



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on: September 02, 2024**
Judgment pronounced on: October 28, 2024

+ W.P.(C) 5619/2017

DY.CIT CENTRAL CIRCLE 28Petitioner

Through: Mr. Sanjeev Menon, JSC.
versus

M/S ASM TRAXIM PVT. LTD. & ORS.Respondents

Through: Mr. Tarun Gulati, Sr. Adv. with
Mr. Manish Khurana, Ms.
Priyanka Jindal & Mr. Devansh
Garg, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

YASHWANT VARMA, J.

1. The Deputy Commissioner of Income Tax seeks to impugn the order of the **Income Tax Settlement Commission**¹ insofar as it has granted immunity to the respondent nos. 1 and 2 from prosecution and penalty proceedings. This becomes apparent from a reading of the relief clause of the writ petition and which is extracted hereinbelow:-

“A. Quash/set aside the impugned order dated 11.03.2016 passed by the Income Tax Settlement Commission to the extent that it gives immunity to the applicants from prosecution and penalty proceedings under the Income-Tax Act to respondents no. 1 & 2.”

2. The principal question which consequently arises is whether it would be open for the writ petitioner to assail the order of the ITSC

¹ ITSC



only to the extent of according immunity from prosecution and penalty as contemplated under Section 245H of the **Income Tax Act, 1961**².

3. It becomes pertinent to note that the writ petitioner has chosen to desist from assailing the order of the ITSC in its entirety and in terms of which, not only was a computation of income exercise in terms contemplated under Section 245D(4) undertaken, the ITSC had also framed directions for tax being computed in terms thereof and for the respondent nos. 1 and 2 being placed under the additional liability of paying interest under Sections 234A, 234B and 234C of the Act.

4. It is in the aforesaid backdrop that the petitioners were called upon to satisfy the Court as to whether a partial challenge to the order of the ITSC could be maintained. This aspect assumes significance since an order of settlement as rendered is premised on a full and true disclosure of income having been made by the applicant before the ITSC and it having processed that application on the anvil and rigors of the provisions contained in Section 245D(2) read along with Section 245D(2C). Undisputedly, the ITSC had passed orders holding the application as made by respondent nos. 1 and 2 as liable to be proceeded with and additionally found that the said application for settlement was not liable to be invalidated and which is a circumstance spoken of in Section 245D(2C).

5. Section 245H follows a similar course and confers a discretionary power on the ITSC to accord immunity from prosecution and the levy of penalties, provided the applicant had made a full and true disclosure of its income and had cooperated in the proceedings.

² Act



The question which consequently arises is whether the consideration of a full and true disclosure can be bifurcated or viewed in independent silos for the purposes of computation of income and the grant of immunity. The writ petitioner would contend that the issues are severable and thus it would be permissible for the Court to consider partially quashing the order of the ITSC and notwithstanding them having chosen not to question or assail the computation of the settlement amount.

For the purposes of disposal of the present writ petition, it would be apposite to take note of the following facts.

6. We are, in this writ petition concerned, with the applications for settlement which had been made by M/s ASM Traxim Pvt. Ltd. and M/s Agson Global Pvt. Ltd., the respondent nos. 1 and 2. The two respondents were stated to be part of the Apresh Garg Group of related entities and all of which had filed settlement applications before the ITSC on 12 December 2011 and 21 December 2011. The settlement applications were allowed to be proceeded with vide orders dated 22 December 2011 and 28 December 2011. Orders in favour of the applicants as contemplated under Section 245D(2C) came to be passed by the ITSC on 07 February 2012.

7. The proceedings under the Act had commenced pursuant to action taken in terms of Sections 132 and 133A in the Apresh Garg Group of cases. Basis the material that came to be gathered in the course of that search and survey, the Income Tax Department seized documents and materials and also recorded the statements of various individuals. Search assessment proceedings as contemplated under



Sections 153A and 153C thereafter came to be initiated. It was during the pendency of those proceedings that the settlement applications came to be filed.

8. It appears that before the ITSC, it was candidly conceded by respondent nos. 1 and 2 that their audited accounts could not be relied upon since they were replete with fictitious transactions. This becomes apparent from a reading of Para 22 of the order of the ITSC impugned before us:-

“22. A perusal of the SOF clearly reveal that the applicant had taken the position that result of audited account will not be reliable for the reason that there are fictitious transactions and that the financial statements contain fabricated results for impressing banks with a sole purpose of impressing the banks. On the contrary, the applicant wanted the result of combined (consolidated) account to be adopted wherein all fictitious transactions of bogus concerns have been reversed or neutralized.”

9. The applications for settlement appear to have been based on a combined or consolidated account which was prepared by M/s M.L. Puri & Co., Chartered Accountants. However, the aforesaid consolidated accounts were also found by the ITSC to be unreliable in light of various discrepancies which it noticed as well as the auditors themselves having expressed reservations with respect to the findings in their report and which was also qualified by various disclaimers.

10. The ITSC thereafter undertook a comparative analysis between the audited and the consolidated accounts. It, in this regard, noted as follows:-

“23.2 As can be seen from the SOF the entire computation of disclosure of income emanated from the financial results of 'consolidated account'. The moot point is the existence of huge variation of result between the audited account and the so-called



consolidated account. There are also significant instances of strange adjustments made out of the said result to form part of the income computation in the SOF. For instance, the computation of net figure of 'Cash shortage' at Rs. 44.90 cr is arrived at after netting 'cash on hand' Rs. 15.25 cr from the 'cash (net) deployed through so-called bogus entities. Firstly, there was no corroborating material to testify these figures. Comparison of data at para 16.10 and bank statements in few cases also depict inconsistency/ discrepancy. At the same time, the said figures are crucially linked in the calculation of the undisclosed income before the Commission."

11. It ultimately and in light of the variation between the audited and consolidated accounts observed as follows:-

“24. **FINDINGS**

We have carefully examined the entire matter and we have noticed the following defects and inconsistencies. They are as under:-

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3) As regards the consolidated account prepared by M.L Puri Chartered Accountants in his Review Report, there are several serious matters. The consolidated account prepared was based solely on the materials placed by the management of the applicant company and it was clearly stated that it was not an audit. The CA did not take responsibility of the correctness being only a review report. The compilation was prepared based on the materials released or placed by the applicant. Since it was not an audit, the CA has no mandate to apply the rigour of audit procedures and thus suffers from comprehensiveness. The Chartered Accountant who prepared the report is not accountable for the correctness of the result. Besides, the manner of making adjustments of so-called transactions and the treatment given therein are apparently designed to suit the purpose of the applicant as testified by the language of the report- "A review is limited primarily to applying analytical procedures with the objective of verifying financial data and thus provides less assurance than an audit. We have not performed audit and, accordingly, we do not express an audit opinion". This being the case, the so-called consolidated account is a fabricated, tailored and self serving document to suit the purpose of the applicant. Thus, the reliability cannot be accepted.

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7) To sum up, having regard to the detailed discussion in the aforesaid paragraphs we are of the view that the consolidated account cannot be relied upon and does not depict a correct state of



affairs. Considering inconsistencies found therein we are also of the view that rather than presenting a correct position the same account was used for a self serving intention of the applicant. Even with regard to the audited account, the applicant has expressed in no uncertain term that the account is not to be relied upon. In this circumstance, we have no option but to declare the book results of both the audited as well as the Review Report in the form of consolidated account as unreliable and therefore, reject the result.

8) In the given background and considering the constraints of inadequate records with the Department as indicated in para 17, to arrive at a fair assessment of the income, the Bench has ordered a joint verification of all available primary records in the presence of the AO, the applicant and the officers of the ITSC for determining the turnover and other relevant data for working out realistic income. In this connection, both the AR and the DR have expressed that they would welcome such exercise for arriving at a reasonable income for settlement. In order to arrive at such figure of income it was decided a detailed analysis of the item-wise potential trading results be worked out keeping in view profitability of each item, nature of commodity, on periodic basis spread throughout the year. These item-wise analysis and resultant profit would form the basis for extrapolating the profit margins for determining the annual income of the period under settlement.

9) It is to be mentioned here that during the concluding hearing of this application the AR conceded that in case the consolidated account presented by the applicant is not accepted the Bench should proceed to decide the settlement application on the basis of reasonable profit rate in the spirit of settlement.”

12. It would appear from the record that since the ITSC was disinclined to accept either the audited or the consolidated accounts, the authorized representative of respondent nos. 1 and 2 accepted the course of action as suggested by the ITSC, namely, of a joint verification of all available primary records being undertaken. This becomes evident from the recital appearing in sub-para (8) extracted above and where the ITSC records that both the **Authorised Representative³** and the **Department Representative⁴** had welcomed

³ AR

⁴ DR



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such an exercise being undertaken “for arriving at a reasonable income for settlement”. The ITSC also took on board the concession made on behalf of respondent nos. 1 and 2 that in case the consolidated accounts were found to be unacceptable, it should proceed to decide the settlement applications on the basis adopted by it and by identification of a reasonable profit rate in the spirit of settlement.

13. Pursuant to the joint verification which was undertaken, the ITSC ultimately rejected the audited book results and based upon the joint verification determined the total income for the purposes of disposal of the settlement applications. This becomes apparent from the following computation table which appears at page 56 of our record:-

Computation of Income u/s 245D(4)					
Name of the Applicant	Asstt. Year	Total Income as per Return (in Rs.)	Income disclosed u/s 245C(1) (in Rs.)	Income settled u/s 245D(4) (in Rs.)	Total income determined u/s 245D(4)(Rs.)
M/s A.S.M. Traxim Pvt. Ltd.	2006-07	0	700000	700000	700000
	2007-08	-30551	800000	800000	769449
	2008-09	6507439	700000	46721861	53229300
	2009-10	7854719	13000000	60194325	68049044
	2010-11	Not filed	100000	47665739	47665739
	2011-12	Not filed	100000	53616275	53616275
	Total	14331607	15400000	209698200	224029807

Computation of Income u/s 245D(4)					
Name of the Applicant	Asstt. Year	Total Income as per Return (in Rs.)	Income disclosed u/s 245C(1) (in Rs.)	Income settled u/s 245D(4) (in Rs.)	Total income determined u/s 245D(4) (in Rs.)
Agson Global Pvt. Ltd.	2004-05	-177602	200000	200000	22398
	2005-06	2404670	100000	100000	2504670
	2006-07	4797679	1500000	13563380	18361059
	2007-08	10939800	9500000	46602925	57542725
	2008-09	11859976	100000	40607700	52467676
	2009-10	13106032	10000000	37241760	50347792
	2010-11	24172962	100000	6521085	30694047
	2011-12	Not filed	100000	100000	100000
	Total	67103517	21600000	144936850	212040367



14. Appearing for the writ petitioners, Mr. Menon, learned counsel submitted that the sine qua non for the invocation of Section 245H is a full and true disclosure of income being made in the applications that may be filed before the ITSC. Mr. Menon submitted that bearing in mind the conclusions which came to be recorded by the ITSC and which stand reflected in Para 24(7), it becomes apparent that the respondents had clearly failed to satisfy that primordial test. Mr. Menon submitted that the requirement of a full and true disclosure in the course of settlement and the said facet being of fundamental importance cannot possibly be doubted bearing in mind the decision of the Supreme Court in **Kotak Mahindra Bank Ltd. vs. Commissioner of Income-Tax**⁵.

15. Learned counsel drew our attention to the following significant passages as appearing in that decision:-

“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

⁵ 2023 SCC OnLine SC 1215



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 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. ”

16. According to Mr. Menon, notwithstanding the computation of income having been undertaken by the ITSC and that part of the order not being questioned by the writ petitioner, the impugned order is clearly severable and this Court would thus be justified in examining whether the ITSC was justified in granting immunity.

17. Appearing for the respondents, Mr. Gulati, learned senior counsel, principally contended that the reliefs as framed would not sustain bearing in mind the limited challenge raised by the petitioners and which stands confined to the extent that the ITSC chose to grant the petitioners immunity from prosecution and the imposition of penalties. According to Mr. Gulati, once the aspect of full and true disclosure was found to have been met by the ITSC and which had passed orders for the application to be proceeded with as also that it was not liable to be invalidated, it would be wholly impermissible for the petitioner to impugn the decision of the ITSC in part. This since, according to learned senior counsel, both Sections 245D as well as 245H are premised on identical preconditions being met.



18. On facts, the respondents contended that the record of the ITSC would itself establish that the income was ultimately computed by it on the basis of a joint verification of all the primary records that were made available and with the respondents themselves accepting and conceding to that course being adopted by the ITSC. They would consequently contend that the order of the ITSC is liable to be viewed as having been rendered on consent and consequently the challenge as raised being liable to be rejected. In any event, it was contended that the impugned order would establish that the respondents had voluntarily and “in the spirit of settlement” entrusted the ITSC to independently verify all facts and compute the tax liability liable to be foisted upon them. In view of the above, they would urge that the writ petition be dismissed.

19. Having noticed the rival submissions which are addressed, we find that the entire exercise of settlement is primordially based on the applicant making a full and true disclosure before the ITSC which is enjoined thereafter to conduct proceedings in terms of the provisions contained in Chapter XIX-A of the Act. It is the aforesaid disclosure which is thereafter tested and evaluated by the ITSC in terms as contemplated under sub-sections (2) and (2C) of Section 245D. Undisputedly, the applications as made by the respondents had crossed that threshold. The computation of income exercise itself ultimately came to be concluded by the ITSC based upon a joint verification that was undertaken.

20. We also bear in mind the stand taken by the respondents themselves that their audited accounts were not liable to be taken into



consideration and that they could not form the basis for the proceedings as were laid before the ITSC. The respondents had candidly admitted that those accounts were wholly unreliable and it was in the aforesaid backdrop that they appear to have participated in the proceedings before the ITSC and agreed to collaborate in the exercise of ascertainment of a true and correct computation of income for the period in question being undertaken. It was this position as struck by parties which appears to have informed the decision of the ITSC to order a joint verification.

21. We are thus, in the facts of the present case, faced with a situation where the ITSC had at no stage come to conclude that the applications as made were liable to be rejected either on the ground that the respondents had failed to make a full and true disclosure or that they had failed to cooperate in the proceedings. If these twin conditions were found to be satisfied for the purposes of Section 245D(4), we fail to appreciate how the said issue could be questioned or reagitated while examining the validity of the discretionary power exercised by the ITSC under Section 245H.

22. In our considered opinion, once the condition of full and true disclosure is held to be satisfied, the same would not partake a separate or different hue for the purposes of Section 245H. Any view to the contrary if taken, would surely result in an incongruous situation arising. This since it would constrain the Court to hold that the test of full and true disclosure applies differently for the purposes of computation and grant of immunity. We bear in consideration the indubitable fact that while the power to grant immunity stands



enshrined in a separate provision in Chapter XIX-A, the said power is exercised contemporaneously by the ITSC while disposing of an application for settlement. The statute does not prescribe the power of computation and grant of immunity being exercised on the basis of tests and precepts which could be said to be separate or distinguishable.

23. As was noticed hereinabove, Section 245H postulates the power of immunity being liable to be invoked identically on a full and true disclosure of income and cooperation rendered before the ITSC. Thus, both Section 245D(4) as well as Section 245H are premised on identical considerations. It would thus be incorrect to uphold the contention of a perceived dichotomy between the opinion with respect to full and true disclosure under Section 245D and that which would guide Section 245H.

24. Regard must also be had to the fact that the Act undoubtedly confers a finality and conclusiveness upon orders made by the ITSC. This becomes evident from a reading of Section 245I and which proscribes any matter or issue which stands concluded by an order of the ITSC being reopened in any proceedings under the Act. That the Legislature clearly intended to imbue finality upon an order of the ITSC is further underscored by Section 245I using the expression “*save as otherwise provided....*”. Thus, an order Chapter XIX-A could be reviewed or reopened only on grounds set out therein and on no other.

25. The nature of the function performed by the ITSC and the scope of interference with its decision was lucidly explained by the Karnataka



High Court in **N. Krishnan vs. Settlement Commission (IT & WT)**⁶
in the following terms:-

“15. With reference to the second question arising for our consideration, as we have pointed out earlier, the provision for constitution of the Settlement Commission was not in existence earlier. This legislative step was taken on the recommendation of the Wanchoo Committee. As observed by us earlier, the Settlement Commission was to be constituted for settling the complicated claims of chronic tax evaders as an extraordinary measure, for giving an opportunity to such persons to make true confession and to have the matters settled once for all, and earn peace of mind. It is a Forum for self surrender and seeking relief and not a Forum for challenging the legality of assessment order or orders passed in any other proceedings. This is not only evident from the provision of the Act which prevents the application made, from being withdrawn as also the provision which makes the decision of the Settlement Commission final and conclusive both on question of law and fact. The power conferred on the Settlement Commission is so wide that it can take any view on any questions of law, which it considers appropriate, having regard to the facts and circumstances of a case, which would be applicable only to that case and it has also the power to give immunity against prosecution or imposition of penalty. It is in this background we should find out the answer to the second question, namely, the scope for interference against a decision of Settlement Commission in a petition under Article 226 of the Constitution of India. The provision for settlement would show that it is in the nature or statutory arbitration, to which a person may submit himself voluntarily. Therefore, it appears to us that the scope is much more restricted than the power of the Court to interfere with an arbitration award. Regarding the jurisdiction of the Civil Court to deal with an arbitration award, the Supreme Court in the case of *Coimbatore District Podu Thozillar Samgam v. Bala Subramania Foundry*- has stated thus:

"The Court was also entrusted with the power to modify or correct the award on the ground of imperfect form or clerical errors, or decision on questions not referred, which were severable from those referred. The Court had also power to remit, the award when it had left some matters referred undetermined or when the award was indefinite, where the objection to the legality of the award was

⁶ 1989 SCC OnLine Kar 87



apparent on the face of the award. The Court might also set aside the award on the ground of corruption or misconduct of the arbitrator, or that a party had been guilty of fraudulent concealment or wilful deception. But the Court could not interfere with the award if otherwise proper on the ground that the decision appeared to it to be erroneous. The award of the arbitrator was ordinarily final and conclusive, unless a contrary intention was disclosed by the agreement. The award was the decision of a domestic Tribunal chosen by the parties, and the Civil Courts which were entrusted with the power to facilitate arbitration and to effectuate the awards, could not exercise appellate powers over the decision. Wrong or right the decision was binding, if it be reached fairly after giving adequate opportunity to the parties to place their grievances in the manner provided by the arbitration agreement. This Court reiterated in the said decision that it was now firmly established that an award was bad on the ground of error of law on the face of it, when in the award itself or in a document actually incorporated in it, there was found some legal proposition which was the basis of the award and which was erroneous."

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

- (i) if grave procedural defect such as violation of the mandatory procedural requirements of the provisions in the Chapter XIX-A and/or violation of Rules of natural justice is made out;
- (ii) if it is found that there is no nexus between the reasons given and the decision taken by the Settlement Commission.
- (iii) this Court cannot interfere either with an error of fact or error of law, alleged to have been committed by the Settlement Commission.

We answer the second question accordingly."

26. As was emphasized by the Supreme Court in *Kotak Mahindra*, the essential ingredients liable to be borne in consideration by the ITSC for the purposes of grant of immunity are cooperation by the applicant in the computation of total income in the settlement proceedings and a full and true disclosure of income being made. The Supreme Court,



however, pertinently observed that what would be relevant in this respect would be the assessee offering to tax income in addition to what may have been disclosed in the return. The Supreme Court held that the settlement is premised on a full and true disclosure before the ITSC irrespective of the disclosures or discoveries that may be made before an Assessing Officer.

27. As noticed hereinabove, the joint survey which was undertaken was itself based on all original documents and material having been duly placed by the respondents. It is, therefore, not the case of the petitioners that the respondents either failed to cooperate in those proceedings or withheld information. The Court is also cognizant of the fact that Chapter XIXA does not envisage the ITSC to be bound by the voluntary disclosure that an applicant may choose to make. It stands empowered to enquire and investigate as well as call for reports and material before completing the exercise of computation. This was an aspect which we had highlighted in **Principal Commissioner of Income-Tax vs. Trent East LPG Bottling Ltd**⁷ and where we had observed as follows:-

“19. It becomes significant to note that in terms of section 245D(4) of the Act, the Income-tax Settlement Commission 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 Income-tax Settlement Commission 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 Income-tax Settlement Commission be of the opinion that for the

⁷ 2024 SCC OnLine Del 2674



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 245-I of the Act.

22. As would be manifest from the discussion above, the Income-tax Settlement Commission 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 Income-tax Settlement Commission'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 Income-tax Settlement Commission 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 Income-tax Settlement Commission could exercise was lucidly explained by the Supreme Court in *Kotak Mahindra Bank Ltd. v. CIT* [(2023) 458 ITR 113 (SC); 2023 SCC OnLine SC 1215.]. The Supreme Court in *Kotak Mahindra Bank [Kotak Mahindra Bank Ltd. v. CIT, (2023) 458 ITR 113 (SC); 2023 SCC OnLine SC 1215.]* held (page 141 of 458 ITR):

“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 Penal Code, 1860, 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....

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 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 Income-tax Settlement Commission 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* [(2021) 432 ITR 134 (Delhi); 2021 SCC OnLine Del 3518.] wherein the following was observed (page 142 of 432 ITR):

“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 sections 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 section 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. Income-tax Settlement Commission* [(2016) 380 ITR 342 (Delhi); 2016 SCC OnLine Del 49.] 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* [(1989) 65 Comp Cas 1 (SC); (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.* [(2000) 99 Comp Cas 383 (SC); (1999) 9 SCC 334; 1999 SCC OnLine SC 1031.] 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; 2004 SCC OnLine SC 491.] , *National Textile Corporation (MN) Ltd. v. Durga Trading Company* [(2015) 12 SCC 558; (2016) 1 SCC (Civ) 489; 2015 SCC OnLine SC 1417.] and *Maxopp Investment Ltd. v. CIT* [(2018) 402 ITR 640 (SC); (2018) 15 SCC 523; 2018 SCC OnLine SC 250.] .”

Viewed in light of the above, we find that the order of the ITSC clearly does not merit interference under Article 226 of the Constitution.

28. Mr. Menon had commended for our consideration the invocation of the principle of severability. The power to sever and to disgorge a



part which is offending and unsustainable could be wielded, provided it does not impact the very foundation of an order. However, and as we had noticed hereinabove, the considerations for the framing of an order under Section 245D(4) and 245H do not proceed on a consideration of factors which may be said to be distinct or independent. Both are informed by and founded upon cooperation and full and true disclosure and which are the essential prerequisites for computation of the settlement amount as well as consideration of grant of immunity. The aforementioned two factors thus constitute the very substratum of an application for settlement.

29. Interfering with the grant of immunity on grounds as suggested by the writ petitioner would essentially amount to the Court questioning the validity of the acceptance of the application itself by the ITSC. That is not even the suggestion of the writ petitioner in these proceedings. If the twin statutory conditions were found to be satisfied and thus meriting an order of settlement under Section 245D(4) being rendered, the position would not vary or undergo a change when it come to the question of grant of immunity. We thus find ourselves unable to countenance the challenge as raised.

30. Accordingly, and for all the aforesaid reasons, the writ petition fails and shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

OCTOBER 28, 2024/RW