Settlement Commission, the Delhi High Court pointed out, following the decision in **CCE v. True Woods P. Ltd., ((2006) 1999 ELT 288 (Delhi))** that there may be cases where it is possible for the Commission to record a finding that the disclosure made in the application was full and true. At the same time there could also be situations in which the Commission may not be able to, at the stage of admission of the application, record a finding with any amount of certainty. It is in such a situation that it would be permissible for the Commission to keep the question open to be examined at a later stage.

50. But in the case on hand, the Settlement Commission was not satisfied that there was a true and full disclosure. Therefore, they did what they did and which they are entitled to do under sub-section (2C).

51. In **Dr. C.M.K. Reddy v. Settlement Commission and others[7],** which was followed by the Madras High Court in **Canara Jewellers** (cited supra), the Court pointed out that the making a full and true disclosure is a mandatory requirement for maintaining an application under Section 245C read with Rules 44C and 44CA of the Income Tax Rules, 1962.

[7] (2008) 306 ITR 403 (Mad)

52. Therefore, when the Settlement Commission has recorded reasons, which we have extracted above, to come to the conclusion, after perusing the report of the Principal Commissioner submitted under sub-section (2B) that there was no true and full disclosure, there is no scope for any interference under Article 226 of the Constitution of India. Hence, all the writ petitions are liable to be dismissed.

Accordingly, all the writ petitions are dismissed. No costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

T. RAJANI, J

Date: -04-2018

JS/Ksn

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE SMT. JUSTICE T. RAJANI

<u>W.P.Nos.24631, 24636, 24641, 26244, 26249, 26260, 26276, 26321, 26374, 26376 & 26380 of 2016</u>

(COMMON ORDER: *(per V. Ramasubramanian,J)*

April, 2018.

(Ksn)