

IN THE HIGH COURT OF JUDICATURE OF MADRAS

RESERVED ON : 15.09.2020

PRONOUNCED ON : 29.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NOS.34040 & 34041 OF 2014

&

M.P.NOS.1 & 1 OF 2014

In W.P.No.34040 of 2014

The Commissioner of Income Tax,
Central-II, No.46, Mahatma Gandhi Road,
Chennai-600 034.

...Petitioner

Vs.

1. M/s.Adhiparasakthi Charitable Medical,
Educational and Cultural Trust,
GST Road, Melmaruvathur,
Cheyyar Taluk,
Kanchipuram District-603 319.

2. The Income Tax Settlement Commission,
Additional Bench,
640, Anna Salai, Nandanam,
Chennai-600 035.

...Respondents

In W.P.No.34041 of 2014

The Commissioner of Income Tax,
Central-II, No.46, Mahatma Gandhi Road,
Chennai-600 034.

...Petitioner

Vs.

1.Sri.G.Bangaru

2.The Income Tax Settlement Commission,
Additional Bench,
640, Anna Salai, Nandanam,
Chennai-600 035.

...Respondents

PRAYER in W.P.No.34040 of 2014:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the second respondent in Settlement Application No.TN/CN/53/2012-13/7/IT, dated 28.03.2014 and to quash the same as illegal and direct the second respondent to restore the jurisdiction of the Assessing Officer in respect of the assessments for assessment years 2005-06 to 2011-12 of the first respondent.

PRAYER in W.P.No.34041 of 2014:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the second respondent in Settlement Application No.TN/CN/53/2012-13/6/IT, dated 08.04.2014 and to quash the same as illegal and direct the second respondent to restore the jurisdiction of the Assessing Officer in respect of the assessments for assessment years 2005-06 to 2011-12.

For Petitioner : Mr.A.P.Srinivas,
Sr.S.Counsel

For Respondent-1 : Mr.R.Sivaraman

C O M M O N O R D E R

With the consent of both parties, the present Writ Petitions are heard through Video Conferencing on 15.09.2020.

1.The brief facts of the case in W.P.No.34040 of 2014 are as follows:

1.a) The first respondent herein is a Charitable Trust founded by Shri G.N.Bangaru (hereinafter referred to as the 'assessee'). On 02.07.2010, search and seizure operations under Section 132 of the Income Tax Act (hereinafter referred to as the 'Act') were carried out by the Income Tax Department (hereinafter referred to as the 'Department') in the offices and residential premises of various members of the assessee group and during the operations, cash amounting to Rs.13,17,00,000/- and jewelry weighing 11339.160 grams, along with incriminating documents were seized. Subsequent to the search, the assessee was issued with notices under Sections 153A/153C/142(1) of the Act for the Assessment Years (AYs) 2005-06 to 2011-12.

1.b) In pursuance of the said notices, the assessee filed a Settlement Application under Section 245C of the Act on 25.01.2012 before the Income Tax Settlement Commission (ITSC) disclosing additional income of Rs.11,50,09,902/- Crores for the AYs 2007-08 to 2011-12. On 07.02.2012, the ITSC rejected the said application under Section 245D(1) of the Act for non-payment of taxes on the additional income disclosed in the Settlement Application and did not allow the same to be proceeded with. Thereafter, on 30.04.2012, the assessee filed its returns of income for the AYs 2007-08 to 2011-12.

1.c) Subsequently, on 26.11.2012, the assessee filed another Settlement Application under Section 245C of the Act before the ITSC, disclosing an additional income of Rs.9,65,10,102/- for the AYs 2007-08 to 2011-12. By an order dated 10.12.2012, the ITSC allowed the Settlement Application to be proceeded with under Section 245D(1) of the Act. The reports under Section 245D(2B) were then called for from the Department and on being satisfied with the conditions stipulated in Section 245D(2C) of the Act, the ITSC held that the Settlement Application covering AYs 2005-06 to 2011-12 cannot be said to be invalid. On receipt of the report under Rule 9 of the ITSC (Procedure Rules), the following issues were taken up by ITSC, for consideration:

- i) Suppression in income admitted before Settlement Commission;
- ii) Anonymous donations taxable u/s.115 BBC;
- iii) Collection of unaccounted capitation fee;
- iv) Diversion of capitation fee to relatives of founder;
- v) Payment of salary in cash;
- vi) Bogus employment of doctors;
- vii) Application of accounted income of trust to benefit the relatives of founder; and
- viii) Violations of conditions of Sec.11/Sec.10(23C).

1.d) On consideration of the explanations, the ITSC, by its impugned award dated 28.03.2014, settled the first respondent's income by accepting the additional income of Rs.1.65 Crores offered in the Settlement Application and the further income of Rs.11,02,55,021/- disclosed as per order under Section 245D(4) of the Act, together with the returned income of Rs.8,00,10,102/-, thereby settling the total income at Rs.20,67,65,123/- for the AYs 2007-08 to 2011-12. The Department has challenged the award in the present Writ Petition.

2. The brief facts of the case in W.P.No.34041 of 2014 are as follows:

2.a) The first respondent herein (hereinafter referred to as

the 'assessee'), is the founder of Adhiparasakthi Charitable, Medical, Educational and Cultural Trust. On 02.07.2010, search and seizure operations under Section 132 of the Income Tax Act (hereinafter referred to as the 'Act') were carried out by the Department on the assessee and certain other related Trusts and individuals and during the operations, cash amounting to Rs.13,17,40,000/- and jewelery weighing 11339.160 grams, along with incriminating documents were seized. Subsequent to the search, the assessee was issued with notices under Sections 153A/153C/142(1) of the Act for the Assessment Years (AYs) 2005-06 to 2011-12.

2.b) In pursuance of the said notices, the assessee filed a Settlement Application under Section 245C of the Act on 25.01.2012 before the Income Tax Settlement Commission (ITSC) disclosing additional income of Rs.1,67,00,000/- for the AYs 2005-06 to 2010-11. On 07.02.2012, the ITSC rejected the said application under Section 245D(1) of the Act for non-payment of taxes on the additional income disclosed in the Settlement Application and did not allow the same to be proceeded with. Thereafter, on 17.04.2012, the assessee filed its returns of income for the AYs 2005-06 to 2010-11 and the returns for the AYs 2011-12 were filed on 28.11.2011.

2.c) Subsequently on 26.11.2012, the assessee filed another Settlement Application under Section 245C of the Act before the ITSC, disclosing an additional income of Rs.1.67 Crores for the AYs 2007-08 to 2010-11. Though the assessee had disclosed the same total income of Rs. 1.67 crores both in the 1st and 2nd applications, an income of Rs.47 lakhs was deferred in the second application for AYs 2007-08 to 2010-11. By an order dated 10.12.2012, the ITSC allowed the Settlement Application to be proceeded with under Section 245D(1) of the Act. The reports under Section 245D(2B) were called for from the Department and on being satisfied with the conditions stipulated in Section 245D(2C) of the Act, the ITSC held that the Settlement Application covering AYs 2005-06 to 2010-11 cannot be said to be invalid. On receipt of the report under Rule 9 of the ITSC (Procedure Rules), the following issues were taken up for consideration:

- i) Deferment of income admitted before the Settlement Commission to later assessment year;
- ii) The Assessment Years in which cash of Rs.8,60,00,000 seized from the premises of the applicant has to be assessed and the actual quantum to be assessed;
- iii) In which applicant's hands the cash of Rs.3,51,00,000/- seized from the office of M/s.Adhiparasakthi Charitable, Medical, Educational and Cultural Trust has to be assessed;
- iv) In which applicant's hands the cash of Rs.8,00,000 seized from the Engineering College run by the Trust has to be

assessed;

v) Income of the applicant as per seized records not admitted;

2.d) On consideration of the explanations, the ITSC, by its impugned award dated 04.08.2014, settled the first respondent's income by accepting the additional income of Rs.1.67 Crores offered in the Settlement Application and the further income of Rs.6,16,70,923/- disclosed as per order under Section 245D(4) of the Act, thereby settling the total income at Rs.20,04,06,714/-. The said award has been challenged by the Department in the present Writ Petition.

3. The legal grounds raised in these two Writ Petitions are predominantly one and the same and therefore with the consent of both sides, both the Writ Petitions are disposed of through a common order.

4. To a preliminary issue raised by this Court with regard to the maintainability of the Writ Petition challenging the Award of the ITSC, Mr.A.P.Srinivas, learned Senior Standing counsel for the Department, submitted that these Writ Petitions are maintainable since the decision making process adopted by the ITSC in these cases are contrary to the procedure prescribed by the Act and hence the Writ Petitions, challenging the award of the ITSC is sustainable, which proposition has been upheld in various legal precedents.

5. Apart from this, the learned Senior Standing counsel would submit that the assessee had not made a full and true disclosure of their income in the Settlement Application, as contemplated under Section 245C(1) of the Act and hence the assessee is ineligible for settlement of income, as well as for immunity from prosecution and penalty. He further submitted that when the first Settlement Application under Section 245C (1) was rejected, the settlement proceedings abates in view of Section 245HA (1) (i) and the Assessing Officer is entitled to use all the material produced by the Assessee before ITSC. Therefore, when the disclosure of income in the second Settlement Application was less than the income disclosed in the first application in WP No. 34040 of 2014 and an income of Rs.47 lakhs was deferred in the second application in WP No. 34041 of 2014, disclosure of the income cannot be construed to be a full and true disclosure. It is also his submission that since the additional amount of income tax payable on the disclosed income in the second Settlement Application has not exceeded, at least by Rs.50 lakhs as contemplated under proviso (i) of Section 245C (1) of the Act, the second application ought not to have been entertained by the ITSC. In support of his contentions, the learned Senior Standing counsel relied on various case laws.

6. Mr.R.Sivaraman, learned counsel for the assessee submitted that the grounds raised by the petitioner are not such of those permissible exceptions to maintain a Writ Petition against the award of the ITSC. Insofar as the claim that there was no true and full disclosure in the Settlement Application is concerned, the learned counsel would submit that the reasons for the non disclosure have been explained and considered by the ITSC and therefore, the income disclosed in the second application is deemed to be a full and true disclosure. With regard to the submission that the second Settlement Application has not exceeded Rs.50 lakhs is concerned, the learned counsel stated that it is factually an incorrect statement and that the additional income tax payable were more than Rs. 50 lakhs, as evidenced in the Settlement Application itself. The learned counsel also relied on a few decisions to substantiate his counter arguments, which I will deal with later.

7. I have given my careful and anxious consideration to the submissions made by the respective counsels.

8. It is a settled proposition of law that the scope of interference to an award of the ITSC by invoking Article 226 of the Constitution of India is very limited to such awards, that are in violation to the provisions of Act. In other words, judicial review would be concerned with the decision-making-process alone and not the decision. The issue as to whether the awards of the ITSC or the decision making process culminating to the award, are in violation of the provisions of the Act or not, could be ascertained if the grounds raised by the petitioner, other than the ground of maintainability of the writ petition, are addressed first.

9. In Writ Petition No. 34040 of 2014, the predominant ground raised by the petitioner is to the effect that in the first Settlement Application under Section 245C(1), the assessee had disclosed an income of Rs.11,50,09,902/- for the assessment years 2007-08 to 2011-12, whereas in the second Settlement Application, an income of Rs.9,65,01,102/- alone was disclosed, which is less than the total additional income disclosed in the previous Settlement Application and therefore, there was no full and true disclosure of his income as required under Section 245C of the Act, which is a pre-requisite for maintaining the application. Since due process as provided under the provisions of the Act was not adopted for making the final decision, the impugned award of the ITSC requires to be quashed.

10. Likewise, in Writ Petition No. 34041 of 2014, a similar ground of non-disclosure of full and true income has been taken, stating that, though the assessee had disclosed the same total

income of Rs. 1.67 crores in the 1st and 2nd applications, an income of Rs.47 lakhs was deferred in the second application for AYS 2007-08 to 2010-11.

11. Section 245C of the Act enables the assessee to file an application at any stage of a case relating to him with a "full and true disclosure of his income", which income was not disclosed before the Assessing Officer. It is also mandated that the application should disclose the manner in which such undisclosed income was derived and the additional amount of income tax payable on such income requires to be disclosed. On receipt of the application, the ITSC calls for a report from the Commissioner under Section 245D(2B) of the Act and on the basis of the material contained in the report and having regard to the nature and circumstances of the case or complicity of the investigation involved therein, it can either reject an application or allow the application to be proceeded with, as provided in Section 245D(1) of the Act.

12. There is no bar for filing of a second application before the ITSC, when the earlier application was 'not allowed' to be proceeded with under Section 245D(1) of the Act. Section 245K(2) of the Act prohibits a subsequent application, only when the assessee had earlier made an application under Section 245C and such an application has been 'allowed' to be proceeded with under Section 245D(1). In contrast, there is no provision under the Income Tax Act, disbarring the assessee from subsequently making an application after his original application was 'rejected' under Section 245D(1) and 'not allowed' to be proceeded with.

13. The fundamental requirement of the application under Section 245C(1) of the Act is that the full and true disclosure of the income has to be made, along with the manner in which such income was derived. What requires to be taken into account by the ITSC is as to whether the assessee had explained the manner in which the additional income which was not disclosed before the Assessing Officer, has been disclosed in the application or not and whether, such a disclosure is a full and fair disclosure. This would basically be a factual aspect.

14. The case of the Department in the Writ Petition No. 34040 of 2014 is that there was a reduction of the additional income disclosed in the first application, when compared to the second application, by Rs.1,84,99,800/- for the AYs 2007-08 to 2011-12. Likewise, in Writ Petition No. 34041 of 2014, an income of Rs.47 lakhs was deferred in the second application for AYs 2007-08 to 2010-11. The assessee had submitted their explanations before the ITSC with regard to this discrepancy by stating that they had received certain amounts of anonymous

voluntary donations during the relevant assessment years and that, they were later able to locate necessary proof of such anonymous donations in 400 to 500 cases and thus, these amounts were offered to tax as additional undisclosed income in the second application before the ITSC. Hence the discrepancy.

15. In order to settle this issue, the ITSC had called for estimations from both the Department as well as the assessee and the basis for arriving at such estimations. After much deliberations, it was mutually decided that donations of less than Rs.20,000/- in cash will be accepted. Accordingly, both the parties had provided details of working as hereunder:

Details provided by ASSESSEE:

	FY 2006 -07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	TOTAL
Below Rs.20,000	1993 426	2410958 1	8575099 9	7844204 5	5741111	19087016 2
Below Rs.20,001	2539 997	2932693 6	2097091 7	1071987 5	546292	64104017

Details provided by DEPARTMENT:

	FY 2006 -07	FY 2007- 08	FY 2008-09	FY 2009-10	FY 2010-11	TOTAL
Below Rs.20,000	3431 645	421804 14	10757475 8	12589024 1	613489	279690547
Below Rs.20,001	4913 578	310418 60	20970917	24101283	722742	81750380

The details given by the department came to be accepted by ITSC and while the donations of less than Rs.20,000/- amounting to Rs. 27,96,90,547/- was allowed, donations of above Rs.20,000/- amounting to Rs.8,17,50,380/- was added back for want of full and complete details. Accordingly, the first respondent's total income of Rs 20,67,65,123/- came to be settled through the impugned award.

16. Thus, it would be seen that the ITSC, had determined the suppression in income, as well as the anonymous donations, based on the inputs of both the parties and had thus rendered a factual finding. The settlement of the additional income was also on the basis of mutual consent by both the Assessee, as well as the Department, to accept cash donations of less than Rs.20,000/-. Such a factual finding of the ITSC, cannot be

interfered with, by this Court by exercising its powers under Article 226 of the Constitution of India. Above all, when the manner in which the additional income derived has been disclosed in the application under Section 245C of the Act and the same has been considered by the ITSC based on the inputs given by both the parties and on mutual agreement to accept cash donations of less than Rs.20,000/-, it cannot now be said at this stage, that the application was bereft of full and true disclosure of the assessee's income.

17. Mr. A.P. Srinivas, learned Senior Standing counsel for the Department placed reliance on the decision of the Hon'ble Supreme Court in Ajmera Housing Corporation Vs. Commissioner of Income Tax reported in 2010 (326) ITR 642 (SC) and submitted that, disclosure of full and true particulars of undisclosed income is a pre-requisite for a valid application under Section 245C(1) and since the disclosure of additional income made in the first Settlement Application is less than the disclosure made in the second application, the assessee has failed to disclose the full and true particulars and therefore the second application ought to have been rejected by the ITSC, at the inception itself.

18. The facts involved in Ajmera Housing Corporation are that the Assessee originally filed an application under Section 245C(1) of the Act before the Commission, disclosing an income of Rs.1.94 Crores, in addition to the income declared in the returns submitted by them earlier. The Settlement Commissioner called for a report from the Commissioner in terms of Section 245D(1) r/w. Rule 6. The Commissioner, while objecting to the entertainment of the application through settlement, claimed that the disclosure has not been full and true. The Assessee then filed a revised Settlement Application by declaring an additional income by Rs.11.41 Crores. After an order under Section 245D(1) was passed and the cases commenced, the Assessee made a third disclosure of undisclosed income of Rs.2.76 Crores. Subsequently, another disclosure of Rs.1 Crore was made for the fourth time, by revising the statement of facts and ultimately, the Settlement Commissioner passed a final order under Section 245D(4). It is in this background, that the Hon'ble Supreme Court had held that the Scheme of Chapter XIX-A of the Act does not contemplate revision of the income disclosed in the application and thus, the natural corollary is that determination of income by the Settlement Commission has necessarily to be with reference to the income disclosed in the application.

19. The Assessee in Ajmera Housing Corporation had revised their additional income in the application under Section 245C (1), on three occasions after their first disclosure, at

different stages of the case. The mode of comparison adopted by the Hon'ble Supreme Court to determine the failure to disclose the full and true income, was between the income/revised income disclosed in the settlement application and the income disclosed in the returns filed before the Assessing Officer. In this background, the Hon'ble Supreme Court had held that there is no stipulation for revision of an application under the Scheme of Chapter XIX-A and if such revision is permitted, it would amount to withdrawal of the original application, which is impermissible in view of sub-section (3) of Section 245D. The relevant portion of the order reads thus:-

"26. It is plain from the language of sub-section (4) of Section 245D of the Act that the jurisdiction of the Settlement Commission to pass such orders as it may think fit is confined to the matters covered by the application and it can extend only to such matters which are referred to in the report of the Commissioner under sub-section (1) or sub-section (3) of the said Section. A "full and true" disclosure of income, which had not been previously disclosed by the assessee, being a pre-condition for a valid application under Section 245C(1) of the Act, the scheme of Chapter XIX-A does not contemplate revision of the income so disclosed in the application against item No. 11 of the form. Moreover, if an assessee is permitted to revise his disclosure, in essence, he would be making a fresh application in relation to the same case by withdrawing the earlier application. In this regard, Section 245C (3) of the Act which prohibits the withdrawal of an application once made under sub-section (1) of the said Section is instructive in as much as it manifests that an assessee cannot be permitted to resile from his stand at any stage during the proceedings. Therefore, by revising the application, the applicant would be achieving something indirectly what he cannot otherwise achieve directly and in the process rendering the provision of sub-section (3) of Section 245C of the Act otiose and meaningless. In our opinion, the scheme of said Chapter is clear and admits no ambiguity.

....

28. As afore-stated, in the scheme of Chapter XIX-A, there is no stipulation for revision of an application filed under Section 245C(1) of the Act and thus the natural corollary is that determination of income by the Settlement Commission has necessarily to be with reference to the income disclosed in the application filed under the said Section in the prescribed form."

20. In the present case, the fact remains that the assessee's first application under Section 245C(1) was rejected by an order under Section 245D(1) for non-payment of additional amount of income tax on the additional income disclosed and accordingly did not allow the same to be proceeded with. Thereafter, the assessee had filed its returns of income and then filed the second Settlement Application under section 245C of the Act. As observed earlier, in view of Section 245K(2), there is no bar for filing of a second application, when the earlier application was rejected under Section 245D(1). While in Ajmera Housing Corporation, the factor determining full and true disclosure was the comparison between repeated revision of incomes in the application under Section 245C vis-à-vis the income declared in the returns filed by that assessee earlier, the present facts are totally divergent wherein the Department is attempting to point out the difference in the disclosures of income of the assessee, between the first and second applications. Likewise in Ajmera Housing Corporation, while the Commissioner had raised objections for non-disclosure of full and true income at the stage of Section 245D(1) proceedings, the Department in the present case, had not raised any objections, either at the stage of Section 245D(1) or 245D(2C) proceedings and such objections are now raised for the first time in these Writ Petitions.

21. Thus, when the assessee, in the second application, had disclosed such income which was not disclosed before the Assessing Officer and had set forth the manner in which such additional income has been derived and had not repeatedly revised his disclosure of income in the application during the pendency of the proceedings and the Department having failed to raise any objections for non-disclosure of full and true income, either at the stage of Section 245D(1) or 245D(2C) of the proceedings, the ratio decidendi in Ajmera Housing Corporation's case (supra) may not be applicable to the present cases, since it is distinguishable on facts.

22. For the same proposition, the learned Senior Standing counsel for the Department placed reliance on V.M.Shaik Mohammed Rowther V. ITSC [1999 (236) ITR 581 (Mad)] , and ACE Investments Ltd., V. ITSC [2003 (264) ITR 571 (Mad) and Canara Jewellers V. ITSC [2009 (315) ITR 328 (Mad DB)].

23. In view of the discussions on the facts of the present case and the manner in which the assessee had made an application with full and true disclosure of income and the manner in which such a major portion of the income has been derived, these three decisions, which are on the same ratio as that of the decisions of the Hon'ble Supreme Court in Ajmera Housing Corporation, may not help the Department. Incidentally,

the ratio laid down in Canara Jewellers (supra) relied upon by the Department, came to be distinguished by a Hon'ble Division Bench of the Bombay High Court in Principal Commissioner of Income Tax V. Income Tax Settlement Commission (ITSC) reported in 2017 (79) taxmann.com 186 (Bombay) and rendered the proposition "sub-silento" in the following manner:-

"7. This, reading of the Madras High Court's decision in Kanara Jewellers (supra) on the part of the Petitioner does not appear to be correct as evident from the facts arising before it. The Assessee therein had filed an application for settlement, declaring undisclosed income. The Commission allowed the application for settlement by an order under Section 245D(4) of the Act while enhancing the amount declared as undisclosed income in its application for settlement. This order was challenged by the Assessee before the learned Single Judge of the Madras High Court on the ground that Commission has no jurisdiction to enhance the amounts disclosed/ declared in the Settlement Application while settling the dispute under Chapter XIX-A of the Act. The Assessee then S.R.JOSHI 9 of 28 wp-2562-2015 submitted that the Commission has either to accept the amounts declared in the Settlement Application or reject it, but it cannot increase it. The learned Single Judge of the Madras High Court rejected the Petition on the ground that there is no provision in the Act, prohibiting the Commission from arriving at an income higher than that declared in the application for settlement. Being aggrieved, the Assessee carried the issue in appeal before the Division Bench, which allowed its appeal. This by holding that the Commission had come to a finding that there is no full and true disclosure of the Assessee's income in its application for settlement. Therefore, on the basis of the above finding that there is no true and full disclosure, the Court held that the application for settlement had to be rejected. The rejection of the application for settlement by the Division Bench was not on the basis that the amounts disclosed in settlement proceedings is a ceiling for the quantum of settlement. Therefore, the basis of the Madras High Court's decision is not premised on the fact that the income of the Petitioner determined for settlement is higher than that disclosed. The submission of the Petitioner that the above decision leads to an

inescapable conclusion that settlement of income at a higher figure than that disclosed in Settlement Application, is evidence of failure to make a full and true disclosure in the Settlement Application made by the Applicants, cannot be accepted.

8. In any case, if we read the Madras High Court's order in Kanara Jewellers (supra) as suggested by the Petitioner, then it appears to us to have been rendered sub-silento. This is so as attention of the Court was not invited to sub-section 6-A of Section 245-D of the Act. This sub-section specifically provides that where any tax payable in pursuance of an order passed under Section 245-D(4) of the Act, is not paid within 35 days from receipt of the order of the Commission, then interest on the tax so determined, would become payable by the Applicant. Thus, the aforesaid provisions clearly bring out the fact that the Commission could settle the dispute between the parties at a higher income than the income disclosed by the Assessee in its application for settlement. It is only in such a case that tax become payable in pursuance of the order passed under Section 245D (4) of the Act, as otherwise, the Applicant has to pay tax payable on the income disclosed in its application for settlement along with interest before filing its application under Section 245-C (1) of the Act with the Commission. Thus, the decision of the Madras High Court in Kanara Jewellers (supra) having not considered the above statutory provisions is rendered sub-silento."

24. As stated earlier, with regard to the discrepancy of the income declared between first and second settlement applications, the assessee had explained before the ITSC about the manner in which the income was derived, by attributing the discrepancies to anonymous voluntary donations, the proof of which were subsequently located. As such, the assessee had explained the sources of their income and such an explanation was also accepted by the ITSC. These factual issues cannot be reviewed by this Court under Article 226 of the Constitution of India. In these circumstances, a Hon'ble Division Bench of the Bombay High Court in the case of Commissioner of Income Tax-Central-I V. ITSC reported in 2016 (65) taxmann.com 40 (Bombay), had held as follows:-

"11. So far as the other objection is concerned viz failure to disclose the manner in which this income has been derived, we find that

the application for settlement sufficiently explains the source of the income being declared. The application mentions how the additional income which is being disclosed has been derived i.e. on application of the ALP in respect of exports made to its Associated Enterprise viz holding company. We do not see any merit in the above submission on behalf of the petitioner."

25. In Commissioner of Income Tax (C) -III Vs. Gopal Gupta reported in 2014 (46) taxmann.com 312 (Delhi), a Hon'ble Division Bench of the Delhi High Court had rejected the contentions of the Department that the assessee had not given a full and true disclosure by holding that the interpretations of the assessee has been accepted by the Settlement Commission and therefore, the Hon'ble Division Bench was of the view that the contentions of the Department, that the assessee had indulged in misrepresentation and not made a full and true disclosure, was rejected. In this background, the Bombay High Court had held that such factual issues cannot be reviewed under Article 226 of the Constitution of India. The relevant portion of the order reads thus:-

"15. From the above, it is evident that the Supreme Court observed that the High Court ought not to go into a factual issue while exercising writ jurisdiction and should not have substituted its opinion against the opinion of the Settlement Commission. From all these decisions, it is abundantly clear that the scope of review under Article 226 of the Constitution insofar as an order passed by the Settlement Commission under Section 245D(4) of the Income Tax Act is concerned, is a very limited one. This Court certainly cannot substitute its view in place of the Settlement Commission particularly on point of interpretation of a particular document. Interference can only be made if there is a fault in the decision making process and not with the decision itself. Even if this Court feels that it would have arrived at a different decision, it cannot interfere with the conclusion arrived at by the Settlement Commission because this Court does not sit in appeal over the decision of the Settlement Commission.

16. In this context, it is to be seen that the only point urged by the learned counsel for the Revenue is that the interpretation placed on the receipts was erroneous. The interpretation which has been placed by the Settlement

Commission on the documents in question, first of all, results in a finding of fact which, as we have seen, cannot be interfered with. And secondly, the interpretation is not so outlandish to be categorized as arbitrary or perverse so as to call for interference. We make it clear that the interpretation sought to be placed by the Revenue may be a possible interpretation but, so, too, would be the interpretation placed by the Settlement Commission which has also been espoused by the learned counsel for respondent No.1. In such a situation no interference with the Settlement Commission's order is warranted."

26. A similar view was also taken by the Kerala High Court in Commissioner of Income Tax (Central), Kochi V. Settlement Commission (It & WT) reported in 2014 (51) taxmann.com 351 (Kerala), by placing reliance on the decision of the Hon'ble Supreme Court and Karnataka High Court, in the following manner:-

"The Karnataka High Court in N.Krishnan v. Settlement Commission [1989] 180 ITR 585/47 Taxman 294 observed as follows at page 597 :

"The provision for settlement would show that it is in the nature of statutory arbitration to which a person may submit himself voluntarily. Hence, many of the grounds on which an arbitration award could be set aside would not be available in view of the nature and jurisdiction of the Settlement Commission. A decision of the Settlement Commission could be interfered with only (i) if grave procedural defects such as violation of the mandatory procedural requirements of the provisions in Chapter XIX-A of the Income Tax Act, 1961, and/or violation of the rules of natural justice are made out; or (ii) if it is found that there is no nexus between the reasons given and the decision taken by the Settlement Commission. The court cannot interfere either with an error of fact or error of law alleged to have been committed by the Settlement Commission."

More recently, the Supreme Court in Union of India V. Indo-Swift Laboratories Ltd., [2011 (4) SCC 633] observed as follows at page 643:

"An order passed by the Settlement Commission could be interfered with only if the said order is found to be contrary to any

provisions of the Act. So far as the findings of fact recorded by the Commission or question of facts are concerned, the same is not open for examination either by the High Court or by the Supreme Court. In the present case the order of the Settlement Commission clearly indicates that the said order, particularly, with regard to imposition of simple interest @ 10% per annum was passed in accordance with the provisions of Rule 14 but the High Court wrongly interpreted the said Rule and thereby arrived at an erroneous finding. So far as the second issue with respect to interest on Rs.50 lakhs is concerned, the same being a factual issue should not have been gone into by the High Court exercising the writ jurisdiction and the High Court should not have substituted its own opinion against the opinion of the Settlement Commission when the same was not challenged on merits."

Hence, it is well settled that the power of judicial review is not to be exercised to decide the issue on facts or on an interpretation of the documents available before the Court. It follows, therefore, that in the instant case, the enquiry by this Court can only be with regard to whether or not the Settlement Commission exercised a jurisdiction that it did not have or, alternatively, if it did have the jurisdiction, whether it erred in the exercise of that jurisdiction. In the latter event, this Court would also have to bear in mind the nature of the jurisdiction exercised by the Settlement Commission, which is akin to a statutory arbitration."

27. A perusal of the award of the ITSC in the present cases reveal that the procedures under Section 245C & 245D of the Act have been duly followed and the terms of the Settlement have been arrived at on mutual acceptance, after perusing the offers made by the Department and the Assessee. Hence, it cannot be said that the award of the ITSC is in violation of the statutory provisions or the decision making process. If that be so, the ground raised by the Department in the present Writ Petition are merely factual in nature and since there are no procedural lapses on the part of the ITSC in adjudicating and arriving at the terms of the settlement. Hence, by applying the ratio held in the aforesaid decisions, the Writ Petitions challenging such factual aspects, cannot be sustained.

28. There is yet another crucial aspect of the matter. The "full and true disclosure of the income of the assessee" in the application under Section 245C of the Act, correlates to such income which has not been disclosed before the Assessing Officer and not to the income disclosed in the first respondent's first Settlement Application that was rejected under Section 245D(1) and not allowed to be proceeded with for non-payment of taxes on the additional income disclosed in the said application. For convenience, Section 245C and 245D(1) of the Income Tax Act are extracted hereunder:

Section 245C. (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 that no such application shall be made unless,—

(i) in a case where proceedings for assessment or reassessment for any of the assessment years referred to in clause (b) of sub-section (1) of section 153A or clause (b) of sub-section (1) of section 153B in case of a person referred to in section 153A or section 153C have been initiated, the additional amount of income-tax payable on the income disclosed in the application exceeds fifty lakh rupees,

Section 245D. (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:

29. The contents of the application in the prescribed form

under Section 245C of the Act, requires the assessee to furnish the following particulars:

- (i) A full and true disclosure of his income;
- (ii) The income referred to clause (i) should be the income which was not disclosed to the Assessing Officer;
- (iii) The source of the income referred to in clauses (i) & (ii);
- (iv) The additional amount of income tax payable on such income; and
- (v) Disclosure of such other particulars as may be prescribed, for the purpose of settlement.

30. Section 245C does not require or mandate the Assessee to specify the additional income disclosed in his 'earlier Settlement Application' which was rejected and/or not allowed to be proceeded with under Section 245D(1) of the Act.

31. When the first application came to be rejected under Section 245D(1) of the Act, the proceedings before the ITSC would abate in view of Section 245HA of the Act, without deliberation on the additional income disclosed in the application. The relevant portions of Section 245HA of the Income Tax Act reads as follows:

Section 245HA. (1) Where - (i) an application made under Section 245C on or after the 1st day of June, 2007 has been rejected under sub-section (1) of section 245D;

.....

the proceedings before the Settlement Commission shall abate on the specified date.

(2) Where a proceedings before the Settlement Commission abates, the Assessing Officer, or, as the case may be, any other income-tax authority before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance with the provisions of this Act as if no application under section 245C had been made.

(3) For the purposes of sub-section (2), the Assessing Officer, or, as the case may be, other income-tax authority, shall be entitled to use all the material and other information produced by the assessee before the Settlement Commission or the results of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it, as if such material, information, inquiry and evidence had been produced before the Assessing Officer or other income-tax authority or held or recorded by him in the course of

the proceedings before him. (Emphasis supplied)

32. On a conjoint reading of Section 245HA together with Sections 245C(1) and 245D(1), an Assessing Officer, for the purpose of assessment, would be empowered to use all material, information, inquiry and evidence produced by the Assessee in his original application under Section 245C, which had abated in view of Section 245HA(1)(i), pursuant to the rejection order under Section 245D(1). While empowering so, the legislature has consciously excluded use of the 'income disclosed' by the Assessee in the earlier application under Section 245C(1), which had abated, but rather had authorized the Assessing Officer to use the 'information' produced by him before the ITSC, in support of his income disclosed at that point of time, for the purpose of the proceedings before him. Such a permission to use the 'information' cannot be or include a permission to use a 'disclosure', since 'information' and 'disclosure' are distinct.

33. While 'information' as referred to in Section 245HA (3) of the Act would mean such information contained in the annexure, statements and other documents accompanying the annexure to the application, 'disclosure' would refer to the income disclosed through filing of a return. All other facts and statements in the proceedings that had abated under Section 25HA (1)(i), other than the disclosed income, would be 'information'. While interpreting the term 'disclosure' under the Act, the Hon'ble Supreme Court in ACIT versus A.R. Enterprises reported in (2013) 3 SCC 196 had held:

"18..... Undisclosed income is defined by Section 158B as that income "which has not been or would not have been disclosed for the purposes of this Act". The legislature has chosen to define "undisclosed income" in terms of income not disclosed, without providing any definition of "disclosure" of income in the first place. We are of the view that the only way of disclosing income, on the part of an assessee, is through filing of a return, as stipulated in the Act, and therefore an "undisclosed income" signifies income not stated in the return filed..... (emphasis supplied)"

34. While Section 245C(1) refers to 'disclosure of income' before the ITSC, Section 245HA(3) refers to the use of 'information produced' before the ITSC. The term 'disclosed income' is conspicuously absent in Section 245HA(3). When a taxing law, does not provide or empower the Assessing Officer to rely on or take into consideration the income disclosed by the Assessee in the earlier application that had abated in view of Section 245HA(1)(i) of the Act, the attempt of the Department to make a comparison between the income disclosed in the abated

proceedings and the second settlement application to establish that the assessee has not fully and truly disclosed their income, is not based on intelligible differentia.

35. The mode of interpretation of the provisions of the Income Tax law, was dealt with by the Hon'ble Supreme Court in Ajmera Housing Corporation's case (supra), in the following manner:-

"27. It is trite law that a taxing statute is to be construed strictly. In a taxing Act one has to look merely at what is said in the relevant provision. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. There is no room for any intendment. There is no equity about a tax."

36. Thus, when the Income Tax law does not empower the Assessing Officer to rely on the income disclosed in the earlier proceedings that had abated before the ITSC, the Department is not justified in making a comparison with such an income and thereby find fault with the ITSC's decision making process in the impugned proceedings.

37. To the next submission of the Department that since the additional amount of income tax payable on the disclosed income in the second Settlement Application has not exceeded, at least by Rs.50 lakhs as contemplated under proviso (i) of Section 245C (1) of the Act, the second application ought not to have been entertained by the ITSC, the Counsel for the assessee would point out that the submission is factually incorrect since the additional income tax payable on the disclosed incomes in both the applications seems to exceed Rs.50 lakhs. In reply, the Department did not controvert such a submission. A perusal of the impugned awards also reveal that the assesses have declared a sum of Rs. 1.65 and Rs.1.67 crores respectively as income in their respective settlement applications before the ITSC and the additional amount of income tax payable on such income exceeds Rs. 50 lakhs. Thus, the ground raised by the Department in this regard, cannot be sustained.

38. The learned Senior Standing counsel for the Department also raised an issue stating that the amounts towards capitation fees have been disclosed and offered as voluntary contribution in the hands of the assessee. Such a statement is refuted by the learned counsel for the Assessee stating that these amounts are in the nature of voluntary contribution made by the devotees and not capitation fees and the same has been offered to tax by the assessee and accepted by the Department. Apparently, the ground raised is purely a factual finding rendered by the ITSC and such

factual findings is not permissible to be reviewed by this Court under Article 226 of the Constitution of India, as held in the aforesaid cited decisions.

39. In view of discussions and findings in the preceding paragraphs establishing that there was no defect on the part of ITSC in the decision making process leading to the impugned Awards, the preliminary objection raised to the Department by this Court, with the regard to the maintainability of the Writ Petition, challenging the award of a Settlement Commission, gains significance .

40. The Hon'ble Supreme Court in various cases, has delved on the ratio that a challenge to an award of the ITSC on questions of fact cannot be maintained through a Writ Petition file under Article 226 of the Constitution of India and the power of review of an award of the ITSC under Article 226 of the Constitution of India is very limited to such cases, where the award of the ITSC is in violation to the statutory provisions of Act. The following are some of the decisions:-

i) In R.B.Shreeram Durga Prasad & Fatehchand Nursing Das V. Settlement Commission reported in 1989 (43) Taxman 34 (SC), it was held that the Courts exercising the power of judicial review of the decision of the Settlement Commission would be concerned with the legality of the procedure followed and not with the validity of the order.

ii) In Jyotendrasinhji V. S.I. Tripathy, the Hon'ble Apex Court reported in 1993 (68) Taxmann 59 (SC), the Hon'ble Supreme Court had held that the only scope for such interference is when the award of the ITSC is in violation of the statutory provisions. The relevant portion of the order reads as follows:

"The scope of enquiry, whether by High Court under Article 226 or by this Court under Article 136 is also the same-whether the order of the Commission is contrary to any of the provisions of the Act and if so, apart from ground of bias, fraud and malice which, of course, constitute a separate and independent category has it prejudiced the petitioner/appellant. Reference in this behalf may be had to the decision of this Court in R.B.Shreeram Durga Prasad & Fatehchand Nursing Das V. Settlement Commission [1989] 176 ITR 169, which too was an appeal against the orders of the Settlement Commission. Sabyasachi Mukharji.J., speaking for the Bench comprising himself and S.R.Pandian, J. observed that in such a case this Court is concerned with the legality of procedure followed and not the validity of the

order'. The learned Judge added 'judicial review is concerned not with the decision but with the decision making process'. Reliance was placed upon the decision of the House of Lords in Chief Constable of the N.W. Police V. Evans [1982] 1 WLR 1155. Thus, the appellate power under article 136 was equated to power of judicial review, where the appeal is directed against the orders of the Settlement Commission. For all the above reasons, we are of the opinion that the only ground upon which this Court can interfere in these appeals is that the order of the Commission is contrary to the provisions of the Act and that such contravention has prejudiced the appellant. The main controversy in these appeals relates to the interpretation of the settlement deeds though it is true, that some contentions of law are also raised. The Commission has interpreted the trust deeds in a particular manner. Even if the interpretation placed by the Commission on the said deeds is not correct, it would not be a ground for interference in these appeals, since a wrong interpretation of a deed of trust cannot be said to be a violation of the provisions of the Act. It is equally clear that the interpretation placed upon the said deeds by the Commission does not bind the authorities under the Act in proceedings relating to other assessment years."

iii) In Union of India Vs. Ind-Swift Laboratories Ltd [2011 (9) taxmann.com 282 (SC), the Hon'ble Supreme Court had held that findings of fact are not open for review by the High Court. Such findings are as follows:

"21. An order passed by the Settlement Commission could be interfered with only if the said order is found to be contrary to any provisions of the Act. So far findings of the fact recorded by Commission or question of facts are concerned, the same is not open for examination either by the High Court or by the Supreme Court. In the present case the order of the Settlement Commission clearly indicates that the said order, particularly, with regard to the imposition of simple interest at the rate of 10% per annum was passed in accordance with the provisions of Rule 14 but the High Court wrongly interpreted the said Rule and thereby arrived at an erroneous finding.

22. So far as the second issue with respect

to interest on Rs.50 lakhs is concerned, the same being a factual issue should not have been gone into by the High Court exercising the writ jurisdiction and the High Court should not have substituted its own opinion of the Settlement Commission when the same was not challenged on merits."

41. For the same proposition, he also placed reliance on the decision in Commissioner of Income Tax Vs. Om Prakash Mittal reported in 2005 (143) Taxmann 373 (SC). The facts in Om Prakash Mittal's case (supra) are that, after the commission had passed orders in terms of Section 245D(4), enquiries were conducted by the CBI, which revealed that there was fraud and misrepresentation of facts. It is in this background, the Hon'ble Supreme Court had held that when the order was obtained on fraud and misrepresentation of facts, it cannot be said that there was a true and fair disclosure. The relevant portion of the order reads as follows:

"19. There is a purpose why the legislature has prescribed the condition relating to declaration of the order void when it is obtained by fraud or misrepresentation of facts. It cannot be said that there has been a true and fair declaration of income which is the pre-requisite for settlement by the Commission. If an order is obtained by fraud or misrepresentation of facts, it cannot be said that there was true and fair disclosure. It was noted here that unlike Section 139 of the Act which provides for filing of revised return, there is no provision for revision of an application made in terms of Section 245C. That shows clear legislative intent that the applicant for settlement has to make a true and fair declaration from the threshold. It is on the basis of the application received that the Commissioner calls for report to decide whether the application is to be rejected or permitted to be continued. The declaration contemplated in Section 245C is in the nature of voluntary disclosure of concealed income, but as noted above it must be true and fair disclosure. Voluntary disclosure and making a full and true disclosure of the income are necessary pre-conditions for invoking the Commission's jurisdiction. "

42. In the present case, it is not the stand of the department that there was fraud and misrepresentation of facts, owing to which, the disclosure requires to be treated as not

true or fair. Rather, the disclosure was voluntary and the manner in which a major portion of the additional income has been derived was also explained. As a matter of fact, the department had not raised any objections during the stage of the case under Section 245D(1) or 245D(2C) of the Act. As such, the aforesaid decision is clearly distinguishable on the facts of the case, as well as the consequential ratio and hence may not be applicable.

43. In the light of the above discussions, I am of the affirmed view that both the impugned awards of the ITSC dated 28.03.2014 and 08.04.2014 are neither in violation of any statutory provisions of the Income Tax Act nor is there any defect in the decision making process. As such the Writ Petitions, challenging the awards of the ITSC cannot be maintained. Accordingly, both the Writ Petitions stand dismissed. Consequently, Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

DP

To

1. The Income Tax Settlement Commission,
Additional Bench,
640, Anna Salai, Nandanam,
Chennai-600 035.
2. The Commissioner of Income Tax,
Central-II, No.46, Mahatma Gandhi Road,
Chennai-600 034.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.35005

W.P.Nos.34040 & 34041 of 2014
& M.P.Nos.1 & 1 of 2014

RR(CO)
CS/24/11/2020