



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

% **Judgment reserved on: February 14, 2024**
Judgment pronounced on: April 09, 2024

+ **W.P.(C) 7444/2016**

PR. COMMISSIONER OF I TAX (CENTRAL)-II

..... Petitioner

Through: **Mr. Prashant Meharchandani, Sr.**
SC with Mr. Akshat Singh, Jr.
SC and Ms. Ritika Vohra, Adv.

Versus

M/S TRENT EAST WEST LPG BOTTLING LTD.

..... Respondent

Through: **Mr. G.C. Srivastava and Mr.**
Kalrav Mehrotra, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR
KAURAV

J U D G M E N T

YASHWANT VARMA, J.

1. The **Principal Commissioner of Income Tax**¹ seeks to invoke our jurisdiction conferred by Article 226 of the Constitution and impugns the order passed by the **Income Tax Settlement Commission**² dated 26 March 2014. In terms of the aforesaid order, the ITSC has settled the total liabilities payable by the respondent-assessee

¹ PCIT

² ITSC



for the block assessment period of 1995-96 to 25 May 2000. In addition to settling the total tax liability, it has also accorded immunity to the respondent from prosecution and penalties imposable under the **Income Tax Act, 1961**³.

2. The principal ground of challenge which was addressed before us flowed from the manner of disclosure made by the respondent and insofar as it related to the purchase of a land parcel admeasuring 20 acres. The petitioner principally asserts that since the respondent had failed to surrender the amount representative for the aforementioned transaction to tax in the statement filed before the ITSC, the acceptance of settlement is clearly vitiated and the order passed by the ITSC liable to be quashed on this ground alone. It was their contention that the petitioner had struck contradictory stands before the authority undertaking the assessment and before the ITSC insofar as this aspect is concerned and thus having clearly failed to make a “full and true” disclosure of its income. It is on the aforesaid primary ground that the order is impugned before us.

3. The record would reflect that a search and seizure operation was undertaken by the Department in December 1999 against one S.K. Jain. In the course of that search, certain documents came to be seized in which the name of the respondent company was also reflected. This led to a consequential search and seizure being conducted upon the business premises of the respondent as well as the residential premises of some of its Directors on 25 May 2000. In the course of that

³ Act



operation, statements of the Directors of the respondents were recorded, cash, jewellery and various other documents and papers seized and inventoried.

4. It was the case of the respondent that while passing the assessment order, the Department had raised exorbitant demands based solely upon alleged confessional statements and the name of the respondent appearing in some of the documents seized. In order to lend a quietus to the dispute and to avoid protracted litigation, the respondent is stated to have approached the ITSC by way of an application dated 08 November 2002. In the application which was submitted, the transaction in respect of the immovable property was described to be founded upon an Agreement to Sell executed in favour of S.K. Jain through an associate company M/s S.K. Jain and Associates.

5. The petitioner contended before the ITSC that as per the agreement asserted to exist, fifty percent of the sale consideration had already been received in advance and that though sought to be portrayed as a sale, it was a mere accommodation entry. The petitioner also highlighted the incompatible stand taken by the respondent who had at one stage described the receipts as pertaining to share subscription and subsequently before the ITSC adopting a case of sale of immoveable property. They also appear to have borne in consideration the statement of S.K. Jain who outrightly disavowed the sale transaction. According to the petitioner, additions made in the hands of the respondent was thus clearly justified.



6. Undisputedly the agreement which was executed did not fructify and consequently the respondent is stated to have refunded the advance which was received. The failure of the agreement is attributed to various practical obstacles which the respondent faced, including the refusal of clearance by the Airport Authority of India.

7. Dealing specifically with the aforesaid transaction, the assessee had taken the following stand before the ITSC: -

“It may be explained that the applicant company was incorporated with the main objective of installation of LPG Bottling Plant. For the installation of the plant, land measuring about 20 acres was purchased near the Calcutta Airport. However, keeping in view the explosive nature of the business activity and land being very near to the Airport, Airport Authority of India has denied permission to the applicant company for installation of the said plant. In view of the above, it was decided by the management for disposing off the said land and an agreement was first entered into in 1996 with M/s Spring Field. However, due to certain unavailable circumstances, the deal was not materialised and another agreement was later entered into with Sh. S.K. Jain through his associated concern M/s P.K. Jain and Associates for sale of the land for a total consideration of Rs.5.10 crore vide agreement dated 18.2.99. Copy of the agreement is annexed with this statement of facts. As per the terms & conditions of the said agreement, 50% of total consideration was to be paid as advance and remaining 50% at the time of execution of agreement to sale subject to fulfillment of certain other conditions as laid down in the agreement. It is in this context that the applicant company received a sum of Rs.263.50 lacs from Sh. Jain through his associated concerns. A confirmation to this effect is also enclosed with this statement of fact. However due to non fulfillment of requisite conditions as laid down in the agreement, both the parties were left with no other alternative than to cancel the deal. Due to the cancellation of deal, a sum of Rs.234.50 lacs was refunded to Sh. S.K. Jain by the end of December, 2001 and balance is still outstanding. The money received and refunded were out of the regular banking channels and no accommodation entries, as alleged by the department, have taken place. In view of the above facts and circumstances of the case, it is prayed to Hon'ble Settlement Commission that a finding be recorded that transactions entered into by the applicant company with Sh. S.K. Jain were on account of sale



of the land and not for accommodation entries.

The statement of computation of income as originally filed for assessment years 1995-96 to 2002-03 alongwith the respective Trading, profit & Loss account, Balance sheet are enclosed with this statement of facts. The revised statement of computation of Income for the said years on the basis of disclosures made as above is also annexed with this statement of facts. It has not been possible to prepare the revised year-wise Trading and Profit & Loss account and Balance Sheet in as much as no year-wise details have been maintained regarding the prepared a statement of affairs as at 31.03.02 showing undisclosed transactions. However, the applicant has prepared a statement of affairs as at 31.02.02, showing utilisation of funds disclosed by the group and the same is enclosed at page TEW-15 of Statement of Facts.”

8. Upon the ITSC taking a decision that the application filed by the respondent on 08 November 2002 was entitled to be proceeded with, the same came to be formally admitted by an order dated 29 September 2003. In terms of the procedure as prescribed, a report was thereafter called from the **Commissioner of Income Tax**⁴. The CIT in its report while dealing with the asserted sale with respect to the land in question had submitted as under: -

“...Search and seizure operation u/s 132(1) of the IT Act 1961 was carried out in this case on 25.05.2000 and concluded on 13.07.2000. Notice u/s 158-BC was served on the assessee on 03.05.2001 to file the return within 15 days of the service of the notice. The return of income in Form No. 2 B for the block period from 01.04.1990 to 25.05.2000 relevant for the A. Yrs. 1991-92 to 2001-02 had been filed by the assessee on 11.06.2001 declaring undisclosed income of NIL. The income of the assessee for the block period has been assessed at Rs. 24751000/- vide order u/s 158-BC dated 31.07.2002.

Against the order of the AO the assessee has moved an application before the Income tax Settlement Commission, New Delhi and the application has been admitted and the order u/s 245-D(1) has been passed admitting the application to be processed with for the block

⁴ CIT



period as also for the A.Ys. 2001-02 and 2002-03.

The prime issue for consideration in this case is regarding the nature of transaction on account of which the amount of Rs. 2,33,50,000/- has been received by the applicant from Sh. S.K. Jain through his concerns M/s P.K. Jain & Associates, M/s Royal Investments and M/s Jyoti Shares. The applicant has submitted before the Hon'ble Settlement Commission that this amount of transaction relates to payment of advance given by the said concerns against agreement to self of property at Calcutta owned by the company. In the Block Asstt. order passed in this case on 31.07.2002, the Assessing Officer has treated this amount as an introduction of the unaccounted money of the applicant as a bogus accommodation book entry. It may be mentioned that the statement of Sh. S.K. Jain was recorded by the AO on oath on 25/02/2005 wherein he clearly denied to have dealings regarding purchase of property. His attention was drawn to the so called agreement executed by him and the assessee through its Director Sh. K.D.S. Anand. He stated that some type of evidence, has to be created to give it the colour of a genuine transaction.

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6. The documents furnished by the assessee and submissions regarding the transaction, are clearly a story cooked up by the assessee and is thus, full of contradictions and inconsistencies. To the contrary, there are various evidences which prove that the transactions are in fact bogus accommodation book entries. These points are briefly given below:

I. The ledger accounts of Sh. Dinesh Sharma, mediator has been seized vide Annexure A-4 from the residence of Sh. S.K. Jain at 555, New Rajinder Nagar, New Delhi on 14.12.1999. The relevant portions of this account showing the transactions relating to the applicant M/s Trend East West LPG Bottling Ltd. is enclosed as per pages 6 to 9 of the paper book submitted earlier. This account clearly shows that accommodation entry of Rs. 29,00,000/~ has been obtained through the mediator Sh. Dinesh Sharma. [Copy of account is placed at page-29 of the paper book].

II. The ledger account of Sh. Rajest Aggarwal, mediator has been seized vide Annexure A-10 from the residence of Sh. S.K. Jain at 555, New Rajinder Nagar, New Delhi on 14.12.1999. The relevant portions of this account showing the transactions relating to the applicant M/s Trend East West LPG Bottling Ltd. is enclosed as per pages 10 of the paper book submitted earlier. This account clearly shows that accommodation entry of Rs. 10000000/- has been obtained through the mediator Sh. Dinesh Sharma. [Copy of account



placed at page-29 of the paper book].

III. The statement of Sh. S.K. Jain reproduced at page 21 to 23 of the assessment order wherein he has clearly stated to be engaged in the business of providing accommodation entries. (Copy of statement is placed at pages 13 to 28 of the paper book.)

IV. The statement of A K Goel, Director of Aasheesh Securities Ltd. reproduced at pages 17 to 21 of the assessment order wherein he has explained the modus operandi followed in providing accommodation entries and has categorically stated that M/s PK Jain & Associates and M/s Royal Investment were used by Sh. S.K. Jain for providing accommodation entries. (The copy of statement of Sh. A.K. Goel is placed at pages 31 to 46 of the paper book.)

V. The agreement to sell dated 18.02.1999 is an after thought and cannot be relied upon for reasons mentioned at pages 30 to 37 of the assessment order and summarized in Para-5 above. It is seen from the back of the Stamp paper that overwriting has been done at S. No., of the Register of Stamp Vendor. The address of the Stamp vendor is not available/legible and the Department is not in a position to verify the genuineness of the stamp Paper. This appears to be a forged document in view of the over writings on the Register of Stamp Vender. A copy of the same is placed at pages 47 to 51 of the paper book.

7. In view of the above discussion, it is submitted that the view taken by the Assessing Officer in the block assessment order, is the correct view about the nature of the transactions done by the applicant and it leaves no further complexity regarding the quantum of transactions or nature thereof. Therefore the application of the applicant assessee is devoid on merits and deserves to be dismissed...”

9. The CIT also appears to have placed strong reliance upon the doubts which were expressed by the **Assessing Officer**⁵ with regard to the genuineness of the transaction and which have also been copiously reproduced in its report.

10. The ITSC insofar as undisclosed income and which was offered to tax and quantified at INR 4,85,000/- was concerned, held as

⁵ AO



follows:-

“4.5 It is noticed that applicant has disclosed Rs. 4,85,000/- in his SOF filed before the Commission . The applicant claimed that the same is unaccounted income of various businesses such as trading in sugar, parking and trading in wood etc. The applicant has maintained that since this was unaccounted business and no details/accounts have been maintained. The Commission has considered the explanation given by the applicant and found it satisfactory. Hence no further addition is called for on this issue.”

11. Insofar as the land transaction was concerned, it has observed as under:-

“4.6 The issue relating to accommodation entry was discussed in the court during the hearings. The Ld. CIT(DR) strongly argued that there are enough and solid evidence against the applicant which shows the whole transactions was a sham and it is applicant's unexplained money which was routed through accommodation entry operator. The Ld. CIT(DR) has relied upon the following facts:

- a. The amount of entry was obtained from known entry operator i.e. Shri S K Jain and the unequivocal statement was given by Shri Jain.
- b. There is conflict of versions given by the different persons of the applicant company with reference to this transaction. At one point of time it was stated that said amount was received on account of sale of shares, later on the applicant changed the stand and taken the argument that the amount was received as advance on account of sale of land.
- c. There are entries in one seized diary where the cash has been shown as received and the cheques were issued.

The Commission has gone through the contention of the CIT through Ld. CIT (DR) and found the same not without merit. The Commission has also observed that the applicant has not been able to give a satisfactory explanation regarding this allegation. Accordingly, the view of the Commission was confronted to the applicant for his comments. The applicant has thereafter offered voluntarily to surrender the said amount along with the amount of entry charges @1% on the amount of entry. Hence amount of Rs. 2,33,50,000/- plus Rs. 2,33,500/- are being incorporated in the hands of the applicant for the block period. Hence total addition of Rs. 2,35,83,500/- is being



made in addition to the amounts declared in ROI and SOF.

4.7 The applicant, in this regard, has submitted a letter dated 06.03.2014 in which he has offered the above discussed amount for settlement of the case. The said letter is reproduced as under:

"...1. Honorable Commission was please to hear the above matters under section 245D(4) of the Income Tax Act, 1961 on 03.03.2014 and on earlier occasions.

2. During the course of hearings it transpired that the level of evidence in the following matter is not of such a nature that the addition could be made without further verification/confrontation of the material, the applicant in order to give a quietus to the matter once and for all in the spirit of settlement agrees to the following additions over and above income offered in the SOF subject to terms and conditions of settlement:-

S.No.	Name of Applicants	Assessment Year	Nature of addition	Amount (Rs.)
i)	Trend East West LPG Bottling Ltd.	Block Period 01.04.1994 to 25.05.2000	On account of part sale consideration of land at 24, Parganas (North), West Bengal, received from M/s P.K. Jain * Associates	2,33,50,000/-
			Alleged incidental charges	2,33,500/-
	Grand Total			2,35,83,500/-

TERMS OF SETTLEMENT

Under the terms of Settlement followings prayers are being made:-



1. Determination of the total income of the applicant as per the agreed amounts and income offered in the application.

2. Setting aside of the orders for the assessment year (s) under settlement framed by the assessing authorities and any order passed by the appellate authorities.

3. Interest under section 158BFA(1) for the block period or any other section of Income tax Act, 1961 if applicable, should not be levied or may be waived as the case may be.

Interest under section 234B for regular assessment years 2000-01 to 2002-03 may be charged as per the ratio in the case of Brij Lal decided by the Honorable Apex Court.

The applicant craves waiver of interest exigible under section 220(2). It is prayed that the applicant qualifies for waiver of interest as per the Provisions of section 220(2A) of the Act. Honorable Commission has the power to waive interest as laid out by the Honorable Supreme Court in the case of CIT Vs. Damani Brothers 259 ITR 475. It is most humbly submitted that the applicants have co-operated in all the proceedings before the Honourable Commission. The assessment framed was very high pitched and the default of payment was beyond the control of the. applicant in any case the applicant had paid tax on income disclosed in the SOF in time. Payment of such a huge levy due to delay for reasons beyond control of the applicant would cause genuine hardship to the applicant.

It has been a consistent past practice of the Honourable Commission in excluding the period from the date of filing of the application upto 35 days of the order under section 245D(4) while charging of interest u/s 220(2), it is prayed that the said precedence may kindly be followed.

4. Waiver of interest and penalties, if exigible, u/s 158BFA of the Income tax Act, 1961.

5. That the applicant may kindly be allowed to capitalize the income brought to tax. It may be mentioned that the amount of Rs. 2,33,50,000/- stands paid to M/s P.K. Jain & Associates as per the books of the company between 11.10.2001 to 20.12.2001.

6. That the penalties under various provisions of the Income Tax Act, 1961 levied/leviable may kindly be deleted/waived in the case of the applicant.

7. Immunity from prosecution under any of the relevant provisions of Income-tax Act, 1961 and any other Central Acts.



8. Release of assets, books of account, documents, papers etc. seized upon payment of taxes.

9. To grant the liberal installments to the applicant for payment of the additional demand arising out of the above settlement..

5. The income of the applicant is settled as under:

<u>Name of the applicant</u>	<u>A.Y.</u>	<u>Income as per ROI</u>	<u>Additional income offered in SOF</u>	<u>Further addition u/s 245D(4)</u>	<u>Total</u>
M/s Trend East West LPG Bottling Ltd.	Block period 1995-96 to 25.05.2000	Nil	3,27,000	2,35,83,500	2,39,10,500
	2002-03	Nil	48,000		48,000
Total		Nil	3,75,000	2,35,83,500	2,39,58,500"

It was on the aforesaid basis that an addition of INR 2,35,83,500/- came to be made and a final order of settlement drawn.

12. Assailing the aforesaid order, Mr. Meharchandani submitted that as would be evident from the recordal of facts, the respondent had taken a wholly inconsistent stand insofar as the subject transaction was concerned as would be evident from its assertion in the assessment proceedings as opposed to the stand as struck in the statement that was submitted for the consideration of the ITSC. Mr. Meharchandani sought to highlight the fact that while at one stage, the sums received from S.K. Jain were asserted to represent consideration for sale of shares, before the ITSC the respondent sought to contend that the amount represented advance received on account of sale of land. This according to learned counsel clearly failed to meet the test of a "full and true" disclosure of income, which is undoubtedly a prerequisite for settlement.



13. Mr. Meharchandani sought to rest his submissions on the following pertinent observations as rendered by the Supreme Court in **Ajmera Housing Corporation and Another vs. Commissioner of Income Tax**⁶:-

“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.

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35. It is plain from the language of sub-section (4) of Section 245-D of the Act that the jurisdiction of the Settlement Commission to pass such orders as it may think fit is confined to the matters covered by the application and it can extend only to such matters which are referred to in the report of the Commissioner under sub-section (1) or sub-section (3) of the said section. A “full and true” disclosure of income, which had not been previously disclosed by the assessee, being a precondition for a valid application under Section 245-C(1) of the Act, the scheme of Chapter XIX-A does not contemplate revision of the income so disclosed in the application against Item 11 of the form. Moreover, if an assessee is permitted to revise his disclosure, in essence, he would be making a fresh application in relation to the same case by withdrawing the earlier application. In this regard, Section 245-C(3) of the Act which prohibits the withdrawal of an application once made under sub-section (1) of the said section is instructive inasmuch as it manifests that an assessee cannot be permitted to resile from his stand at any stage during the proceedings. Therefore, by revising the application, the applicant would be achieving something indirectly which he cannot otherwise achieve directly and in the process rendering the provision of sub-section (3) of Section 245-C of the Act otiose and meaningless. In

⁶ [2018] 8 SCC 739



our opinion, the scheme of said Chapter is clear and admits no ambiguity.

36. It is trite law that a taxing statute is to be construed strictly. In a taxing Act one has to look merely at what is said in the relevant provision. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. There is no room for any intendment. There is no equity about a tax. (See *Cape Brandy Syndicate v. IRC* [(1921) 1 KB 64] and *Federation of A.P. Chambers of Commerce & Industry v. State of A.P.* [(2000) 6 SCC 550]) In interpreting a taxing statute, the court must look squarely at the words of the statute and interpret them. Considerations of hardship, injustice and equity are entirely out of place in interpreting a taxing statute. (Also see *CST v. Modi Sugar Mills Ltd.* [AIR 1961 SC 1047: (1961) 2 SCR 189])

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

14. The submission of Mr. Meharchandani essentially was that a mere disclosure of the transaction in question in the application which was submitted before the ITSC would not fulfil the essential requirement of a “full and true” disclosure and this more so in the absence of the income so derived having been offered to tax.

15. Appearing for the respondents, Mr. Srivastava submitted that the substance of the transaction had been candidly set out in the application which was made to the ITSC and consequently it would be wholly incorrect for the writ petitioner to contend that there was no disclosure made by the respondent. According to learned counsel, the process of settlement as envisaged under Chapter XIX-A does not preclude the applicant from advocating a particular view or contesting the stand



taken by the Department in the course of assessment as untenable. Ultimately, according to Mr. Srivastava, since all aspects pertaining to the income surrendered as well as other issues connected with the assessment fall for the consideration of the ITSC, it would be wholly incorrect for the writ petitioner to contend that a “full and true” disclosure had not been made.

16. Mr. Srivastava also submitted that the ITSC had on an overall consideration of the issues relating to the amounts received from S.K. Jain, borne in consideration the fact that the respondent-assessee had cooperated fully, voluntarily surrendered the said amount and agreed to the same being taxed in its hands. In view of the above and bearing in mind the limited scope of interference which is warranted with an order passed by the ITSC, Mr. Srivastava submitted that the challenge as raised by way of the present writ petition is liable to be negatived.

17. Having noticed the rival submissions so addressed, we at the outset deem it apposite to take note of the following salient provisions which stand incorporated in Chapter XIX-A and which regulates the subject of settlement. We, in this regard deem it appropriate to extract Sections 245C, 245D, 245F and 245I of the Act hereunder: -

“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 153-A or clause (b) of sub-section (1) of Section 153-B in case of a person referred to in Section 153-A or Section 153-C have been initiated, the additional amount of Income Tax payable on the income disclosed in the application exceeds fifty lakh rupees,

[(i-a) 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 153-A or clause (b) of sub-section (1) of Section 153-B in case of the applicant, being a person referred to in Section 153-A or Section 153-C, 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.]

[Explanation.—For the purposes of clause (i-a),—

(a) the applicant, in relation to the specified person referred to in clause (i-a), means,—

(i) where the specified person is an individual, any relative of the specified person;

(ii) where the specified person is a company, firm, association of persons or Hindu undivided family, any director of the company, partner of the firm, or member of the association or family, or any relative of such director, partner or member;

(iii) any individual who has a substantial interest in the business or profession of the specified person, or any relative of such individual;

(iv) a company, firm, association of persons or Hindu undivided family having a substantial interest in the business



or profession of the specified person or any director, partner or member of such company, firm, association or family, or any relative of such director, partner or member;

(v) a company, firm, association of persons or Hindu undivided family of which a director, partner or member, as the case may be, has a substantial interest in the business or profession of the specified person; or any director, partner or member of such company, firm, association or family or any relative of such director, partner or member;

(vi) any person who carries on a business or profession,—

(A) where the specified person being an individual, or any relative of such specified person, has a substantial interest in the business or profession of that person; or

(B) where the specified person being a company, firm, association of persons or Hindu undivided family, or any director of such company, partner of such firm or member of the association or family, or any relative of such director, partner or member, has a substantial interest in the business or profession of that person;

(b) a person shall be deemed to have a substantial interest in a business or profession, if—

(A) in a case where the business or profession is carried on by a company, such person is, [on the date of search], the beneficial owner of shares (not being shares entitled to a fixed rate of dividend, whether with or without a right to participate in profits) carrying not less than twenty per cent of the voting power; and

(B) in any other case, such person is, [on the date of search], beneficially entitled to not less than twenty per cent of the profits of such business or profession.]

(1-A) For the purposes of sub-section (1) of this section the additional amount of income tax payable in respect of the income disclosed in an application made under sub-section (1) of this section shall be the amount calculated in accordance with the provisions of sub-sections (1-B) to (1-D).

[(1-B) Where the income disclosed in the application relates to only one previous year,—

(i) if the applicant has not furnished a return in respect of the total income of that year, then, tax shall be calculated on the income disclosed in the application as if such income were the total income;



(ii) if the applicant has furnished a return in respect of the total income of that year, tax shall be calculated on the aggregate of the total income returned and the income disclosed in the application as if such aggregate were the total income.]

(1-C) The additional amount of income tax payable in respect of the income disclosed in the application relating to the previous year referred to in sub-section (1-B) shall be,—

(a) in a case referred to in clause (i) of that sub-section, the amount of tax calculated under that clause;

(b) in a case referred to in clause (ii) of that sub-section, the amount of tax calculated under that clause as reduced by the amount of tax calculated on the total income returned for that year;

(c) [* * *]

(1-D) Where the income disclosed in the application relates to more than one previous year, the additional amount of income tax payable in respect of the income disclosed for each of the years shall first be calculated in accordance with the provisions of sub-sections (1-B) and (1-C) and the aggregate of the amount so arrived at in respect of each of the years for which the application has been made under sub-section (1) shall be the additional amount of income tax payable in respect of the income disclosed in the application.

(1E) [***]

(2) Every application made under sub-section (1) shall be accompanied by such fees as may be prescribed.

(3) An application made under sub-section (1) shall not be allowed to be withdrawn by the applicant.

(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.]

[(5) No application shall be made under this section on or after the 1st day of February, 2021.]

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

(1) On receipt of an application under Section 245-C, 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.]

[(1-A) * * *]

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

(2-A) Where an application was made under Section 245-C before the 1st day of June, 2007, but an order under the provisions of sub-section (1) of this section, as they stood immediately before their amendment by the Finance Act, 2007, has not been made before the 1st day of June, 2007, such application shall be deemed to have been allowed to be proceeded with if the additional tax on the income disclosed in such application and the interest thereon is paid on or before the 31st day of July, 2007.

Explanation.—In respect of the application referred to in this subsection, the 31st day of July, 2007 shall be deemed to be the date of the order of rejection or allowing the application to be proceeded with under sub-section (1).

(2-B) 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 (2-A) 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.

(2-C) Where a report of the [Principal Commissioner or Commissioner] called for under sub-section (2-B) 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].

[Provided also that where in respect of an application, an order, which was required to be passed under this sub-section on or before the 31st day of January, 2021, has not been passed on or before the 31st day of January, 2021, such application shall deemed to be valid.]

(2-D) Where an application was made under sub-section (1) of Section 245-C 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 subsection (2-C); or

(ii) an application referred to in sub-section (2-D) 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 subsection (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 (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].

(4-A) The Settlement Commission shall pass an order under subsection (4)—

(i) in respect of an application referred to in sub-section (2-A) or sub-section (2-D), 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 245-BA, the materials brought on record before the Settlement Commission shall be considered by the Members of the Bench concerned before passing any order under sub-section (4) and, in relation to the passing of such order, the provisions of Section 245-BD 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.

(6-A) Where any tax payable in pursuance of an order under subsection (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.

[(6-B) The Settlement Commission may, with a view to rectifying any mistake apparent from the record, 4008[amend any order passed] 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 subsection (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 subsection (1) of Section 186 shall apply to the pursuance of any such directions as aforesaid.

[(9) On and from the 1st day of February, 2021, the provisions of sub-sections (1), (2), (2-B), (2-C), (3), (4), (4-A), (5), (6) and (6-B) shall apply to pending applications allotted to Interim Board with the following modifications, namely:—

(i) for the words “Settlement Commission”, wherever they occur, the words “Interim Board” shall be substituted;

(ii) for the word “Bench”, the words “Interim Board” shall be substituted;

(iii) for the purposes of this section, the date referred to in subsection (2) of Section 245-M shall be deemed to be date on which the application was made under Section 245-C and received by the Interim Board;

[(iv) where the time-limit for amending any order or filing of rectification application under sub-section (6-B) expires on or after the 1st day of February, 2021, but before the 1st day of February, 2022, such time-limit shall be extended to the 30th day of September, 2023.]

(10) On and from the 1st day of February, 2021, the provisions of sub-sections (6-A) and (7) shall have effect as if for the words “Settlement Commission”, the words “Settlement Commission or Interim Board of Settlement” had been substituted.

(11) The Central Government may by notification in the Official Gazette, make a scheme, for the purposes of settlement in respect of pending applications by the Interim Board, so as to impart greater efficiency, transparency and accountability by—

(a) eliminating the interface between the Interim Board and the assessee in the course of proceedings to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing a mechanism with dynamic jurisdiction.

(12) The Central Government may, for the purposes of giving effect to the scheme made under sub-section (11), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the said notification:



Provided that no such direction shall be issued after the 31st day of March, 2023.

(13) Every notification issued under sub-section (11) and subsection (12) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.]

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245-F. Power and procedure of Settlement Commission.—(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 245-C has been allowed to be proceeded with under Section 245-D, the Settlement Commission shall, until an order is passed under sub-section (4) of Section 245-D, 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 245-C 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 245-D; or
- (ii) an application is not allowed to be proceeded with under subsection (2-A) of Section 245-D, or, as the case may be, is declared invalid under sub-section (2-C) of that section; or
- (iii) an application is not allowed to be further proceeded with under sub-section (2-D) of Section 245-D, the Settlement Commission, in respect of such application shall have such exclusive jurisdiction up to 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 doubts, 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) [Omitted]

(6) [Omitted]

(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.

[(8) On and from the 1st day of February, 2021, the powers and functions of the Settlement Commission under this section shall be exercised or performed, by the Interim Board and all the provisions of this section shall mutatis mutandis apply to the Interim Board as they apply to the Settlement Commission.]

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245-I. Order of settlement to be conclusive.—Every order of settlement passed under sub-section 4 of Section 245-D 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.”

18. The ITSC comes to be moved pursuant to an application being made by an assessee referable to Section 245C of the Act. The said application must contain a “full and true” disclosure of the income which was not disclosed before the AO as also the entire income which is sought to be made subject matter of consideration before the ITSC. Additionally, the applicant is obliged to disclose the means from which the income was so derived, the additional amount of tax which is payable and such other particulars as prescribed under the Rules. In terms of Section 245C(3) of the Act, once an application comes to be submitted before the ITSC, it cannot be withdrawn by the applicant. On receipt of such an application, the ITSC commences the process of



evaluating whether the application is liable to be proceeded with. In respect of an application which is allowed to be proceeded with, the ITSC stands empowered to call for a report from the CIT in terms of Section 245D(2B) of the Act. Taking proceedings further and in respect of applications which have not been declared to be invalid, the ITSC in terms of Section 245D(3) of the Act is enabled to call for the records and, if deemed necessary, to direct such further inquiry or investigation as may be necessary. Pursuant to the aforesaid power as conferred, the Principal Commissioner/Commissioner is obliged to undertake a further inquiry or investigation and submit a report in respect of all matters covered by the application as also any other matter relating to the case. Sub-Section (4) of Section 245D of the Act envisages the ITSC passing final orders upon the application taking into consideration the report submitted by the Principal Commissioner/Commissioner, an examination of all the evidence that may have been placed before it and proceed to pass a final order on matters covered by the application as well as any other matter relating to the case.

19. It becomes significant to note that in terms of Section 245D(4) of the Act, the ITSC stands enabled to pass orders not only in respect of matters covered by the application, but also “*other matter relating to the case not covered by the application, but referred to in the report of the Principal Commissioner or Commissioner*”.

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.

23. We note that the scope and extent of the power which the ITSC



could exercise was lucidly explained by the Supreme Court in **Kotak Mahindra Bank Ltd. v. CIT**⁷. The Supreme Court in *Kotak Mahindra Bank* held:-

“5.2. Section 245D deals with the procedure to be followed by the Commission on receiving an application for settlement under section 245C. Sub-section (1) of section 245C enables the Commission to call for a report from the Commissioner. On the basis of the Commissioner's report and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, the Settlement Commission may either allow the application to be proceeded with or reject the same. Sub- section (4) of section 245D empowers the Settlement Commission to pass an order after examination of the records and the report submitted by the Commissioner, after hearing the applicant and the Commissioner, or their authorized representatives and examining any further evidence before it.

5.3. Section 245H of the Act bestows upon the Settlement Commission, discretion to grant immunity to an applicant from prosecution for any offence under the Act or under the Indian Penal Code, or from the imposition of any penalty under the Act, with respect to the case covered by the settlement. The grant of such immunity is subject to such conditions which the Commission may think it fit to impose. The precondition for granting immunity is that the applicant must have co-operated in the proceedings before the Commission and made a "full and true disclosure" of his income and the manner in which such income has been derived.

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6. On a close reading of the provisions extracted hereinabove, it emerges that under section 245H(1) if the Settlement Commission is satisfied that any assessee who makes 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 its income and the manner in which such income has been derived, may grant immunity from prosecution or from the imposition of penalty, either wholly or in part with respect to the case covered by the settlement. The necessary ingredients for granting immunity from prosecution would be : (a) the assessee should have co-operated with the Settlement Commission in the

⁷ 2023 SCC OnLine SC 1215



proceedings before it ; and (b) the assessee should have made a full and true disclosure of its income and the manner in which such income has been derived, to the satisfaction of the Commission. Therefore, what is of essence is that the assessee ought to have :
(a) made full and true disclosure before the Commission, and
(b) co-operated with the Commission in the proceedings before it.

6.1. Upon being satisfied as to the said ingredients, the Commission may grant immunity from prosecution or from the imposition of penalty, either wholly or in part with respect to the case covered by the settlement.”

24. The power conferred upon the ITSC not being confined merely to the matters spoken of and covered by the application but also extending to any other matter relating to the case was an aspect which came to be highlighted in a decision handed down by a Division Bench of the Court in **Tahiliani Design P. Ltd. v. Joint CIT**⁸ wherein the following was observed: -

“**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

⁸ 2021 SCC OnLine Del 3518



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 where too 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 Stahlunion GmbH 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.”

25. Reverting then to the facts of the present case, we find that the respondent had clearly alluded to the transaction with S.K. Jain in the application which was made before the ITSC. It had essentially questioned the stand taken by the respondent of the aforesaid land transaction being merely an accommodation entry. It had asserted that the transaction was genuine and that the receipt of a sum of INR 234.50 lakhs represented the consideration received by it from S.K. Jain for a proposed sale of land. It was also its case that the transaction ultimately could not fructify since various clearances and approvals could not be obtained. This was therefore not a case where a disclosure in respect of a transaction had not been made.



26. However, and in our opinion, the procedure as contemplated under Chapter XIX-A does not detract from the right of an assessee to question an addition or view that may have been taken by the taxing authorities. It could have legitimately asserted that an addition suggested or a view taken with respect to a particular item of income is incorrect or flawed. What the assessee is essentially doing in such a scenario is calling upon the ITSC to examine all such questions and render its decision, enabling the assessee to obtain closure of all disputes. Viewed in that light, it would be wholly incorrect for the writ petitioner to assert that the respondent had failed to make a “full and true” disclosure.

27. It must also be borne in mind that what the law proscribes is an applicant seeking to either amend an application or taking contrarian positions in proceedings before the ITSC. As was explained by the Supreme Court in *Ajmera Housing*, the sine qua non for a settlement order being entered is a “full and true” disclosure of income being made by the applicant. As the Supreme Court explained, what is impermissible is a revision of a disclosure. A particular contention with respect to taxability and which is made in order to invite a conclusive pronouncement from the ITSC cannot possibly be viewed as a revision of the application made. In our considered opinion, therefore, in the facts of the present case, the test of “full and true” disclosure had clearly been met.

28. Even otherwise, we note that the ITSC while accepting the surrender of income, has not indicted the respondent-assessee. It has taken note of the perceived conflict in versions which were alluded to



by the Commissioner and the respondent having been unable to proffer a satisfactory explanation. It had, however, and for the purposes of a holistic examination, voiced its doubts and confronted the respondent-assessee seeking its unequivocal stand in respect of the transaction relating to sale of immovable property. It is at that stage that the respondent appears to have offered to voluntarily surrender the said amount and thus agreeing to the same being subjected to tax.

29. It is also relevant to note that while ultimately accepting the voluntary surrender, it was not the case of the ITSC that the respondent was guilty of suppression or falsification of facts. What appears to have ultimately weighed upon it was the imperatives of the controversy being resolved and the matter being conferred finality.

30. The second aspect which weighs upon us is the extent and intensity of judicial review which must govern while considering a challenge to orders passed by the ITSC. The scope and extent of interference warranted with orders made by the ITSC were succinctly explained by the Supreme Court in **Jyotendrasinhji v. S.I. Tripathi and Others**⁹ in the following words: -

“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

⁹ 1993 Supp (3) SCC 389



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.”

31. More recently and dealing with the aforesaid aspect, the Supreme Court in *Kotak Mahindra Bank* has observed as under:-

“9. In the present case, as noted above, we find that the appellant placed material and particulars before the Commission as to the manner in which income pertaining to certain activities was derived and has sought to offer such additional income to tax. Based on such disclosures and on noting that the appellant co-operated with the Commission in the process of settlement, the Commission proceeded to grant immunity from prosecution and penalty as contemplated under section 245H of the Act. The High Court ought not to have sat in appeal as to the sufficiency of the material and particulars placed before the Commission, based on which the Commission proceeded to grant immunity from prosecution and penalty as contemplated under section 245H of the Act.

10. We are fortified in our view by the judgment of this court in *Jyotendrasinhji v. S. I. Tripathi* [1993] Supp (3) SCC 389, wherein it was observed that a court, while exercising powers under article 32, 226 or 136 of the Constitution of India, as the case may be, may not interfere with an order of the Commission, passed in exercise of its discretionary powers, except on the ground that the order contravenes the provisions of the Act or has caused prejudice to the opposite party. Interference may also be open on the grounds of fraud, bias or malice. Therefore, this court has carved out a very narrow scope for judicial review of the Commission's orders, passed in exercise of its discretionary powers. Hence, we hold that sufficiency of the material and particulars placed before the



Commission, based on which the Commission proceeded to grant immunity from prosecution and penalty as contemplated under section 245H of the Act, are beyond the scope of judicial review, except under the circumstances set out in *Jyotendrasinhji v. S. I. Tripathi* (supra).

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12. While we are mindful of the fact that the provisions of Chapter XIX-A of the Act are not to be employed so as to provide a shelter for tax dodgers to obtain immunity from facing the consequences of tax evasion by simply approaching the Settlement Commission, vide *B. N. Bhattachargee* (supra), we are however of the view that in the present case, the Commission rightly exercised its discretion under section 245H having regard to the bona fide conduct of the assessee of offering additional income for tax, apart from the income disclosed in the return of income.

13. Before parting with the record, we may add that having regard to the legislative intent, frequent interference with the orders or proceedings of the Settlement Commission should be avoided. We have already indicated the limited grounds on which an order or proceeding of the Settlement Commission can be judicially reviewed. The High Court should not scrutinize an order or proceeding of a Settlement Commission as an appellate court. Unsettling reasoned orders of the Settlement Commission may erode the confidence of the bona fide assessees, thereby leading to multiplicity of litigation where settlement is possible. This larger picture has to be borne in mind.”

32. On an overall conspectus of the aforesaid and when we apply the tests as propounded by the Supreme Court in the aforementioned decisions, we find ourselves unable to hold that the procedure adopted by the ITSC was either palpably incorrect or manifestly erroneous. The decision ultimately rendered by it also cannot possibly be characterized as being contrary to any provision of the Act. As was noticed by us hereinbefore, this was not a case where the respondent had failed to make a disclosure. Details in respect of the subject transaction were duly disclosed. This was therefore not a case where a “full and true”



disclosure had not been made. The dispute essentially was with respect to the character of the receipt. The assessee had contested the position taken by the writ petitioner of the same being an accommodation entry. The ITSC has ultimately and upon due consideration of the rival stands as struck before it, exercised its adjudicatory function bearing in mind the larger purpose and intent of the settlement process. The same consequently merits no interference under Article 226 of the Constitution.

33. The writ petition fails and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 09, 2024/RW