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WA No. 1852 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2022

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Appeal No. 1852 of 2021
and
C.M.P. No. 11718 of 2021

K.S. Thirumalaivasan
No.B-6, Thiru-vi-ka Industrial Estate
Guindy, Chennai – 600 032
running a company M/s. Krishna Energy Pvt Ltd
184/2, SIDCO Industrial Estate
represented by his son
Mr. T. Gokula Krishna

.. Appellant

Versus

1. The Chairman
Income Tax Settlement Commission
Principal Bench, New Delhi
2. The Income Tax Settlement Commission
Additional Bench
No.640, Anna Salai
Nandanam, Chennai – 600 035
3. The Principal Commissioner of Income Tax
Central-II, Nungambakkam
Chennai – 600 034
4. The Assistant Commissioner of Income Tax
Central Circle – I (4)
No.46, Mahatma Gandhi Salai
Nungambakkam, Chennai

.. Respondents



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Writ Appeal filed under Clause 15 of The Letters Patent against the Order dated 17.04.2021 passed in WP No. 41407 of 2016 on the file of this Court.

For Appellant : Mr. R.V.Easwar, Senior counsel for
Mr. N. Viswanathan

For Respondents : Mr. A.P. Srinivas
Senior Standing Counsel

JUDGMENT

R.MAHADEVAN, J.

Aggrieved against the order of dismissal dated 17.04.2021 passed in W.P.No.41407 of 2016, the appellant has come up with this intra-court appeal.

Brief facts.

2. According to the appellant, he has been regularly filing the returns of income including the Tax Audit report. During the Financial Year 2006-2007, his concern M/s. Maruthi Electrical Engineers was awarded an electrical contract by M/s. RR Info Park Private Limited (RRIPL) for supply and installation work in their proposed twin town IT park at Ambattur. The contract was so structured that there was an excess in the value of the contract, which was to be brought back as investment in the two companies of RR group namely RR Industries Limited and Hanudev Investments Private Limited. In the structured deal between the appellant and RRIPL, the excess contractual amount payable to the appellant was treated as investment in the



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preferential share capital of the two group companies. In view of the long business relationship, the appellant had with the aforesaid companies, he agreed for the structured transaction during the financial years 2006-2007 and 2007-2008 and accordingly, he invested the excess contract value of the amount in the two companies.

3. The appellant further averred that for the Assessment years 2008-2009 and 2009-2010, he filed returns of income, which were scrutinised and assessment orders were passed on 28.12.2010 and 29.12.2011 respectively under Section 143 (3) of the Act. In fact, for the assessment year 2008-2009, the Assessing Officer added Rs.3,42,00,000/- towards disallowance under Section 43B of the Act apart from other disallowances totalling Rs.49,11,094/-. Aggrieved by the same, the appellant has filed a statutory appeal before the Commissioner of Income Tax (Appeals) VIII, Chennai. The Appellate Authority, by an order dated 01.02.2012 deleted the disallowance amounting to Rs.49,11,094/- and confirmed the disallowance of Rs.3,42,00,000/-. As against the order dated 01.02.2012, the Revenue filed an appeal before the Income Tax Appellate Tribunal and it was allowed on 30.01.2014 by setting aside the order of the Appellate Authority with respect to adding back of donation of Rs.2,77,000/- and disallowance under Section 40 (a) (i) of the Act to the tune of Rs.46,34,094/-.



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4. In the meantime, the Assessing Authority entertained the reasons to suspect that certain income of the appellant has been concealed or is likely to be concealed. Therefore, in exercise of powers conferred under Section 131 of the Act, summons were issued to the appellant on 24.05.2012 calling upon him to appear for an enquiry. Accordingly, the appellant appeared and his statement was recorded. Thereafter, on 10.10.2012, a search was conducted by the officials attached to the investigation wing of the Income Tax Department during which certain documents in the form of books of account were seized. Consequent upon such search, six notices, all dated 22.11.2013, were issued to the appellant by the fourth respondent herein, in exercise of the powers conferred under Section 153A of the Act, proposing to assess/re-assess the income of the appellant for the assessment years 2007-2008 to 2013-2014. In response, the appellant sent a reply on 10.02.2014 enclosing copies of profit and loss account and balance sheet, with a request to treat the original return of income filed by him for the respective assessment years, as the return of income in respect of the notices under Section 153A of the Act.

5. While so, on 30.11.2014, the appellant met with a major accident and slipped into coma stage. It is stated that the assessee was under prolonged treatment, initially in Apollo Super Speciality Hospitals, Nandanam and



thereafter shifted to Brain & Spine Hospital, Nandanam. In those circumstances, the son of the assessee namely T. Gokula Krishna filed an application under Section 245D (4) of the Act before the second respondent praying to (i) determine the taxable income for the years covered in the application and for payment of additional tax therein (ii) to grant immunity from penalty and prosecution, if any, under the provisions of the Act (iii) waive in full or in part, the interest under Section 234 A, B and C of the Act (iv) upon settlement of the issues, permit the assessee to make necessary entries in his books of accounts to bring into the actual transactions relating to the contract with RRIPL (v) to direct the Income Tax Authorities to give effect to the final settlement ordered by the Settlement Commission and accordingly close all further proceedings under the Act, which are pending in respect of the assessment years in question.

6. The application filed by the son of the assessee, under Section 245(D) of the Act, was taken up for hearing by the second respondent. After hearing the representative of the parties, the second respondent passed an order dated 07.04.2015, allowing the application for settlement of the tax dispute. In Para Nos.11 and 12 of the order dated 07.04.2015, it was observed as follows:



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“11. We have carefully considered the submissions of the learned A.R. And the facts available on record. The applicant's submission with regard to pendency of assessment for the A.Ys 2007-08 to 2012-13 u/s.153A and deemed pendency in respect of A.Y.2013-14 is found to be in order in view of the clarification issued by the CBDT on 17.11.2014 with respect to Circular No.3 of 2008. The applicant has declared additional income before us which are not declared before the Assessing Officer and the same are above the prescribed threshold limit of tax payable. The applicant has also paid additional tax and interest payable with reference to the additional income disclosed before us. The application fee of Rs.500/- has been paid by applicant and evidence has been filed. Intimation in Form 34BA have been furnished to the Assessing Officer on the same day i.e., 25.03.2015 when the Application was filed before us. The manner of earning of additional income has also been explained during the course of hearing and also in the SOF filed along with the application. As regards, the issue of true and full disclosure, we are of the opinion that at present, there is prima facie no material in our possession which warrants the conclusion that true and full disclosure has not been made by the applicant. So far as other conditions are concerned, they stand satisfied by the applicant.

12. In view of the above, we allow the above Settlement Application to be proceeded with further.”

7. Pursuant to the order dated 07.04.2015 of the second respondent, the third respondent submitted a report dated 19.08.2015 under Rule 9 of the Income Tax Settlement Commission Rules to the second respondent stating that the appellant has not satisfied that he has made full and true disclosure of the income about the income received or derived, the manner in which the purchases and various expenses were inflated and also the manner in which the investments were made. Therefore, by the report dated 19.08.2015, the third respondent sought for further investigation into the matter relating to plea of appellant for settlement of the dispute.



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8. On notice, the appellant's son submitted a reply dated 23.06.2016 before the second respondent to the report of the third respondent dated 19.08.2015 and contended that the second respondent need not accede to the report of the third respondent dated 19.08.2015 for further investigation under Section 245D (3) and to direct the department to comply with the order dated 07.04.2015 of the second respondent.

9. The report dated 19.08.2015 of the third respondent and the reply dated 23.06.2016 of the son of the appellant was taken on record by the second respondent. Upon scrutiny of the records, the second respondent, by the order dated 24.06.2016 concluded that enquiry/investigation is necessary to be conducted with respect to the source of money derived by the appellant, quantum of investments made etc. Accordingly, the second respondent directed the third respondent to cause further enquiries/investigation under Section 245D (3) of the Act and to submit a report within thirty days and directed to post the case for further hearing after receipt of a report from the third respondent within the time stipulated.

10. In compliance with the order dated 24.06.2016 of the second respondent, a notice dated 11.07.2016 was issued to the appellant, represented by his son T. Gokulakrishna, calling upon to furnish certain details. In



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response, a detailed reply dated 14.09.2016 was submitted by the appellant's son to the third respondent along with enclosures. Based on the reply submitted by the appellant's son and upon collecting various other details relating to the transactions the appellant had with two companies viz., M/s. RR Industries Limited and Hanudev Investments Private Limited, a detailed report was submitted to the second respondent in compliance with the order dated 24.06.2016. On scrutiny of the report, the second respondent passed an order dated 26.09.2016 holding that the settlement application is not maintainable due to the non-disclosure of full and true income in the application of the appellant. Therefore, by the order dated 26.09.2016, the second respondent reversed the earlier order dated 07.04.2015 allowing the application filed by the son of the assessee under Section 245 (D) of the Act and directed the department to take further action in accordance with law. Pursuant to the order dated 26.09.2016, the fourth respondent has issued a warrant of attachment dated 28.10.2016 under Section 281B of The Income Tax Act, 1961 to attach the immovable properties of the appellant. Challenging the aforesaid orders dated 26.09.2016 and 28.10.2016, the appellant filed WP.No.41407 of 2016. An interim order directing the assessment proceedings to be kept under abeyance was granted by the Writ Court, when the said writ petition was taken up for hearing on 25.11.2016.



11. The learned Judge, after hearing the counsel for both sides, dismissed the writ petition on 17.04.2021. The observations of the learned Judge are extracted below for ready reference:

“11. The settlement of cases under Section 245C cannot be construed as an absolute right of an assessee. It is only a facility provided to the assessee to settle the cases in a peaceful manner. When the settlement being not a right, the procedures contemplated are to be followed scrupulously. All the assessments are to be made by the regular Assessing Officer by following the provisions of the Act. Thus, the application filed under Section 245C is a special provision contemplated for the purpose of settling the cases in a speedy manner, only in the event of furnishing the true and full disclosure of income by an assessee along with the application.

12. Doubts raised based on incriminating evidence by the Department and the particulars produced by the assessee are sufficient enough to form an opinion that there was no true and full disclosure. The true and full disclosure contemplated under the provision must be understood that the said disclosure must be an acceptable disclosure with reference to the documents and evidences available with the Department. The very settlement is a consensus to arrive a settlement and the parties are expected to be fair and honest. With this idea, the concept of true and full disclosure is contemplated in the provision.

13. As far as the writ proceedings are concerned, such disputed facts and circumstances with reference to the documents and evidence cannot be adjudicated under Article 226 of the Constitution of India. Such an adjudication must be done by the Competent Authority by conducting a full-fledged enquiry/trial. In the event of rejection of an application filed under Section 245C, the matter shall go before the Assessing Officer before whom the assessee would get an opportunity to submit his explanation or documents or otherwise. Thus, the High Court under Article 226 cannot adjudicate or made any finding with reference to the disputed facts. Thus, the contention raised by the writ petitioner in this regard need not be considered.”

12.1. Assailing the order dated 17.04.2021, the learned senior counsel for the appellant would contend that the learned Judge failed to appreciate the admitted facts and documents produced on behalf of the appellant to show that the second respondent had erred in the decision making process which



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warrants interference under Article 226 of The Constitution of India. The learned Judge also failed to take note of the fact that the second respondent Commission, which is entrusted with the discretionary power to serve the larger interest of the tax payers, has not acted fairly and reasonably, while so, the learned Judge ought to have interfered in exercise of the writ jurisdiction. The observations made by the learned Judge, in the order impugned, are generic and not specific. The Learned Judge has not considered the contentions and the documents produced in support of the contention that there was no dispute on to the facts or the nature of transaction but went on record as if there was some disputed facts. The learned Judge has not appreciated the efforts made by the appellant to settle the dues payable to the department by filing the Settlement Application and the rejection of the said application would only result in multiplicity of litigation.

12.2. The learned senior counsel for the appellant placed reliance on the decision of the Karnataka High Court in *N.Krishnan (died) v. Settlement Commission and others [1989 180 ITR 585]* wherein it was held that “if there is grave procedural defects such as violation of mandatory procedural requirements and there is no nexus between the reasons given and the decision taken by the Settlement Commission, then the High Court, in exercise of



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power under Article 226 of The Constitution of India, can interfere with the proceedings of the Commission”. By pointing out the said decision, the learned senior counsel submitted that the decision making process itself is arbitrary inasmuch as the mandatory procedural requirements have not been followed and the earnest efforts taken by the appellant to settle the tax dues has not been appreciated by the second respondent Commission.

12.3. The learned senior counsel referring to the statement under Section 132, Annexure 3 of the Application, reply of the appellant dated 23/06/2016 with the annexures, reply dated 14/09/2016, report of the Company Secretary, reports of the Joint Commissioner and the Principal Commissioner, further contended that the 2nd respondent has failed to consider all the documents submitted by the appellant and the consideration of the same would have proven that every particulars were disclosed and also recorded in earlier proceedings, but in an arbitrary, biased and prejudicial manner, recording perverse findings by considering irrelevant materials ignoring relevant materials, the application has been rejected as not maintainable. The Learned senior counsel also pointed out that the senior member of the commission was also earlier supervising the investigation and hence the decision is biased. The Learned senior counsel further submitted that once the



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Settlement Commission after having found that all the particulars have been disclosed and that the application was valid, it cannot review the order more particularly when no additional materials were produced. The Learned senior counsel further contended that there is no nexus between the findings regarding non-disclosure and the conclusions and that the report of the principal commissioner has been arbitrarily rejected and findings contrary to the documents have been recorded. The Learned senior counsel further relied upon the Judgments in *S.P Jain's case* and *Calcutta Discount Company Case* in support of his contention. That apart, the Learned senior counsel contended that since proper opportunity was not given before erroneously holding that the appellant was liable to be taxed under Section 28(iv) of the Act, the matter may be remanded to the Interim Board for readjudication of the Application. Therefore, the learned senior counsel prayed for allowing this writ appeal by setting the order impugned herein.

13.1. Per contra, the learned Senior Standing Counsel appearing for the respondents would submit that the case against the appellant is that the contracts from RR Info Park Limited were inflated and there was structured transaction with RR Group. The excess receipt of income payable to the appellant by RR Info Park Private Limited was routed as investment in



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preference shares in RR Industries Limited and Hanudev Investments Private Limited for Rs.51,89,59,000/- and Rs.1,84,51,000/-. Further, the excess contract value received from RRIPL was debited in the books of accounts by the appellant as capital work in progress. The excess contract receipts are not out of any corresponding purchases. Therefore, the amount redeemed should be taxed in the hands of ultimate beneficiary, M/s. RRIPL as income from other sources.

13.2. It is further submitted on the side of the respondents that the appellant through his son, had filed a Settlement Application before the second respondent under Section 245D (4) of the Act praying to determine the taxable income for the years covered in the application and for payment of additional tax therein, to grant immunity from penalty and prosecution, if any, under the provisions of the Act and for other reliefs. The second respondent, initially allowed the application filed by the appellant on 07.04.2015 and directed to department to proceed further in relation to the plea of the appellant. However, after the order dated 07.04.2015 was passed, certain details were called for, from the appellant. The details furnished thereof unfolded that the appellant had suppressed several material particulars and therefore, a report was submitted to the second respondent. On the basis of such report, after affording opportunity of hearing to both sides, the second respondent passed



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the order dated 26.09.2016 holding that for the very same assessment years, the orders of assessment passed by the assessing officer were subjected to challenge and they are the subject matter of appeal before the Tribunal. Therefore, it was concluded that the Commission could take up the final adjudication under Section 245D (4) of the Act after the Tribunal decides the appeal. Further, the assessment order has not been set aside or decision of the Tribunal has not been given, the issue relating to bogus sales/deductions made under Section 43B of the Act cannot be decided by the second respondent. Accordingly, the second respondent held that the application for settlement is not maintainable. Above all, a specific finding has been given that the appellant has not disclosed full and true income in the application and therefore, the Department was directed to take further course of action in accordance with law. Taking note of the above, the learned Judge rightly concluded that when there are disputed question of facts involved, discretionary jurisdiction conferred under Article 226 of The Constitution of India cannot be exercised. The learned Senior Standing Counsel for the respondents, therefore, prayed for dismissal of the writ appeal.

14. By way of reply, the learned senior counsel for the appellant submitted that the conclusion reached by the second respondent that the



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Tribunal is ceased of the matter and therefore the Commission could take up the final adjudication of the application under Section 245D (4) of the Act after the Tribunal decides the appeal, is without application of mind. According to the learned senior counsel, the appellant has not filed any appeal in respect of the assessment years 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012 and 2012-2013. The documents have not been taken into consideration by the 2nd respondent, which has passed the orders in haste without giving proper opportunity to the appellant citing the time constraints though the commission still had time to pass orders. The appellant has filed an appeal as against the order of assessment dated 28.06.2021 in relation to the assessment year 2013-2014 on 02.09.2021, which is yet to be numbered. Once, the matter is remanded back, the assessment orders and even the appeal filed by the appellant will have no force. Further, as on the date when the order dated 26.09.2016 was passed by the second respondent, no appeal was filed or pending before the Tribunal. Thus, it is submitted that the second respondent has passed the order dated 26.09.2016 without any application of mind and on this ground, he prayed for allowing this writ appeal.

15. We have heard the learned counsel for both sides and perused the materials placed on record.



16. Before we proceed further, it is necessary to look into the relevant provisions regarding the powers and functioning of the Settlement Commission. Chapter XIX-A of the Income Tax Act deals with Settlement of Cases. The relevant provisions read as under:

“Section 245C. Application for settlement of cases.—*(1) An assessee may, at any stage of a case relating to him, make an application in such form and in such manner 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,

(ia) in a case where—

A) the applicant is related to the person referred to in clause (i) who has filed an application (hereafter in this sub-section referred to as -specified person?); and

(B) the proceedings for assessment or re-assessment 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 the applicant, being 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 ten lakh rupees,

(ii) in any other case, the additional amount of income-tax payable on the income disclosed in the application exceeds ten lakh rupees, and such tax and the interest thereon, which would have been paid under the provisions of this Act had the income disclosed in the application been declared in the return of income before the Assessing Officer on the date of application, has been paid on or before the date of making the application and the proof of such payment is attached with the application.

.....

(4) An assessee shall, on the date on which he makes an application under sub-section (1) to the Settlement Commission, also intimate the Assessing



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Officer in the prescribed manner of having made such application to the said Commission

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245D. Procedure on receipt of an application under section 245C.—

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

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

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

.....
(2B) The Settlement Commission shall,—

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

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

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

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

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

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

(2D) Where an application was made under sub-section (1) of section 245C before the 1st day of June, 2007 and an order under the provisions of sub-section (1) of this section, as they stood immediately before their amendment by the Finance Act, 2007, allowing the application to have been proceeded with, has been passed before the 1st day of June, 2007, but in order under the provisions of sub-section (4), as they stood immediately



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before their amendment by the Finance Act, 2007, was not passed before the 1st day of June, 2007, such application shall not be allowed to be further proceeded with unless the additional tax on the income disclosed in such application and the interest thereon, is, notwithstanding any extension of time already granted by the Settlement Commission, paid on or before the 31st day of July, 2007.

3. The Settlement Commission in respect of –

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

(7) Where a settlement becomes void as provided under sub-section (6), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the income-tax authority concerned, may, notwithstanding anything contained

in any other provision of this Act, complete such proceedings at any time



before the expiry of two years from the end of the financial year in which the settlement became void.

(8) For the removal of doubts, it is hereby declared that nothing contained in section 153 shall apply to any order passed under sub-section (4) or to any order of assessment, reassessment or recomputation required to be made by the Assessing Officer in pursuance of any directions contained in such order passed by the Settlement Commission and nothing contained in the proviso to sub-section (1) of section 186 shall apply to the cancellation of the registration of a firm required to be made in pursuance of any such directions as aforesaid.

Power of Settlement Commission to reopen completed proceedings.

245E. If the Settlement Commission is of the opinion (the reasons for such opinion to be recorded by it in writing) that, for the proper disposal of the case pending before it, it is necessary or expedient to reopen any proceeding connected with the case but which has been completed under this Act by any income-tax authority before the application under section 245C was made, it may, with the concurrence of the applicant, reopen such proceeding and pass such order thereon as it thinks fit, as if the case in relation to which the application for settlement had been made by the applicant under that section covered such proceeding also :

Provided that no proceeding shall be reopened by the Settlement Commission under this section if the period between the end of the assessment year to which such a proceeding relates and the date of application for settlement under section 245C exceeds nine years :

Provided further that no proceeding shall be reopened by the Settlement Commission under this section in a case where an application under section 245C is made on or after the 1st day of June, 2007.

Powers and procedure of Settlement Commission.

245F. (1) In addition to the powers conferred on the Settlement Commission under this Chapter, it shall have all the powers which are vested in an income-tax authority under this Act.

(2) Where an application made under section 245C has been allowed to be proceeded with under section 245D, the Settlement Commission shall, until an order is passed under sub-section (4) of section 245D, have, subject to the provisions of sub-section

(3) of that section, exclusive jurisdiction to exercise the powers and perform the functions of an income-tax authority under this Act in relation to the case :

Provided that where an application has been made under section 245C on or after the 1st day of June, 2007, the Settlement Commission shall have such exclusive jurisdiction from the date on which the application was made:

Provided further that where—

(i) an application made on or after the 1st day of June, 2007, is rejected



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- under sub-section (1) of section 245D; or
- (ii) an application is not allowed to be proceeded with under sub-section (2A) of section 245D, or, as the case may be, is declared invalid under sub-section (2C) of that section; or
- (iii) an application is not allowed to be further proceeded with under sub-section (2D) of section 245D,
- the Settlement Commission, in respect of such application shall have such exclusive jurisdiction upto the date on which the application is rejected, or, not allowed to be proceeded with, or, declared invalid, or, not allowed to be further proceeded with, as the case may be.
- (3) Notwithstanding anything contained in sub-section (2) and in the absence of any express direction to the contrary by the Settlement Commission, nothing contained in this section shall affect the operation of any other provision of this Act requiring the applicant to pay tax on the basis of self-assessment in relation to the matters before the Settlement Commission.
- (4) For the removal of doubt, it is hereby declared that, in the absence of any express direction by the Settlement Commission to the contrary, nothing in this Chapter shall affect the operation of the provisions of this Act in so far as they relate to any matters other than those before the Settlement Commission.
- (5) [* * *]
- (6) [* * *]
- (7) The Settlement Commission shall, subject to the provisions of this Chapter, have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

Inspection, etc., of reports.

245G. No person shall be entitled to inspect, or obtain copies of, any reports made by any income-tax authority to the Settlement Commission; but the Settlement Commission may, in its discretion, furnish copies thereof to any such person on an application made to it in this behalf and on payment of the prescribed fee :

Provided that, for the purpose of enabling any person whose case is under consideration to rebut any evidence brought on record against him in any such report, the Settlement Commission shall, on an application made in this behalf, and on payment of the prescribed fee by such person, furnish him with a certified copy of any such report or part thereof relevant for the purpose.

Power of Settlement Commission to grant immunity from prosecution and penalty.

245H. (1) The Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 245C has co-



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operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived, grant to such person, subject to such conditions as it may think fit to impose for the reasons to be recorded in writing immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1860) or under any other Central Act for the time being in force and also (either wholly or in part) from the imposition of any penalty under this Act, with respect to the case covered by the settlement :

Provided that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under section 245C:

Provided further that the Settlement Commission shall not grant immunity from prosecution for any offence under the Indian Penal Code (45 of 1860) or under any Central Act other than this Act and the Wealth-tax Act, 1957 (27 of 1957) to a person who makes an application under section 245C on or after the 1st day of June, 2007.

(1A) An immunity granted to a person under sub-section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of settlement passed under sub-section (4) of section 245D within the time specified in such order or within such further time as may be allowed by the Settlement Commission, or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.

(2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Settlement Commission, if it is satisfied that such person had, in the course of the settlement proceedings, concealed any particulars material to the settlement or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the settlement and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

Abatement of proceeding before Settlement Commission.

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; or
- (ii) an application made under section 245C has not been allowed to be proceeded with under sub-section (2A) or further proceeded with under sub-section (2D) of section 245D; or
- (iii) an application made under section 245C has been declared as invalid under sub-section (2C) of section 245D; or
- (iiia) in respect of any application made under section 245C, an order under sub-section (4) of section 245D has been passed not providing for the terms



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(iv) in respect of any other application made under section 245C, an order under sub-section (4) of section 245D has not been passed within the time or period specified under sub-section (4A) of section 245D, the proceedings before the Settlement Commission shall abate on the specified date.

Explanation.—For the purposes of this sub-section, "specified date" means —

(a) in respect of an application referred to in clause (i), the day on which the application was rejected;

(b) in respect of an application referred to in clause (ii), the 31st day of July, 2007;

(c) in respect of an application referred to in clause (iii), the last day of the month in which the application was declared invalid;

(ca) in respect of an application referred to clause (iiia), the day on which the order under sub-section (4) of section 245D was passed not providing for the terms of settlement;]

(d) in respect of an application referred to in clause (iv), on the date on which the time or period specified in sub-section (4A) of section 245D expires.

(2) Where a proceeding 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.

(4) For the purposes of the time-limit under sections 149, 153, 153B, 154, 155, 158BE and 231 and for the purposes of payment of interest under section 243 or 244 or, as the case may be, section 244A, for making the assessment or reassessment under sub-section (2), the period commencing on and from the date of the application to the Settlement Commission under section 245C and ending with "specified date" referred to in sub-section (1) shall be excluded; and where the assessee is a firm, for the purposes of the time-limit for cancellation of registration of the firm under sub-section (1) of section 186, the period aforesaid shall, likewise, be excluded.

Credit for tax paid in case of abatement of proceedings.

245HAA. Where an application made under section 245C on or after the 1st day of June, 2007, is rejected under sub-section (1) of section 245D, or any other application made under section 245C is not allowed to be



proceeded with under sub-section (2A) of section 245D or is declared invalid under sub-section (2C) of section 245D or has not been allowed to be further proceeded with under sub-section (2D) of section 245D or an order under sub-section (4) of section 245D has not been passed within the time or period specified under sub-section (4A) of section 245D, the Assessing Officer shall allow the credit for the tax and interest paid on or before the date of making the application or during the pendency of the case before the Settlement Commission.

Order of settlement to be conclusive.

245-I. Every order of settlement passed under sub-section (4) of section 245D shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force.

Proceedings before Settlement Commission to be judicial proceedings.

245L. Any proceeding under this Chapter before the Settlement Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860).

Disclosure of information in the application for settlement of cases.

Rule 44CA.(1) The Settlement Commission shall, while calling for a report from the Commissioner under sub-section (2B) of section 245D, forward a copy of the application in Form No. 34B ([including the Annexure and the statements] and other documents accompanying such Annexure) along with a copy of the order under sub-section (1) of section 245D or, as the case may be, an intimation in respect of an application deemed to have been allowed to be proceeded with under sub-section (2A) of that section 245D.

(2) Where an application has not been declared invalid under sub-section (2C) of section 245D or an application has been allowed to be further proceeded with under sub-section (2D) of that section, all the material and other information produced by the assessee before the Settlement Commission shall be sent to the Commissioner to enable him to furnish the report under sub-section (3) of section 245D.

(3) Where the proceeding before the Settlement Commission abates, the Commission shall send, all the material and other information produced by the assessee before the Commission and the results of any enquiry held or evidence recorded in the course of proceedings before it, to the Commissioner.

17. The relevant Rules under the Income Tax Settlement Commission

(Procedure) Rules, 1997 are extracted hereunder:



Rule 6. Report of the Commissioner under sub-section (2B) of Section 245D.

The Commissioner shall furnish seven copies of report referred to in sub-section (2B) of Section 245D, to the Commission and one copy to the applicant simultaneously.

Filing of affidavit.

8. *Where a fact, which is not borne out by or is contrary to the record relating to the case, is alleged in the settlement application (including the annexure and the statement or other documents accompanying such annexure), it shall be stated clearly and concisely and supported by a duly sworn affidavit.*

Commissioner's further report

9. (1) *Where an application has not been declared invalid under sub-section (2C) of Section 245D or an application has been allowed to be further proceeded with under sub-section (2D) of Section 245D, the information contained in the annexure and in the statements and other documents accompanying such annexure shall be sent to the Commissioner by the Commission with the direction that the Commissioner shall furnish a further report in seven copies within forty-five days of the receipt of said annexure or within such extended period as may be allowed by the Commission on a request made by the Commissioner.*

(2) *If the Commissioner fails to furnish his report on or before the expiry of the specified period of forty-five days or within further extended period as the Commission may allow, as the case may be, the Commission may proceed to hear the case without such report.*

(3) *A copy of the report of the Commissioner under sub-rule (1) of rule 9 shall be sent to the applicant by the Commission.*

Applicant's Comments on Commissioner's report under rule 9.

9A.(1) *The applicant may furnish comments on the Commissioner's report received under rule 9 within fifteen days of the receipt of the copy of the said report by him or within such extended period as may be allowed by the Commission on a written request made by the applicant.*

(2) *The comments of the applicant shall be accompanied by a paper book in support thereof, having the specifications referred to in rule 7.*

(3) *If the applicant fails to furnish comments on or before the expiry of the specified period of fifteen days or within further extended period under sub-rule (1), the Commission may proceed further with the case without such comments.*

Verification of additional facts.

15. *Where in the course of any proceedings before the Commission any facts not contained in the settlement application (including the annexure*



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and the statements and other documents accompanying such annexure) are sought to be relied upon, they shall be submitted to the Commission in writing and shall be verified in the same manner as provided for in the settlement application.

18. A perusal of the above provisions indicate that the settlement commission is set into motion by the assessee, who though has failed to furnish all the particulars in the returns, files an application under Section 245C with annexures disclosing the suppressed transaction or transactions and the additional income derived by him with a request to the commission to waive the penalty, interest and prosecution. It is an option exercised by the assessee to amicably settle the dispute instead of litigating the same before statutory authorities and the courts to by peace of mind. After the application is made, the commission is to pass an order under Section 245D(1) initially rejecting the application or allowing the application to be proceeded with. Thereafter, a report is called from the commissioner under 245D (2B) read with Rule 6 and thereafter with 15 days from the date of the report, the commission must pass an order under Section 245D (2C) declaring the application as valid or not and to proceed further. The commission, after an order is passed under section 245D(1) if is of the opinion that further investigations are necessary or particulars are to be called for, it can ask the commissioner to submit a report. Thereafter, with the report and after granting a personal hearing to the applicant, the commission is to pass an order under



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Section 245D (4) as it deems fit on the matters covered by the application and also by the report. The power is not only to lay down the terms of settlement but also includes the authority to reject the application. The final order under sub-section 4, if in case the settlement commission deems it fit to grant such reliefs as it may think, shall set forth the terms of settlement including demand by way of tax, penalty or interest, the mode of payment and shall also specify that such settlement shall be void if it is later found that it has been obtained by fraud or misrepresentation of facts. A conjoint reading of sub-sections 3, 4A, 6, 6B are all concerned with the final order to be passed or passed by the Commission under Section 4 and not with the orders passed under Section 245D (1) or (2C) of the Act. There is no provision under the Act to review or recall the order under sub-sections (1), (2C) and (4) and the power to rectify any mistake apparent from the record or amend any order passed by it referred in sub-section 6B is also confined only to an order under sub-section 4. The word “apparent” makes it clear that the mistake must be visible from the face of the record and is not be discerned by a fishing and roving enquiry. As per section 245F, once an application is filed and until rejected, it is only the commission which has powers as that of an Income Tax Authority to deal with matters or issues before it within the scheme of settlement of cases and the Assessing Officer ceases to have any powers. The powers therein are not akin



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to the powers of an assessing authority making regular assessment or revision of assessment to accept or deny the explanation offered by the assessee, but rather the scope of enquiry would be confined to the true and full disclosure, co-operation with the commission and the manner in which such income has been derived. The powers are to be exercised keeping in mind the object of the settlement scheme provided under the Act for speedy disposal of the disputes. At every stage before the orders are passed, an opportunity including personal hearing is to be granted to controvert the report produced against him. As per sub-section (5), it is mandatory that the commission considers all the materials brought on record before passing any order under sub-section (4), implying that even documents and statements produced or made subsequent to the application, but before orders are passed, is to be considered by the commission. Whenever any report is obtained in the course of proceedings against any persons and it is incumbent upon the commission to furnish a copy to that person to enable him to rebut the contents of the report. Otherwise, the order would be vitiated by non-compliance of the principles of natural justice and the provisions of Section 245G of the Act.

19. It is now necessary to look into the scope of interference with the findings of the Settlement Commission. Some of the decisions are:



(a) In *N. Krishnan v. Settlement Commission (IT & WT)*, [1989 SCC

OnLine Kar 87 : ILR 1990 Kar 404 : (1989) 180 ITR 585 : (1989) 80 CTR

15], the Karnataka High Court held as follows:

“14. Even so, as regards the first question is concerned, it should be remembered that the power of judicial review of administrative action including those of Courts and Tribunals conferred on the High Courts under Articles 226 and 227, constitutes one of the basic structures of the Constitution. Therefore, irrespective of the nature of an administrative Tribunal or the width of its power or a provision in the relevant provision of law that its decision is final and conclusive, the High Court's power of judicial review remains unaffected, though the scope of judicial review might vary. That power can be curtailed or varied only by a constitutional provision. (See: H.V. Kamath v. Ahmed Ishaque) [AIR 1955 SC 233.] Moreover with reference to the Settlement Commission itself the question as to whether its decisions are appealable to the Supreme Court under Article 136 has been the subject matter of consideration by the Supreme Court in I.T. Commissioner v. B.N. Bhattacharjee [(1980) 3 SCC 54 : AIR 1979 SC 1724.] on a preliminary objection. The Supreme Court held thus:

“47. The preliminary objection raised by Shri A.K. Sen need not detain us because we are satisfied that the amplitude of Article 136 is wide enough to bring within its jurisdiction orders passed by the Settlement Commission. Any Judgment, decree, determination, sentence or order in any case or matter passed or made by any Court or Tribunal, comes within the correctional cognisance and review power of Article 136. The short question, then, is whether the Settlement Commission cannot come within the category of “Tribunals”. To clinch the issue, Section 245L declares all proceedings before the Settlement Commission to be judicial proceedings. We have hardly any doubt that it is a Tribunal. Its powers are considerable; its determination affects the rights of parties; its obligations are quasi-judicial; the orders it makes at every stage have tremendous impact on the rights and liabilities of parties.

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In short, Settlement Commissions are Tribunals. The preliminary point fails.”

Thus the Settlement Commission is held to be a Tribunal. That being the position, the petitioner is entitled to seek judicial review of the order of the Settlement Commission in a petition under Articles 226 and 227 of the Constitution of India. For these reasons, we answer the first question in



the affirmative.

15..... In our opinion, many of the grounds on which arbitration award could be set aside, would not be available in view of the nature and jurisdiction of the Settlement Commission. We are of the view that a decision of Settlement Commission could be interfered with only.

(i) if grave procedural defect such as violation of the mandatory procedural requirements of the provisions in the Chapter XIX-A and/or violation of Rules of natural justice is made out;

(ii) if it is found that there is no nexus between the reasons given and the decision taken by the Settlement Commission.

(iii) this Court cannot interfere either with an error of fact or error of law, alleged to have been committed by the Settlement Commission.

We answer the second question accordingly.”

(b) The Apex Court in ***CIT v. S.P. Jain, [(1973) 3 SCC 824 : 1973 SCC (Tax)]*** held as follows:

“18. In our view, the High Court and this Court have always the jurisdiction to intervene if it appears that either the Tribunal has misunderstood the statutory language, because the proper construction of the statutory language is a matter of law, or it has arrived at a finding based on no evidence or where the finding is inconsistent with the evidence or contradictory of it, or it has acted on material partly relevant and partly irrelevant or where the Tribunal draws upon its own imagination imports facts and circumstances not apparent from the record or bases its conclusions on mere conjectures or surmises or where no person judicially acting and properly instructed as to the relevant law could have come to the determination reached. In all such cases the findings arrived at are vitiated.”

(c) In the judgment reported in ***R.B. Shreeram Durga Prasad and Fatehchand Nursing Das v. Settlement Commission (IT & WT), [(1989) 1***

SCC 628 : 1989 SCC (Tax) 124], the Apex Court held as follows:

“7. We are definitely of the opinion that on the relevant date when the order was passed, that is to say, 24-8-1977 the order was a nullity because it was in violation of principles of natural justice. See in this connection, the principles enunciated by this Court in State of Orissa v. Dr. Binapani Dei [AIR 1967 SC 1269 : (1967) 2 SCR 625 : (1967) 2 LLJ 266] as also the observations in Administrative Law by H.W.R. Wade, 5th Edn., pp.



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310-311 that the act in violation of the principles of natural justice or a quasi-judicial act in violation of the principles of natural justice is void or of no value. In *Ridge v. Baldwin* [1964 AC 40 : (1963) 2 WLR 935 : (1963) 2 All ER 66] and *Anisminic Ltd. v. Foreign Compensation Commission* [(1969) 2 AC 147 : (1969) 2 WLR 163 : (1969) 1 All ER 208] the House of Lords in England has made it clear that breach of natural justice nullifies the order made in breach. If that is so then the order made in violation of the principles of natural justice was of no value. If that is so then the application made for the settlement under Section 245-C was still pending before the Commission when the amendment made by Finance Act of 1979 came into effect and the said amendment being procedural, it would govern the pending proceedings and the Commission would have the power to overrule the objections of the Commissioner. Dr. V. Gauri Shankar, appearing for the revenue, did not seriously contest that position. He accepted the position that the law as it is, after the amendment authorises the Commission to consider and overrule the Commissioner's objection. He also very fairly, in our opinion and [Vide Corrigendum No. F.3/Ed. B.J./61 dated 21-8-1989] rightly accepted the position that the appellant was entitled to be heard on the Commissioner's objections. It appears to us, therefore, if that is the position then, in our opinion, the appellant was entitled to be heard on the objections of the Commissioner. As mentioned hereinbefore, the only short ground which was sought to be canvassed before us was whether after the amended Act the order had been rightly set aside and whether the appellant had a right to be heard on the objections of the Commissioner. Mr Harish Salve, counsel for the appellant contends that it had a right to be heard. On the other hand Dr. V. Gauri Shankar, learned counsel for the respondents submitted that the order proceeded on the assumption that the objections had been heard. He did not, in fairness to him it must be conceded, contest that in a matter of this nature the appellant had a right to be heard. Reading the order, it appears to us, that though the appellant had made submissions on the Commissioner's objections but there was no clear opportunity given to the appellant to make submissions on the Commissioner's objections in the sense to demonstrate that the Commissioner was not justified in making the objections and secondly, the Commission should not accept or accede to the objections in the facts and circumstances of the present case. We are of the opinion that in view of the facts and circumstances of the case and in the context in which these objections had been made, it is necessary as a concomitant of the fulfilment of natural justice that the appellant should be heard on the objections made by the Commissioner. It is true that for the relevant orders for the years for which the Commissioner had objected the concealment had been upheld in the appeal before the appropriate authorities. But it may be that in spite of this concealment it may be possible for the appellant to demonstrate or to submit that in disclosure of concealed income for a spread over period settlement of the entire period should be allowed and not bifurcated in the manner sought to be suggested for the Commissioner's objections. This objection the appellant should



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have opportunity to make. In exercise of our power of judicial review of the decision of the Settlement Commission we are concerned with the legality of procedure followed and not with validity of the order. See the observations of Lord Hailsham in Chief Constable of the North Wales Police v. Evans [(1982) 1 WLR 1155] . Judicial review is concerned not with the decision but with the decision making process.”

(d) ***Ajmera Housing Corpn. v. CIT [(2010) 8 SCC 739 : 2010 SCC***

OnLine SC 918], wherein, it was held by the Hon'ble Supreme Court as follows:

“45. Ultimately the High Court observed that:

(i) since the Settlement Commission had not supplied the annexure filed on 19-9-1994, declaring additional income of Rs. 11.41 crores, due opportunity had not been given to the Revenue to place its stand properly;

(ii) huge amount of unexplained expenses, unexplained loans and unexplained surplus, total of which was more than Rs. 14 crores, was not taken into consideration while passing the final order; and

(iii) the Settlement Commission had imposed token penalty of Rs. 50 lakhs while on its own assessment leviable penalty would have been Rs. 562.87 lakhs. Further, if the amount which had not been taken into consideration while assessing the total undisclosed income was to be taken into account, the amount of leviable penalty would have been much more.

In the light of these facts, the High Court formed the opinion that it would be in the interest of justice to set aside the final order passed by the Settlement Commission and to remand the case back to it for fresh adjudication on the assessee's application.

46. Bearing in mind the aforestated factual position, as emanating from the material on record, we find it difficult to persuade ourselves to agree with the learned counsel for the assessee that there was no justification for the order of remand by the High Court and that the order passed by the Settlement Commission should have been affirmed. We are satisfied that under the given scenario, the High Court was correct in making the order of remand and no good ground is made out for interference in exercise of our jurisdiction under Article 136 of the Constitution.”

From the above judgments, it is clear that the power of the High Court to interfere with the orders of the Settlement Commission is available, when the



commission has violated the procedures prescribed under the Act which includes the grant of opportunity and the obligation to consider the materials before the Commission. Similarly, when there are no nexus between the findings and the decision by the Tribunal, the order can be interfered. These grounds are in addition to the grounds of violation of the principles of natural justice, jurisdictional errors, against the provision, bias, fraud and malice. It is also settled law that a writ of certiorari can be issued by the High Court under Article 226 of the Constitution of India, when an administrative or a quasi-judicial authority, in the decision making process, considers irrelevant materials by ignoring the relevant materials to draw its conclusion, the order can be interfered with.

Discussion and Findings.

20. In the present case, it appears that the application under Section 245C was filed on 25/03/2015, the order under Section 245D (1) was passed on 07/04/2015, the order under 245D (2C) was passed on 27.05.2015, Rule 9 report was filed on 19.08.2015, the objections were filed on 23/06/2016, the order directing an enquiry and calling for detailed report was made on 24/06/2016, a letter dated raising 12 queries was issued on 08/09/2016, a detailed reply to the letter was given on 14/09/2016, the Assistant Commissioner of Income Tax, the AO had filed an additional report dated



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19.09.2016 to the Joint Commissioner of Income Tax, the Joint Commissioner of Income Tax filed his further report on 19/09/2016 along with the report of the AO to the Principal Commissioner and the Principal Commissioner filed his report under 245D(3) with the reports of the AO and JCIT on 20/09/2016 on the last date of hearing and the final orders rejecting the application as not maintainable was passed on 26/09/2016. From the order dated 26/09/2016, it is evident that the hearings took place on 24/06/2016, 08/09/2016 and 20/09/2016. Even though the further report under 245D(3) was filed on 20/09/2016 along with the report of the JCIT and the AO at the time of hearing, it is evident that no further opportunity has been afforded by the Commission contrary to the Section 245D (4), despite the fact that the report of the AO has been referred and relied upon in the order by the 2nd respondent commission and despite an opportunity was sought by the appellant and the Commissioner. The request for further opportunity has been denied by recording in para 9 that “the matter is time barring shortly”. This, in the view of this Court, is not only arbitrary, but also goes against the procedure under the Act and is in violation of the principles of natural justice. The commission not only rejected the request but also the additional report of the PCIT while considering the report of the AO which was enclosed as an annexure with the report by the PCIT, in what appears to be a stand taken by the department that



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admittedly the amount has been received and routed towards investment.

Therefore, the amount redeemed should be taxed in the hands of ultimate beneficiary M/s RRIPL for the Financial Years 2009-10 to 2011-12 as “income from other sources” and “it is suggested that the balance amount invested in such shares in the said two companies, needs to be taxed in the hands of the person from whom such funds has originated in the relevant assessment years”. Though the conclusion of the PCIT and the JCIT has been rejected, as stated above, the report of the AO has been taken and the finding that the source of funds from whom such money has been received by RRIPL, has not been furnished, is taken on record. The reliance on the report of the AO, without further opportunity to the appellant, vitiates the order as it is in violation of the principles of the natural justice and also the procedure as contemplated under Sections 245D(4) and 245G of the Act.

21. Further, a perusal of the application, annexures filed therewith reveals that the appellant has disclosed about the transaction/financial arrangement in dispute with RRIPL and HIPL, the derival of additional income and all other particulars in paras 13 to 18 of the application. In the order dated 07/04/2015 passed under section 245D(1), the contentions regarding the transaction and the offer of 3% towards additional income of the



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excess received from the structured transaction are discussed in para 7, indicating that the appellant had truly disclosed the transaction and the mode of derival of such additional income. In the application, it was also stated that excess income derived from the inflated purchase forming part of the financial transaction was erroneously reflected in the P & L account and needs to be corrected. A perusal of the records further reveals that the appellant had also furnished the details of the 36 sundry creditors. To the 12 queries raised on 08/09/2016, a detailed reply dated 14/09/2016 has been furnished. In the said reply at para 4, the appellant has reiterated that the basis of disclosure of additional income is as shown in the SA (Settlement Application). In para 7, it is mentioned that the details of the contract receipts and the inflated amount are already given in the SA and also in the replies. The appellant also in para 8 dealt with the sundry creditors and in para 9, the impact of the floods in 2015 was mentioned also specifically claiming that in the spirit of settlement, Rs.1.61 crores was offered. The source for payment of the settlement amount is also furnished in the said reply. However, the Commission has without looking at the contentions in the application, the annexures therewith and misdirecting the explanations on queries as amounting to non-disclosure at the time of filing the application, rejected the application as not maintainable.



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22. The appellant also in the form of additional typed set furnished before this court, the particulars furnished to the commission and during the investigation under Section 245D(3) to the AO along with their reply dated 14.09.2016, which obviously is part of the report of the AO dated 19.09.2016. The particulars furnished by RRIPL, which corroborate the statement and the particulars furnished by the appellant in support of their contention that the investment of excess amount as preferential shares was by way of a financial arrangement/accommodation. It is pertinent to mention here that none of the information is a new information, but only corroboratory statements and proofs in support of the earlier statements. It is also pertinent to note that the appellant has not only submitted all the available documents along with the application, but also the necessary documents to clarify the stand taken by them along the with replies submitted later, which already form part of the records. Insofar as the statement of the Company Secretary is concerned, the Commission could not have disregarded the same citing that since the company is now under liquidation and that, only the official liquidator can issue such statement. We are of the view that the commission erred in its approach as because it is more the substance than the form that counts. The Company Secretary was at the helm of affairs, when the transaction took place. The official liquidator, once appointed manages the affairs of the company



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until its wound up and performs the functions and duties as contemplated under Section 290 of the Indian Companies Act, 2013. The enquiry is relating to the nature of financial arrangement between the parties. Therefore, the statement could not have been totally discarded. In any case, the books of accounts and other particulars of RRIPL were available before the commission which also was ignored. As rightly contended by the learned counsel for the appellant, the settlement commission has travelled beyond the scope of enquiry contemplated under Chapter XIX-A and assumed the role of an assessing authority. This court is of the view that when the source of income of the assessee in question is sought and answered, it is sufficient to satisfy the disclosure. The commission or the assessing authority under the guise of investigation under 245D(3), cannot seek explanation on the source of income of the vendors to deny the application of the appellant. The Settlement Commission seems to be guided by the biased approach to deny the application rather than taking an neutral approach as is expected of a quasi-judicial authority in deciding a matter in the nature of arbitration. The fact that the senior member of the Commission was earlier supervising the investigation conducted against the appellant and that of RR group, is not disputed. The composition of the commission with such a member, in the view of this court would lead to institutional bias and at times even personal



bias. The bias in the minds of the adjudicating authority, may not be evident openly, but would reflect in the manner in which proceedings are conducted and concluded. The settled law propounded on the legal maxim *nemo iudex in sua causa debet esse*, comes into operation.

23. At this juncture, it will be useful to refer to the judgment of the Apex Court in *A.K. Kraipak v. Union of India*, (1969) 2 SCC 262, wherein, while dealing with a situation where a candidate himself was part of the selection board, the Apex Court setting aside the entire selection, held as follows:

“15. It is unfortunate that Naqishbund was appointed as one of the members of the selection board. It is true that ordinarily the Chief Conservator of Forests in a State should be considered as the most appropriate person to be in the selection board. He must be expected to know his officers thoroughly, their weaknesses as well as their strength. His opinion as regards their suitability for selection to the All-India Service is entitled to great weight. But then under the circumstances it was improper to have included Naqishbund as a member of the selection board. He was one of the persons to be considered for selection. It is against all canons of justice to make a man judge in his own cause. It is true that he did not participate in the deliberations of the committee when his name was considered. But then the very fact that he was a member of the selection board must have had its own impact on the decision of the selection board. Further admittedly he participated in the deliberations of the selection board when the claims of his rivals particularly that of Basu was considered. He was also party to the preparation of the list of selected candidates in order of preference. At every stage of his participation in the deliberations of the selection board there was a conflict between his interest and duty. Under those circumstances it is difficult to believe that he could have been impartial. The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney



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General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct. It was in the interest of Naqishbund to keep out his rivals in order to secure his position from further challenge. Naturally he was also interested in safeguarding his position while preparing the list of selected candidates.

16. The members of the selection board other than Naqishbund, each one of them separately, have filed affidavits in this Court swearing that Naqishbund in no manner influenced their decision in making the selections. In a group deliberation each member of the group is bound to influence the others, more so, if the member concerned is a person with special knowledge. His bias is likely to operate in a subtle manner. It is no wonder that the other members of the selection board are unaware of the extent to which his opinion influenced their conclusions. We are unable to accept the contention that in adjudging the suitability of the candidates the members of the board did not have any mutual discussion. It is not as if the records spoke of themselves. We are unable to believe that the members of selection board functioned like computers. At this stage it may also be noted that at the time the selections were made, the members of the selection board other than Naqishbund were not likely to have known that Basu had appealed against his supersession and that his appeal was pending before the State Government. Therefore there was no occasion for them to distrust the opinion expressed by Naqishbund. Hence the board in making the selections must necessarily have given weight to the opinion expressed by Naqishbund.

23. One more argument of the learned Attorney General remains to be considered. He urged that even if we are to hold that Naqishbund should not have participated in the deliberations of the selection board while it considered the suitability of Basu, Baig and Kaul, there is no ground to set aside the selection of other officers. According to him it will be sufficient in the interest of justice if we direct that the cases of Basu, Baig and Kaul be reconsidered by a Board of which Naqishbund is not a member. Proceeding further he urged that under any circumstance no case is made out for disturbing the selection of the officers in the junior scale. We are unable to accept either of these contentions. As seen earlier Naqishbund was a party to the preparation of the select list in order of preference and that he is shown as No. 1 in the list. To that extent he was undoubtedly a judge in his own case, a circumstance which is abhorrent to our concept of justice. Now coming to the selection of the officers in the junior scale service, the selections to both the senior scale service as well as junior scale service were made from the same pool. Every officer who had put in service of 8 years or more, even if he was holding the post of an Assistant Conservator of Forests was eligible for being selected for the senior scale



service. In fact some Assistant Conservators have been selected for the senior scale service. At the same time some of the officers who had put in more than eight years of service had been selected for the junior scale service. Hence it is not possible to separate the two sets of officers.”

24. In ***Union of India v. Ram Lakhan Sharma* [(2018) 7 SCC 670 : (2018) 2 SCC (L&S) 356 : 2018 SCC OnLine SC 646]**, it was held by the Hon'ble Supreme Court as follows:

“24. The disciplinary proceedings are quasi-judicial proceedings and the Enquiry Officer is in the position of an independent adjudicator and is obliged to act fairly, impartially. The authority exercising quasi-judicial power has to act in good faith without bias, in a fair and impartial manner.

26. A Constitution Bench of this Court has elaborately considered and explained the principles of natural justice in A.K. Kraipak v. Union of India [A.K. Kraipak v. Union of India, (1969) 2 SCC 262 : AIR 1970 SC 150] . This Court held that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. The concept of natural justice has undergone a great deal of change in recent years. Initially recognised as consisting of two principles, that is, no one shall be a judge in his own cause and no decision shall be given against a party without affording him a reasonable hearing, various other facets have been recognised. In para 20 the following has been held: (SCC p. 272)

“20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely, (1) no one shall be a judge in his own case (nemo debet esse judex propria causa), and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and, that is, that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. ...”



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27. *In State of U.P. v. Saroj Kumar Sinha [State of U.P. v. Saroj Kumar Sinha, (2010) 2 SCC 772 : (2010) 1 SCC (L&S) 675]*, this Court had laid down that Enquiry Officer is a quasi-judicial authority, he has to act as an independent adjudicator and he is not a representative of the department/disciplinary authority/Government. In paras 28 and 30 the following has been held: (SCC p. 782)

“28. An Enquiry Officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The Enquiry Officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.”

31. A Division Bench of the Madhya Pradesh High Court speaking through R.V. Raveendran, C.J. (as he then was) had occasion to consider the question of vitiation of the inquiry when the Enquiry Officer starts himself acting as prosecutor in Union of India v. Mohd. Naseem Siddiqui [Union of India v. Mohd. Naseem Siddiqui, ILR 2004 MP 821]. In the above case the Court considered Rule 9(9)(c) of the Railway Servants (Discipline and Appeal) Rules, 1968. The Division Bench while elaborating fundamental principles of natural justice enumerated the seven well-recognised facets in para 7 of the judgment which is to the following effect:

“7. One of the fundamental principles of natural justice is that no man shall be a judge in his own cause. This principle consists of seven well-recognised facets:

(i) The adjudicator shall be impartial and free from bias,

(ii) The adjudicator shall not be the prosecutor,



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- (iii) *The complainant shall not be an adjudicator,*
(iv) *A witness cannot be the adjudicator,*
(v) *The adjudicator must not import his personal knowledge of the facts of the case while inquiring into charges,*
(vi) *The adjudicator shall not decide on the dictates of his superiors or others,*
(vii) *The adjudicator shall decide the issue with reference to material on record and not reference to extraneous material or on extraneous considerations.*

If any one of these fundamental rules is breached, the inquiry will be vitiated.”

37. The High Court having come to the conclusion that the Enquiry Officer has acted as prosecutor also, the capacity of independent adjudicator was lost while adversely affecting his independent role of adjudicator. In the circumstances, the principle of bias shall come into play and the High Court was right in setting aside the dismissal orders by giving liberty to the appellants to proceed with inquiry afresh. We make it clear that our observations as made above are in the facts of the present cases.”

The underlying ratio in the above case is that no man can be a prosecutor and also an adjudicator. In the case before us, the senior member had personal knowledge about the transaction which the assessee termed it as financial accommodation and the department termed it as “undisclosed income”. When the principal commissioner had filed a report that it had to be taxed at the hands of RRIPL, the stand was rejected as because it goes against their intention to tax it at the hands of the appellant. This in the mind of this court is a biased approach, also warranting interference.



25. Chapter XIX-A contemplates assessment by settlement unlike chapter XIV which contemplates regular assessment proceedings. The scope of enquiry under Chapter XIX-A is restricted to true and full disclosure, co-operation with the commission and the disclosure of the mode of income. The disclosure as contemplated under scheme is true and full when that is not tainted with fraud or misrepresentation. What is to be seen is whether the materials produced are enough to subjectively satisfy oneself to the limited scope of enquiry for settlement. It is sufficient that the assessee discloses all the primary facts. Once, the primary facts are disclosed with materials, it satisfies the requirement of full and true disclosure. The applicant cannot be burdened with the responsibility to satisfy all the inferences that are drawn by the assessing officer or the commission. Considering the nature of the scheme, that also is not the intention of the legislature. In this context, it is necessary to refer to the judgment of the Apex Court in ***Calcutta Discount Co. Ltd. v. ITO***, [(1961) 2 SCR 241 : AIR 1961 SC 372 : (1961) 41 ITR 191], wherein it was held as follows:

“10. Does the duty however extend beyond the full and truthful disclosure of all primary facts? In our opinion, the answer to this question must be in the negative. Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else — far less the assessee — to tell the assessing authority what inferences whether of facts or — law should be drawn. Indeed, when it is remembered that people often differ as regards what inferences should be drawn from given



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facts, it will be meaningless to demand that the assessee must disclose what inferences — whether of facts or law he would draw from the primary facts.

11. If from primary facts more inferences than one could be drawn, it would not be possible to say that the assessee should have drawn any particular inference and communicated it to the assessing authority. How could an assessee be charged with failure to communicate an inference, which he might or might not have drawn?

13. We have therefore come to the conclusion that while the duty of the assessee is to disclose fully and truly all primary relevant facts, it does not extend beyond this.”

26. Obviously, one can approach the settlement Commission only when there is an undisclosed income that escaped assessment. Therefore, it is completely unnecessary and beyond the scope of the commission to find fault or with the modus operandi of the assessee in arranging his tax liability, while deciding an application under Section 245D. In the present case, we are satisfied that the assessee has fully disclosed all the primary facts and produced the documents in support of the same. At the cost of repetition, all materials placed before the Commission are to be considered as per Section 245D (5). Therefore, we do not agree with the casual finding of the Learned Judge that the disclosure must be acceptable disclosure. It is relevant to point out that no new materials were produced by the department to enable the settlement commission to take a different view that there was no true and full disclosure. Rather, the department and the settlement commission have embarked upon to alter their earlier view or inference, which cannot be a



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reason to thwart the application as not maintainable. The paradox in the functioning of settlement commission, comprising of senior members from the department, deviating from the neutrality of a quasi-judicial authority, would have invited our much attention if it had not been abolished and replaced with interim board. The Learned Judge, as rightly contended by the learned senior counsel for the Appellant, ought to have gone into the merits of the contentions advanced on behalf of the appellant and rendered specific findings, more particularly, when the allegations of principles of natural justice and violation of the procedures as alleged. Even if the Learned Judge was to disagree with the contentions, all the contentions ought to have been discussed and specific findings ought to be given. Therefore, we have no hesitation to hold that the order has been passed in violation of the principles of natural justice and against the procedures prescribed under the Income Tax Act and hence, the order is liable to be set aside and remanded back for fresh consideration after giving opportunity to both the parties.

27. The next question that comes to the fore is as to whether the Interim Board can now decide the matter. Before we decide on the issue, it is necessary to briefly take note of the relevant dates. The application before the settlement commission was filed on 25.03.2015. The orders will have to be



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passed within 18 months if the application is not declared as invalid. The principal commissioner submitted his additional report on 20.09.2016. The application was rejected as not maintainable reversing the earlier decision on 26.09.2016. The writ petition was filed before this Court in November 2016 and an order of interim order was granted on 25.11.2016. The writ petition was dismissed on 17.04.2021. In the meantime, by Finance Act 2021, Sections 245A and 245B were amended by which the Settlement Commission ceased to exist, and “interim Board” was substituted. The Amendment Act came into force on 01/04/2021. By the amended provisions, initially, the Interim Board was entitled to entertain only applications which were pending.

28. Section 245A(eb) has defined the word “Pending applications” as follows:

*“Pending application” means an application which was filed under section 245C and which fulfils the following conditions, namely: -
(i) it was not declared invalid under sub-section (2C) of section 245D; and
(ii) no order under sub-section (4) of section 245D was issued on or before the 31st day of January 2021 with respect to such application”*

29. By the amendment, it was made clear that no application will be entertained after 01.02.2021. Thereafter, the Central Government has constituted Interim Board for Settlement *vide* Notification no. 91 of 2021 dated 10.08.2021. Subsequently, the following press release dated 07.09.2021 was issued by the Central Board of Direct Taxes.



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Ministry of Finance Department of Revenue
Central Board of Direct Taxes
New Delhi, 7th September, 2021

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PRESS RELEASE

CBDT allows taxpayers an opportunity to file application for settlement

The Finance Act, 2021 has amended the provisions of the Income-tax Act, 1961 (“the Act”) to *inter alia* provide that the Income-tax Settlement Commission (“ITSC”) shall cease to operate with effect from 01.02.2021. Further, it has also been provided that no application for settlement can be filed on or after 01.02.2021, which was the date on which the Finance Bill, 2021 was laid before the Lok Sabha. In order to dispose off the pending settlement applications as on 31.01.2021, the Central Government has constituted Interim Board for Settlement (hereinafter referred to as the “Interim Board”), *vide* Notification no. 91 of 2021 dated 10.08.2021. The taxpayers, in the pending cases, have the option to withdraw their applications within the specified time and intimate the Assessing Officer about such withdrawal.

It has been represented that a number of taxpayers were in advanced stages of filing their application for settlement before the ITSC as on 01.02.2021. Further, some taxpayers have approached High Courts requesting that their applications for settlement may be accepted. In some cases, the Hon’ble High Courts have given interim relief and directed acceptance of applications of settlement even after 01.02.2021. This has resulted in uncertainty and protracted litigation.

In order to provide relief to the taxpayers who were eligible to file application as on 31.01.2021, but could not file the same due to cessation of ITSC vide Finance Act, 2021, it has been decided that applications for settlement can be filed by the tax payers by 30th September, 2021 before the Interim Board if the following conditions are satisfied:-

- i. The assessee was eligible to file application for settlement on 31.01.2021 for the assessment years for which the application is sought to be filed (relevant assessment years); and
- ii. all the relevant assessment proceedings of the assessee are pending as on the date of filing the application for settlement.

Such applications, subject to their validity, shall be deemed to be “pending applications” under clause (eb) of section 245A of the Act and shall be disposed of by the Interim Board as per the provisions of the Act.

It is clarified that taxpayers who have filed such applications shall not have the option to withdraw such applications as per the provisions of section 245M of the Act. Further, the taxpayers who have already filed application for settlement on or after 01.02.2021 as per the direction of the various High Courts and who are otherwise eligible to file such application, as per para 3 above, on the date of filing of the said application shall not be



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required to file such application again.

Legislative amendments in this regard shall be proposed in due course.

(Surabhi Ahluwalia)
Commissioner of Income Tax
(Media & Technical Policy)
Official Spokesperson, CBDT

30. The said press release was issued after several High Courts issued directions to entertain the applications for settlement. It was further stated that the assesseees, who were eligible to file an application as on 31.01.2021 and where assessments are pending, would be eligible to file their application 30th September 2021. It was also made clear that the applications filed by the assesseees based on the directions of the High Courts would be entertained. Following the press release, an order under Section 119 (2) (b) of the Act came to be passed, which reads as follows:

“ ORDER

Civic Centre,
New Delhi
Dated the 28.09.2021

Subject: Order under section 119(2)(b) of the Income Tax Act, 1961 for filing applications for settlement before the Interim Board for Settlement - reg.

The Finance Act, 2021 has amended the provisions of the Act to inter alia provide that the Income-tax Settlement Commission (ITSC) shall cease to operate with effect from 01.02.2021. Further, it has also been provided that no application for settlement can be filed on or after 01.02.2021, which was the date on which the Finance Bill, 2021 was laid before the Lok Sabha. In order to dispose off the pending settlement applications as on 31.01.2021, the Central Government has constituted Interim Board for Settlement (hereinafter referred to as the "Interim Board"), vide notification No. 91 of 2021 dated 10.08.2021.

<https://www.mhc.tn.gov.in/judis> Meanwhile, in order to avoid genuine hardship to number of taxpayers



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who were in the advanced stages of filing their application for settlement before the ITSC as on 01.02.2021 and also due to the hardship faced during the covid pandemic by the tax payers, the Central Board of Direct Taxes (referred to as the "Board") had provided relief vide Press Release dated 07.09.2021 thereby allowing assessees eligible to file application for settlement on 31.01.2021 to file such applications till the extended period of 30.09.2021.

3. In view of the above, the Board in exercise of its power under clause (b) of sub-section (2) of section 119 of the Income-tax Act, 1961 (the Act), in order to avoid genuine hardship to assessees authorizes the Commissioner of Income-tax, posted as Secretary to the Settlement Commission prior to 01.02.2021, to admit an application for settlement on behalf of the Interim Board filed after 31.01.2021, which is the date mentioned in sub-section (5) of section 245C of the Act for filing such application, and before 30.09.2021 and treat such applications as valid and process them as "pending applications" as defined in clause (eb) of section 245A of the Act.

4. The above relaxation is available to the applications filed:-

(i) by the assessees who were eligible to file application for settlement on 31.01.2021 for the assessment years for which the application is sought to be filed (relevant assessment years); and

(ii) where the relevant assessment proceedings of the assessee are pending as on the date of filing the application for settlement.

5. The Hindi version of the order shall follow."

31. The above order has been issued by exercising the powers under Section 119 in line with the press release dated 07.09.2021. In the case before us, the assessment orders were passed on 20.07.2021 for the AY 2007-08 to 2012-13 and on 28.06.2021 for AY 2013-14. Though the order of the Settlement Commission rejecting the application has been passed on 26.09.2016, the challenge to the same was accepted by this Court and interim order was granted by this court directing the assessment proceedings to be kept under abeyance. The writ petition was pending when the Settlement Commission was abolished and Interim Board was brought into operation.



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This court is of the view that the restrictive circumstances under which an Interim Board can entertain an application, is applicable only when an application is filed afresh or pending and not applicable to cases where the High Court in exercise of its powers under Article 226 of the Constitution of India, set asides an earlier order and remands back the matter for fresh consideration. The powers of the High Court which emanate from the Constitution cannot be curtailed by a law made by the legislature, such law being subordinate to the Constitution. It is not out of place to mention here that it is evident from the press release which was followed by the order dated 28.09.2021, various High Courts had earlier issued directions to entertain the applications for settlement and such applications were also entertained. While so, the contention of the counsel for the department that the interim board cannot entertain the old application, cannot be accepted. Upon the matter being remanded, the application filed by the Appellant would have to be treated as a pending application and appropriate orders are to be passed after giving the appellant sufficient opportunity and by considering all the materials placed by him. Another point that was raised by the counsel for the department before us was that the pendency of the Appeal for the year 2013-14 would be an embargo, which we do not think so. In this connection, it will be useful to refer to the judgment of the Apex Court in ***Calcutta Discount Co. Ltd. v. ITO***,



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[(1961) 2 SCR 241 : AIR 1961 SC 372 : (1961) 41 ITR 191], in which, it was

held as follows:

“30. We are informed that assessment orders were in fact made on March 25, 1952, by the Income Tax Officer in the proceedings started on the basis of these impugned notices. This was done with the permission of the learned Judge before whom the petition under Article 226 was pending, on the distinct understanding that these orders would be without prejudice to the contentions of the parties on the several questions raised in the petition and without prejudice to the orders that may ultimately be passed by the Court. The fact that the assessment orders have already been made does not therefore affect the Company's right to obtain relief under Article 226. In view however of the fact that the assessment orders have already been made we think it proper that in addition to an order directing the Income Tax Officer not to take any action on the basis of the impugned notices a further order quashing the assessment made be also issued.”

32. The assessment order for 2013-14 was passed only on 20/06/2021 after the disposal of the Writ Petition. The appeal though has been preferred is yet to be numbered. Once the order of the Settlement Commission is set aside and the matter is remanded back, status quo ante is restored. The orders of assessment and the unnumbered appeal would become otiose. Therefore, this court has no hesitation in remanding back the matter to the Interim Board, which shall dispose off the application within a period of six weeks from the date of receipt of this order on merits and in accordance with law, after giving sufficient opportunity to the appellant and also by considering all the documents placed. Insofar as the attachment proceedings are concerned, the relief has become infructuous as the attachment was made before six years and maximum period for which such provisional attachment could be in force is



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only two years.

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33. With the above directions, this appeal is disposed of. There will be no order as to costs. Consequently, connected miscellaneous petition is closed.

(R.M.D.,J.) (J.S.N.P.,J.)

27.06.2022

Index : Yes / No
Internet : Yes / No
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To

1. The Chairman
Income Tax Settlement Commission
Principal Bench, New Delhi
2. The Income Tax Settlement Commission
Additional Bench
No.640, Anna Salai
Nandanam, Chennai – 600 035
3. The Principal Commissioner of Income Tax
Central-II, Nungambakkam
Chennai – 600 034
4. The Assistant Commissioner of Income Tax
Central Circle – I (4)
No.46, Mahatma Gandhi Salai
Nungambakkam, Chennai

R. MAHADEVAN, J

and

J. SATHYA NARAYANA PRASAD, J



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27.06.2022