



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 07 May 2024
Judgment pronounced on: 03 July 2024

+ W.P.(C) 10864/2019
HARSH DHANUKA HUF Petitioner
Through: Mr. Ajay Vohra, Sr. Adv. with
Ms. Kavita Jha, Mr. Vaibhav
Kulkarni and Mr. Udit Naresh,
Adv.
versus

PRINCIPAL COMMISSIONER OF INCOME- TAX & ORS.
..... Respondents
Through: Mr. Puneet Rai, Sr.SC with Mr.
Ashvini Kumar and Mr.
Rishabh Nangia, Advocates.

+ W.P.(C) 10865/2019
UMA DHANUKA Petitioner
Through: Mr. Ajay Vohra, Sr. Adv. with
Ms. Kavita Jha, Mr. Vaibhav
Kulkarni and Mr. Udit Naresh,
Adv.
versus

PRINCIPAL COMMISSIONER OF INCOME-TAX & ORS.
..... Respondents
Through: Mr. Puneet Rai, Sr.SC with Mr.
Ashvini Kumar and Mr.
Rishabh Nangia, Advocates.

+ W.P.(C) 10866/2019
HARSH DHANUKA Petitioner
Through: Mr. Ajay Vohra, Sr. Adv. with
Ms. Kavita Jha, Mr. Vaibhav
Kulkarni and Mr. Udit Naresh,
Adv.



versus

PRINCIPAL COMMISSIONER OF INCOME & ORS.

..... Respondents

Through: Mr. Puneet Rai, Sr.SC with Mr.
Ashvini Kumar and Mr.
Rishabh Nangia, Advocates.

+ W.P.(C) 10867/2019
AKANGSHA DHANUKA

..... Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with
Ms. Kavita Jha, Mr. Vaibhav
Kulkarni and Mr. Udit Naresh,
Advs.

versus

PRINCIPAL COMMISSIONER OF INCOME-TAX & ORS.

..... Respondents

Through: Mr. Puneet Rai, Sr.SC with Mr.
Ashvini Kumar and Mr.
Rishabh Nangia, Advocates.

+ W.P.(C) 10869/2019
MEGHA DHANUKA

..... Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with
Ms. Kavita Jha, Mr. Vaibhav
Kulkarni and Mr. Udit Naresh,
Advs.

versus

PRINCIPAL COMMISSIONER OF INCOME-TAX & ORS.

..... Respondent

Through: Mr. Puneet Rai, Sr.SC with Mr.
Ashvini Kumar and Mr.
Rishabh Nangia, Advocates.

+ W.P.(C) 10870/2019
URMILA DHANUKA

..... Petitioner



Through: Mr. Ajay Vohra, Sr. Adv. with
Ms. Kavita Jha, Mr. Vaibhav
Kulkarni and Mr. Udit Naresh,
Adv.

versus

PRINCIPAL COMMISSIONER OF INCOME-TAX, & ORS.

..... Respondents

Through: Mr. Puneet Rai, Sr.SC with Mr.
Ashvini Kumar and Mr.
Rishabh Nangia, Advocates.

+ W.P.(C) 10871/2019
RAHUL DHANUKA HUF

..... Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with
Ms. Kavita Jha, Mr. Vaibhav
Kulkarni and Mr. Udit Naresh,
Adv.

versus

PRINCIPAL COMMISSIONER OF INCOME-TAX-8 & ORS.

..... Respondents

Through: Mr. Puneet Rai, Sr.SC with Mr.
Ashvini Kumar and Mr.
Rishabh Nangia, Advocates.

+ W.P.(C) 10872/2019
MADHURI DHANUKA

..... Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with
Ms. Kavita Jha, Mr. Vaibhav
Kulkarni and Mr. Udit Naresh,
Adv.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX-8 & ORS.

..... Respondents

Through: Mr. Puneet Rai, Sr.SC with Mr.
Ashvini Kumar and Mr.
Rishabh Nangia, Advocates.

+ W.P.(C) 10891/2019



MRIDUL DHANUKA HUF

..... Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with
Ms. Kavita Jha, Mr. Vaibhav
Kulkarni and Mr. Udit Naresh,
Adv.

versus

PRINCIPAL COMMISSIONER OF INCOME-TAX, & ORS.

..... Respondents

Through: Mr. Puneet Rai, Sr.SC with Mr.
Ashvini Kumar and Mr.
Rishabh Nangia, Advocates.

+ W.P.(C) 10892/2019

MAHENDRA KUMAR DHANUKA HUF Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with
Ms. Kavita Jha, Mr. Vaibhav
Kulkarni and Mr. Udit Naresh,
Adv.

versus

PRINCIPAL COMMISSIONER OF INCOME & ORS.

..... Respondents

Through: Mr. Puneet Rai, Sr.SC with Mr.
Ashvini Kumar and Mr.
Rishabh Nangia, Advocates.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR
KAURAV**

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J.

1. The present batch of writ petitions have been filed by the individuals of Dhanuka family including HUFs, assailing the common order of the Income Tax Settlement Commission ["ITSC"] dated



26.06.2019. These petitions raise a common question of law and hence, they are being decided by this common judgment. For the sake of brevity, the facts are being extracted from W.P. (C) No.10870/2019.

2. The dispute in question appears to have been triggered with the initiation of search under Section 132 of the Income Tax Act, 1961 [“**Act**”] in the case of the petitioner and other family members. In pursuance of the same, proceedings under Section 153/147 of the Act were initiated for the Assessment Years [“**AYs**”] 2010-11 to 2015-16. While the assessment proceedings were carried out by the Revenue, the petitioner approached the ITSC with the settlement application dated 26.12.2017 disclosing additional income of Rs.10,36,36,417/-. In the said application, it was admitted by the petitioner that it entered into certain off-market transactions commonly referred to as Dabba trading, through a family friend namely, Raj Kumar Kedia and the same was facilitated by a family member namely, M.K. Dhanuka, which resulted in additional income beyond the regular books of accounts.

3. On 13.02.2018, the application filed by the petitioner was admitted by the ITSC *vide* order passed under Section 245D(2C) of the Act. During the course of settlement proceedings, respondent no.1 submitted a report under Rule 9 of the Income Tax Settlement Commission (Procedure) Rules, 1997 and consequently, a reply thereto was also furnished by the petitioner.

4. Subsequently, pursuant to an order dated 25.04.2019 passed by the ITSC directing respondent no.1 to conduct an enquiry and furnish a report as per Section 245D(3) of the Act, respondent no. 1 examined



M.K. Dhanuka and Raj Kumar Kedia by issuing summons under Section 131 of the Act. Upon conducting investigation and recording statements of the aforesaid persons, respondent no.1 submitted a report on 07.06.2019 alleging that the following commission and margin money was paid to Raj Kumar Kedia by the members of Dhanuka family:-

- (i) commission for facilitating transaction of long-term capital gains;
- (ii) margin money on purchase of off-market shares; and
- (iii) commission on total turnover of the off-market transactions

5. Thereafter, on 26.06.2019, the ITSC passed an order under Section 254D(4) of the Act accepting the disclosure of additional income of Rs.10,36,36,417/- and further making an addition of Rs.1,45,09,098/- on the pretext of commission and margin money alleged to have been paid to Raj Kumar Kedia for carrying out off-market transactions. It is this part of the order of addition of Rs.1,45,09,098/- which is sought to be assailed by the petitioner in the instant batch of petitions.

6. Mr. Ajay Vohra, learned senior counsel appearing for the petitioner, submitted that the ITSC has erred in making addition on account of commission and margin money, inasmuch as, it has failed to strictly adhere to the provisions of the Act. According to him, the mandate of law envisaged in Chapter XIX-A of the Act does not confer an unbridled authority upon the ITSC to make any addition which is not permissible as per the regular assessment under the normal provisions of the Act.



7. He emphatically asserted that the aforesaid addition ought not to have been made by the ITSC since the AYs under consideration were unabated in terms of Section 153A of the Act and no incriminating material was found *qua* the said addition. He, therefore, contended that any addition for the relevant AYs could have been made only on the basis of any incriminating material discovered during the course of search, which is not the case at hand.

8. While inviting our attention to the statements of M.K. Dhanuka and Raj Kumar Kedia, Mr. Vohra contended that the said persons had explicitly denied any such payment of margin or commission money in lieu of off-market transactions disclosed before the ITAT. According to him, the additions have been made on the basis of a general statement of Raj Kumar Kedia which does not specifically refer to any commission received from any member of Dhanuka family. He additionally submitted that the Dhanuka family had taken a consistent stand that they had long standing family relations with Raj Kumar Kedia and hence, he did not charge any commission for facilitating the transactions.

9. He also referred to the definition of the expression 'case' as per Section 245A(b) of the Act to submit that the proceedings before the ITSC is for settlement of a case which signifies any proceeding for assessment pending before an Assessing Officer ["AO"]. He relied upon the decision of the Constitution Bench of the Supreme Court in the case of **CIT v. Anjum M.H. Ghaswala**, [(2002) 1 SCC 633] to submit that the ITSC cannot make any order which is in conflict with the mandatory provisions of the Act. He, therefore, submitted that since the addition has been made merely on the basis of presumptions



and surmises, the same ought to be deleted in the absence of any evidence which would prove otherwise.

10. Countering the aforementioned submissions, Mr. Puneet Rai, learned senior standing counsel for the Revenue, submitted that there is no infirmity in the order of the ITAT as the petitioner had failed to make a true and full disclosure of additional income before the ITSC pertaining to commission and margin money on off-market transactions.

11. He contended that on 13.06.2014, a separate search was conducted at the premises of Raj Kumar Kedia, whereby, while identifying Dhanuka Agritech Group promoters as the beneficiary of bogus long term capital gains, he had admitted in his statement recorded under Section 132(4) of the Act that commission of 5 to 6 percent in cash was received by him. Mr. Rai further asserted that the said fact has been duly recorded in the impugned order of the ITSC. He also drew our attention to the statement of Ghansyam Das Gupta, consultant in Dhanuka Agritech Ltd., which was recorded on 31.07.2015 to submit that the factum of commission being paid to Raj Kumar Kedia has been sufficiently corroborated by Ghansyam Das Gupta.

12. According to Mr. Rai, a perusal of Section 245BA of the Act would suggest that the ITSC is required to consider the material brought on record before passing the order under Section 245D(4) of the Act. He also submitted that the remedy under Section 245C is only concessional in nature and once an assessee adopts for such option, it is bound by the provisions of Chapter XIX-A of the Act. He has relied upon the decision of the Supreme Court in the case of **CIT v. Om**



Prakash Mittal [(2005) 2 SCC 751] and this Court's decision in **Agson Global Pvt. Ltd. v. ITSC** [2016 SCC OnLine Del 49] to substantiate his arguments.

13. We have heard the learned counsels appearing for the parties and perused the record.

14. The principal issue involved in the present case pertains to whether the addition made by the ITSC on account of commission and margin money was *dehors* the provisions of the Act and the mandate of law prescribed in Chapter XIX-A therein?

15. In order to appreciate the rival submissions addressed at the Bar, it is germane to traverse through the exposition of law with respect to authority of the ITSC and the procedure envisaged in Chapter XIX-A of the Act to decide an application for settlement filed by an assessee. Recently, in the case of **PCIT v. Pankaj Buildwell & Group** [W.P.(C) 8103/2015] decided on 10.04.2024, we had an occasion to extensively deal with the said provisions and the discussion encapsulated therein is reproduced herein for reference:-

“Legislative mandate enshrined under Chapter XIX-A of the Act

34. The structure outlined in Chapter XIX-A of the Act was introduced by the Taxation Laws (Amendment) Act, 1975. This chapter aims to facilitate prompt and harmonious resolution of cases, ensuring the timely collection of taxes owed to the Income Tax Department.

34.1 Further, Chapter XIX-A also allows an assessee to submit an application under Section 245C (1) of the Act, provided it includes full and true disclosure of its income, the method by which it was obtained, and the additional amount of income tax due on said income. The relevant extract of Section 245C of the Act is reproduced herein below:-



“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....”

34.2 The settlement application under the aforesaid Section necessitates a thorough declaration of any additional income by the applicant. Through Form No.34B, extensive details are requested and the applicant is required to sign a verification form affirming the completeness and accuracy of the provided information.

34.3 Section 245D of the Act delineates the procedure to be followed by the ITSC, upon receiving an application for settlement under Section 245C of the Act. Pursuant to sub-Section (1) of Section 245C of the Act, the ITSC is empowered to solicit a report from the CIT. Based on this report and considering the nature and circumstances of the case or the complexity of the investigation involved, the ITSC may, after conducting a preliminary enquiry, decide whether to allow the settlement application or reject it.

34.4 Furthermore, sub-Section (4) of Section 245D of the Act confers upon the ITSC an authority to issue an order, subsequent to examining the records and the report provided by the CIT. This occurs after hearing both the applicant and the CIT, or their authorized representatives, and after reviewing any additional evidence presented before it. The relevant part of Section 245D (4) of the Act is extracted herein below:

“245-D. Procedure on receipt of an application under Section 245-C.

4. After examination of the records and the report of the [Principal Commissioner or Commissioner], if any, received under—

- (i) sub-section (2-B) 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].”

34.5 Such orders may be issued by the ITSC upon arriving at the satisfaction that the applicant has cooperated in the proceedings and has provided a complete and accurate disclosure of its income along with the sources therein.”

16. It is discernible from the discussion reproduced hereinabove that once application for settlement is accepted by the ITSC, it is bestowed with an authority to issue an order upon examination of records and the report provided by the CIT. As per Section 245D(4) of the Act, the ITSC shall also evaluate any additional evidence brought to its notice in accordance with the provisions of the Act before passing an order on *firstly*, the matters covered by the application and *secondly*, any other matter which does not find place in the application but is referred to in the report of the Principal Commissioner or Commissioner.

17. Thus, a plain understanding of the aforementioned provisions would evince that the power of the ITSC to pass an order is not limited only to the aspects covered by the application for settlement preferred by the assessee, rather the ITSC is empowered to render a decision on such issues which find mention in the report of the Commissioner or Principal Commissioner. On this aspect, it is apposite to refer to a decision of this Court dated 09.04.2024 in the case of **Pr. Commissioner Of I Tax (Central)-II v. M/S Trent East West LPG Bottling Ltd.** [W.P.(C) 7444/2016], wherein, while adopting a similar



view, it had been held that the ITSC has the authority to consider all aspects which arise from the application in order to extend finality to all the disputes. The relevant paragraphs of the said decision are reproduced as under:-

“20. The ITSC apart from exercising its adjudicatory function upon the application as made, is also empowered by law to reopen any proceedings connected with the case pending before it and which may have been completed. If the ITSC be of the opinion that for the proper disposal of a case pending before it, it would be expedient to reopen any proceedings, it may move forward in that direction with the concurrence of the applicant. This power stands placed in its hands by virtue of Section 245E of the Act.

21. Section 245F of the Act provides that in addition to the powers specifically conferred on the Settlement Commission and which are set out in Chapter XIX-A, the Settlement Commission would be entitled to exercise all powers that are otherwise vested in an “Income Tax Authority” under the Act. An order of settlement once rendered is conferred finality by virtue of Section 245I of the Act.

22. As would be manifest from the discussion above, the ITSC is conferred wide powers by virtue of the provisions enshrined in Chapter XIX-A to examine and evaluate all aspects relating to an application for settlement that may come to be made before it. By virtue of the statutory powers so conferred, the ITSC’s jurisdiction to examine and inquire is not confined merely to the disclosures that an applicant may choose to make. This is evident from the statutory provisions empowering and enabling it to call for reports from the Principal Commissioner/Commissioner as also the framing of directions for further inquiry and investigation being undertaken. Chapter XIX-A in our considered opinion thus enables the ITSC to holistically examine all aspects that may be said to arise from the application submitted for its consideration and enabling it to accord a full and complete closure to all disputes.”

18. A Coordinate Bench of this Court in *Agson Global (supra)* struck a distinction between regular assessment and order passed by the ITSC. It has been held that the ITSC does not wield an authority to engage itself in the process of regular assessment, rather it passes an order on the basis of settlement between parties containing the terms



of settlement. The relevant paragraphs of the said decision are reproduced hereinafter as:-

“11. Section 245F of the said Act calls for closer scrutiny as that is the provision which has been invoked by the Settlement Commission as also the learned counsel for the Revenue for supporting the order with regard to the conducting of a special audit. Sub-section (1) of section 245F stipulates that in addition to the powers conferred on the Settlement Commission under Chapter XIX-A, it shall have all the powers which are vested in an income-tax authority under the said Act. But, in our view, this has to be read in the context of and the scope of settlement proceedings. **It does not entail that the powers of regular assessment which are vested in an Income-tax authority can be exercised by the Settlement Commission. What we mean to say is that the Settlement Commission does not engage itself in the process of assessment and cannot make an assessment order. The order that the Settlement Commission makes under section 245D(4) is not in the nature of an assessment but by way of a settlement and contains the terms of settlement.** Thus, we reiterate that the powers which are vested in an Income-tax authority and could be exercised by the Settlement Commission are such which have a nexus with the settlement proceedings which does not include, in our view, the making of an assessment under the said Act.

12. Coming now to sub-section (2) of section 245F of the said Act read with the first proviso thereto, it is thus clear that where an application has been made under section 245C on or after the 1st day of June, 2007 (which is the case at hand), 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 section 245D, exclusive jurisdiction to exercise the powers and perform the functions of an Income-tax authority under the said Act in relation to the case from the date on which the application was made. In our view, the exclusivity of jurisdiction which is contemplated by the said provision is that once an application for settlement is made before the Settlement Commission, no Income-tax authority would have jurisdiction to deal with the case. **It does not mean that the Settlement Commission from that date steps into the shoes of the Income-tax authority who was hitherto dealing with the case.** To be clear, let us take an example. Let us assume that assessment proceedings are underway before an Assessing Officer. At that point of time, the assessee files a settlement application before the Settlement Commission. In view of the provisions of section 245F, from that date onwards the Settlement Commission would have exclusive jurisdiction to



exercise the powers and perform the functions of an Income-tax authority under the said Act in relation to the case. Does it mean that the Settlement Commission could continue with the assessment proceedings which were before the Assessing Officer and pass an assessment order under section 143(3) by way of regular assessment as an Assessing Officer would have done ? We do not think so. **The Settlement Commission does not carry out the function of assessment and does not make an assessment order. It settles the case in terms of the provisions contained in Chapter XIX-A of the said Act.** Therefore, the exclusivity of jurisdiction stipulated in section 245F entails two things : (1) that from the point of time of filing of the settlement application, no Income-tax authority can exercise jurisdiction over the case and it is only the Settlement Commission which could exercise such jurisdiction ; (2) the powers and functions of the Income-tax authority which can exclusively be exercised by the Settlement Commission must have a nexus with the settlement proceedings before it.”

19. The decision in *Agson Global (supra)* was followed by another decision of this Court in **Tahiliani Design P. Ltd. v. Joint CIT** [2021 SCC OnLine Del 3518], where, while recognizing that the power vested in the ITSC is of wide amplitude, it was held as under:-

“12. Though undoubtedly (a) the application under section 245C is to have a case pending assessment settled and the Settlement Commission in exercise of powers under section 245D(4) is to pass orders as it thinks fit on the matters "covered by the application" before it and which application of the petitioner in the present case admittedly does not cover the notice dated September 30, 2019 and in pursuance to which penalty under section 269ST has been levied on the petitioner ; and (b) the argument of the counsel for the respondent that in pursuance to such an application the Settlement Commission in exercise of powers under section 245F and 245H has no case of violation of section 269ST before it and thus does not have exclusive jurisdiction in the matter of levy of penalty under section 269ST and/or to grant immunity with respect thereto, is attractive but on further consideration we find ourselves unable to accept the same for the reasons :

(A) Though the petitioner in the present case, in its application to the Settlement Commission has brought only the case pursuant to notices under section 153A admittedly issued to it, but the powers of the Settlement Commission under section 245D(4) to pass such order as it thinks fit are



not confined to matters covered by the application but also extend to "any other matter relating to the case not covered by the application, but referred to in the report of the Principal Commissioner or Commissioner" presented to the Settlement Commission under section 245D(3) of the Act.

(B) We have thus enquired from the counsel, whether the Principal Commissioner/Commissioner, in the present case, in response to the application of the petitioner to the Settlement Commission, has submitted any report and if so, whether in the said report the aforesaid aspect of violation of section 269ST of the Act has been reported ; if it is so, the Settlement Commission would have jurisdiction to pass orders with respect to violation alleged of section 269ST also. However neither counsel has instructions on the said aspect.

(C) It is not deemed necessary to adjourn the hearing to enable counsel to take instructions on the aforesaid aspect, because the powers of the Settlement Commission under section 245D(4) also extend to "examining such further evidence as may be placed before it or obtained by it" and the Settlement Commission in the present case is still seized of the matter and would be within its rights to, if so deems apposite, also deal with the aspect of violation of section 269ST of the Act and either to grant exemption from penalty therefor or to pass such other order as it thinks fit in relation thereto as well and it is felt that the said power and jurisdiction of the Settlement Commission should not be permitted to be interdicted by the impugned order.

(D) In this context we may also notice that the notices under section 153A as well as under section 271DA of violation of section 269ST, both have their origin in the search, seizure and survey conducted qua the petitioner, as evident from a bare reading of the notice under section 271DA referred to hereinabove by us for this reason. Merit is thus found in the contention of the counsel for the petitioner that both are part of the same case.

(E) The counsel for the respondent, on enquiry fairly states that if the violation of 269ST of the Act is detected as a result of a search and seizure operation, as it is in the present case, then it is open to an applicant before the Settlement Commission to also include in the application, the violation of section 269ST of the Act and to seek settlement qua that also.



(F) A co-ordinate Bench of this court in *Agson Global Pvt. Ltd. v. ITSC* [2016] 380 ITR 342 (Delhi) held that the powers and functions of an Income-tax authority which are to be exclusively exercised by the Settlement Commission must be in the context of and have a nexus with the settlement proceedings. We respectfully concur. The penalty proceedings initiated against the petitioner, as evident from the notice dated September 30, 2019, were in the context of and had a nexus with the search, seizure and survey carried out qua the petitioner and pursuant whereunto notices under section 153A were also issued to the petitioner and in which context the petitioner had approached the Settlement Commission.

(G) Though undoubtedly section 245A(b) while defining "case" refers to a proceeding for assessment pending before an Assessing Officer only and therefrom it can follow that penalties and prosecutions referred to in section 245F and section 245H are with respect to assessment of undisclosed income only, but (i) section 245F vests exclusive jurisdiction in the Settlement Commission, to exercise the powers and perform the functions "of an Income-tax authority under this Act in relation to the case" ; and (ii) section 245H vests the Settlement Commission with the power to grant immunity from "imposition of any penalty under this Act with respect to the case covered by the settlement". The words "of an Income-tax authority under this Act in relation to the case" and "immunity from imposition of any penalty under this Act with respect to the case covered by the settlement" are without any limitation of imposition of penalty and immunity with respect thereto only in the matter of undisclosed income and in our view would cover also penalties under other provisions of the Act, detection whereof has the same origin as the origin of undisclosed income.

(H) Not only so, the words "in relation to the case" and "with respect to the case" used in the aforesaid provisions, are words of wide amplitude and which, in our opinion, in the facts of the present case may allow the Settlement Commission to, notwithstanding the petitioner having not expressly referred to the notice dated September 30, 2019 and proceedings for violation of section 269ST pending against it in its application, pass such orders as it may think fit in relation/with respect thereto and the said powers of the Settlement Commission cannot be permitted to be interdicted by the impugned order. We reiterate that the



proceedings of violation of section 269ST, as per the notice dated September 30, 2019, are a result of what was found in the search and survey qua the petitioner and are capable of being treated as part and parcel of the case taken by the petitioner by way of application to the Settlement Commission.

(I) The Supreme Court, in Doypack Systems Pvt. Ltd. v. Union of India (1988) 2 SCC 299 held that the expression "in relation to" has been interpreted to be the words of widest amplitude and is in the nature of a deeming provision and is intended to enlarge the meaning of a particular word or to include matters which otherwise may or may not fall within the main provisions. Again, in Thyssen StahlunionGmbh v. Steel Authority of India Ltd. (1999) 9 SCC 334 it was held that the phrase "in relation to arbitral proceedings" cannot be given a narrow meaning to mean only pendency of the arbitration proceedings before the arbitrator ; it would cover not only proceedings pending before the arbitrator but also proceedings before the court and any proceedings which are required to be taken under the old Act for award becoming decree and also appeal arising thereunder ; if narrow meaning of the phrase "in relation to arbitral proceedings" is to be accepted, it is likely to create great deal of confusion with regard to the matters where the award is made under the old Act. **Applying the said law and reasoning, we hold that if we were to interpret the words "in relation to" and "with respect to" narrowly, the same also would not only cause confusion as to prosecution and penalty under which provisions of the Act is the subject matter of settlement proceedings and which provisions not and the same is also likely to negate the objective and purpose for introduction of Chapter XIX-A in the Act and of settlement of cases.** The said view has been followed in Tamil Nadu Kalyana Mandapam Association v. Union of India [2004] 267 ITR 9 (SC) ; (2004) 5 SCC 632, National Textile Corporation (MN) Ltd. v. Durga Trading Company (2015) 12 SCC 558 and Maxopp Investment Ltd. v. CIT [2018] 402 ITR 640 (SC) ; (2018) 15 SCC 523."

20. Further, in the case of *Om Prakash Mittal (supra)*, it was noted by a three-Judges Bench of the Supreme Court that Section 245-D is couched in language which would suggest that the ITSC has the power to pass an order and not to carry out an assessment. While



accentuating the fact that the ITSC exercises a plenary jurisdiction, the Supreme Court has held 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 application 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.**”

21. In **Canara Jewellers v. Settlement Commission and Anr.** [2009 SCC OnLine Mad 2905], the Division Bench of the Madras High Court reiterated that the power conferred in Chapter XIX-A of the Act only provides for procedure of settlement of application and not for reassessment of tax for a particular year which rests upon the assessing authority. Paragraph no.11 of the said decision reads as under:-

“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.”



22. An upshot of the aforementioned discussion would lead us to conclude that the settlement provision is an enabling provision to resolve the disputes between the parties based upon a mutual consensus. However, in the said process, the ITSC cannot usurp the original power of the AO to make an assessment strictly according to the provisions of the Act as the same would be contrary to the pith and substance of the scheme of the Act to settle the disputes. In essence, the primary objective of the incorporation of the settlement provisions is to entrust upon ITSC the mandate to compromise with the errant taxpayers, which is strikingly different from the power of regular assessment employed by the AO in order to put an end to the protracted litigations.

23. Referring to the facts of the present case, the main plank of the argument advanced by Mr. Vohra rests on the premise that the addition made by the ITSC on account of commission and margin money is unsustainable since there was allegedly no incriminating material which would warrant such addition. It was his case that by making such an addition, the ITSC has acted in conflict with the provisions of the Act, which is not contemplated in the settlement provisions enshrined in Chapter XIX-A of the Act.

24. It is, therefore, significant to refer to the findings of the ITSC *qua* addition to the tune of Rs.1,45,09,098/-, which reads as under:-

“7.4 Commission's Decision:-

We have considered the facts of the case. **We note that Sh. R.K. Kedia in his statement recorded u/s 132(4) of the Act on 13.06.2014, at the time of search at his premises, had specifically identified DhanukaAgritech Group promoters as the beneficiary of LTCG accommodation entries. He had also stated that commission of 5-6% in cash was received by him on the net bogus pre arrange LTCG provided to the beneficiary. Out of this, 4 to 4.25% was paid by him to the operator and**



approximately 2% was earned by him, out of which expenditure was made for transfer of cash. Thus the argument that Sh. Kedia was well known to the Applicant and therefore could not have charged commission is not tenable. As mentioned above, the commission amount received by him was utilized for meeting other expenses; which would have been payable by him even assuming that he had not taken commission from the Applicant. Obviously, Sh. Kedia would not have incurred expenditure out of his own pocket for the purpose of providing accommodation entry to the Applicant. **We also note that in a statement of Sh. G.D. Gupta, consultant in Dhanuka Agritech Ltd . recorded on 31.07.2015, he has categorically stated in response to question No. 11 that Sh. Kedia used to charge commission of around 5% on the transactions of Dhanuka Group which was paid to him in cash.** Therefore, we uphold the contention of the Department that commission at the rate of 6% of the quantum of accommodation entry obtained should be additionally brought to tax, over and above the amount disclosed in the Application in the year in which the accommodation entry was obtained.”

25. A perusal of the facts of the instant case would also show that the ITSC has reached the conclusion to add margin and commission money on the basis of the report submitted in accordance with Section 245D(3) of the Act which had suggested to make such an addition as the said income remained undisclosed in the Statement of Facts submitted before the ITSC. It is relevant to note that the ITSC has thwarted the argument that Raj Kumar Kedia would not have charged commission money on the basis of his statement dated 13.06.2014, whereby, he had categorically stated to have received 5 to 6 percent commission on the net bogus pre-arrange long term capital gains provided to Dhanuka Agritech Group promoters. Evidently, the said statement was corroborated with the statement of Ghansyam Das Gupta, working as a consultant in Dhanuka Agritech Ltd., who asserted that commission of around 5 percent in cash form was paid to Raj Kumar Kedia for carrying out transactions of Dhanuka Group companies. Therefore, a salient fact which comes to the fore is that the



contested additions were not made only on the basis of assumptions, conjectures or surmises, rather it was done after a careful perusal of the report submitted to the ITSC.

26. In the facts of the case at hand and bearing in mind the plenitude of powers assigned to the ITSC, it cannot be said that the ITSC lacked jurisdiction to make such an addition, which has also been duly recorded in the terms of settlement, to put a quietus to the litigation. Afterall, the objective of the settlement provisions is to strike a balance between the voluntary disclosure of income by the assessee and the income escaping assessment in order to expedite the closure of tax disputes.

27. On the overall conspectus of the discussion hereinabove, under the facts of the present case, we do not find any force in the argument of the petitioner that addition on account of commission and margin money militates against the provisions of the Act, particularly with Section 153A. It is well settled that an applicant cannot assert an indefeasible right to accept the income disclosed by him.

28. We, therefore, find ourselves unable to hold that the said addition made by the ITSC is manifestly erroneous as the ITSC has meticulously exercised its power taking into consideration the underlying intent of the settlement process.

29. Insofar as the decision relied upon by the petitioner in the case of *Anjum M.H. Ghaswala (supra)* is concerned, the dispute was essentially relating to the waiver of interest chargeable under Section 234A, 234B and 234C of the Act which was held to be mandatory in nature. Thus, the reliance placed by the petitioner on the said case is misplaced and inapplicable in the factual scenario of the present *lis*.



30. In view of the aforesaid, the writ petitions stand dismissed and are disposed of alongwith pending application(s), if any.

PURUSHAINDRA KUMAR KAURAV, J.

YASHWANT VARMA, J.

JULY 03, 2024/MJ