Settlement Commission

If the assessee feels that the he will be caught for his undisclosed income than he can approach settlement commission for settlement of his case .The main advantage of settlement commission is that the assessee can get immunity from penalty & prosecution & long drawn litigation can be avoided

I. **Conditions** :-

An assessee can approach STC if following conditions are satisfied :-

1. In case of such assessee ,the assessment proceedings should be pending u/s 143 (3),144 & 153 A,153 C (but not u/s 147)i.e. order under above sections is not yet passed .
2. Additional tax on additional Income offered should be more than Rs 10,00,000 (Rs.50,00,000 in search cases u/s 153 A,153C)

Notes :-

If as consequence of search on a particular person ,other persons (related to him) are also searched than such other persons can approach STC by paying additional tax of more than Rs.10,00,000

II. **Procedure :-**

1. The assessee should pay the additional tax
2. After paying the tax ,the assessee shall make an application to STC in form 34B (fees of Rs 500).The application should make full & true disclosure of the income of assessee & the manner in which the Income derived .Along with the application ,the assessee should attach the proof of tax .The assessee should intimate the A.O. that he has approached STC

The application to STC cannot be withdrawn/revised .

3. Within 7 days from the date of receipt of application the STC shall require the assessee to show cause (as to why his case should be settled)
4. Within 14 days from the receipt of application ,the STC shall allow/reject the application

5. If the application is allowed the STC shall call for report of CIT within 30 days from the date of receipt of application . (in order to know whether case is valid or invalid ,assessment is pending or not)

6. Within 30 days from the date of communication from STC ,the CIT shall furnish the report

7. Within 15 days from the date of receipt of report of CIT, the STC may declare the declare the application as Invalid

8. If the application is declared valid ,than the STC shall call for records from CIT

9. After examining the records ,the STC may direct the CIT to inquire & investigate & furnish a report of such enquiry /investigation within 90 days (from date of request from STC)

10. On the basis of records & investigation report & after giving an opportunity of being heard to CIT & Assessee ,the STC shall pass an order of settlement (within 18 months from the end of the month in which application is received by STC)

11. Within 35 days from the date of receipt of order, the assessee shall pay the tax .If the tax is paid after this time than the assessee is liable to pay interest @1.25%p.m.(part of month is full month)

Notes :- If the STC discovers any mistake which is apparent from the record ,then the STC can rectify such mistake within 6 months from the date on which order is passed .If such ratification has the effect of altering the tax liability of assessee than the opportunity of being heard should be given to CIT /Assessee

III. Powers of settlement Commission

Provisional Attachment :-

In the interest of revenue ,the STC can provisionally attached the property of assessee for a period of maximum 6 months .This period can be extended for reasons to be recorded in writing

Power of I.T .Authority :- The STC shall have all the powers of IT Authority

<u>Exclusive Jurisdiction :-</u> The STC shall have the exclusive jurisdiction over the case

<u>Power to grant Immunity</u> :-The STC can grant immunity from :

a) Penalty under Income Tax Act
b) Prosecution under Income Tax Act & Wealth Tax Act

<u>Conditions for Grant of Immunity :-</u>

a) The assessee should co-operate with STC
b) The assessee should have made full & true disclosure of his income & the manner in which such income is derived

<u>Withdrawal of Immunity :-</u>

a) If the assessee fails to pay Tax as per the order of STC
b) If the STC discovers that assessee has concealed material relevant to proceedings or has given false evidence

IV. <u>Order of STC –</u>

If the STC discovers that the assessee has obtained the order of settlement by fraud /misrepresentation of facts than the STC shall declare its order a "Void". In such case the A.O. shall complete the assessment within 2 years from the end of the year in which order is declared void .

<u>Section 254 HA Abatement of Proceeding</u>

In following cases the proceedings with the STC Shall "Abate"

a) If the application is rejected
b) If the application is allowed & later on it is declared Invalid
c) If the STC fails to pass the order within the prescribed time (i.e. 18 months)

In all the above cases ,the A.O. shall complete assessment of such cases ,the AO shall get extra time as follows (this means ,the AO shall pass the order within normal time 21months/9months +extra time)

Extra Time :-

i) If the application is rejected than the period starting on & from application date up to the date of rejection (including date of application +date of rejection)

ii) If the application is declared invalid than the period starting on & from the application date up to the least date of the months in which application is declared invalid

iii) If the STC fails to pass the order than the period starting on & from the application date up to the date on which prescribed time for passing the order expires

To complete the assessment of such cases (which are abated) ,the AO can use all the materials & evidence produced by assessee to STC

Once the proceedings with STC abates ,there is no scope of immunity from STC but in such cases ,CIT can grant immunity .However ,CIT may grant immunity from penalty /prosecution only under Income Tax Act .The conditions for grant of immunity & the circumstances under which such immunity can be withdrawn are the same as in case of immunity from STC

***In all the above cases (when proceeding abate) ,the assessee shall get the credit of tax paid by him before applying to STC (Section 245 HAA)

Final Judgment

The order of STC is final & conclusive .The assessee cannot file appeal against such order .However ,the order of STC can be challenged in HC/SC if the STC has not followed principles of natural evidence (eg. opportunity of being heard not given)

Interest u/s 234A/B/C

The STC cannot waive interest u/s 234 A/B/C (such interest Is mandatory)

Once in Life Time

The Assessee can settle his case with the help of STC only once in his life time (order can be passed by STC only once in life time for a particular assessee