

Settlement of Tax Cases

Some Key Points : Recent Amendments

Threshold limit for “additional amount of income-tax payable on income disclosed in the application” for admission of a case by an entity related to the tax-payer who is the subject matter of search

- (i) Last year, section 245A was amended to provide that the proceedings for assessment or reassessment resulting from search/requisition would fall within the definition of a “case” which can be admitted by the Settlement Commission.
- (ii) Consequent amendment was made in section 245C to provide that the additional amount of income-tax payable on income disclosed in the application should exceed ₹ 50 lakh, for an application to be made before the Settlement Commission in such cases.
- (iii) Therefore, if proceedings have been initiated against the applicant (hereinafter referred to as specified person) under section 153A or under section 153C as a result of search or a requisition of books of account, an application can be made before the Settlement Commission if the additional amount of income-tax payable on the income disclosed in the application exceeds ₹ 50 lakh.
- (iv) In any other case, the additional amount of income-tax payable on the income disclosed in the application should exceed ₹ 10 lakh.
- (v) The Finance Act, 2011 has now provided that an application can also be made, where the applicant is related to the specified person (mentioned in (iii) above) and in whose case also proceedings have been initiated as a result of search, provided the additional income-tax payable on the income disclosed in the application exceeds ₹ 10 lakh.
- (vi) Therefore, the limit of ₹ 50 lakh would be applicable to the tax payer who is the subject matter of search and the limit of ₹ 10 lakh would be applicable to entities related to such a tax payer, who are also the subject matter of search.

Time limit for passing of order by the Settlement Commission [Section 245D(4A)]

- (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.

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Settlement Commission specifically empowered to amend any order to rectify a mistake apparent from record within six months from date the of its order [Section 245D(6B)]

- (i) Section 245D(4) stipulates that the Settlement Commission shall pass an order after giving an opportunity of being heard to the applicant and the Commissioner.
- (ii) Under section 245F(1), the Settlement Commission has been conferred all the powers which are vested in an income-tax authority under the Act. Under section 154, an income-tax authority has the power to amend any order passed by it in order to rectify any mistake apparent from the record.
- (iii) However, there are High Court rulings holding that the order made by the Settlement Commission is conclusive and final and therefore, the same cannot be rectified under section 154. However, this view does not convey the true legislative intent.
- (iv) Therefore, in order to reflect the correct intention of the legislature, sub-section (6B) has been inserted in section 245D to specifically provide that the Settlement Commission may amend any order passed by it under section 245D(4) to rectify any mistake apparent from the record.
- (v) However, the time limit for effecting such amendment is within six months from the date of its order, as against the permissible time limit of four years provided for under section 154(7).
- (vi) Further, the Settlement Commission should not make a rectification which has the effect of modifying the liability of the applicant, without –
 - (1) giving a notice to the applicant and the Commissioner of its intention to do so; and
 - (2) allowing the applicant and the Commissioner an opportunity of being heard.

Question 1

Seizures were made from Mr. Sunder pursuant to a search conducted in his premises. He filed an application for settlement by claiming to have received the amount by way of loans from several persons. The Settlement Commission accepted his statement and made an order. The CBI, however, conducted enquiry at the instance of the Revenue regarding the claimed amount of loans and opined that the alleged lenders had no means or financial capacity to advance such huge loans to Mr. Sunder and were mere name lenders only. The Commissioner filed an application under section 245D(6) praying for the order to be declared void and for withdrawal of benefit granted. Mr. Sunder, however, contended that the order of the Settlement Commission was final and any fresh analysis would amount to sitting in judgement over an earlier decision, for which the Settlement Commission was not empowered. Discuss the correctness of Mr. Sunder's contention.

Answer

The Apex Court, in *CIT vs. Om Prakash Mittal (2005) 273 ITR 326*, observed that a plain reading of section 245D(6) shows that every order passed under sub-section (4) has to provide for:-

- (i) the terms of settlement; and
- (ii) that the settlement would become void, if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.

The decision that the order has been obtained by fraud or misrepresentation is that of the Settlement Commission. However, there is no requirement that the action be initiated by the Settlement Commission, *suo moto*. The Revenue can move the Settlement Commission for decision on an issue if it has material to show that the order was obtained by fraud or misrepresentation of facts.

The Supreme Court observed that the foundation for settlement is an application which an assessee can file at any stage of a case relating to him in such form and manner as may be prescribed. The fundamental requirement of the application under section 245C is that there must be full and true disclosure of the income along with the manner in which it has been derived. If an order is obtained by fraud or misrepresentation of facts, it cannot be said that there is a full and true disclosure and therefore, the Legislature has prescribed the condition relating to declaration of the order void when it is obtained by fraud or misrepresentation of facts.

The Supreme Court held that merely because section 245-I provides that the order of settlement is conclusive, it does not take away the power of the Settlement Commission to decide whether the settlement order has been obtained by fraud or misrepresentation of facts. If the Commissioner is able to establish that the earlier decision was void because of misrepresentation of facts, then it is open for the Settlement Commission to decide the issue. It cannot be called by any stretch of imagination to be a review of the earlier judgment or the subsequent Bench sitting in appeal over the earlier Bench's decision.

Mr. Sunder's contention is, therefore, not correct.

Question 2

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

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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. However, as per provisions of section 245F, the Settlement Commission shall have all the powers which are vested in an income-tax authority. Therefore, Settlement Commission can grant relief from the aforesaid interest to the extent of the powers given vide the circulars issued by CBDT under section 119.

Question 3

- (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.

Therefore, search cases are eligible for 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 to be kept in mind in view of proviso to section 245C(1).

- (b) The power of Settlement Commission to grant 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, 1961 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, 1961, 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.

Self-examination Questions

1. Define the term "Case" for the purpose of settlement of cases.
2. Discuss the jurisdiction and powers of the Settlement Commission.
3. What is the binding nature of the orders of the Settlement Commission?
4. The Settlement Commission had passed an order under section 245D(4) waiving and/or reducing interest levied on the assessee under sections 234A, 234B and 234C in accordance with the state of law at the relevant point of time. Thereafter, the Settlement Commission, after a period of less than four years served notice upon the assessee stating that in view of the decision of the Supreme Court in the case of *CIT v. Anjum M.H. Ghaswala (2001) 252 ITR 1*, the aforesaid order required rectification. After considering the reply of the assessee, the Settlement Commission passed an order under section 154 withdrawing the reduction/waiver of interest granted by it earlier. Discuss the following with reference to the facts of the case stated above -
 - (a) Is the Settlement Commission vested with the powers of an Income-tax Authority to give effect to the judgment of the Supreme Court?
 - (b) Is the scope and ambit of section 245F wide enough to enable the Settlement Commission to rectify an order passed by it under section 245D(4)?

Answer

4. The above questions have been answered by the Gujarat High Court in *Sanjaybhai R. Patel v. Assessing Officer (2004) 135 Taxman 210*. In this case, the Gujarat High Court observed that section 245F(1) vests the Settlement Commission with all the powers which are vested in an income-tax authority under the Act, in addition to the powers that the Commission has under Chapter XIX-A.

Section 154 contemplates that the powers of rectification thereunder can be exercised only with a view to rectify a mistake apparent from record and that the said powers can

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be exercised by an income-tax authority referred to in section 116. Section 154(7) prescribes the time-limit for exercise of such powers and it says that no amendment under this section shall be made after the expiry of 4 years from the end of the financial year in which the order sought to be amended was passed.

In the instant case, the Settlement Commission had waived or reduced the interest under sections 234A, 234B and 234C despite the fact that it had no such power under the Act and it was contrary to the law laid down by the Supreme Court. The High Court took into consideration the decision in *Standard Radiators v. CIT* (1987)165 ITR 178 (Guj.) and held that in the instant case, the Settlement Commission had committed an error apparent on the face of the record in reducing/waiving the interest chargeable under sections 234A, 234B and 234C. As far as the issue as to whether the Settlement Commission is an income-tax authority or not is concerned, section 245F(1) specifically states that the Settlement Commission has got all the powers of the income-tax authority, over and above the powers under Chapter XIX-A.

The Settlement Commission cannot issue circulars for which the issuing powers are vested with the CBDT under section 119, but it is certainly an Income-tax authority to confer the benefit available to the assessee under the circular and for this purpose, section 245F can be pressed into service. If such powers are exercised by the Settlement Commission within 4 years from the date of original order passed under section 245D, the same is in accordance with the provisions contained in section 154. Therefore, there was no infirmity in the order passed by the Settlement Commission while exercising the powers under section 154 for the purpose of rectifying the mistake committed by it in the original order under section 245D, which was a mistake apparent from record.