Settlement Commission

6.1 Section 245 A to L: Settlement Commission (SC) – An overview

- On the recommendation of the **Wanchoo Committee**, the Central Government has constituted the Settlement Commission (SC) for **one time** settlement of cases. SC **it is not an IT authority.** The principal bench is situated in Delhi and additional benches in Mumbai, Kolkata and Chennai.
- Application **pending with the assessing officer in respect of original assessment u/s 143(3), 144, 153A or 153C can only** be filed with SC. If assessment order is made fresh **on the direction of ITAT**, then this **is not treated** as proceeding for making application.
- A case means, **any proceeding pending** before the assessing officer for the assessment **on the date of filing application**.
- Section **147, 254, 263, 264 shall not be a proceeding** for the purpose of filing an application with SC.
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Section			Commencement date of proceedings
(a)	147	:	Commenced from the date of issue of notice u/s 148
(b)	254	:	Commenced from the date on which order in respective sections setting aside or cancelling an assessment was passed
(c)	263	:	
(d)	264	:	
(e)	153A	:	Commenced on the date of issue of notice initiated such proceeding and concluded on the date of on which the assessment is made
(f)	153C	:	
(G)	in the case of proceedings not covered by above, the proceedings for assessment is deemed to have commenced from the 1st day of the AY and concluded on the date on which assessment is made		

- Once application is filed, Settlement Commission has to pass either order of admission or order of rejection within a period of **14 days** of application after opportunity of being heard in case of rejection.
- The person who filed application with SC herein after referred to as **"specified person".**
- The specified person can **make an application with a full and true disclosure of his income** which has not been disclosed before the assessing officer, **provided the additional income tax payable (caution: not the total income) on income disclosed exceeds ₹ 50 lakhs (or) ₹ 10 lakhs** as the case may be.

(a)	Case is **initiated** u/s 153A(1)(b) or 153B(1)(b) as a result of search and specified person offers to pay additional tax	:	₹ 50 lakhs
(b)	Case is initiated u/s 153A (1)(b) or 153B(1)(b) with specified person **and** money, bullion, jewellery, books of accounts seized or requisitioned **belong to other person and** section 153C has been initiated over other person.	:	₹ 50 lakhs
(c)	Case is initiated u/s 143(3) or 144 and specified person offers to pay additional tax	:	₹ 10 lakhs
(d)	assessee is **related to either (a) or (b)**, whose case already **initiated** u/s 153A(1)(b) or 153B(1)(b) or 153C **and** related assessee offered additional tax	:	₹ 10 lakhs

❖ **Provision Illustration:**

Date of initiation of search (LASE)	:	09.08.2011	FY	2011-2012	AY	2012-2013

So, leave FY 2011-2012, go back six FY's							
	Y_{search}	Y_1	Y_2	Y_3	Y_4	Y_5	Y_6
Financial Year	2011-12	2010-11	2009-10	2008-09	2007-08	2006-07	2005-06
Assessment Year	2012-13	2011-12	2010-11	2009-10	2008-09	2007-08	2006-07
Assessment order passed	153B(1)(b)	153A(1)(b)					

❖ **Section 153A(1)(b):** assess or re-assess the total income of **six assessment years** immediately preceding the assessment year relevant to the previous year of initiation of search. So, all the seven years put together (or) lesser than seven years, the limit of ₹ 50 lakhs or ₹ 10 lakhs as the case may be, in aggregate have to be fulfilled.

❖ If an individual who has **substantial interest** in the business or profession of the specified person, then, he and his relative also treated as an applicant in relation to specified person.

❖ Substantial interest refers beneficial ownership of **shares** carrying **not less than 20% voting power** (or) the beneficial entitlement **not less than 20% of profit** on the **date of search.**

❖ The additional amount of **income tax and tax thereon shall be paid** along with application.

❖ An application **shall not be withdrawn** by the applicant. Even there is no provision to revise the application. Since **"a true and full disclosure"** is a pre-requisite for an application.

❖ **Intimation to** assessing officer is required by applicant once application filed with SC.

❖ The SC shall **pass an order within 18 months** from the end of the month in which the application is filed.

❖ Unable to dispose off case by whatever **reason after 18 months**, the procedings **shall abate** on the expiry of time limit. Then the assessing officer, before whom the proceeding was pending at the time of application before commission, shall dispose off the case as if no application has made u/s 245C.

❖ **Section 245D:** The income tax authority shall be entitled **to use all the material and other information** produced by the assessee before the settlement commission, when application made u/s 245C abated in the following situation.

(i) Application **rejected** within 14 days by order in writing.

(ii) Reports of Commissioner called for by the SC **and** on the basis of report within 15 days of receipt of report, by order in writing, declare the application in question as invalid.

(iii) Unable to dispose of case by whatever **reason within 18 months.**

❖ The income tax department would have access to confidential information of the application, only when a settlement application is admitted for final consideration u/s 245D. **{(In re Dolat Investment Ltd)(2010)(Mum)}** - Contradictory decision expressed by authority with respect to provision.

❖ The settlement commission has **power to attach the property** of specified person for the interest of revenue for the period of 6 months, extendable from time to time up to disposal of case.

❖ The specified person **within 35 days** of receipt of final order u/s 245D (4) discharges tax liability.

❖ The Settlement Commission **within six months** from the date of final order can amends an order passed by it, with a view to rectify any mistake apparent from record.

❖ In case the specified person has indulged in **fraud or misrepresentation of facts** in its application to Settlement Commission basis which an order is passed, then such order is deemed to be void. In such case the assessing officer can complete proceedings **at any time before the expiry of two years from** the end of financial year in which the settlement became void.

❖ Commission does not have power to **reduce or waive** the tax and interest element.

- There is **no provision of appeal** against the order of the Settlement Commission. But the order can be challenged under **Article 226** of the Constitution of India in a court by filing writ petition on the ground that **(i)** Principles of natural justice being violated or **(ii)** mandatory legal requirements are not complied with **(iii)** there is a contradiction between reasons given in the order and conclusion drawn in such order.
- **Immunity from prosecution**: Under Income tax Act or Wealth tax Act.
- **Immunity from penalty:** only under the Income tax Act.
- Application to SC is to be made only **once in Life-time,** if application allowed is **made on or after 1st June, 2007**.
- The Settlement Commission has to consider the material brought on record before it. "Consideration" means independent examination of the evidence and the material on record. Since the material was available before the Commission and such material had been taken into consideration for returning a finding which was relevant for determining the undisclosed income of the assessee, the order of the Commission could not be interfered with. **{(In re Supreme Agro Foods Private Ltd)(2013)(P&H)}**