

SETTLEMENT OF CASES

Some Key Points : Recent Amendments

The Finance Act, 2010 has amended section 245A whereby a proceeding for assessment or reassessment resulting from a search or as a result of requisition of books of account or other documents or any assets, shall be regarded as a case eligible for settlement by the Settlement Commission.

A proceeding for assessment or reassessment for any of the assessment years under section 153A or section 153C shall be deemed to have commenced on the date of issue of notice initiating such proceedings and concluded on the date on which the assessment is made.

The monetary limit for making application

- (a) In a case where the proceedings for assessment or reassessment for any of the assessment years referred to in section 153A(1)(b) or section 153B(1)(b) in the case of a person referred to in section 153A or section 153C, **the additional amount of income-tax payable on the income disclosed in the application must exceed Rs.50 lakhs.**
- (b) In any other case, **the additional amount of income-tax payable on the income disclosed in the application must exceed Rs.10 lakhs.**

Time limit for passing the order

- (a) In respect of application made on or after 01.06.2007 but before 01.06.2010, within 12 months from the end of the month in which the application was made.
- (b) In respect of application made on or after 01.06.2010, within 18 months from the end of the month in which the application was made.

Question 1

Does the Settlement Commission have the power to reduce or waive interest levied under sections 234A, 234B and 234C of the Income-tax Act? Discuss.

Answer

The matter concerning the power of the Settlement Commission to reduce or waive interest chargeable under section 234A, 234B or 234C has been settled by the Supreme Court in *CIT v. Anjum M.H.Ghaswala* reported in 252 ITR 1.

According to the judgment, sub-section (6) of section 245D is only procedural in nature providing for fixing the term by which the amounts settled under sub-section (4) will have to be paid. It does not empower the Commission either to reduce or waive the interest. Any settlement made by the Commission must be in accordance with the provisions of the Act.

The Settlement Commission does not have the power to reduce or waive the interest levied under sections 234A, 234B and 234C. It does not authorize the waiver or deduction of tax. The levy of interest under sections 234A, 234B or 234C is mandatory in nature and therefore any settlement made must include the interest under these sections.

Question 2

- (a) *Does the Settlement Commission have jurisdiction to entertain an application made under section 245C(1) in respect of a case covered by Chapter XIV-B (Search and seizure case).*
- (b) *Power of the Settlement commission to grant immunity from prosecution and penalty is limitless.*

Answer

- (a) Clause (b) of section 245A has restricted the cases eligible to appear before the Settlement Commission. The term 'case' would mean any proceeding for assessment under the Act of any person in respect of any assessment year or years which is pending before the Assessing Officer and which alone shall be eligible for settlement by the settlement commission.

The following shall not be a proceeding for the purpose of filing an application under section 245C.

- (i) a proceeding for assessment or reassessment or re-computation under section 147;
- (ii) a proceeding for making fresh assessment in pursuance of an order under section 254 or section 263 or section 264 setting aside or cancelling an assessment.

In view of the amendment made by the Finance Act, 2010 in proviso to section 245A search cases are eligible settlement through the Settlement Commission. However, a proceeding shall be deemed to have been commenced on the date of issue of notice initiating assessment under section 153A or section 153C and would get concluded on the date on which the assessment is made. During this period, application for settlement of the case could be filed by the assessee. The monetary limit prescribed in respect of

additional amount of income-tax payable is also be kept in mind in view of proviso to section 245C(1).

- (b) The power of Settlement Commission to grant to immunity from prosecution is provided for in section 245H.

It also has the power to grant immunity in whole or in part from the imposition of any penalty under the Income-tax Act with respect to the case covered by the settlement, if any, only if the person who has made the application has co-operated with the Commission and has made a full and true disclosure of his income and the manner in which it was derived.

Further, if any proceeding for the prosecution for any such offence has been instituted before the date of receipt of application for settlement under section 245C of Income-tax Act, the Settlement Commission cannot grant immunity.

The Settlement Commission, however, shall not grant immunity from prosecution for any offence under the Indian Penal Code or under any Central Act other than this Act (Income-tax Act, 1961) and Wealth-tax Act, 1957 to a person who makes an application under section 245C on or after 01.06.2007.