

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.16552 of 2014

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

..Petitioner

vs.

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

2.P.Suman

..Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari to call for the records on the file of the first respondent in S.A.No.TN/CN.53/2013-14/1/IT dated 31.07.2013 and quash the same as illegal and beyond the jurisdictional and authority and restore the jurisdiction of assessing officer to pass regular assessment order of the 2nd respondent for the Assessment year 2007-08 to 2013-14.

For Appellant : Mr.A.P.Srinivas

For Respondeen : No-appearance for R1
Mr.R.Sivaraman for R2

J U D G M E N T

The writ on hand is filed by the Commissioner of Income Tax to quash the order passed by the Income Tax Settlement Commission, Additional Bench, in proceedings dated 31.07.2013 on the ground that the order of settlement passed is beyond the jurisdiction and authority. Therefore, the High Court should restore the jurisdiction of the Assessing Officer so as to pass regular assessment order of the second respondent for the assessment year 2007-2008 to 2013-2014.

2. The learned counsel appearing for the second respondent/Assessee initially raised the question of maintainability of the writ petition on the ground that the order passed by the Settlement Commission under Section 245C of the Act cannot be entertained as the facts in detail were adjudicated by the Settlement Commission by providing an opportunity to the petitioner/Department. The question of fact adjudicated by the Settlement Commission cannot be re-adjudicated in a writ proceedings under Article 226 of the Constitution of India. The nature of proceedings under Section 245C of the Income Tax Act is for settlement of disputes. Once the settlement of disputes are finalized, then there is no scope for entertaining the writ petition under Article 226 of the Constitution of India. The learned counsel for the second respondent cited the judgments in support of his arguments that no writ can be entertained against the order of the Settlement Commission, if the facts in detail were adjudicated by the Settlement Commission with reference to the documents and evidences produced by the parties along with the application filed under Section 245C of the Income Tax Act. In this regard, the learned counsel for the second respondent cited the judgment in the case of JYOTENDRASINHJI vs. S.I.TRIPATHI reported in [1993] 68 Taxman 59(SC). The Apex Court formulated a principle stating that "whether only ground upon which either High Court under Article 226 or Supreme Court under article 32 or 136 can interfere with an order of Settlement Commission is that the order of Settlement Commission is contrary to the provisions of the Act and that such contravention has prejudiced assessee - held yes". Therefore, only in the event of violation of the provisions of the Income Tax Act, the High Courts are empowered to entertain the writ under Article 226 and with reference to the factual details, no such writ proceedings can be entertained at all. It is contended that the factual aspects were elaborately considered by the Settlement Commission and the petitioner/Department has also participated in the adjudication. Thus, there is no scope for entertaining the present writ petition. Thus, the petition is to be dismissed on the ground of maintainability.

3. The learned counsel cited the judgment of the High Court of Gujarat in the case of Principal Commissioner of Income Tax, Surat-I vs. Shreyansh Corporation which is also on the same line. The Gujarat High Court considered the detailed items submitted by the assessee in respect of income and arrived at a conclusion that the issues relating to such facts were adjudicated in detail. Thus, there is no scope for further interference and accordingly, the case of the assessee was settled in terms and conditions of the order passed by the Settlement Commission.

4. The learned Senior Standing Counsel appearing on behalf of the writ petitioner disputed the said contention by stating that the proposition mooted out that the writ petition is not entertainable is incorrect. The writ petitions are entertained on many occasions by various High Courts and by the Hon'ble Supreme Court of India. What is required is, whether the Settlement Commission passed an order in consonance with the ingredients contemplated under Section 245C of the Income Tax Act or not. Thus, the High Court is empowered to adjudicate those issues in order to form an opinion, whether the writ petition is entertainable or not. It is not as if the writ petition is not maintainable at all. The writ petitions are maintainable subject to the condition that if the terms and conditions stipulated for filing an application under Section 245C of the Income Tax Act are complied with. Thus, the very contention raised is to be rejected. The judgments cited are relatable to the facts of those cases. As far as the present writ petition is concerned, the writ petitioner/Department could not establish that there was seizure conducted and during seizure, large quantity of account books and incriminating evidences were recovered. Those evidences are to be considered for the purpose of assessment under Section 153A of the Act and the Settlement Commission, without considering the fundamental powers of the Assessing Officer, formed an opinion and settled the matter, which is impermissible, in view of Section 245(C) of the Income Tax Act. Thus, the very contention of the second respondent that the writ petition is not maintainable deserves no merit consideration.

5. This Court is of the considered opinion that the maintainability of the writ petition is to be considered at the first instance as the same has been raised by the second respondent. All the writ petitions are entertainable under Article 226 of the Constitution of India. No writ petition can be dismissed as not-maintainable. The powers of the High Court under Article 226 of the Constitution of India are wider enough to provide complete justice to the litigants, who are all approaching the High Court. Thus, the concept of non-maintainability of the writ petition is to be examined with reference to the mixed question of law and facts and not merely on the ground that the Settlement Commission under the Income Tax Act passed an order. This being the scheme of constitution under Article 226, this Court is of the considered opinion that on the mere ground that an order was passed by the Settlement Commission settling the disputes between the parties, no writ petition needs to be dismissed as not-maintainable.

6. The learned Senior Standing Counsel cited the judgment of this Court in the case of ACE Investments Limited

vs. Settlement Commission reported in [2003] 264 ITR 571 (MAD). This Court, relying on the judgment of the Hon'ble Supreme Court of India, made an observation that "in so far as the power of this Court to exercise its jurisdiction under article 226 of the Constitution of India, the law is well settled that the judicial review of this Court is not concerned with the decision, but only with regard to the decision making process. The above position of law was reiterated by the apex court in the judgment in R.B.Shreeram Durga Prasad and Fatechand Nursing Das's case [1989] 176 ITR 169 and this proposition of law is also not disputed. Equally, the judicial review of this Court to interfere with the order of the settlement Commission is not barred, if the order of the Settlement Commission is in contravention to any of the provisions of the Act. The law on this question is settled by the Apex court in the judgment in Jyotendrasinhji's case [1993] 201 ITR 611. This proposition of law is also not disputed. Equally the power of this Court to interfere in the order of the Settlement Commission unless there is patent illegality as held by this Court in C.A.Abraham's case [2002] 255 ITR 540 is also not disputed."

7. With reference to the powers of the Assessing Officer under Section 153A of the Income Tax Act, the learned Senior Standing Counsel referred the judgment in the case of CANARA JEWELLERS vs. SETTLEMENT COMMISSION reported in [2009] 184 Taxman 491 (Madras). This Court held as follows:

11. So far as Section 245F is concerned, though the Settlement Commission is empowered to have all the powers which are vested in an income-tax Authority under the Act, in addition to the power conferred under Chapter XIX-A, but such power can be exercised for the purpose of procedure of settlement of application under Section 245C and not for reassessment of tax of a particular year which is vested with the Assessing Authority".

8. Relying on the above judgments, the learned Senior Standing Counsel contended that the writ petition is maintainable and therefore, the issues are to be adjudicated regarding the manner in which the decision was taken by the Settlement Commission and the decision making process adopted with reference to Section 245C of the Income Tax Act.

9. This Court is of the considered opinion that Section 245 (C) of the Income Tax Act enumerates that "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".

10. A reading of the section portrays that it is a special provision contemplated enabling the assessee to settle the disputes in a peaceful manner with the Department, if they have come out with full and true disclosure of income. Such special provisions are enacted with an intention to provide an opportunity to the assessee to settle the issues, in order to rectify certain omissions, commission, mistakes etc., by the Assessee. In view of the complex nature of business by the Entrepreneurs, it is possible for such omission, commission, mistakes etc., while filing income tax returns and furnishing other particulars. Thus, the legislative intention of Section 245C is to provide an opportunity to the Assessee to settle the issues, if they found some discrepancy or commissions, omissions in respect of the disclosures made before the Assessing Officer at the first instance. Since such enabling provisions are made with good intention and to provide an opportunity to the assessee to correct the mistakes, it is to be done in the manner prescribed. Section 245(C) unambiguously stipulates that the application filed under Section 245(C) is to be disposed of in the manner provided in the very section itself. Therefore, it is an exclusive provision under the Act, wherein the procedures are also contemplated and certain terms and conditions are also stipulated for the purpose of settling the disputes.

11. Law presumes that every assessee discloses his true and full income at all times. Law mandates that an assessee must file his returns and show the income in a true and correct manner. While the law expects that an assessee to be truthful and correct in his particulars, the additional provisions for settlement of the disputes are provided enabling the assessee to settle the disputes in the event of any correction, omission, commission or mistakes etc. Thus, an application for settlement of cases cannot be construed as an absolute right. But, it is a right of an assessee to approach the Settlement Commission with full and true disclosure of his income. The right of the assessee is well enumerated in many other provisions of the Income Tax Act. The assessment made by the Assessing Officer at the first instance would be the factor for all purposes and the settlement of the disputes is an additional provision, enabling the assessee to correct certain mistakes, if at all occurred or on account of various other factors. Thus, the scope of Section 245C of the Income Tax Act cannot be compared with the regular assessments to be made in accordance with the procedures contemplated under the Act nor Section 245(C) can be tagged

along with the regular provisions for the purpose of settling the disputes between the assessee and the Department.

12. In a common parlance, the settlement of disputes are possible, only if there is a consensus between the parties to the disputes. The dictionary meaning of "settlement" would show that the settlement can be made, if the difference between the parties are narrowed down. Undoubtedly, the Settlement Commission has got certain powers to settle the issues. However, such power of settlement is absolutely guided by the provision itself. That is the reason why the proviso clauses are provided under Section 245(C). The proviso clause stipulates that no application shall be made unless certain terms and conditions are fulfilled. But Section 245(C)(1) provides that it is a pre-condition to entertain an application that the assessee must disclose full and true facts and the evidence. Thus, Sub-clause (1) to Section 245(C) is the preliminary requirement for entertaining the application under Section 245C.

13. A question arises who will be the deciding Authority for the full and true disclosure as contemplated under Section 245C. When an application is made by the assessee for settlement, then an assessee will contend that the particulars provided in the application are the full and true disclosure. However, if the Department raises an objection regarding such full and true disclosure made by the assessee, then the Settlement Commission is empowered to go into the facts and circumstances and find out the correctness or truthfulness of the disclosure made by the assessee. Therefore, it is always a mixed question of fact and law and in order to ascertain the entertainability of the writ petition, the High Court is bound to look into the facts as well as the laws. In the absence of examining both the facts and laws, it may not be possible to form an opinion, whether the application filed under Section 245(C) of the Income Tax Act is entertainable or not?

14. In the case on hand, the Settlement Commission formed an opinion that the issues can be settled. However, there is no clear finding that the application filed by the second respondent contains full and true disclosure of income. If a clear finding is formulated and found in the order of the Settlement Commission, then the High Court can restrict its scope to deal with the facts. However, in the absence of any such clear finding that the application filed by the second respondent contains full and true disclosure of the income, then it is always arguable by the Department that such disclosure is not in full form and the materials are not considered by the Settlement Commission.

15. With reference to the order passed by the Settlement Commission, regarding the pre-requisite condition under Section 245C and regarding full and true disclosure, it is relevant to extract paragraph No.7.4 of the order passed by the Settlement Commission which reads as under:

"7.4. The Applicant has made a prayer for granting immunity from penalty and prosecution under the Income Tax Act. The Applicant has co-operated in the proceedings before us. She has also disclosed the manner in which such income was derived. We now proceed to discuss if the Applicant has made full and true disclosure of income. Admittedly we have directed that some additional income is required to be further disclosed in respect of some issues because there seemed to be a possibility that perhaps there could be a component of income arising out of the transactions concerned. It was only to cover such a possibility that we have directed further disclosure to be made. In respect of most of the issues, there was no evidence to conclusively establish that there had been any under disclosure of income. The Applicant also agreed to abide by our directions for further disclosure not because she accepted any understatement of income but basically with a view to bring quietus to the matter and in the spirit of settlement. In these circumstances, we find that it cannot be said that the disclosure of income by the Applicant was not full and true. Thus the Applicant has satisfied the requisite conditions prescribed u/s.245H of the Act. Accordingly we allow the prayer of the Applicant for immunity from penalty and prosecution under the Income Tax Act only so far as the same relate to issues dealt with in this order of settlement."

16. A perusal of the above findings regarding full and true disclosure reveals that the Settlement Commission itself is doubtful about the disclosure made. Further, it reveals that some additional income and some other particulars were also adjudicated by the Settlement Commission, which were not disclosed by the assessee even at the time of filing of the application under Section 245C of the Act.

17. Thus, let us consider the scope as well as the powers of the Settlement Commission to entertain an application under Section 245(C) of the Income Tax Act. When the Section in unambiguous terms contemplates that the application in such form and in such manner as may be prescribed containing a "full and true disclosure" alone is entertainable, then it becomes a pre-requisite condition for entertaining an application under Section 245(C). The phraseology 'full and true disclosure of his

income' is contemplated in Section 245(C)(1) itself. Thus, it is for the assessee to establish at the first instance that the application contains full and true disclosure of the income. Once the said factum is established, then alone the question of settlement would arise and not otherwise.

18. The learned counsel appearing for the second respondent made a submission that the Settlement Commission is empowered to adjudicate the complete facts and circumstances with reference to the various provisions of the Income Tax Act and even, empowered to make an assessment under the provisions of the Income Tax Act. The contention as a whole need not be taken into consideration in view of the fact that the Settlement Commission has got powers to deal with facts and circumstances with reference to the provisions of the Income Tax Act. However, the Settlement Commission cannot make an independent assessment, which is the power of the Assessing Officer under the Act. The Settlement Commission cannot usurp the powers of the Assessing Officer. If such an exercise is allowed to be exercised, then the very settlement provisions under Section 245C would be defeated and the purpose and object also would be defeated. Thus, the scope of Section 245C and the procedures contemplated under Section 245D are to be scrupulously followed by the Settlement Commission, while dealing with an application filed under Section 245C. The interpretation of these provisions cannot be expanded so as to confer any additional power to the Settlement Commission, which is otherwise to be exercised by the other Competent Authorities of the Income Tax Department. In other words, what is not contemplated under Section 245C and 245D cannot be conferred on the Settlement Commission by the Courts nor the Settlement Commission is competent to usurp the powers. Undoubtedly, the Settlement Commission has to consider the mixed question of law and facts. But, while considering the same, the Commission is not competent to exercise the powers and the procedures contemplated beyond the scope of the provisions of the Act. Thus, the powers of the Settlement Commission to deal with facts, circumstances in consonance with the provisions of the Act are permitted. However, the Settlement Commission cannot make an assessment or exercise the powers conferred on the other Authorities under the provisions of the Act.

19. As far as the original power of the Assessing Officer under Section 153(A) of the Act is concerned, the Division Bench of this Court in the case of CANARA JEWELLERS vs. SETTLEMENT COMMISSION reported in [2009] 184 Taxman 491 (Madras) held that "the Settlement Commission is empowered to have all the powers which are vested in an income-tax Authority under the Act, in addition to the power conferred under Chapter XIX-A, but such power can be exercised for the purpose of procedure of settlement of application under Section 245C and not for

reassessment of tax of a particular year which is vested with the Assessing Authority".

20. Thus, the power of the Assessing Officer conferred under Section 153(A) cannot be usurped by the Settlement Commission, which would defeat the very scheme of the Act nor the original powers vested on the Assessing Officer cannot be neutralized. In other words, in the event of permitting the Settlement Commission to exercise the original power of assessment, then the power of assessment of the Assessing Officer is not only diluted, but the very provision will be frustrated. Thus, such a power is neither contemplated nor intended. As per the Division Bench judgment, the original assessment power vested with the Assessing Officer cannot be exercised by the Settlement Commission.

21. In respect of maintainability of the writ petition, the learned Senior Standing Counsel appearing for the writ petitioner made a submission that the Department had established that during conduct of seizure, they recovered the account books, incriminating evidences to establish that there was no full and true disclosure in the application and the power of assessment vested with the Assessing Officer must be allowed to be exercised for the purpose of assessment. By overtaking the powers of Assessing Officer, the settlement cannot be made under Section 245(C) of the Income Tax Act.

22. There is a force in the argument as the very purpose and object of the income Tax Act is to ensure that the income disclosure must be full and true. In the event of any discrepancy, the Department must be provided with an opportunity to make an assessment under Section 153(A) and without making such assessment, the question of settlement would not arise at all. Undoubtedly, if the said assessment made is accepted by the assessee, then the issues can be settled and not otherwise. That is the reason why in the event of non-consensus, the settlement of disputes are impermissible. If there is a strong objection and confrontation regarding full and true disclosure, then the power of assessment must be given to the Assessment Officer by the Settlement Commission and the Settlement Commission cannot usurp the power of the Assessing Officer under Section 153(A) of the Income Tax Act.

23. In the present case, the petitioner could able to establish that they have made all the particulars before the Settlement Commission regarding the seizures made and the books of accounts and incriminating evidences collected from the premises of the second respondent. The detailed working of each year were submitted by the Department on 25.07.2013 before the Settlement Commission. Accordingly, the petitioner/Department

found that there is a difference of more than 11 crores in disclosing the true and full income of the second respondent. When such a dispute is raised, then the Settlement Commission ought to have allowed the Assessment officer to make a fresh assessment with reference to the newly recovered materials under Section 153A of the Act. It is improper to settle the issues despite the fact that there are controversies regarding the true and full disclosure of income. This being the mixed question of law and fact, the High Court is well within its powers to entertain the writ petition under Article 226 of the Constitution of India, in view of the fact that the point of jurisdiction as well as the powers of the Settlement Commission is raised as a ground for filing the present writ petition. Thus, the writ petition is maintainable and the said issue is answered in favour of the petitioner/Department.

24. Let us now consider the grounds raised in the writ petition.

25. The learned Senior Standing Counsel appearing on behalf of the writ petitioner-Department made a submission that even before filing of an application by the second respondent-assessee under Section 245C of the Act, the petitioner-Department conducted a search under Section 132 of the Act in the residential premises of the assessee and the said search revealed detection of unaccounted stock of gold and diamond jewellery, unaccounted cash and several incriminatory records and the assessee, before the authorities, admitted the undisclosed income to the tune of Rs.70.65 crores. After the search, notices under Section 153A of the Act were issued for the assessment years 2007-08 to 2012-13. The assessee filed her return of income on 25.03.2013 for these years relying on the said search conducted under Section 132 of the Act.

26. The learned Senior Standing Counsel made a submission that when large quantity of undisclosed income, incriminating evidences were recovered by the Department, then the application filed thereafter under Section 245C of the Act, must be verified by the Settlement Commission, if those incriminating evidences recovered are also included in the application so as to entertain the application, as there is a pre-requisite condition under the provision that the assessee must make full and true disclosure of income. When true and full disclosure of income is contemplated as a pre-condition under the Act, then the Settlement Commission is obligated to consider the submission made by the Department regarding the incriminating evidences and undisclosed income recovered from the assessee.

27. As far as the application filed by the assessee under Section 245C of the Act is concerned, the disclosure made in the

application is far lesser than that of the actual income, which was identified by the Department more specifically, while conducting search. Even the difference is not meagre or the differential amount of income is huge, therefore, there is no reason for the Settlement Commission to entertain an application under Section 245C of the Act at all.

28. This Court is of the considered opinion that the provision for settlement is an enabling provision to settle the dispute between the parties. Therefore, law expects that the parties, who are approaching the Settlement Commission by way of application, must disclose full and true income in the event of any difference or confrontation in this regard such an application for settlement cannot be entertained. Contrarily, the Assessing Officer must be permitted to make regular assessment of income under Section 153A of the Act. It is further contended that the differential amount of income is crossing Rs.25 Crores and all these facts were placed before the Settlement Commission by the Department. In this regard, it is contended that the Settlement Commission has committed an error in adopting the decision making process, as the process adopted is totally in contravention to the facts and circumstances established by the Department and further, such facts and circumstances are not correlating with the application filed by the assessee under Section 245C of the Act. When there are discrepancies and doubt arises with regard to the true and full disclosure of income, then the natural course of action would be that the Assessing Officer must be permitted to make a regular assessment under Section 153A of the Act and settlement cannot be arrived under doubtful circumstances. In such circumstances, settlements are impermissible and cannot be construed as settlement at all.

29. The very concept of settlement is depending on the mutual consensus and in the absence of element of mutual consensus between the parties, the settlement by the Settlement Commission cannot be unilateral and in such an event, Settlement Commission is usurping the powers of the Assessing Officer under other provisions of the Act. In other words, every authority under the Income Tax Act, 1961 is expected to exercise the powers as contemplated.

30. The question of exercise of excessive powers or jurisdiction would arise, if the authority made an attempt to travel beyond the scope of the provision under which, such powers are conferred to a particular authority. In the instant case, the power of the Settlement Commission is well enumerated under Section 245C and 245D of the Act. The manner in which settlement is to be arrived is also contemplated under the Act. Certain pre-conditions are also stipulated. Thus, the

Settlement Commission cannot enter into the venture of assessment, which is the power of an Assessing Officer under Section 153A of the Act. Therefore, this Court is of an opinion that in the absence of any true and full disclosure, the Settlement Commission cannot go beyond the scope of Section 245C of the Act and adjudicate the additional income found by the Department during seizure, which is admittedly not disclosed in the application filed at the first instance by the assessee.

31. In the instant case, the assessee having knowledge about the search and received notice under Section 153A of the Act, ought to have submitted all such particulars along with the application including the undisclosed income recovered by the Department in the application itself. The very fact is that the assessee had not filed any details regarding the undisclosed income recovered by the Department in her application under Section 245C of the Act and therefore, the very application for settlement is certainly not entertainable and prima facie the Department established that the assessee had not approached the Settlement Commission with clean hands.

32. To substantiate the said contention, it is relevant to consider the findings of the Settlement Commission more specifically, the findings from paragraphs 6.3 to 6.6, which are all extracted hereunder:-

"6.3. Cash amounting to Rs.96,44,870/- was found during the search though the cash book showed a balance of only Rs.3,26,710/-. It has been claimed that certain sales had been effected prior to the date of the search which had remained to be entered in the books of account. Such unrecorded sales proceeds amounting to Rs.62,71,694/- received by way of cash are claimed to represent a part of the cash found during the search. It was argued that credit should be given for the same. The learned AR pointed out that the physical stock in the shop at the time of the search was less than the stock recorded in the other set of books. This indicates that there must have been some sales, in respect of which bills had remained to be issued. While this explanation may perhaps be true but the fact remains that no evidence was found during the search which establishes the fact that any sales had remained to be entered in the books. Hence we are of the view that there is no clinching evidence to support the explanation for excess cash amounting to Rs.62,71,694/-. Further disclosure to the extent of Rs.62,71,694/- is, therefore,

required to be made on this account. The learned AR vehemently argued that the sales had actually taken place and the corresponding cash received formed part of the cash found during the search. However, he stated that, in the spirit of settlement and to bring a quietus to the matter, a further amount of Rs.62,71,694/- is also offered for taxation for the A.Y. 2013-14.

6.4. During the search, the Applicant had stated that jewellery weighing 859.300 grams found in the locker had been taken from the shop for personal use. She had made an offer of Rs.23 lakhs as undisclosed income on this account. 225 grams of jewellery was also found at the residence. It was argued before us that, considering the size of the family, the possession of 1084.300 grams of gold jewellery was not abnormal. We admit that, considering the size of the family, the possession 1084.300 grams of jewellery is not unreasonable. It is quite possible that the explanation of the Applicant is correct. At the same time, we have to keep in mind the fact that the Applicant had stated during the search that jewellery weighing 859.300 grams pertained to the shop and did not belong to her. This statement has never been retracted. We, therefore, of the view that the value of the jewellery which was estimated at Rs.23 lakhs is required to be further disclosed. The learned AR stated that, though the jewellery was actually owned by the Applicant and her family members, the Applicant was willing to offer a sum of Rs.23 lakhs for the A.Y. 2013-14 in the spirit of settlement.

6.5. As regards payment of 'on money' for acquisition of properties (summarised in paras 2.3.2 to 2.3.5 above), it has been argued before us that the value of such properties as per the registered documents was much below than what has been admitted by the Applicant's son at the time of the search. It was argued that this statement had been given as the son was not aware of the value of the properties as per the documents. The necessary records in this respect were not available at that time. It has also been argued that no material was unearthed during the search to indicate that there was any 'on money' payment in respect of these properties over and above the documented value.

After considering the matter, we agree that no evidence was found during the search to establish that any 'on money' was paid in respect of these properties. We also agree that the Applicant's son did not have the relevant documents which is statement was being recorded during the search. At the same time, it has also to be kept in mind that a statement to this effect had been made during the search which has not been retracted. We, therefore, are of the view that the value of the properties over and above the documented value (as admitted at the time of the search) is required to be further disclosed as unaccounted income. The learned AR stated that, even though no evidence was unearthed during the search in respect of such 'on money' payment, the Applicant wishes to bring a quietus to the matter and hence is willing to offer the following amounts:-

Property at	Value stated in 132(4) statement	Value in Document	Difference	A.Y.	Further disclosure
Bangalore	60,00,000	43,00,000	17,00,000	2011-12 2012-13	10,00,000 7,00,000
K.K.Pudur, Stamp Duty & Others	60,00,000	19,55,000	40,45,000 19,750 40,64,750	2011-12	40,64,750
Ganapathy Stamp Duty & others	40,00,000	12,85,000	27,15,000 1,16,690 28,31,690	2011-12	28,31,690

6.6. There is another aspect in this case which we would like to discuss. The Applicant has quantified the undisclosed income on the basis of 'Net Accretion to Asset Method'. However, considering the status of the Applicant, there exists a possibility that there would have been substantial drawings for personal purposes out of the undisclosed business income. There is also a possibility of some undetected errors and omissions being present in the regular books of account. We are of the view that this possibility is also required to be covered even though there is no evidence to establish any such drawings or error and omissions. In our opinion, a total sum of Rs.3.30 crores is further required to be disclosed as given below:-

(Amount in Rupees)

A.Y.	Addition
2007-08	15,00,000
2008-09	25,00,000
2009-10	35,00,000
2010-11	45,00,000
2011-12	55,00,000
2012-13	70,00,000
2013-14	85,00,000
Total	3,30,00,000

33. Perusal of the above findings of the order of the Settlement Commission clearly established that there are many additions regarding the undisclosed income by the assessee. The additions are made due to the search conducted and the Department has stated that the undisclosed income are more and a regular assessment is to be made in order to scrutinise all the books of accounts and incriminating evidences for the purpose of forming an opinion and to determine the tax payable by the assessee. When such an exercise to be made under the Act is not permitted and if the issues are settled, then this Court has no hesitation in holding that the very purpose and object of the provisions of the Act is defeated. This apart, the very scope of Section 245C of the Act cannot be widened so as to permit the Settlement Commission to make a regular assessment, which is not contemplated.

34. The very factum that there are additional disclosures of income during the pendency of the Settlement Commission, which were not made available at the time of application by the assessee under Section 245C of the Act there is a sufficient cause to reject the application under Section 245C of the Act. The very spirit of the provision is that the application must contain full and true disclosure of income. Once it is established that the application does not contain full disclosure of income and additions are made during the pendency of the application, it is sufficient to arrive at a conclusion that the application made by the assessee is not in consonance with the provisions of Section 245C of the Act and therefore, the same is liable to be rejected in limine. Contrarily, in the present case, the Settlement Commission travelled beyond the scope of Section 245C of the Act and adjudicated the additional income disclosed and further gone to the extent of settling the issues based on the additional income, which were not disclosed at the time of filing of an application under Section 245C of the Act.

35. In view of the facts and circumstances, it is established that the assessee has not approached the Settlement Commission with clean hands. The assessee has not disclosed the true and full income and more specifically, the undisclosed income recovered during the search were not made available before the Settlement Commission along with the application and this would be sufficient to reject the application by the Settlement Commission. Contrarily, the Settlement Commission proceeded by adjudicating the issues on merits on the presumption that the Settlement Commission can pass an assessment order, which is otherwise not permissible under the provisions of Section 245C of the Act. Thus, the order passed by the Settlement Commission is perverse and not in consonance with the provisions of the Income Tax Act, 1961 and the Settlement Commission exceeded its jurisdiction by entering into the venture of a regular assessment, which is otherwise to be made by the Assessing Officer under the other provisions of the Income Tax Act, 1961.

36. Accordingly, the order passed by the first respondent-Settlement Commission in S.A.No.TN/CN.53/2013-14/1/IT, dated 31.07.2013 is quashed and consequently, the petitioner-Department is permitted to proceed with the regular assessment through the competent authority under the provisions of the Act and by following procedures as contemplated so as to determine the tax payable and to initiate all further actions, in accordance with law.

37. Accordingly, this writ petition stands allowed. No costs.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

ssb/abr
To

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

+1 CC to Mr.A.P. Srinivas, Advocate sr 22588

W.P.No.16552 of 2014

SMI (CO)
SP(14/06/2021)