

# SECTION 245C/INCOME-TAX ACT

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[2009] 184 TAXMAN 491 (MAD.)

## HIGH COURT OF MADRAS

Canara Jewellers\*

v.

Settlement Commission

S.J. MUKHOPADHAYA AND RAJA ELANGO, JJ.

WRIT APPEAL NOS. 970 AND 971 OF 2001

JULY 16, 2009

**Section 245C, read with sections 245D and 245F, of the Income-tax Act, 1961 - Settlement Commission - Application for settlement of cases - Assessment years 1991-92 to 1993-94 - Whether though Settlement Commission has all powers which are vested with an income-tax authority, in addition to power conferred under Chapter XIX-A, yet such power can be exercised for purpose of procedure of settlement of application under section 245C and not for reassessment of tax of a particular year - Held, yes - Whether where income disclosed by assessee under section 245C was not accepted by Settlement Commission as full and true disclosure of their income, applications filed under section 245C were not maintainable and, therefore, order passed by Settlement Commission enhancing income disclosed by assessee was without jurisdiction - Held, yes**

### FACTS

The assessee were jewellers. They had been assessed by the Assessing Officer. Subsequently, the Assessing Officer initiated reassessment proceedings and made additions on account of difference between the closing stock and opening stock in the ornament register of the assessee. The assessee filed appeals before the Commissioner (Appeals). During the pendency of the said appeals, they filed applications for settlement under section 245C disclosing their revised income. The Settlement Commission, after enquiry, though accepted that the assessee had made full and true disclosure, yet enhanced the revised income as shown by the assessee. On writ, the Single Judge upheld the order of the Settlement Commission holding that the decision to approach the Settlement Commission was entirely that of the assessee, they being under no compulsion whatsoever to approach the Commission and having sought the order of the Commission, it was not open to them to wriggle out of that order by saying that the Commission ought not to have determined the income at a figure higher than the one that had been offered by them.

On appeal :

### HELD

*The provisions for settlement of cases are prescribed under Chapter XIX-A. From these provisions, it will be evident that apart from the power conferred under Chapter XIX-A, the Settlement Commission has the power vested with an income-tax authority under the Act. However, such power is to be used for the purpose of determining an application under section 245C and not for the purpose of reassessment of tax calculated by the Assessing Officer. [Para 7]*

*The provision of section 245C fell for consideration before the Supreme Court and High Courts from time-to-time. In CIT v. Express Newspapers Ltd. [1994] [206 ITR 443](#)/[72 Taxman 438](#) , the Supreme Court held that in an application under section 245C for settlement of applicant's income-tax case, there should be disclosure of income not earlier disclosed before the Assessing Officer. If the Assessing Officer or the income-tax authority has already discovered it and either has gathered the material to establish the particulars of such income or is at a stage of investigation/enquiries, then the disclosure cannot be said to be voluntary or in good faith and the assessee cannot be allowed to take advantage of the comparatively easy course of settlement. The scope of section 245C was also noticed by the High Court in Ace Investments Ltd. v. Settlement Commission [2003] [264 ITR 571](#) (Mad.), wherein a Single Judge held that full and true disclosure of income by the assessee is a condition precedent for settlement of cases and for grant of immunity from penalty and prosecution. Sections 245C and 245H contemplate full and true disclosure of income by the applicant and the manner in which such income has been derived. Once it is held that an application filed for settlement of cases is not maintainable on the ground that the applicant has not made full and true disclosure of the income, proceeding with such application and deciding the issue would be outside the power of the Settlement Commission, as the application itself is not in conformity with section 245C(1). [Para 8]*

*In the impugned order, the Settlement Commission had observed that considering the co-operation extended by the assessee in the completion of the settlement proceedings and the full and true disclosure made, the Commission granted immunity under section 245H(1) from imposition of penalty and prosecution under the Act and the relevant section of the Indian Penal Code. However, it would be evident that the income, as was disclosed by the assessee as full and true disclosure of their respective income, was not accepted and a revised higher income was assessed by the Settlement Commission. Once the income disclosed by the assessee under section 245C was not accepted as full and true disclosure of their respective income in view of the judgment of the Supreme Court referred to above, the applications under section 245C preferred by the assessee were not*

*maintainable and, therefore, the Settlement Commission had no jurisdiction to pass any order enhancing the income, showing higher income in respect of the assesseees.* [Para 10]

*So far as section 245F was concerned, though the Settlement Commission is empowered to have all powers, which are vested with an income-tax authority under the Act, in addition to the power conferred under Chapter XIX-A, such power can be exercised for the purpose of procedure of settlement of application under section 245C and not for reassessment of tax of a particular year which is vested with the assessing authority.* [Para 11]

*For the aforesaid reasons, while the impugned order passed by the Settlement Commission could not be upheld, for the same reason, the order passed by the Single Judge dated 28-2-2001, deserved to be set aside.* [Para 12]

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## CASE REVIEW

*CIT v. Express Newspapers Ltd.* [1994] [206 ITR 443/ 72 Taxman 438](#) (SC) [Para 8]; and *Ace Investments Ltd. v. Settlement Commission* [2003] [264 ITR 571](#) (Mad.) [Para 8] *followed*.

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## CASES REFERRED TO

*CIT v. Express Newspapers Ltd.* [1994] [206 ITR 443/ 72 Taxman 438](#) (SC) [Para 8], *Ace Investments Ltd. v. Settlement Commission* [2004] [264 ITR 571](#) (Mad.) [Para 8] and *Dr. C.M.K. Reddy v. Settlement Commission (IT/WT)* [2008] [306 ITR 403/ 172 Taxman 34](#) (Mad.) [Para 8].

**V. Ramachandran** for the Appellant. **Mrs. Pushya Sitaraman** for the Respondent.

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## JUDGMENT

**S.J. Mukhopadhya, J.** - In both the writ appeals, one filed by the firm and the other by the partner of the firm, as a common question of law is involved, they are being heard together and disposed of by this common judgment.

2. The appellant in W.A. No. 970 of 2001, *viz.*, M/s. Canara Jewellers, is a partnership firm. It is an individual assessee of income-tax. The appellant in W.A. No. 971 of 2001, *viz.*, Sri Yogesh Achar, is the partner of the firm and he is also an individual income-tax assessee. Both the appellants were assessed by the Assessing Officer for the assessment years 1991-92, 1992-93 and 1993-94. The Assessing Officer subsequently re-opened the assessment of the firm with regard to the assessment year 1991-92 so as to bring for assessment, the value of the undisclosed stock of gold etc. During the course of the assessment proceeding for the assessment year 1992-93, the Assessing Officer found from the Ornaments Register that the opening balance of gold as per the Register as on 1-4-1991 was certain grams. Logically, the closing balance as on 31-3-1991 should have been the same amount, but instead, the closing stock of gold, including the customers' gold, was shown to be of a different quantity. Therefore, the excess stock was noticed as not disclosed by the assessee as on 31-3-1991. Similar was the case with regard to the assessment year 1993-94. The firm was also not happy with the assessment made on re-opening for the assessment year 1991-92. It was in this background, during the pendency of the appeals, the appellants preferred their respective applications under section 243C of the Income-tax Act, 1961. Therein, the appellants had shown their revised income and taken a plea that the income so shown was a full and true disclosure of the income of assesseees. Having heard the parties, the Settlement Commission, after due enquiry and obtaining the report, issued the impugned order dated 21-5-1998. By the said order, though it was accepted that the appellants made a full and true disclosure, the revised income as shown by the appellants was enhanced and thereby, it was ordered to be assessed on the basis of the enhanced income as fixed by the Settlement Commission. The common order was challenged by both the assesseees in their respective writ petitions, *viz.*, W.P. Nos. 12314 and 12315 of 1998. The learned Single Judge, by the impugned common judgment dated 28-2-2001, held that the decision to approach the Settlement Commission is entirely that of the assessee, he being under no compulsion whatsoever to approach the Commission. Having sought the order of the Commission, it was not open to the assessee to wriggle out of that order by saying that the Commission ought not have determined the income at a figure higher than the one that had been offered by the assessee. The Court further observed the fact that the assessee had disclosed a lesser income does not imply that it is the ceiling up to which the Commission could go while determining the taxable income for the relevant years.

3. At the outset, learned senior counsel appearing on behalf of the appellants M/s. Canara Jewellers stated that the income assessed by the Settlement Commissioner for the assessment years 1991-92 and 1992-93 being almost similar to that of the income shown by the appellants/assesseees, the appellant M/s. Canara Jewellers does not press the appeal with regard to the assessment years 1991-92 and 1992-93. So far as the order of the Settlement Commission for the assessment year 1993-94 in respect of M/s. Canara Jewellers and for the assessment years 1992-93 and 1993-94 in respect of Sri Yogesh Achar is concerned, it was submitted that if the Settlement Commission accepted that the income shown was a full and true disclosure, then there was no occasion to fix some higher income, as has been done in the impugned order. The alternative argument was that, if the Settlement Commissioner has not accepted the income disclosed by appellants/assesseees under section 243C of the Income-tax Act, in that case, the petition under section 243C was not maintainable and therefore, the Settlement Commissioner had no jurisdiction to pass any order thereon.

4. *Per contra*, the stand taken by Mrs. Pushya Sitaraman, learned Senior Standing Counsel for the revenue is that in view of section 243F of the Income-tax Act, the Settlement Commission was not bound by the amount as was disclosed by the assesseees and was empowered to fix the income on the basis of the report and other records.

5. We have heard the learned counsel appearing on behalf of the parties and perused the records.

6. In this case, the only question that requires to be determined is, whether the Settlement Commission had the jurisdiction under section 243C of the Income-tax Act to compute the income of the assesseees on the basis of the report and records available, if

the said Commission otherwise does not agree with the income shown by the assesseees as full and true disclosure of their income.

7. The provisions for settlement of cases are prescribed under Chapter XIX-A of the Income-tax Act, 1961. Under section 245C thereof, an assessee may, at any stage of the case relating to him, make an application, for settlement of cases, containing a full and true disclosure of his income which has not been disclosed before the Assessing Officer. The procedure to be followed on receipt of such application under section 245C has been prescribed under section 245D. Section 245F deals with the powers and procedure of the Settlement Commission. Under sub-section (1) of section 245F, in addition to the powers conferred on the Settlement Commission under Chapter XIX-A, it shall have all powers which are vested in an Income-tax Authority under the Act; that means the power of the Assessing Authority. Under sub-section (2) of section 245F, when an application made under section 245C has been allowed to be proceeded with under section 245D, the Settlement Commission shall, until an order is passed under sub-section (4) of section 245D, have, subject to the provisions of sub-section (3) of that section, exclusive jurisdiction to exercise the powers and perform the functions of an Income-tax Authority under the Act in relation to the case. Therefore, it will be evident that apart from the power conferred under Chapter XIX-A of the Act, the Settlement Commission has the power vested with an Income-tax Authority under the Act. However, such power is to be used for the purpose of determining an application under section 245C and not for the purpose of reassessment of tax calculated by the Assessing Officer.

8. The provision of section 245C of the Income-tax Act, 1961 fell for consideration before the Supreme Court and High Courts from time-to-time. In *CIT v. Express Newspapers Ltd.* [1994] [206 ITR 443](#)<sup>1</sup>, the Supreme Court held that in an application under section 245C of the Act, for settlement of applicant's income-tax case, there should be disclosure of income not earlier disclosed before the Assessing Officer. If the Assessing Officer or the income-tax authority has already discovered it and either has gathered the material to establish the particulars of such income or fraud fully or is at a stage of investigation/enquiries, then the disclosure cannot be said to be voluntary or in good faith and the assessee cannot be allowed to take advantage of the comparatively easy course of settlement. The scope of section 245C of the Income-tax Act, 1961 was also noticed by this Court in *Ace Investments Ltd. v. Settlement Commission* [2003] [264 ITR 571](#), wherein a learned Single Judge of this Court held that full and true disclosure of income by the assessee is a condition precedent for settlement of cases and for grant of immunity from penalty and prosecution. Sections 245C and 245H of the Income-tax Act, 1961 contemplate full and true disclosure by the applicant of income and the manner in which such income has been derived. When once it is held that an application filed for settlement of cases is not maintainable on the ground that the applicant has not made full and true disclosure of the income, proceeding with such application and deciding the issue would be outside the power of the Settlement Commission, as the application itself is not in conformity with section 245C(1) of the Act. A similar view was expressed by a Division Bench of this Court in *Dr. C.M.K. Reddy v. Settlement Commission* [2008] [306 ITR 403](#)<sup>1</sup>.

9. It will be evident from the impugned order passed by the Settlement Commission that the following disclosure of income was made by the appellants as full and true disclosure of their respective income. The income that was assessed by the Assessing Officer and the income as fixed by the Settlement Commission are also shown hereunder :—

M/s. Canara Jewellers (Appellant in W.A. No. 970 of 2001)

Assessment Year	Income assessed by the Assessing Officer	Income shown as full and true disclosure u/s 245C	Income assessed by the Settlement Commission under the impugned order
1991-92	4,93,584	9,30,350	10,84,000
1992-93	14,39,427	8,58,000	8,51,327
1993-94	8,350	16,06,100	37,00,000

Sri Yogesh Achar (Appellant in W.A. No. 971 of 2001)

Assessment Year	Income assessed by the Assessing Officer	Income shown as full and true disclosure u/s 245C	Income assessed by the Settlement Commission under the impugned order
1992-93	14,35,530	4,00,161	11,13,124
1993-94	68,215	4,78,149	14,12,000

10. In paragraph 15 of the impugned order, the Settlement Commission has observed that considering the co-operation extended by the applicants in the completion of the present settlement proceedings and the full and true disclosure made, the Commission granted immunity under section 245H(1) from imposition of penalty and prosecution under the Income-tax Act and the relevant section of the Indian Penal Code. However, from paragraphs 10, 11 and 12 thereof, it will be evident that the income was disclosed by the appellants as full and true disclosure of their respective income was not accepted and a revised higher income was assessed by the Settlement Commission, particularly with regard to the assessment year 1993-94 with regard to M/s. Canara Jewellers and for both the assessment years 1992-93 and 1993-94 with regard to the petitioner/assessee (Sri Yogesh Achar), since deceased. When once the income disclosed by the assesseees under section 245C is not accepted as full and true disclosure of their respective income, in view of the judgments of the Supreme Court and this Court as referred to above, we hold that the applications under section 245C preferred by the assesseees were not maintainable and therefore, the Settlement Commission had no jurisdiction to pass any order enhancing the income, showing higher income in respect of the assesseees.

**11.** So far as section 245F is concerned, though the Settlement Commission is empowered to have all powers which are vested in an Income-tax Authority under the Act, in addition to the power conferred under Chapter XIX-A, but such power can be exercised for the purpose of procedure of settlement of application under section 245C and not for reassessment of tax of a particular year which is vested with the Assessing Authority.

**12.** For the reasons aforesaid, while we cannot uphold the impugned order dated 21-5-1998 passed by the Settlement Commission, for the same reason, the order passed by the learned Single Judge dated 28-2-2001 deserves to be set aside. We order accordingly, and set aside the order dated 21-5-1998 passed by the Settlement Commission and the order dated 28-2-2001 passed by the learned Single Judge. However, this judgment shall not stand in the way of the Assessing Officer/Competent Authority to proceed in accordance with law, if otherwise it is not barred by limitation. We may also add that we have noticed the provision of section 153(3)(v) of the Income-tax Act as referred to by the learned Senior Standing Counsel. The writ appeals are allowed with the aforesaid observations, but there shall be no order as to costs.