

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 Nos.2629 and 2632 of 2021
&
CMP Nos.17167, 17169, 17185 and 17186 of 2021

W.A. No. 2629 of 2021

Kandathil M. Mammen
17, Boat Club Road
Third Avenue, R.A. Puram
Chennai, Tamil Nadu - 600 028
rep. by his power agent
Mr. Jossy Joseph .. Appellant

Versus

1. Income Tax Settlement Commission
Additional Bench, Chennai
Ministry of Finance
Department of Revenue
488-489, Anna Salai
Chennai - 600 035
2. Deputy Commissioner of Income Tax
Central Circle 1 (1)
Investigation Wing, Room No.320
New No.46, Mahatma Gandhi Road
Chennai - 600 034
(Cause title accepted as per order dated
14.09.2021 made in CMP Nos. 14649 & 14647 of 2021
in WA SR Nos. 77923 & 77922 of 2021) .. Respondents

W.A. No. 2632 of 2021

Arun Mammen
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Third Avenue, R.A. Puram
Chennai, Tamil Nadu - 600 028
rep. By his power agent
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in WA SR Nos. 77923 & 77922 of 2021)

.. Respondents

Writ Appeals filed under Clause 15 of The Letters Patent against the common order dated 03.08.2021 passed in WP Nos. 33432 and 33431 of 2017 respectively on the file of this Court.

Prayer in W.P.No.33431 of 2017 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent contained in its impugned order bearing No.TN/CN51/2015-16/ 34&35/IT dated 6.12.2017 and to quash the same as arbitrary unjust and illegal and to consequently direct the 1st respondent to reconsider the application filed by the petitioner bearing No.TN/CN51/2015-16/34/IT and pass a fresh order under Section 245D(4) of the Income Tax Act 1961 after affording the petitioner a sufficient opportunity of being heard in accordance with law.

Prayer in W.P.No.33432 of 2017 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent contained in its impugned order bearing No.TN/CN51/2015-16/ 34&35/IT dated 6.12.2017 and to quash the same as arbitrary unjust and illegal and to consequently direct the 1st respondent to reconsider the application filed by the petitioner bearing No.TN/CN51/2015-16/34/IT and pass a fresh order under Section 245D(4) of the Income Tax Act 1961 after affording the petitioner a sufficient opportunity of being heard in accordance with law.

For Appellant : Mr. R.V. Easwar (WA.No.2629/2021)
and Mr.N.L.Rajah (WA No.2632/2021)
Senior Advocates
for Mr. Suhrit Parthasarathy

For Respondents: Mr. A.P. Srinivas
Senior Standing Counsel
in both the Writ Appeals

COMMON JUDGMENT

R.MAHADEVAN, J.

Both these intra-court appeals are filed as against a common order dated 03.08.2021 passed by the learned Judge in WP Nos.33431 and 33432 of 2017.

2. The appellants have preferred the aforesaid writ petitions for issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent contained in its order bearing No.TN/CN51/2015-16/34 & 35/IT dated 06.12.2017 and to quash the same as arbitrary, unjust and illegal and to consequently direct the first respondent to reconsider the applications filed by the appellants bearing No.TN/CN-51/2015-16/34 & 35/IT and pass a fresh order under section 245D(4) of the Income Tax Act, 1961, after affording sufficient opportunities of being heard to the appellants in accordance with law.

3. For the purpose of disposal of these appeals, it is essential to look into the common averments made in the affidavits filed in support of the writ petitions and they are elucidated hereunder, in brief.

4.1. The appellant in W.A. No. 2632 of 2021 is the Managing Director of MRF Limited, dealing in tyre and rubber industry, finance and investment business as also consultancy and advisory services. It is stated that during the year 2005, for the purpose of commencing the consultancy and advisory service related business activities outside India, he opened a Joint Bank Account (US Dollar Account) along with his brother Kandathil M. Mammen (appellant in W.A. No. 2629 of 2021) with Standard Chartered Bank, Dubai Branch. In 2010, the name of Mr. Samir Thariyan Mappillai (brother's son) was also added as a joint holder. Subsequently, the appellants opened a joint bank account with UBS AG Bank, Singapore Branch, besides opening various other sub accounts in different currencies with the said banks. During the year 2007, it was decided to carry on the business activities substantially in the name of Moon Misty Enterprises Limited and it was registered in the British Virgin Island, in which the appellants and brother's son mentioned above, were shareholders, however, the entire management and administration of the said company vested with the appellants alone. Subsequently, on 17.07.2007, a bank account was opened in

the name of the said company Moon Mist Enterprises Limited with UBS Bank, Singapore Branch, apart from opening various other sub accounts. On 03.05.2007, the appellants settled a trust known as Webster International Trust and the Trust in turn floated a company named as Fairwood Services Limited. The said Fairwood Services Limited opened account with UBS Bank, Singapore Branch on 11.05.2007 apart from various other sub-accounts. However, during the year 2011, Moon Mist Enterprise Limited and Fairwood Services Limited were liquidated, besides the Trust formed by the appellants was also terminated. Thereafter, the appellants have opened a joint account with First Gulf Bank, Dubai, closed the bank accounts opened in the name of Fairwood Services Limited and transferred the closing balance to the newly opened joint account with First Gulf Bank, Dubai Branch during July and August 2013.

4.2. At this stage, on 28.08.2013, a summons was issued by the Deputy Director of Income Tax under Section 131 of the Act calling upon the appellants to produce documents mentioned therein. The appellants submitted reply on 18.09.2013 narrating the above facts. They also appeared before the officials of the Income Tax Department in connection with the enquiry conducted on 22.01.2015. During such enquiry, the appellants were questioned about the transactions through the company called Moon Mist Enterprises, the reason for the closure of the said company during 2011 etc. Thereafter, the appellants filed a revised return for the assessment years 2005-2006 to 2012-2013 on 21.05.2015. On receipt of the revised returns, a notice under Section 148 of the Act was issued on 29.05.2015. On receipt of the notice dated 29.05.2015, the appellants also submitted their return on 01.06.2015.

4.3. In the above circumstances, the appellants filed applications under Section 245C of the Act in Form 34B before the second respondent - Settlement Commission for settlement of all the pending cases by making a full and true disclosure of the facts in relation to the income earned by them for the assessment years 2005-2006 to 2014-2015, as, at that time, the assessment for the said assessment years was pending. The appellants also paid a sum of Rs.18,30,00,000/- towards income tax together with interest. However, the first respondent, without taking note of the disclosure of income of the appellants, rejected the Applications on 30.06.2015 on the ground that the first respondent has no jurisdiction to accept the applications in view of the notification dated 27.05.2015 issued under the provisions of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (in short, Black Money Act). It is further stated that by virtue of the notification dated 27.05.2015, all the undisclosed income will be dealt with under the said statute i.e., Black Money Act, 2015.

4.4. Pursuant to the order dated 30.06.2015, the appellants sent a letter dated 03.07.2015 clarifying that the Black Money Act, 2015 would come into force only from 01.07.2015 and it has no application to the applications dated 02.06.2015 filed by the appellants. The appellants also filed a fresh application dated 10.07.2015 under Section 245C of the Act specifically stating that the applications are maintainable and the first respondent has jurisdiction to entertain it without reference to the Black Money Act. However, the applications were dismissed by the second respondent on 15.07.2015 against which WP Nos. 22216, 22217, 22218 and 22219 of 2015 were filed by the appellants. By order dated 21.06.2016, this Court allowed the writ petitions, by setting aside the rejection orders of the second respondent with a direction to entertain the applications submitted by the appellants.

4.5. Pursuant to the order dated 21.06.2016 passed by this Court, the appellants' through their authorised representative, participated in the enquiry conducted by the first respondent. After considering the oral and documentary evidence, the first respondent passed an order dated 07.10.2016, allowing the applications filed by the appellants by concluding that a prima facie case is made out and directed the department to determine the tax amount due and payable by the appellants. Pursuant to such direction, the Principal Commissioner of Income Tax, Chennai submitted a report dated 11.11.2016 under Section 245D (2B) of the Act stating that the appellants have fulfilled/satisfied the conditions laid down under Section 245D (1) of the Act. It was also stated that the correctness and adequacy of the additional taxes paid by the appellants are proper. However, at the same blush, it was stated by the Principal Commissioner of Income Tax that the appellants have not produced the opening and closing forms of various accounts and therefore, he could not effectively conclude his investigation. Objecting to the report dated 11.11.2016, the appellants sent separate letters dated 22.11.2016 narrating the sequences of facts supported by documentary proof. On consideration of the reply dated 22.11.2016, the first respondent passed an order on the same day viz., 22.11.2016 under Section 245D (2C) of the Act stating that all prescribed conditions have been fulfilled by the appellants for entertaining the said applications. Accordingly, the settlement applications of the appellants were allowed with a direction to the Principal Commissioner of Income Tax to submit a report under Rule 9 of the Income Tax Settlement Commission (Procedure) Rules, within 45 days of receipt of the said order. Accordingly, a report dated 08.02.2017 was submitted to the effect that an enquiry is required to be conducted under Section 245D (3) through FT & TR, a division of the CBDT to find out the nature of credit and debit appearing in the foreign bank accounts

disclosed by the appellants and other transactions related thereto. In effect, the Principal Commissioner of Income Tax requested the first respondent to permit him to conduct an enquiry to verify the domestic income and expenditure of the appellants. The appellants also submitted reply dated 23.02.2017 to the report dated 08.02.2017 of the Principal Commissioner of Income Tax Department contending that no further enquiry is required to be conducted inasmuch as the income earned by the appellants have been truly and fully disclosed along with documentary evidence.

4.6. Notwithstanding the objections raised by the appellants, the first respondent passed an order dated 11.05.2017 under Section 245D (3) of the Act, directing the department to carry out an enquiry/investigation with respect to certain income said to have been derived by the appellants, with a further direction to post the applications for further hearing after receipt of a report. Pursuant to the said order dated 11.05.2017, the second respondent, by a communication dated 14.07.2017, called upon the appellants to furnish certain information and they were furnished by the appellants on 21.07.2017 and 27.07.2017. Based on the details furnished by the appellants, a report dated 09.08.2017 was submitted by the Principal Commissioner of Income Tax under Section 245D (3) of the Act, for which the appellants also submitted their reply dated 06.09.2017. On 06.10.2017, the appellants and the representative of the department were heard by the first respondent and written submissions were also made. On consideration of the written submissions and other documentary evidence, the first respondent passed an order dated 06.12.2017 under Section 245D (4) of the Act rejecting the settlement applications of the appellants. Aggrieved by the same, the appellants have filed the writ petitions under Article 226 of the Constitution of India.

5. The learned Judge, on appreciation of the rival submissions, concluded that the non-disclosure of certain income by the appellants cannot be construed as a mere omission or lack of knowledge about the information, but the non-furnishing of true and complete material particulars has disabled the Settlement Commission to arrive at a conclusion and there are suppression of material facts by the appellants. The learned Judge recorded a finding that if the assessee has not furnished the details regarding the income and the manner in which such income has been derived, it may not be possible for the Settlement Commission to complete the process of determination of income. Therefore, the learned Judge refused to interfere with the order passed by the Settlement Commission and dismissed the writ petitions.

6.1. Mr.R.V.Easwar, learned senior counsel appearing for the appellant in WA.No.2629 of 2021 submitted that Section 245 (D3) provides that if an application for settlement is treated as valid, then the Settlement Commissioner shall allow such application and call for further report or records from the Commissioner or Principal Commissioner of Income Tax, as the case may be. In this case, on receipt of the application of the appellants, reports have been called for from the Principal Commissioner of Income Tax and various reports have been furnished to the Settlement Commissioner. After receipt of such reports, the Settlement Commissioner has to give opportunity of hearing to the appellants as provided in Section 245D (4) of the Act. In the present case, a notice dated 15.11.2017 was issued to the appellants directing them to appear for an enquiry on 23.11.2017 at 11.30 am. On the date of hearing namely 23.11.2017, a report of the learned Principal Commissioner dated 22.11.2017 was served on the authorised representative of the appellants stating that the appellants have not made true and full disclosure of the undisclosed income. For the report dated 22.11.2017 served on 23.11.2017 at 11.30 am, the appellants were asked to submit their response together with documentary evidence by 27.11.2017 by 12 noon, allowing just one and half working day. Nevertheless, the response was submitted by the appellants within the time allowed by the first respondent. According to the learned Senior counsel, in compliance with the directions of the settlement commission on 23.11.2017, the appellants prepared a reply stating that upon verifying the copy of the report submitted by the Principal Commissioner of Income Tax along with the bank statement and documents received from Singapore & UAE including a compact disc, the appellants have not found mismatch with the records furnished to the Income Tax Settlement Commission. However, this submission of the appellants was not recorded by the first respondent while passing the order of rejection. In this context, the learned Senior counsel pointed out the reply dated 27th November 2017 submitted by the appellants, wherein it was clearly stated as follows:

".....Hope we have clarified all the issues raised by the learned PCIT in his report. Though the report of the ld.PCIT was made available to us only at 11.30 am on 23.11.2017 and we were asked to submit our clarifications and documents in support of our contention by 27.11.2017 by 12 noon, thus allowing us only one and half working day, yet we have tried our level best to furnish the desired details/particulars within the time frame.

We wish to reiterate that the applicants have all along tried their level best to obtain and furnish all particulars and explanations available

with them. It has never been their intention to withhold or misrepresent any information or fact from the Honourable Settlement Commission since such action may invite the risk/mischief of section 245D (6) of the Income Tax Act, 1961, which no sensible person can afford to take."

6.2. By pointing out the reply dated 27.11.2017, the learned senior counsel would submit that the appellant has truly and fully disclosed the material particulars in the settlement application without withholding any particulars for consideration. While so, without following the provisions under sub-section (4) of Section 245D of Income Tax Act, 1961, the first respondent proceeded to pass the order of rejection. In effect, it is the submission of the learned senior counsel that as stipulated under sub-section (4) of Section 245D of the Act, sufficient opportunity was not afforded to the appellant and therefore, he prayed for remanding the matter back to the first respondent for fresh consideration.

6.3. It is also submitted by the learned senior counsel that the time-limit for completion of the settlement proceedings expired only on 31.03.2018. Yet, the appellant was served with a report by the Principal Commissioner of Income Tax dated 22.11.2017 on 23.11.2017 and was expected to file a response thereto on 27.11.2017 i.e., barely one and half working days. As such, the order dated 06.12.2017 was passed without affording sufficient opportunities to the appellant to respond to the report of the PCIT, the contents of which represent the chief reasoning offered by the first respondent. The learned senior counsel placed reliance on the decision in the case of Automotive tyre manufacturers Association vs. Designated Authority and others, [(2011) 2 SCC 258] wherein it was held that the written submissions furnished by a litigant cannot be a substitute for oral hearing. In that decision, it was held as follows:

"...82. In the light of the afore noted legal position and the elaborate procedure prescribed in Rule 6 of the 1995 Rules, which the DA is obliged to adhere to while conducting investigations, we are convinced that duty to follow the principles of natural justice is implicit in the exercise of power conferred on him under the said Rules. Insofar as the instant case is concerned, though it was sought to be pleaded on behalf of the respondents concerned, though it was sought to be placed on behalf of the respondents that the incumbent DA had issued a common notice to the advocates for ATMA and Ningbo Nylon, for oral hearing that pursuant to ATMA's letter dated 24-1-2005, notice for oral hearing was issued to them by the incumbent DA. Moreover, the alleged opportunity of oral hearing

on 9-3-2005, being in relation to the price undertaking offer by Ningbo Nylon, cannot be likened to public hearing contemplated under Rule 6(6) of the 1995 Rules.

83. The procedure prescribed in the 1995 Rules imposes a duty on the DA to afford to all the parties, who have filed objections and adduced evidence, a personal hearing before taking a final decision in the matter. Even written arguments are no substitute for an oral hearing. A personal hearing enables the authority concerned to watch the demeanour of the witnesses, etc. and also clears up his doubts during the course of the arguments. Moreover, it was also observed in Gullapalli, if one person hears and other decides, then personal hearing becomes an empty formality"

6.4. The learned senior counsel for the appellant proceeded to contend that the Settlement commission is not an adjudicatory authority. The appellant approached the Settlement Commission disclosing all the incomes truly and correctly to resolve their tax dispute in an expeditious manner. The object of approaching the Settlement Commission is to rectify the past mistakes inadvertently done by the appellant. Such past mistake done by the appellants cannot itself be a ground to reject the application for settlement which would defeat the very purpose of constitution of the Settlement Commission. Chapter XIX-A of the Act is provided to aid bilateral dispute resolution and to provide a fast and effective means of settling disagreements in complicated cases that might otherwise result in an unwarranted strain on the investigative resources of the tax department. By this process, the assessee can pay the tax and interest on admitted income before filing the application for settlement itself. However, the Settlement Commission failed to exercise its statutory powers to arrive at a settlement with the appellant on technicalities.

6.5. The learned senior counsel further submitted that the Settlement Commission has been abolished by virtue of the notification dated 10.08.2021 with effect from 01.02.2021 and in its place, an Interim Board for settlement has been constituted. The Interim board has been formed to consider the pending applications and it has the powers to resolve the tax dispute raised by the appellants. While so, the discontinuance of the Settlement Commission will have no bearing in the case of the appellants and the Interim Board has the powers to adjudicate the dispute in the place of the Settlement Commission in the event of the matter being remanded back to the Interim Board. The learned senior counsel therefore prayed this court to allow this appeal and to remand the matter back to the Interim Board for settlement of the tax dispute.

7.1. Mr.N.L. Rajah, learned senior counsel appearing for the appellant in W.A. No. 2632 of 2021, at the outset, would contend that the order passed by the first respondent-Settlement Commission is in violation of the principles of natural justice. According to the learned senior counsel, the appellants herein are brothers and they have filed two settlement applications bearing Nos. TN/CN51/2015-16/34/IT and TN/CN51/2015-16/35/IT on 10.07.2015 before the first respondent invoking Section 254C (1) of the Act relating to the assessment years 2005-2006 to 2014-2015. On 07.10.2016, the applications were admitted by way of an order passed under Section 245D (1) of the Act. Subsequently, on 11.11.2016, the Department submitted the Rule-6 report under Section 245D (2B) of the Act. On 22.11.2016, the appellants submitted detailed reply to the Rule-6 report. After taking note of the same, the first respondent-Commission passed an order under Section 245D (2C) declaring that the claim of the appellants for settlement of the tax dispute is valid. Thereafter, the Department filed a Rule-9 report alleging that there are deficiencies in the settlement applications and sought for an investigation to be conducted under Section 245D (3) of the Act. In response, on 23.02.2017, the appellants submitted their response. On 02.05.2017, the settlement applications were taken up for hearing under Section 245D(3). After hearing both sides, the first respondent passed an order allowing the department to conduct an enquiry. Pursuant to such direction of the first respondent, on 11.08.2017, a report was submitted under Section 245D (3) of the Act, for which a reply was given by the appellant on 11.08.2017. Subsequently, on 06.10.2017, the Department furnished a further report for which the appellants have submitted their response on 11.10.2017. On 18.11.2017, the appellants have also filed their written submissions. However, on the last date of hearing on 22.11.2017, the department submitted a report under Section 245D (3) and the appellant was called upon to submit their response on 23.11.2017 viz., on the next day. Even then, the appellant filed a sworn affidavit clarifying the various issues raised. The first respondent thereafter did not afford an opportunity of hearing to the appellant, but passed the order dated 06.12.2017 rejecting the settlement application of the appellant. Therefore, the learned senior counsel would submit that the order, which was impugned before the learned Judge, has been passed without affording proper and sufficient opportunity to the appellant.

7.2. The learned senior counsel would further contend that the counter affidavit filed by the Department in these writ appeals was solely on merits. On the other hand, the appellant is not inclined to venture into the merits of the case, but only require sufficient opportunity to be given to put forth his submissions. It is also submitted that the appellant had fully

and truly disclosed the income and any other details are wholly extraneous to the determination of an application for settlement. The appellant had fully cooperated with the first respondent for conclusion of the proceedings, which stands testimony to the fact that the Department, in the various reports filed before the first respondent, do not indicate any non-cooperation on the part of the appellant. However, while passing the order, which was impugned before the learned Judge, the first respondent failed to adhere to the basic principles of natural justice and it infringes the fundamental rights as guaranteed to the appellant under Articles 14, 19 (1) (g) and 21 of The Constitution of India. Therefore, it is submitted by the learned senior counsel that the gay abandon with which the first respondent proceeded to pass the order dated 06.12.2017 is based on preconceived notions. As such, the order dated 06.12.2017 of the first respondent has to be set aside with a direction to give sufficient opportunity to the appellant to put forth their submission. Without considering the said aspects, the learned Judge erred in dismissing the writ petitions filed by the appellants. Therefore, the learned senior counsel prayed to allow this writ appeal by setting aside the order passed by the learned Judge.

8.1. Opposing the writ appeals, Mr.A.P.Srinivas, learned senior standing counsel appearing for the respondents submitted that the applications submitted by the appellants before the Settlement Commission stood disposed of on 06.12.2017 and there is no case pending before the Settlement Commission prior to its discontinuance with effect from 01.02.2021. On and from 01.02.2021, the Income Tax Settlement Commission has been discontinued and in its place Interim Board has been constituted as provided under the Finance Act, 2021 to consider the pending applications only. Therefore, no direction could be given to the Settlement Commission which has been discontinued from 01.02.2021 onwards. Therefore, on this ground, the writ appeals have to be dismissed by confirming the orders passed by the learned Judge.

8.2. It is further submitted that the appellants have not explained the nature of transfer of funds from foreign bank accounts which are revenue receipts in the hands of the appellants. Any appreciation arising on revenue account as a result of foreign exchange fluctuation has to be offered as income in the respective years. The outstanding is a revenue item and every year at the close of the accounting year, the appellants have to value the foreign currency revenue income and offer the exchange fluctuation to tax. In this context, reliance has been placed on the decision of the Honouable Supreme Court in the case of Commissioner of Income Tax vs. Woodward Governor India Private Limited [312 ITR 254 (SC)] wherein it was held that accretion on account of foreign exchange fluctuations have

to be brought to tax.

8.3. The learned Senior Standing Counsel also submitted that the Income Computation and Disclosure Standard-VI relating to the effects of changes in foreign exchange rates and also Accounting Standards AS-11 provides that exchange differences arising on foreign currency transactions should be recognised as income or as expenses in the period during which they arise. All monies received abroad are commission receipts to be treated as business receipts, which have been used for investing in funds, bonds etc., and earned income therefrom, which are trading receipts in the revenue account as has been held by the Honourable Supreme Court in the case of Suttlej Cotton Mills Limited vs. CIT [116 ITR 1]. In the present case, the appellants have followed accrual basis of accounting in respect of the income received from ABN Amro Bank but in respect of a commission income, the appellants followed 'cash basis' accounting. The amounts are already lying in the bank account and whatever benefit arises out of the foreign exchange gain is already available in the bank accounts itself and hence taxable in either system of accounting by treating it as income received by the appellants. As per Section 6 of the Act, the total income includes all income that accrues or arises outside India. It has to be necessarily taxed in the mercantile system of accounting. However, the appellants have not disclosed any income on account of foreign exchange rate fluctuation in the year of remittances also. Further, in the absence of production of balance sheet or statement of accounts, the full and true income of the appellants cannot be determined. Even as on date, the appellants have not produced the bank statement of the account No. 1685646 held with First Gulf Bank, Dubai and therefore also, the Settlement Commission is right in rejecting the application submitted by the appellants for settlement of the dispute. Similarly, the appellants have not produced any proof to show that the address in Singapore belongs to their friend. Even before the Settlement Commission, the appellants have not filed the statement of affairs for the financial years 2004-2005 to 2013-2014. After repeated demands, a statement was produced without including the foreign transactions and bank accounts. Thus, the appellants did not cooperate with the Department by furnishing all the particulars, truly and correctly.

8.4. In response to the submissions made by the learned senior counsel for the appellants, it is replied by the learned Senior Standing Counsel that more than three days time was given to the appellants to submit their reply to the report of the Principal Commissioner of Income Tax. In fact, the clarifications made in the report filed by the Principal Commissioner of Income Tax ought to have been furnished by the appellants themselves. As they failed to file the documents, an

ultimatum was given by the Settlement Commissioner to produce those documents so as to expedite the settlement proceedings. While so, it cannot be said that the proceedings of the Settlement Commission have been conducted in violation of principles of natural justice. Whatever the documents or report filed by the Principal Commissioner of Income Tax will be furnished to the appellants and their report was sought for before proceeding further. While so, the question of violation of principles of natural justice does not arise in this case. Therefore, it is submitted by the learned Senior Standing Counsel that sufficient opportunities were provided to the appellants by the Settlement Commissioner before passing the order rejecting their applications. In any event, the appellants have not complied with the requirements contained under Section 245C of the Act by truly and correctly disclosing all the material particulars in relation to the income earned by them. The provisions under sub-section (4) of Section 245D of Income Tax Act, 1961 stipulates that there must be full and final disclosure of the documents. There are several information withheld by the appellants. This was pointed out by the Settlement Commission as mentioned below:

“When questioned during the hearing, the AR stated that the applicant is not aware of any company by name Moon Water Limited and the salary income mentioned in the account opening form was filed up just like that. Later, the applicants took a position in the further submissions dated 27.11.2017, that it represents the salary income of AED 3,50,000/- per month, coming to approx Rs.6.8 crores per annum earned in India. The applicant also submitted that Shri Arun Mammen was never an employee of the so called company Moon water Limited and the applicant was also not aware of the existence of any such company. We find that the statements recorded in the account opening form duly signed by the applicant and that given in the SOF/further submissions by the applicant are contradictory. The salary income shown in India in the Returns of Income is around Rs.2.57 crores (AY 2013-14) and Rs.5.79 crores (AY 2014-15) from MRF Ltd. in respect of Shri Arun Mammen. Hence, the disclosure made by the applicant in the statement of facts is not full both in respect of Moon Water Ltd and the salary income. Further, whatever is stated in the Statement of Facts on the manner in which the income has been derived has not been corroborated with any specific evidence by the applicants. The disclosure is not full and true and the manner in which the income earned has also not been properly

corroborated. Thus it is not possible to hold that a full and true disclosure has been made by the applicants and the manner in which the income has been derived is correct. Hence, the applications are not maintainable."

8.5. By pointing out the above portion of the observation made by the Settlement Commissioner, the learned Senior Standing Counsel submitted that the order of rejection of the settlement applications filed by the appellants is wholly justified and it does not call for any interference by this Court. For the same proposition, the learned Senior standing counsel for the department also placed reliance on the decisions in (i) ACE Investment Ltd v. Settlement Commission [(2003) 264 ITR 571 (Mad)], (ii) Ajmera Housing Corpn. v. CIT [(2010) 193 Taxman 193 (SC)] and (iii) Rashmi Infrastructure Developers Ltd v. Income Tax Settlement Commission and others [(2017) 396 ITR 210 (Bom)]. The learned counsel therefore prayed for dismissal of the writ appeals.

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

10. 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 deals with Settlement of Cases. The relevant provisions are extracted 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 Officer in the prescribed manner of having made such application to the said Commission

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 an order

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

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 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 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-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 of settlement; or

(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).

19. 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."

11. 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 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."

12. 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 buy 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 within 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 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. The report is to be furnished within 45 days as per Rule 9 and if in case, the report is not furnished in time or if no extension is granted, then the commissioner cannot file any report and the settlement commission has to proceed further and pass orders without such report. The time period specified under Rule 9 is mandatory as because there is no provision to extend

the outer time limit of 18 months, even in case any extension in filing the report under Rule 9. As per Rule 9A, the assessee is to file his objections within 15 days or within such extended period. Thereafter, considering the report, objections to the report of the assessee and after granting a personal hearing to the applicant, the commission is to pass an order under 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 subsection 4. The word "apparent" makes it clear that the mistake must be visible from the face of the record and is not to 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 proceedings will abate upon rejection of the application at any of the stages in 245D(1) or (2C) or (2D) or (4). It will be useful to trace the legislative history of the settlement commission as extracted by the Division Bench of the Karnataka High Court 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 relevant passage of which may be set out below:

"12. Before considering the validity of the contentions, it is necessary to allude to the legislative background as also the salient aspects of the provisions providing for the establishment of Settlement Commission as also the scope of its powers and the special procedure regulating the exercise of its powers. Recommendation was made by the Wanchoo Committee for establishing a settlement machinery. Relevant portion of the recommendation reads:

"Settlement machinery":

2.32. This, however, does not mean that the door for compromise with an errant tax payer should for ever remain closed. In the administration of fiscal laws, whose primary objective is to raise revenue, there has to be room for compromise and settlement. A rigid attitude would not only inhibit a one-time tax-evader or an unintending defaulter from making a clean breast of his affairs, but would also unnecessarily strain the investigational resources of the Department in cases of doubtful benefit to revenue, while needlessly proliferating litigation and holding up collections. We would, therefore, suggest that there should be a provision in the law for a settlement with the taxpayer at any stage of the proceedings. In the United Kingdom the 'confession' method has been in vogue since 1923. In the U.S. law also, there is a provision for compromise with the tax payer as to his tax liabilities. A provision of this type facilitating settlement in individual cases will have this advantage over general disclosure schemes that misuse thereof will be difficult and the disclosure will not normally breed further tax evasion. Each individual case can be considered on its merits and full disclosures not only of the income but of the modus operandi of its buildup can be insisted on, thus sealing off chances of continued evasion through similar practices.

2.33. To ensure that the settlement is fair, prompt and independent, we would suggest that there should be a high level machinery for administering the provisions, which would also incidentally relieve the field officer of an onerous responsibility and the risk of having to face adverse criticism which, we are told has been responsible for the slow rate of disposal of disclosure petitions. We would, therefore, recommend that settlements may be entrusted to a separate body within the Department, to be called the Direct Taxes Settlement Tribunal. It will be a permanent body with three Members. The strength of the Tribunal can be increased later, depending on the workload. To ensure impartial and quick decisions and to encourage officers with integrity and wide knowledge and experience to accept assignments on the Tribunal, we recommend that its members should be given the same status and emoluments as the members of the Central Board of Direct Taxes.

Any taxpayer will be entitled to move a petition before the Tribunal for settlement of his liability

under the direct tax laws. We do not think that it is necessary to provide for cases being referred to the Tribunal by the Department. However, we wish to emphasize that the Tribunal will proceed with the petition filed by a taxpayer only if the Department raises no objection.

"Where the taxpayer takes the initiative and voluntarily discloses the fact of his past frauds and their full extent and is also prepared to facilitate investigations, and to furnish full evidence (including not only the business books and records but also private bank books) as may be required on behalf of the Board as to the amount of the correct liability, the Board will not institute criminal proceedings, but will accept a pecuniary settlement".

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The award will be binding both on the petitioner and on the Department. The application of its decisions on questions of law will, however, be confined to the case under settlement and will not in any way interfere with the interpretation of law in general. No appeal will lie against the decision of the Tribunal by the petitioner or the Department, whether on question of fact or of law." [Income Tax Law by Chaturvedi and Pithisaria. - Third Edition, pp. 4132 to 4134.]

(Underlining by us)

Pursuant to the aforesaid recommendation, Chapter XIXA consisting of Sections 245A to 245K for settlement of cases was introduced into the Act by the Taxation Laws Amendment Act 1973."

13. At this juncture, it will be useful to refer to the judgments of the Apex Court, wherein the scope of proceedings by the Settlement Commission has been discussed and laid down, as follows:

(i) CIT v. Om Prakash Mittal, (2005) 2 SCC 751 : 2005 SCC OnLine SC 376:

"14. The Commission's power of settlement has to be exercised in accordance with the provisions of the Act. Though the Commission has sufficient elbow room in assessing the income of the applicant, it cannot make any order with a term of settlement which would be in conflict with the mandatory provisions of the Act, like in the quantum and payment of tax and the interest. The object of the legislature, in introducing Section 245-C is to see that protracted proceedings before the authorities or in courts are

avoided by resorting to settlement of cases. In this process an assessee cannot expect any reduction in amounts statutorily payable under the Act.

.....

16. The foundation for settlement is an application which the assessee can file at any stage of a case relating to him in such form and in such manner as is prescribed. The statutory mandate is that the application shall contain "full and true disclosure" of the income which has not been disclosed before the assessing officer, the manner in which such income has been derived. The fundamental requirement of the application under Section 245-C is that full and true disclosure of the income has to be made, along with the manner in which such income was derived. On receipt of the application, the Commission calls for report from the Commissioner and on the basis of the material contained in the report and having regard to the nature and circumstances of the case or complexity of the investigation involved therein, it can either reject the application or allow the application to be proceeded with as provided in Section 245-D(1).

17. It has to be noted that the Commission exercises power in respect of income which was not disclosed before the authorities in any proceeding, but is disclosed in the petition under Section 245-C. It is not that any amount of undisclosed income can be brought to the notice of the Commission in the said petition. The Commission exercises jurisdiction if the additional amount of tax on such undisclosed income is more than a particular figure (which at different points of time exceeded rupees fifty thousand or rupees one hundred thousand, as the case may be). The assessee must have in addition furnished the return of income which he is or was required to furnish under any of the provisions of the Act. In essence the requirement is that there must be an income disclosed in a return furnished and undisclosed income disclosed to the Commission by a petition under Section 245-C.

18. There is a purpose why the legislature has prescribed the condition relating to declaration of the order void when it is obtained by fraud or misrepresentation of facts. It cannot be said that there has been a true and fair declaration of income which is the prerequisite for settlement by the Commission. If an order is obtained by fraud or misrepresentation of facts, it cannot be said that there was true and fair disclosure. It was noted here that unlike Section 139 of the Act which provides for

filing of revised return, there is no provision for revision of an application made in terms of Section 245-C. That shows clear legislative intent that the applicant for settlement has to make a true and fair declaration from the threshold. It is on the basis of the application received that the Commission calls for report to decide whether the application is to be rejected or permitted to be continued. The declaration contemplated in Section 245-C is in the nature of voluntary disclosure of concealed income, but as noted above it must be true and fair disclosure. Voluntary disclosure and making a full and true disclosure of the income are necessary preconditions for invoking the Commission's jurisdiction.

19. In the aforesaid background it would be proper to direct the Commission to rehear the matter. It shall be open to the parties to place any further material which they may choose to place for consideration in support of their respective stands. The Commission shall decide the matter afresh keeping in view the observations made above. It is, however, made clear that we have not expressed any opinion on the facts of the case."

(ii) Brij Lal v. CIT, (2011) 1 SCC 1 : 2010 SCC OnLine SC 1192:

"18. Coming to Chapter XIX-A which deals with settlement of cases, it may be stated that the word "case" is defined under Section 245-A(b). It is an exhaustive definition. The definition makes it clear that an application for settlement shall lie only when any proceedings for assessment or reassessment are pending or an appeal or revision in connection with such assessment or reassessment is pending before the Income Tax Authority. Under Section 245-C(1), such application for settlement will not be maintainable without full and true disclosure of the income by the applicant, the manner in which such undisclosed income was derived and that the applicant had furnished his return of income and that the additional tax payable on such income exceeds the specified amount. This was the position prior to the Finance Act of 2007. However, Section 245-C(1-A) inter alia provides that additional amount of income tax payable in respect of the income disclosed shall be calculated in accordance with the provisions of Section 245-C(1-B). Under sub-section (1-B)(ii) if the applicant has furnished his

return in respect of his total income and no assessment is made, the tax shall be calculated on the aggregate of the total income returned and the income disclosed in the application as if such aggregate was the total income. The words "regular assessment" are not there in Section 245-C(1-B)(ii). However, under Section 245-C(1-C)(b), it is provided that the additional tax calculated under Section 245-C(1-B)(ii) shall be reduced by the aggregate of the tax deducted at source or tax paid in advance and the amount of tax paid under Section 140-A. The resultant amount is the additional tax payable by the assessee. Thus, Section 245-C incorporates within it the provisions of Chapters XVII(B), XVII(C) and Section 140-A of the Act.

21. If one carefully analyses the provisions of Sections 245-D(1) and 245-D(4), one finds two distinct stages - one allowing the application to be proceeded with (or rejected) and the other of disposal of the application by appropriate orders being passed by the Settlement Commission. In between the two stages, we have provisions which require the applicant to pay the additional income tax and interest. Even under Section 245-D(7) it is provided that where the settlement becomes void under Section 245-D(6) the proceedings with respect to the matters covered by the settlement shall be deemed to have revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the Income Tax Authority may complete the proceedings within the period mentioned therein. Thus, Section 245-D(7) brings out the difference between Section 245-D(1) stage and Section 245-D(4) stage. Under Section 245-D(6), it is laid down that every order under Section 245-D(4) shall provide for the terms of settlement including any demand by way of tax, penalty or interest.

23. Descriptively, it can be stated that assessment in law is different from assessment by way of settlement. If one reads Section 245-D(6) with Section 245-I, it becomes clear that every order of settlement passed under Section 245-D(4) shall be final and conclusive as to the matters contained therein and that the same shall not be reopened except in the case of fraud and misrepresentation. Under Section 245-F(1), in addition to the powers conferred on the Settlement Commission under Chapter XIX-A, it shall also have all the powers which are vested in the Income Tax Authority under the Act. In this connection, however, we need to keep in

mind the difference between "procedure for assessment" under Chapter XIV and "procedure for settlement" under Chapter XIX-A (see Section 245-D). Under Section 245-F (4), it is clarified that nothing in Chapter XIX-A shall affect the operation of any other provision of the Act requiring the applicant to pay tax on the basis of self-assessment in relation to matters before the Settlement Commission.

(I) Whether Sections 234-A, 234-B and 234-C are applicable to Chapter XIX-A proceedings?

25. Our detailed analysis shows that though Chapter XIX-A is a self-contained code, the procedure to be followed by the Settlement Commission under Sections 245-C and 245-D in the matter of computation of undisclosed income; in the matter of computation of additional income tax payable on such income with interest thereon; the filing of settlement application indicating the amount of income returned in the return of income and the additional income tax payable on the undisclosed income to be aggregated as total income shows that Chapter XIX-A indicates aggregation of incomes so as to constitute total income which indicates that the special procedure under Chapter XIX-A has an in-built mechanism of computing total income which is nothing but assessment (computation of total income).

33. Under Sections 245-C(1-B) and (1-C) the additional amount of income tax payable on the undisclosed income shall be on the total income as calculated under Section 245-C(1-B). On computation of total income under Sections 245-C(1-B) and (1-C), interest follows such computation. It is important to note that interest follows computation of total income. Once such computation takes place under Section 245-C(1-B) then Section 234-B(2) applies. The said sub-section deals with the situation where before determination of the total income under Section 143(1) or Section 143 (3) tax is paid under Section 140-A or otherwise interest shall be calculated in accordance with Section 234-B(1) up to the date on which tax is so paid. In that sense an application under Section 245-C (1) is a return. Section 245-C(1) deals with computation of total income.

39. Moreover, as stated above, under the Act, there is a difference between assessment in law [regular assessment or assessment under Section 143(1)] and assessment by settlement under Chapter XIX-A. The

order under Section 245-D(4) is not an order of regular assessment. It is neither an order under Section 143(1) or Section 143(3) or Section 144. Under Sections 139 to 158, the process of assessment involves the filing of the return under Section 139 or under Section 142; inquiry by the AO under Sections 142 and 143 and making of the order of assessment by the AO under Section 143(3) or under Section 144 and issuing of notice of demand under Section 156 on the basis of the assessment order. The making of the order of assessment is an integral part of the process of assessment. No such steps are required to be followed in the case of proceedings under Chapter XIX-A. The said chapter contemplates the taxability determined with respect to undisclosed income only by the process of settlement/arbitration. Thus, the nature of the orders under Sections 143(1), 143(3) and 144 is different from the orders of the Settlement Commission under Section 245-D(4).

42. The order of the Settlement Commission under Section 245-D(4) shall be final and conclusive under Section 245-I subject to two qualifications under which it can be recalled viz. fraud and misrepresentation but even here it is important to note that under Section 245-D(7) where the settlement becomes void on account of fraud and misrepresentation 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. This further supports our view that there are two distinct stages under Chapter XIX-A and that the legislature has not contemplated the levy of interest between order under Section 245-D(1) stage and Section 245-D(4) stage. Thus, interest under Section 234-B will be chargeable till the order of the Settlement Commission under Section 245-D(1) i.e. admission of the case.

44. As stated, proceedings before the Settlement Commission are similar to arbitration proceedings. It contemplates assessment by settlement and not by way of regular assessment or assessment under Section 143(1) or under Section 143(3) or under Section 144 of the Act. In that sense, it is a code by itself. It does not begin with the filing of the return but by filing the application for settlement. As stated above, under the Act, the procedure for assessment falls in Chapter XIV (in which Section 154 falls) which is different from the procedure for settlement in Chapter XIX-A in which Sections 245-C and 245-D

fall. Provision for levy of interest for default in payment of advance tax under Section 234-B falls in Chapter XVII (Section F) which deals with collection and recovery of tax which as stated above is incidental to the liability to pay advance tax under Section 207 (which is also in Chapter XVII) and to the computation of total income in the manner indicated under Chapter XIX-A vide Sections 245-C(1-B) and 245-C(1-C) read with the provisos to Section 245-C(1) on the additional income tax payable on the undisclosed income.

45. Further, if one examines the provisions of Sections 245-C(1-B) and 245-C(1-C), one finds that various situations are taken into account while computing the additional amount of tax payable viz. if the applicant has not filed his returns, if he has filed but orders of assessment are not passed or if the proceedings are pending for reassessment under Section 147 (again in Chapter XIV) or by way of appeal or revision in connection with such reassessment and the applicant has not furnished his return of total income in which case tax has to be calculated on the aggregate of total income as assessed in the earlier proceedings for assessment under Section 143 or under Section 144 or under Section 147 [see Section 245-C(1-B)]. The point to be noted is that in computation of additional income tax payable by the assessee, there is no mention of Section 154. On the contrary, under Section 245-I the order of the Settlement Commission is made final and conclusive on matters mentioned in the application for settlement except in the two cases of fraud and misrepresentation in which case the matter could be reopened by way of review or recall. Like ITAT, the Settlement Commission is a quasi-judicial body. Under Section 254(2), ITAT is given the power to rectify but no such power is given to the Settlement Commission. Thus, we hold that the Settlement Commission cannot reopen its concluded proceedings by invoking Section 154 of the Act."

14. Following the above decisions and considering various other judgments, a Division Bench of the Delhi High Court, while considering the scope of proceedings before the Settlement Commission in *Agson Global Pvt Ltd & Others v. Income Tax Settlement Commission & Others* [(2016) SCC Online Del 49] held as under:

"14. It is, therefore, clear that the powers and functions of an income tax authority which are to be exclusively exercised by the settlement commission

(subject to the provisions of section 245D(3)) must be in the context of and have a nexus with the settlement proceedings. That being the case, since the requirement of a special audit falls under the procedure for assessment which is distinct and different from settlement proceedings, the settlement commission would not, in our view, have jurisdiction to direct a special audit as it does not have any nexus with the settlement proceedings. All that the settlement commission is required to do in the course of the settlement proceedings is to ensure that the assessee who has made the application for settlement of his case has inter-alia made a full and true declaration of his hitherto undisclosed income and the manner in which it was derived. The method of computation of the tax liability of the applicant is set out in section 245C and in particular in sub-sections (1A) to (1D) thereof. If the settlement commission is of the view that an assessee has not made a full and true declaration of the undisclosed income then the application is liable to be rejected. In other words, if the accounts put forth by the assessee before the settlement commission are found by the settlement commission on the basis of the available records and/or the reports of the Commissioner to be neither full nor true then the only option available with the settlement commission is to reject the application for settlement and relegate the assessee to the normal provisions of assessment under the said act. The settlement commission cannot, by itself, enter upon an assessment and step into the shoes of an assessing officer for the purposes of making an assessment.

15. Let us now examine the decisions cited at the bar. In CIT v. Om Prakash Mittal: (2005) 2 SCC 751 the Supreme Court observed as under:

"13. Section 245-F dealing with powers and procedure of the Settlement Commission provides that in addition to the powers conferred on the Settlement Commission under Chapter XIX-A, it has all the powers which are vested in the Income Tax Authority under the Act. Sub-section (2) is of vital importance and provides that where an application made under Section 245-C has been allowed to be proceeded with under Section 245-D, the Commission shall until an order is passed under sub-section (4) of Section 245-D, subject to the provisions of sub-section (3)

of that section, have exclusive jurisdiction to exercise the powers and perform the functions of the Income Tax Authority under the Act in relation to the case. In essence, the Commission assumes jurisdiction to deal with the matter after it decides to proceed with the application¹ and continues to have the jurisdiction till it makes an order under Section 245-D. Section 245-D(4) is the charging section and sub-section (6) prescribes the modalities to be adopted to give effect to the order. It has to be noted that the language used in Section 245-D is "order" and not "assessment". The order is not described as the original assessment or regular assessment or reassessment. In that sense, the Commission exercises a plenary jurisdiction."

(emphasis supplied)

16. In *Brij Lal v. CIT* [(2011) 1 SCC 1], the Hon'ble Supreme Court held as under:

"23. Descriptively, it can be stated that assessment in law is different from assessment by way of settlement. If one reads Section 245-D(6) with Section 245-I, it becomes clear that every order of settlement passed under Section 245-D(4) shall be final and conclusive as to the matters contained therein and that the same shall not be reopened except in the case of fraud and misrepresentation. Under Section 245-F(1), in addition to the powers conferred on the Settlement Commission under Chapter XIX-A, it shall also have all the powers which are vested in the Income Tax Authority under the Act. In this connection, however, we need to keep in mind the difference between "procedure for assessment" under Chapter XIV and "procedure for settlement" under Chapter XIX-A (see Section 245-D). Under Section 245-F(4), it is clarified that nothing in Chapter XIX-A shall affect the operation of any other provision of the Act requiring the applicant to pay tax on the basis of self-assessment in relation to matters before the Settlement Commission.

xxxx xxxxx xxxxx xxxxx

39. Moreover, as stated above, under the Act, there is a difference between assessment in

law [regular assessment or assessment under Section 143(1)] and assessment by settlement under Chapter XIX-A. The order under Section 245-D(4) is not an order of regular assessment. It is neither an order under Section 143(1) or Section 143(3) or Section 144. Under Sections 139 to 158, the process of assessment involves the filing of the return under Section 139 or under Section 142; inquiry by the AO under Sections 142 and 143 and making of the order of assessment by the AO under Section 143(3) or under Section 144 and issuing of notice of demand under Section 156 on the basis of the assessment order. The making of the order of assessment is an integral part of the process of assessment. No such steps are required to be followed in the case of proceedings under Chapter XIX-A. The said chapter contemplates the taxability determined with respect to undisclosed income only by the process of settlement/arbitration. Thus, the nature of the orders under Sections 143(1), 143(3) and 144 is different from the orders of the Settlement Commission under Section 245-D(4).

xxxx xxxxx xxxxx xxxxx

44. As stated, proceedings before the Settlement Commission are similar to arbitration proceedings. It contemplates assessment by settlement and not by way of regular assessment or assessment under Section 143(1) or under Section 143(3) or under Section 144 of the Act. In that sense, it is a code by itself. It does not begin with the filing of the return but by filing the application for settlement. As stated above, under the Act, the procedure for assessment falls in Chapter XIV (in which Section 154 falls) which is different from the procedure for settlement in Chapter XIX-A in which Sections 245-C and 245-D fall. Provision for levy of interest for default in payment of advance tax under Section 234-B falls in Chapter XVII (Section F) which deals with collection and recovery of tax which as stated above is incidental to the liability to pay advance tax under Section 207 (which is also in Chapter XVII) and to the computation of total income in the manner indicated under

Chapter XIX-A vide Sections 245-C(1-B) and 245-C(1-C) read with the provisos to Section 245-C(1) on the additional income tax payable on the undisclosed income."

(emphasis

supplied)

17. The Supreme Court, in Brij Lal (supra), made a clear distinction between assessment in law (regular assessment under Chapter XIV) and "assessment" by way of settlement. It clearly held that there is a difference between "procedure for assessment" under Chapter XIV and "procedure for settlement" under Chapter XIX-A. In fact, it reiterated that under the said Act, there is a clear difference between 'assessment in law' [regular assessment or assessment under Section 143(1)] and 'assessment by settlement' under Chapter XIX-A. It also held categorically that an order of settlement under Section 245D(4) is not an order of regular assessment nor is it an order under Section 143(1) or Section 143(3) or Section 144. What is of importance is that the Supreme Court held that the making of an order of assessment is an integral part of the process of assessment. Meaning thereby that if the proceedings do not culminate in an assessment order the same cannot be regarded as assessment proceedings. In the case of proceedings under Chapter XIX-A there is no provision for an assessment order and the said chapter only contemplates the taxability determined with respect to undisclosed income by the process of settlement/arbitration. Elaborating on this aspect, the Supreme Court held that the Chapter XIX-A provisions contemplate assessment by settlement and not by way of regular assessment or assessment under Section 143(1) or under Section 143(3) or under Section 144 of the Act and that the said Chapter XIX-A is a code by itself.

18. Since the learned counsel for the revenue placed reliance on paragraphs 25 to 27 of the decision in Brij Lal (supra) it would be appropriate to consider the same. The said paragraphs are as under:

"25. Our detailed analysis shows that though Chapter XIX-A is a self-contained code, the procedure to be followed by the Settlement Commission under Sections 245-C and 245-D in the matter of computation of undisclosed income; in the matter of computation of additional income tax payable on such income

with interest thereon; the filing of settlement application indicating the amount of income returned in the return of income and the additional income tax payable on the undisclosed income to be aggregated as total income shows that Chapter XIX-A indicates aggregation of incomes so as to constitute total income which indicates that the special procedure under Chapter XIX-A has an in-built mechanism of computing total income which is nothing but assessment (computation of total income).

26. To elaborate, under Section 245-C(1-B), if the applicant has furnished a return in respect of his total income, tax shall be calculated on the aggregate of total income returned and the income disclosed in the settlement application as if such aggregate were total income. Under the Act, tax is payable on the total income as computed in accordance with the provisions of the Act. Thus, Section 143(3) provision is sought to be incorporated in Section 245-C. When Parliament uses the words "as if such aggregate would constitute total income", it presupposes that under the special procedure the aggregation of the returned income plus income disclosed would result in computation of total income which is the basis for the levy of tax on the undisclosed income which is nothing but "assessment". Similarly, Section 245-C(1-C) provides for deductions from the total income computed in terms of Section 245-C(1-B).

27. Thus, the special procedure under Sections 245-C and 245-D in Chapter XIX-A shows that a special type of computation of total income is engrafted in the said provisions which is nothing but assessment which takes place at Section 245-D(1) stage. However, in that computation, one finds that provisions dealing with a regular assessment, self-assessment and levy and computation of interest for default in payment of advance tax, etc. are engrafted. [See Sections 245-C(1-B), 245-C(1-C), 245-D(6), 245-F(3) in addition to Sections 215(3), 234-A(4) and 234-B(4).]"

(emphasis supplied)

19. On the strength of the observations quoted above it was contended by the learned counsel for the revenue that the proceedings under Chapter XIX-A also entail assessment. The corollary to this being that the direction for the conducting of a special audit was legitimate. We cannot agree with this contention of the learned counsel for the revenue. Wherever the Supreme Court spoke of assessment in the context of settlement proceedings under Chapter XIX-A, it qualified it by using the expression "computation of income" (which has necessarily to be done by aggregating the disclosed and undisclosed income) and more particularly the expression - "a special type of computation of total income". In any event, as pointed out above, the Supreme Court held that the Chapter XIX-A provisions contemplate assessment by settlement and not by way of regular assessment under section 143 (3) or 'assessment' under Section 143(1) or under Section 144 of the Act and that the said Chapter XIX-A is a code by itself.

20. In view of the above analysis, we need not examine the decisions in Picasso Overseas (supra), Ashwani Tobacco (supra), Dharampal (supra) and Murarilal Harishchandra Jaiswal (supra), which, though they support the contentions on behalf of the petitioners, have been rendered either under the Central Excise Act, 1944 or the Customs Act, 1962. We may, however, notice the decision of a division bench of the Madras High Court in Canara Jewellers v. Settlement Commission: [2009] 315 ITR 328 (Madras), in which it was held that:-

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

21. We have already expressed a similar view above. The exclusive jurisdiction of the settlement commission to exercise the powers and perform the

functions of an income tax authority, in terms of section 245F(2) of the said Act, is to be exercised and performed for the purpose of settlement of the case under Chapter XIX-A and not for assessment under Chapter XIV. That being the case, the powers and functions which are in the exclusive jurisdiction of the settlement commission are circumscribed by the object and role which has been ascribed to the settlement commission, which is to settle the case in terms of the procedure stipulated in Chapter XIX-A. Since assessment of the type contemplated under section 143(3) is outside the purview of settlement proceedings, a special audit under section 142(2A), which is in aid of assessment, would also be beyond the scope of settlement proceedings. The other decisions referred to by the learned counsel for the revenue do not militate against the view we have taken."

15. The powers therein are not akin 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. The proceedings are similar to arbitration, whereby the commission is not to delve more on the legalities on the conduct of the assessee prior to the application but rather the approach should be to explore the possibility of settling the issue, once and for all. However, the Commission cannot pass orders against the provisions of the Act.

16. Being a judicial proceedings by quasi-judicial officers, adherence to the principles of natural justice has been emphasized. At every stage before 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 person, 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 principle of natural justice and the provisions of Section 245G of the Act.

17. It is now necessary to look into the scope of interference by the High Court under Article 226 of the constitution of India, with the findings of the Settlement Commission. In this regard, reliance was placed on the following decisions:

(i) Udit Narain Singh Malpaharia v. Addl. Member Board of Revenue, [1963 Supp (1) SCR 676 : AIR 1963 SC 786], wherein, it was observed as follows:

"8. The next question is, what is the nature of a writ of certiorari. What relief can a petitioner in such a writ obtain from the Court. Certiorari. lies to remove for the purpose of quashing the proceedings of inferior courts of record or other persons or bodies exercising judicial or quasi-judicial functions. It is not necessary for the purpose of this appeal to notice the distinction between a writ of certiorari and a writ in the nature of certiorari: in either case the High Court directs an inferior tribunal or authority to transmit to itself the record of proceedings pending therein for scrutiny and, if necessary, for quashing the same. It is well settled law that a certiorari lies only in respect of a judicial or quasi-judicial act as distinguished from administrative act. The following classic test laid down by Lord Justice Atkin, as he then was, in King v. Electricity Commissioners [(1924) 1 KB 171] and followed by this Court in more than one decision clearly brings out the meaning of the concept of judicial act:

"Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

Lord Justice Slesser in King v. London County Council [(1931) 2 KB 215, 243] dissected the concept of judicial act laid down by Atkin, L.J., into the following heads in his judgment: "Wherever any body of persons (1) having legal authority (2) to determine questions affecting rights of subjects and (3) having the duty to act judicially (4) act in excess of their legal authority – a writ of certiorari may issue". It will be seen from the ingredients of judicial act that there must be a duty to act judicially. A tribunal, therefore, exercising a judicial or quasi-judicial act cannot decide against the rights of a party without

giving him a hearing or an opportunity to represent his case in the manner known to law. If the provisions of a particular statute or rules made thereunder do not provide for it, principles of natural justice demand it. Any such order made without hearing the affected parties would be void. As a writ of certiorari will be granted to remove the record of proceedings of an inferior tribunal or authority exercising judicial or quasi-judicial acts, ex hypothesi it follows that the High Court in exercising its jurisdiction shall also act judicially in disposing of the proceedings before it. It is implicit in such a proceeding that a tribunal or authority which is directed to transmit the records must be a party in the writ proceedings, for, without giving notice to it, the record of proceedings cannot be brought to the High Court. It is said that in an appeal against the decree of a subordinate court, the court that passed the decree need not be made a party and on the same parity of reasoning it is contended that a tribunal need not also be made a party in a writ proceeding. But there is an essential distinction between an appeal against a decree of a subordinate court and a writ of certiorari to quash the order of a tribunal or authority: in the former, the proceedings are regulated by the Code of Civil Procedure and the court making the order is directly subordinate to the appellate court and ordinarily acts within its bounds, though sometimes wrongly or even illegally, but in the case of the latter, a writ of certiorari is issued to quash the order of a tribunal which is ordinarily outside the appellate or revisional jurisdiction of the court and the order is set aside on the ground that the tribunal or authority acted without or in excess of jurisdiction. If such a tribunal or authority is not made party to the writ, it can easily ignore the order of the High Court quashing its order, for, not being a party, it will not be liable to contempt. In these circumstances whoever else is a necessary party or not the authority or tribunal is certainly a necessary party to such a proceeding. In this case, the Board of Revenue and the Commissioner of Excise were rightly made parties in the writ petition."

(ii) Syed Yakoob v. K.S. Radhakrishnan, [(1964) 5 SCR 64 : AIR 1964 SC 477], wherein, it was held as follows:

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under

Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Syed Ahmad Ishaque* [(1955) 1 SCR 1104] *Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam* [(1958) SCR 1240])

and Kaushalya Devi v. Bachittar Singh [AIR 1960 SC 1168]"

(iii) CIT v. S.P. Jain, [(1973) 3 SCC 824 : 1973 SCC (Tax)], in which, it was held by the Hon'ble Supreme Court 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."

(iv) Sawarn Singh v. State of Punjab, [(1976) 2 SCC 868], wherein, it was held by the Hon'ble Supreme Court as follows:

"12. Before dealing with the contentions canvassed, it will be useful to notice the general principles indicating the limits of the jurisdiction of the High Court in writ proceedings under Article 226. It is well settled that certiorari jurisdiction can be exercised only for correcting errors of jurisdiction committed by inferior courts or tribunals. A writ of certiorari can be issued only in the exercise of supervisory jurisdiction which is different from appellate jurisdiction. The Court exercising special jurisdiction under Article 226 is not entitled to act as an appellate court. As was pointed out by this Court in Syed Yakoob case,

"this limitation necessarily means that findings of fact reached by the inferior court or tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be."

13. In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued

only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice."

(v) 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. 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 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."

(vi) State of W.B. v. Atul Krishna Shaw, [1991 Supp (1) SCC 414], wherein, it was held as follows:

"7. Admittedly the High Court did not go into any of the questions raised by the appellant in the writ petition. It summarily dismissed the writ petition. Therefore, what we have to read is only the orders of the appellate tribunal and the Assistant Settlement Officer – the primary authority together with the record of evidence. Counsel took us through the evidence to show that the findings recorded by the appellate Judge are based on either no evidence or surmises and conjectures. We have given our anxious consideration to the respective contentions and considered the evidence on record once again. It is indisputably true that it is a quasi-judicial proceeding. If the appellate authority had appreciated the evidence on record and recorded the findings of fact, those findings are binding on this Court or the High Court. By process of judicial review we cannot appreciate the evidence and record our own findings of fact. If the findings are based on no evidence or based on conjectures or surmises and no reasonable man would, on given facts and circumstances, come to the conclusion reached by the appellate authority on the basis of the evidence on record, certainly this Court would oversee whether the findings recorded by the appellate authority is based on no evidence or beset with surmises or conjectures. Giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review. Reasoned decision is not only for the purpose of showing that the citizen is receiving justice, but also a valid discipline for the Tribunal itself. Therefore, statement of reasons is one of the essentials of justice.

.....

11. The contention of Shri Chatterjee that it is the duty of the appellant to produce the record to repudiate the findings recorded by the appellate authority is without substance. In a quasi-judicial enquiry it is for the parties who rely upon certain state of facts in their favour to adduce evidence in proof thereof. The proceedings under the Act is not like a trial in a civil court and the question of burden of proof does not arise. In the absence of adduction of the available documentary evidence, the necessary conclusion drawn by the Assistant Settlement

Officer that the loan application made might pertain to Plot Nos. 2201 and 2235 is well justified. The appellate authority is not justified in law to brush aside that finding. The other finding that the witnesses examined on behalf of the respondents support the existence of the fishery for a pretty long time is also without discussing the evidence and assigning reasons in that regard. The Assistant Settlement Officer extensively considered the evidence and has given cogent reasons which were neither discussed nor found to be untenable by the appellate authority. Thus, we have no hesitation in coming to the conclusion that the appellate tribunal disregarded the material evidence on record, kept it aside, indulged in fishing expedition and crashed under the weight of conjectures and surmises. The appellate order is, therefore, vitiated by manifest and patent error of law apparent on the face of the record. When so much is to be said and judicial review done, the High Court in our considered view, committed error of law in dismissing the writ petition in limine. In the facts and circumstances of this case, in particular, when the litigation has taken well over 28 years till now, we find it not a fit case to remit to the High Court or Tribunal for fresh consideration."

(vii) Jyotendrasinhji v. S.I. Tripathi, [1993 Supp (3) SCC 389], in which, it was held as follows:

"16. It is true that the finality clause contained in Section 245-I does not and cannot bar the jurisdiction of the High Court under Article 226 or the jurisdiction of this Court under Article 32 or under Article 136, as the case may be. But that does not mean that the jurisdiction of this Court in the appeal preferred directly in this Court is any different than what it would be if the assessee had first approached the High Court under Article 226 and then come up in appeal to this Court under Article 136. A party does not and cannot gain any advantage by approaching this Court directly under Article 136, instead of approaching the High Court under Article 226. This is not a limitation inherent in Article 136; it is a limitation which this Court imposes on itself having regard to the nature of the function performed by the Commission and keeping in view the principles of judicial review. Maybe, there is also some force in what Dr Gauri Shankar says viz., that the order of the Commission is in the nature of a package deal and that it may not be possible, ordinarily speaking, to dissect its order and that the assessee should not be

permitted to accept what is favourable to him and reject what is not. According to learned counsel, the Commission is not even required or obligated to pass a reasoned order. Be that as it may, the fact remains that it is open to the Commission to accept an amount of tax by way of settlement and to prescribe the manner in which the said amount shall be paid. It may condone the defaults and lapses on the part of the assessee and may waive interest, penalties or prosecution, where it thinks appropriate. Indeed, it would be difficult to predicate the reasons and considerations which induce the Commission to make a particular order, unless of course the Commission itself chooses to give reasons for its order. Even if it gives reasons in a given case, the scope of enquiry in the appeal remains the same as indicated above viz., whether it is contrary to any of the provisions of the Act. In this context, it is relevant to note that the principle of natural justice (*audi alteram partem*) has been incorporated in Section 245-D itself. The sole overall limitation upon the Commission thus appears to be that it should act in accordance with the provisions of the Act. The scope of enquiry, whether by High Court under Article 226 or by this Court under Article 136 is also the same – whether the order of the Commission is contrary to any of the provisions of the Act and if so, has it prejudiced the petitioner/appellant apart from ground of bias, fraud and malice which, of course, constitute a separate and independent category. Reference in this behalf may be had to the decision of this Court in *R.B. Shreeram Durga Prasad and Fatechand Nursing Das v. Settlement Commission (IT and WT)* [(1989) 1 SCC 628 : 1989 SCC (Tax) 124 : (1989) 176 ITR 169] which too was an appeal against the orders of the Settlement Commission. Sabyasachi Mukharji, J., speaking for the Bench comprising himself and S.R. Pandian, J. observed that in such a case this Court is “concerned with the legality of procedure followed and not with the validity of the order”. The learned Judge added “judicial review is concerned not with the decision but with the decision-making process”. Reliance was placed upon the decision of the House of Lords in *Chief Constable of the N.W. Police v. Evans* [(1982) 1 WLR 1155 : (1982) 3 All ER 141] . Thus, the appellate power under Article 136 was equated to power of judicial review, where the appeal is directed against the orders of the Settlement Commission. For all the above reasons, we are of the opinion that the only ground upon which this Court can interfere in

these appeals is that the order of the Commission is contrary to the provisions of the Act and that such contravention has prejudiced the appellant. The main controversy in these appeals relates to the interpretation of the settlement deeds – though it is true, some contentions of law are also raised. The Commission has interpreted the trust deeds in a particular manner. Even if the interpretation placed by the Commission on the said deeds is not correct, it would not be a ground for interference in these appeals, since a wrong interpretation of a deed of trust cannot be a violation of the provisions of the Income Tax Act. It is equally clear that the interpretation placed upon the said deeds by the Commission does not bind the authorities under the Act in proceedings relating to other assessment years.”

(viii) Dharamraj v. Chhitan, [(2006) 12 SCC 349 : 2006 SCC OnLine SC 1153], wherein, it was held as follows:

“18. It is well-settled position of law by a catena of decisions of this Court that in the writ jurisdiction of the High Court, it is always permissible for it to correct the decision of the consolidation authorities or to declare the law on the basis of facts and proof of such facts. For this proposition, we may usefully refer to a decision of this Court in Mukunda Bore v. Bangshidhar Buragohain [(1980) 4 SCC 336 : 1982 SCC (Tax) 143 : AIR 1980 SC 1524] in which this Court indicated as to when the High Court can interfere with the orders of quasi-judicial authority. This observation may be quoted which is as follows: (SCC pp. 339-40, para 16)

“16. While on facts the order of the Board under appeal is not impeccable, we must remember that under Article 226 of the Constitution, a finding of fact of a domestic tribunal cannot be interfered with. The High Court in the exercise of its special jurisdiction does not act as a court of appeal. It interferes only when there is a jurisdictional error apparent on the face of the record committed by the domestic tribunal. Such is not the case here. It is true that a finding based on no evidence or purely on surmises and conjectures or which is manifestly against the basic principles of natural justice, may be said to suffer from an error of law. In the instant case, the finding of the Board that the appellant does not possess the

necessary financial capacity, is largely a finding of fact. Under Rule 206(2) of the Assam Excise Rules, an applicant for settlement of a shop is required to give full information regarding his financial capacity in the tender. Such information must include the details of sources of finance, cash in hand, bank balance, security assets, etc. Then, such information is verified by the inquiry officer".

(ix) Ajmera Housing Corpn. v. CIT, [(2010) 8 SCC 739 : 2010 SCC OnLine SC 918], in which, it was held by the Hon'ble Supreme Court as under:

"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."

(x) Union of India v. Asahi India Safety Glass Ltd., [(2015) 11 SCC 451 : 2015 SCC OnLine SC 518], wherein, it was held as follows:

"14. From the aforesaid it becomes clear that the High Court has not interfered with the facts which were recorded by the Settlement Commission. On the contrary, the facts noted above remained undisputed. On those facts the High Court has simply stated the correct legal position where the Settlement Commission had gone wrong in law. Thus, the High Court has simply applied the correct principle of law on the admitted facts. This, according to us, was well within the powers of the High Court while exercising its jurisdiction under Article 226 of the Constitution. Such remand of the High Court has been held permissible in *Jyotendrasinhji v. S.I.Tripathi* [*Jyotendrasinhji v. S.I. Tripathi*, 1993 Supp (3) SCC 389 : (1993) 201 ITR 611] which was also concerning the powers of the Settlement Commission, albeit under Section 245-D(4) of the Income Tax Act. The principle of law remains the same and can be applied in case of orders passed by the Settlement Commission under the Central Excise Act as well."

(xi) 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 Division Bench of 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."

18. 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 as 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.

19. In the case before us, the applications have been rejected by an order under 245D(4) for the reasons that the appellants have failed to truly and fully disclose the particulars and that they have not co-operated with the commission. The Learned Senior Standing counsel for the revenue has contended that once there is no true and full disclosure in the application, the same has to be rejected and for that proposition, the following judgments have been relied upon.

(i) Ajmera Housing Corpn. v. CIT, [(2010) 8 SCC 739 : 2010 SCC OnLine SC 918], in which, it was held by the Hon'ble Supreme Court as follows:

"27. It is clear that disclosure of "full and true" particulars of undisclosed income and "the manner" in which such income had been derived are the prerequisites for a valid application under Section 245-C(1) of the Act. Additionally, the amount of income tax payable on such undisclosed income is to be computed and mentioned in the application. It needs little emphasis that Section 245-C(1) of the Act mandates "full and true" disclosure of the particulars of undisclosed income and "the manner" in which such income was derived and, therefore, unless the Settlement Commission records its satisfaction on this aspect, it will not have the jurisdiction to pass any order on the matter covered by the application."

(ii) ACE Investment Ltd v. Settlement Commission (2003) 264 ITR 571 (Mad), in which it was held as follows:

"10. This is more so, since the petitioners, having filed the application had no option even to withdraw the application in terms of s. 245C(3) of the Act. The

power of judicial review of this Court is not barred when the validity of an order of the Settlement Commission is questioned on the ground that the application itself is not maintainable and any decision on the application is also without jurisdiction. When, once it is held that an application filed for settlement of cases is not maintainable on the ground that the applicant has not made a true and full disclosure of the income, proceeding with such application and deciding the issue would be outside the power of the Settlement Commission, as the application itself is not in conformity with s. 245C(1) of the Act. Merely because the petitioners have participated in the proceedings, the petitioners are not prevented from questioning the jurisdictional issue that too on the well settled law by the apex Court. In this regard, it is to be noticed that the application was filed on 29th May, 1992. The same was admitted on 21st April, 1993. The judgment of the apex Court in Express Newspapers Ltd.'s case (supra) was delivered on 11th Jan., 1994. After the said judgment only the Commission has proceeded with the enquiry and passed the impugned order only on 19th Jan., 1995. Such an enquiry was beyond the power of the Commission as there was no other option for the Commission except to dismiss the application.

11. In that view of the matter, I find that the application of the company made under s. 245C(1) of the Act without making true and full disclosure of the income is not maintainable and the order of the Settlement Commission passed on such application is bad, illegal, void and unsustainable in the eye of law and this Court could interfere in the decision making process. Hence, the order of the first respondent Settlement Commission dt. 13th Jan., 1995, is liable to be set aside and accordingly the same is set aside. Consequently, the petitioners are entitled to proceed further with the appeal pending before the Tribunal filed against the order of the AO. The writ petition is allowed. No costs. Consequently, W.M.P. No. 10989 of 1995 is closed."

(iii) Rashmi Infrastructure Developers Ltd v. Income Tax Settlement Commission and others [(2017) 396 ITR 210 (Bom)], wherein, it was held as follows:

"11. It needs no repeating that relief under Article 226 of the Constitution of India is extraordinary and discretionary. It is a relief in equity and the writ granted is prerogative writ and not a matter of course. Therefore the obligation on the petitioner to act with

utmost good faith i.e. uberrimae fidei. Thus the petitioner must disclose all material facts even if not favourable to him. It is not open to the petitioner to selectively disclose facts and suppress some facts and yet seek extra ordinary remedy of a prerogative writ. As pointed out above, one of the heads of expenses claimed before the Commission for arriving at estimated expenses is the amount paid as "speed money. Thus it was a material fact. The degree of materiality is of no consequence and once the court comes to the view that the non-disclosure was deliberate and possibly made with a view to present a picture different from what existed before the Commission, this Court will not exercise its writ jurisdiction. Therefore, the petitioner has not come with clean hands. In the present case, we are of the view that there was suppression of facts in the petition which was material to the issue at hand. Therefore, we see no reason to entertain this petition on the above ground also."

20. There is no quarrel about the preposition that the failure to truly and fully disclose the particulars and the manner of derivation of the additional income is the primordial requisite for an application to be entertained. In the present case, the Learned Senior Counsel for the appellants has, referring to the applications, annexures and other particulars filed before the commission, contended that the appellants have truly and fully disclosed all the particulars within their knowledge and also the manner in which the additional income has been derived and that satisfies the requirements under Sections 245C and 245D of the Act. What constitutes true and full disclosure in the context of Chapter XIX-A is to be explored before we proceed further.

21. An assessee is entitled to approach the settlement Commission only when there is an undisclosed income that escaped assessment or that has not been disclosed in the returns. The very purpose and the circumstances under which the provisions were introduced has been traced in paragraph 11. The commissioner also for the purpose of furnishing his report, cannot deviate from the scheme of Chapter XIX-A and do an assessment. Therefore, it is completely unnecessary and beyond the scope of the commission to find fault with the assessee for not disclosing the transaction earlier in the returns, while deciding an application under Section 245D.

22. For the purpose of true and full disclosure, the assessee is bound to disclose all the primary facts within his knowledge and produce the documents in support of the same. Chapter XIX-A contemplates an order 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 relating to undisclosed income now disclosed before the commission, additional income and the manner in which the additional are derived 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 commissioner or the commission. Considering the nature of the scheme, that also is not the intention of the legislature. At this juncture, 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], which reads as follows:

"8. Before we proceed to consider the materials on record to see whether the appellant has succeeded in showing that the Income Tax Officer could have no reason, on the materials before him, to believe that there had been any omission to disclose material facts, as mentioned in the section, it is necessary to examine the precise scope of disclosure which the section demands. The words used are "omission or failure to disclose fully and truly all material facts necessary for his assessment for that year". It postulates a duty on every assessee to disclose fully and truly all material facts necessary for his assessment. What facts are material, and necessary for assessment will differ from case to case. In every assessment proceeding, the assessing authority will, for the purpose of computing or determining the proper tax due from an assessee, require to know all the facts which help him in coming to the correct conclusion. From the primary facts in his possession, whether on disclosure by the assessee, or discovered by him on the basis of the facts disclosed, or otherwise - the assessing authority has to draw inferences as regards certain other facts; and ultimately, from the primary facts and the further facts inferred from them, the authority has to draw the proper legal inferences, and ascertain on a correct interpretation of the taxing enactment, the proper tax leviable. Thus, when a question arises whether certain income received by an assessee is capital receipt, or revenue receipt, the assessing

authority has to find out what primary facts have been proved, what other facts can be inferred from them, and taking all these together, to decide what the legal inference should be.

9. There can be no doubt that the duty of disclosing all the primary facts relevant to the decision of the question before the assessing authority lies on the assessee. To meet a possible contention that when some account books or other evidence has been produced, there is no duty on the assessee to disclose further facts, which on due diligence, the Income Tax Officer might have discovered, the legislature has put in the Explanation, which has been set out above. In view of the Explanation, it will not be open to the assessee to say, for example - "I have produced the account books and the documents: You, the assessing officer examine them, and find out the facts necessary for your purpose: My duty is done with disclosing these account-books and the documents". His omission to bring to the assessing authority's attention these particular items in the account books, or the particular portions of the documents, which are relevant, amount to "omission to disclose fully and truly all material facts necessary for his assessment". Nor will he be able to contend successfully that by disclosing certain evidence, he should be deemed to have disclosed other evidence, which might have been discovered by the assessing authority if he had pursued investigation on the basis of what has been disclosed. The Explanation to the section, gives a quietus to all such contentions; and the position remains that so far as primary facts are concerned, it is the assessee's duty to disclose all of them - including particular entries in account books, particular portions of documents and documents, and other evidence, which could have been discovered by the assessing authority, from the documents and other evidence disclosed.

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 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?

12. It may be pointed out that the Explanation to the sub-section has nothing to do with "inferences" and deals only with the question whether primary material facts not disclosed could still be said to be constructively disclosed on the ground that with due diligence the Income Tax Officer could have discovered them from the facts actually disclosed. The Explanation has not the effect of enlarging the section, by casting a duty on the assessee to disclose "inferences" to draw the proper inferences being the duty imposed on the Income Tax Officer.

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."

23. The above proposition on disclosure was reiterated by the Apex Court in ITO v. Mewalal Dwarka Prasad, [(1989) 2 SCC 279 : 1989 SCC (Tax) 266], which reads as follows:

"8. With this conclusion the decision of the High Court would ordinarily have been reversed. As we have already stated, the assessee has also appealed against that part of the judgment of the High Court which was adverse to it. Mr Manchanda contended that in this case the regular assessment had been made for the assessment year 1965-66 on 22-1-1966. Notice under Section 148 of the Act was issued on 7-3-1973 i.e. more than seven years after assessment had been completed. The three amounts mentioned in the notice under Section 148 of the Act were found in the assessee's accounts by the Income Tax Officer when he examined the same in course of the assessment proceedings. He had called upon the assessee to substantiate the genuineness of the transactions and the assessee had produced material to support the same. The Income Tax Officer accepted the documents produced and treated all the three transactions to be genuine and on that footing completed the assessment. The primary facts were before the Income Tax Officer

at the time of the regular assessment and he called upon the assessee to explain to his satisfaction that the entries were genuine and on the basis of materials provided by the assessee satisfaction was reached. It was then open to the Income Tax Officer to make further probe before completing the assessment if he was of the view that the material provided by the assessee was not sufficient for him to be satisfied that the assessee's contention was correct. This Court in *Calcutta Discount Co. Ltd. v. ITO* [AIR 1961 SC 372 : (1961) 1 SCR 241 : (1961) 41 ITR 191] held that the expression "material facts" used in clause (a) referred only to primary facts and the duty of the assessee was confined to disclosure of primary facts and he had not to indicate what factual or legal inferences should properly be drawn from the primary facts. In the facts appearing on the record we are in agreement with Mr Manchanda that clause (a) of Section 147 did not apply to the facts of the case as the alleged escapement of income for assessment had not resulted from failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for that year. The notice in the instant case did not indicate whether it was a case covered by clause (a) or clause (b). On our finding that clause (a) was not invokable, the power under clause (b) could be called in aid under Section 149(1) (b) of the Act within four years from the end of the relevant assessment year. Admittedly, the notice has been issued beyond a period of four years and, therefore, the notice itself was beyond the time provided under the law. On the facts appearing in the case the High Court overlooked to consider this aspect of the matter. Since the proceedings before the High Court were under Article 226 of the Constitution and not by way of reference under the Act, the jurisdiction of this Court is not advisory and confined to the questions referred for opinion. On the facts we are satisfied that ends of justice require our intervention and we would accordingly allow the appeal of the assessee by holding that the notice under Section 148 of the Act cannot be sustained in law for the reasons indicated below."

24. Upon perusal of applications and the annexures, particularly Annexure 4, prima facie, the assessee has disclosed the fact that they had foreign bank accounts and the extent of money available in it. The assessee had also claimed that all available particulars are being furnished and also filed an affidavit dated 24.11.2017 as contemplated under Rule 8 wherein

they have explained that the funds in Standard Chartered Bank, Dubai with account no.2244535 was transferred to account number 18341724701, which amount has been disclosed in Annexure 4. At the cost of repetition, all materials placed before the Commission are to be considered as per Section 245D (5). If the primary and material facts are disclosed and later explanations are offered, the same cannot be treated as a new disclosure. Even then, a conjoint reading of Section 245D(5), Rule 8 and Rule 15 makes it clear, all disclosures and documents submitted during the course of enquiry, which do not alter the nature or the original claim in the application will have to be treated as true and full disclosure and hence the delay, if any, in filing any statement cannot be treated as non-cooperation. Similarly, the finding of the Commission, when the appellants have claimed that the applications were filed with the available documents and that certain documents are not available with them, unless it is proven with evidence that there has been additional income and that the same has been deliberately suppressed, the conduct cannot be termed as non-cooperation. It is only when the assessee fails to take any step on account of his deliberate intention to withhold the information, such a conduct can be termed as non-cooperation. Be that as it may, we are not going deeper into factual aspects at this stage and hence, we are not discussing the other judgments relied upon by the counsel for the respondents regarding foreign exchange fluctuation and trade receipts. We disagree with the casual finding that the assessee has filed returns without disclosing the income deposited in foreign banks and went on to hold that it is the duty of the assessee to disclose the income as because the very purpose of the scheme for settlement is only to disclose the undisclosed income. The Learned Judge, as rightly contended by the counsel for the Appellants, ought to have gone into the merits of the contentions advanced on behalf of the appellants and rendered specific findings, more particularly when allegations of principles of natural justice and violation of the procedures, are 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. However, the learned Judge has merely reproduced the order of the Settlement Commission and recorded that the conditions stipulated have not been satisfied, without considering whether the opportunities as contemplated under the provisions, have been granted in the light of the specific contentions.

25. At this stage, we are concerned with the legality of the procedure. The applications were originally filed on 10.07.2015. The order of remand was passed by this Court on 21.06.2016. The order under Section 245D(3) was passed on 11.05.2017. The report ought to have been filed with 90 days or within such extended period. No records are produced before this

Court to show that the time to file the report has been extended by the commission. By the impugned order, it is evident that the proceedings were held on 06.10.2017 and 23.11.2017. The report of the commissioner was produced on 23.11.2017 and the appellants were directed to submit their reply on or before 27.11.2017 and the final order was passed on 06.12.2017. It is the case of the appellants that only one and half working days was granted despite there being time till 31.03.2018 to the commission to pass final orders. On the other hand, it has been contended that more than 3 days were granted. It is relevant to note that the report under 245D(3) had to be filed within 90 days. However, the same has not been filed in time and the same was also taken on record. In the present case, even if we go by the date on which the earlier order was set aside by this Court remanding back the application to be decided afresh, the time to pass orders would expire on 31.12.2017. The commission had sufficient time to grant a reasonable opportunity after the report was served on 23.11.2017. There are no provision in the rules by which any time is fixed for the assessee to submit his objections to the report under section 245D(3). When no time is prescribed a reasonable time must be granted to the assessee. To a report under Rule 9, the assessee is granted 15 days' time under Rule 9A to submit his objections, which in the opinion of this court is a reasonable period. The period of 3 days granted by the commission is not a reasonable period, more particularly when the commissioner has been allowed to file a report after the statutory period. Further, as per Section 245D (4), it is mandatory grant a personal hearing after receipt of the report under sub-section 3, which in the present case was not granted. Hence, the procedure contemplated under the Act is violated. The judgment relied upon by the Learned Senior Counsel for the appellants in Automotive tyre manufacturers Association v. Designated Authority and others, [(2011) 2 SCC 258] (supra) is squarely applicable. When the provisions lay down that a particular procedure is to be followed, there cannot be any deviation from the same. It is needless to state that the date for personal hearing is to be fixed after the objections are filed by the assessee. It will be useful to refer to the judgement of the Apex Court in Nareshbhai Bhagubhai v. Union of India, [(2019) 15 SCC 1 : 2019 SCC OnLine SC 1027] wherein the settled law regarding mandatory procedures to be followed has been reiterated in the following paragraphs:

"30.The mandate of the law is that the order on the objections is required to be passed by the competent authority "after the personal hearing" is granted. The respondents had filed an affidavit dated 17-7-2018 before the High Court wherein it was stated that the reply given vide letter dated 15-7-2011 does not indicate the decision/order/predetermination of the

competent authority. The competent authority had informed the objectors to remain present with all material documents at the time of personal hearing, the date of which would be notified later. At the time of arguments before this Court, it was sought to be contended by the Additional Solicitor General for the Union of India that the letter dated 15-7-2011 was an order passed under Section 20-D(2) of the Act. We find that the stand taken by the respondents before the High Court and this Court is completely contradictory, and does not commend acceptance.

31. In any event, the order under Section 20-D(2) cannot be passed prior to the personal hearing. The mandate of the law is that the order must be passed "after" the grant of personal hearing, and after any further enquiry is made by the competent authority. The whole process of granting a personal hearing would be reduced to an empty formality and a farcical exercise, if the order on the objections precedes the grant of personal hearing. This would be clearly contrary to the provisions of Section 20-D(2) of the Act. It is well settled that where a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. [Nazir Ahmad v. King Emperor, 1936 SCC OnLine PC 41 : (1935-36) 63 IA 372, Taylor v. Taylor, (1875) LR 1 Ch D 426 followed in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh, AIR 1954 SC 322 : 1954 Cri LJ 910; State of U.P. v. Singhara Singh, AIR 1964 SC 358 : (1964) 1 Cri LJ 263 (2); J&K Housing Board v. Sanjay Krishan Kaul, (2011) 10 SCC 714 : (2012) 3 SCC (Civ) 672; Kunwar Pal Singh v. State of U.P., (2007) 5 SCC 85.] The provisions of an expropriatory legislation, which compulsorily deprive a person of his right to property without his consent, must be strictly construed. [Jilubhai Nanbhai Khachar v. State of Gujarat, 1995 Supp (1) SCC 596; See also Khub Chand v. State of Rajasthan, AIR 1967 SC 1074; CCE v. Orient Fabrics (P) Ltd., (2004) 1 SCC 597.] The Railways Act, 1989 being an expropriatory legislation, its provisions have to be strictly construed. [Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd., (2007) 8 SCC 705]."

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 as prescribed under the Income Tax Act and hence, the order is liable to be set aside and the matter is remanded back for fresh consideration after giving opportunity to both the parties.

26. 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 applications before the settlement commission were filed on 10.07.2015. The order of remand was passed by this Court on 21.06.2016. The orders will have to be passed within 18 months if the applications are not declared as invalid. The principal commissioner submitted his additional report dated 22.11.2017 on 23.11.2017. The applications were rejected on 06.12.2017. The writ petitions were filed before this Court on 14.12.2017 and the same were dismissed on 03.08.2021. In the meantime, by Finance Act 2021, Section 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.

27. Section 245A(eb) defined the word "Pending applications" defined 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."

28. 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.

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

29. 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 till 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 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.

2. Meanwhile, in order to avoid genuine hardship to number of taxpayers 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 assesseees 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."

30. 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 order of the Settlement Commission rejecting the applications has been passed on 06.12.2017, the challenge to the same was accepted by this Court. The writ petitions were pending, when the Settlement Commission was abolished and Interim Board was brought into operation. 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 applications filed by the Appellants

would have to be treated as pending applications and appropriate orders are to be passed after giving the appellants sufficient opportunity and by considering all the materials placed by them. The Interim Board shall dispose of the applications within a period of six weeks from the date of receipt of the order, on merits and in accordance with law, after giving sufficient opportunity to the appellants and the respondents.

31. In view of the above, the orders impugned in the writ petitions as well as in the present writ appeals, are set aside. Both the appeals are accordingly, allowed. There will be no order as to costs. The connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar (CS)

//True copy//

Sub Assistant Registrar

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To

1. Income Tax Settlement Commission
Additional Bench, Chennai
Ministry of Finance
Department of Revenue
488-489, Anna Salai
Chennai - 600 035
2. Deputy Commissioner of Income Tax
Central Circle 1 (1)
Investigation Wing, Room No.320
New No.46, Mahatma Gandhi Road
Chennai - 600 034

+2ccs to Mr.A.P.Srinivas, Advocate SR.No.39775

WA Nos. 2629 & 2632 of 2021

RGN(CO)
GMY(15/07/2022)