

# SECTION 245C/INCOME-TAX ACT

---

[2008] 172 TAXMAN 34 (MAD.)  
**HIGH COURT OF MADRAS**

*Dr. C.M.K. Reddy*

v.

*Settlement Commission \* (IT/WT)*

**K. RAVIRAJA PANDIAN AND P.P.S. JANARTHANA RAJA, JJ.**

WRIT PETITION NO. 13725 OF 2004

APRIL 17, 2008

**Section 245C of the Income-tax Act, 1961 - Settlement Commission - Application for settlement of cases - Assessment years 1990-91 to 2000-01 - Whether an application to Commission is not intended to enable a dishonest assessee to continue with his dishonest conduct and still claim benefit which can be conferred by Commission if Commission were to ultimately make an order of settlement - Held, yes - On a survey conducted under section 133A, it was noticed that petitioner had not filed returns for assessment years 1990-91 and 1994-95, during which period he had made huge investments - Assessments for assessment years 1990-91 to 2000-01 were completed under section 143(3)/144, read with section 147 - Petitioner filed appeal before Commissioner (Appeals) and during pendency of same, filed an application for settlement under section 245C(1) before Settlement Commission - Settlement Commission, on facts, found that petitioner had not made full and true disclosure of his income and, therefore, rejected application - Whether Settlement Commission was justified in rejecting application - Held, yes - Whether finding arrived at by Commission on facts without report of Commissioner could not vitiate Commission's order, as in instant case, one of conditions precedent for maintaining an application under section 245C, i.e., full and true disclosure of income, which had not been disclosed before Assessing Officer, was lacking - Held, yes - Whether further, petitioner having participated in enquiry having full knowledge about non-receipt of report from Commissioner could not later on contend that in absence of report of Commissioner under section 245D(1), order non-suited petitioner for settlement was a procedural irregularity and was liable to be set aside - Held, yes**

---

## **FACTS**

On a survey conducted under section 133A, it was noticed that the petitioner had not filed returns of income for the assessment years 1990-91 and 1994-95, during which period he had made huge investments in the construction of hospital-cum-hotel complex. A notice under section 148 was issued to him for the assessment years 1989-90 to 2000-01 and the assessments were completed under section 143(3)/144, read with section 147. The petitioner filed appeals before the Commissioner (Appeals) for all the assessment years. During the pendency of the appeals, he filed an application for settlement under section 245C(1) before the Settlement Commission. The application was rejected on the grounds that the assessee had not made full and true disclosure of his income and, therefore, did not satisfy the conditions for admission of an application filed under section 245C(1); and that no complexity of investigation was involved in the case.

On writ, the petitioner contended that the order of the Settlement Commission was liable to be quashed as vitiated in its decision-making process as well as suffering from a 'decisive error'; that lacking of complexity of investigation could not be regarded as a conclusive requirement and the Settlement Commission had proceeded as if under section 245D(1) the alleged "complexity of the investigation" was the sole criteria; and that the order of the Settlement Commission was also liable to be quashed on the ground that even the rejection order under section 245D(1) had not been made on the basis of the materials contained in the report of the Commissioner and having regard to the nature and circumstances of the case.

---

## **HELD**

*As per the scheme of the provision of section 245C, the assessee may (on his option) at any stage of a case relating to him make an application under section 245C. That application has to be made in Form No. 34B as per rules 44C and 44CA of the Income-tax Rules, 1962 and shall contain full and true disclosure of the assessee's income which was not disclosed before the Assessing Officer and shall contain full and true disclosure of the manner in which such income has been derived and additional amount of income-tax payable on such income. The application shall also contain such other particulars as are required under*

Form No. 34B. [Para 8]

*Thus, it is manifestly clear that the assessee, who makes an application, should make a full and true disclosure of the income which is not disclosed before the Assessing Officer and the manner in which such income has been derived, which is a pre-condition or a mandatory requirement for maintaining an application under section 245C, read with rules 44C and 44CA. If such an application fulfilling all the conditions prescribed under section 245C is filed, the procedure to be followed for disposal of the application has been stated in section 245D. The first sentence of the said section reads that "on receipt of an application under section 245C", the Settlement Commission shall call for the report from the Commissioner and on the basis of the materials contained in such report and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, the Settlement Commission, shall, wherever it is possible, by an order, reject the application or allow the application to be proceeded with within a period of one year from the end of month in which such application was made under section 245C. The proviso appended thereto provides that the application shall not be rejected unless an opportunity has been given to the applicant of being heard. [Para 9]*

*It was apparent from the impugned order that the petitioner had not made full and true disclosure of the income before the Settlement Commission. Before the Settlement Commission, the petitioner filed a cash flow statement and contended that his mother had executed a Will under which she bequeathed the sum of Rs. 12.5 lakhs which had been used by the petitioner towards construction of the hospital and hotel building. On a perusal of the copy of the Will produced before the Settlement Commission, having regard to the recital contained therein to the effect that a sum of Rs. 12.5 lakhs had been given away to the petitioner for the purpose of constructing nursing home, the Settlement Commission had opined that the document produced, though claimed to be a Will, yet it was really a gift deed inasmuch as Will operates in favour of the beneficiaries only after the death of the testator, but in the case of the petitioner the sum of Rs. 12.5 lakhs had been paid by the testator during her lifetime itself, i.e., on the date of the execution of the deed. On that information and from the further fact that even assuming that the said amount was regarded as a gift, the petitioner, admittedly, did not file any gift tax return and the further fact that in the absence of any evidence forthcoming from the petitioner as to the source of the amount stated to have been given to the petitioner by his mother, the Commission had come to the conclusion that even the source of the amount stated to have been given by the petitioner's mother remained unproved. In addition to that, from the cash flow statement for the different assessment years filed by the petitioner, the Commission found that investment in fresh assets and higher amounts of investment in existing assets had been shown in addition to the claim made for the receipt of fresh loans and gifts for most of the years which had not been established. On the abovesaid conclusions, the Commission had rejected the application of the petitioner on the ground that the petitioner had not made full and true disclosure of his income and, thus, did not satisfy the condition for admission of an application under section 245C(1) for all the assessment years. [Para 10]*

*Of course, the issue, as to the complexity which was required to be considered by the Commission on the basis of the information contained in the report of the Commissioner and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, was also considered by the Commission in the impugned order. However, the said consideration was invited by the petitioner, who had argued before the Commission about the full and true disclosure and complexity of investigation and about the additional income-tax payable on the disclosed income in the application. As an argument had been advanced before the Commission, it was constrained to consider the same and, therefore, it had observed that there was no complexity involved in the case. It was clear from the order of the Commission which had stated that the application was liable to be rejected on the sole ground of absence of full and true disclosure and also the complexity of the investigation involved in the case. Hence, the finding arrived at on facts without the report of the Commissioner could not vitiate the order for the reason that in the instant case, one of the conditions precedent for maintaining an application under section 245C, i.e., full and true disclosure of the income which had not been disclosed before the Assessing Officer, was lacking. The application itself cannot be termed as an application filed as required under section 245C, read with the connected rules. The further fact in the instant case was that the petitioner had participated in the enquiry having full knowledge about non-receipt of report from the Commissioner. Having so participated and obtained an adverse order, later on it was not open to him to turn around and contend that in the absence of the report of the Commissioner under section 245D(1), the order non-suiting the petitioner for settlement was a procedural irregularity and was liable to be set aside. [Para 11]*

*In addition to the reason stated above, which was applicable for all the assessment years, which were under consideration, for the assessment year 1990-91, there was a shortfall of admitted tax payable in a sum of Rs. 2,010 for which there was no acceptable reason stated by the petitioner. Payment of an admitted tax is mandatory for admission of an appeal which was also not complied with by the assessee for the said assessment year. [Para 12]*

*In respect of the assessment year 1997-98, the petitioner had not filed the return in response to the notice under section 147 and*

an assessment under section 144 was framed. As per section 245C(1) filing of return is mandatory, which had also made the application of the petitioner not maintainable. [Para 13]

It is well-settled that no assessee is allowed to approach the Commission without disclosing full and true income and such true, full and honest disclosure is a pre-condition for invoking the Commission's jurisdiction under section 245C. An application to the Commission is not intended to enable a dishonest assessee to continue with his dishonest conduct and still claim benefit which can be conferred by the Commission if the Commission were to ultimately make an order of settlement. [Para 14]

As the application was made by the petitioner under section 245C, in the absence of full and true disclosure of the income which he had not disclosed before the Assessing Officer and the manner in which it was derived was also not disclosed, it could not be regarded as an application as required under section 245C(1). The contention that the impugned order was vitiated because of the jurisdictional error did not further the case of the petitioner. [Para 15]

The other contention of the petitioner, that the Settlement Commission, by the impugned order, felt disabled to proceed solely on the alleged ground that the case lacked complexity of the investigation involved, was not correct as it was not the sole requirement of the provision. The non-disclosure of full and true income and its source disentitled the petitioner to have his matter settled by filing an application under section 245C and the finding on the complexity was an invited finding, as much was argued about complexity of the case before the Commission. The contention that the complexity of the investigation involved was not the sole criteria had to be rejected. [Para 16]

For the above reasons, the writ petition was liable to be dismissed. [Para 18]

---

## CASES REFERRED TO

*Jai Narain Parasrampur* v. *Pushpa Devi Saraf* [2006] 7 SCC 756 [Para 11], *CIT v. Smt. G.A. Samantha Kamini* [2002] [259 ITR 215](#)[2002] [125 Taxman 424](#) (Mad.) [Para 12], *CIT v. Income-tax Settlement Commission* [2000] [246 ITR 63](#)/ [112 Taxman 523](#) (Bom.) [Para 14], *V.M. Shaik Mohammed Rowther v. Settlement Commission* [1999] [236 ITR 581](#)/ [102 Taxman 546](#) (Mad.) [Para 14], *Reliance Airport Developers (P.) Ltd. v. Airport Authority of India* [2006] 10 SCC 1 [Para 15], *Centurion Bank of Punjab Ltd. v. Income-tax Settlement Commission* [2007] [290 ITR 555](#)/ [161 Taxman 97](#) (Bom.) [Para 16], *M.L. Sethi v. R.P. Kapur* [1972] 2 SCC 427 [Para 16] and *Chairman and Managing Director, United Commercial Bank v. P.C. Kakkar* [2003] 4 SCC 364 [Para 16].

**C. Natarajan and K.A. Mariappan for the Appellant. Mrs. Pushya Sitaraman for the Respondent.**

---

## JUDGMENT

**K. Raviraja Pandian, J.** - This writ petition is filed for the issue of writ of certiorarified *mandamus* to quash the order of the Settlement Commission dated 21-1-2004 and consequently direct the first respondent to take up the application filed by the petitioner under section 245C(1) for the assessment years 1990-91 to 2000-01 and proceed further for settlement of disputes.

2. The petitioner is a doctor. On a survey conducted on 6-2-2001 under section 133A of the Income-tax Act, it was noticed that the petitioner had not filed return of income for the assessment years 1990-91 and 1994-95 during which period he had made huge investments in the construction of hospital-*cum*-hotel complex. Notice under section 148 of the Act was served on the petitioner on 29-3-2001 for the assessment years 1989-90 to 2000-01. The writ petitioner filed returns for the assessment years 1990-91 to 1995-96 on 15-3-2002 and for the assessment years 1996-97 to 2000-01 on 8-3-2002. The assessments for the years 1990-91 to 2000-01 except the assessment year 1997-98 was completed under section 143(3) read with section 147 of the Act on 28-3-2002. The assessment for the year 1997-98 was completed under section 144 read with section 147 of the Act on 5-3-2002 in the absence of return as the same was filed only on 8-3-2002. After the assessment was completed, the petitioner filed appeals before the Commissioner of Income-tax (Appeals) for all the assessment years except the assessment year 1997-98 on 30-4-2002 and for the assessment year 1997-98 on 2-4-2002. When the appeals were so pending before the Commissioner of Income-tax (Appeals) the petitioner filed an application for settlement of disputes under section 245C(1) of the Act before the first respondent.

3. The first respondent after taking note of the statutory requirements to maintain the said application under section 245C of the Act, ultimately rejected the application under section 245D(1) of the Act on the grounds that—

- 1.the applicant has not made "full and true" disclosure of his income and therefore, does not satisfy the conditions for admission of an application filed under section 245C(1) for all the assessment years;
- 2.that no complexity of investigation is involved in the present case; and
- 3.there was no 'case' within the meaning of section 245A(b) of the Act for the assessment year 1990-91 and therefore, the application under section 245C is not maintainable for this reason and also for the reasons stated in serial Nos. 1 and 2

stated above.

4. Application under section 245C is not maintainable for assessment year 1997-98 as it does not fulfil the condition as laid down under proviso (a) to section 245C(1) as also for the reasons given at Sl. Nos. 1 and 2 above stated.

The said order is assailed by the assessee in this writ petition.

4. Mr. C. Natarajan, senior counsel arguing on behalf of the petitioner contended that the order of the Settlement Commission is liable to be quashed as vitiated in its decision-making process as well as suffering from "decisive error", that the lacking of complexity of investigation cannot be regarded as a conclusive requirement. The Settlement Commission proceeded as if under section 245D(1) the alleged "complexity of the investigation" is the sole criteria. The Tribunal overlooked the import of the expression "having regard to" the nature and circumstances of the case. The Settlement Commission erred in misconstruing the provision empowering it to settle the disputes. The order of the Settlement Commission is liable to be quashed on the ground that even the rejection order under section 245D(1) has not been made on the basis of the materials contained in the report of the Commissioner and having regard to the nature and circumstances of the case. The word 'and' is conjunctive that in the order impugned, no report of the Commissioner of Income-tax has been referred to.

5. *Per contra*, the learned Senior Standing Counsel for the revenue contended that this writ petition will not lie against an order made by the Settlement Commission. The assessee having opted for settlement of disputes under Chapter XIX of the Act, now cannot turn back to challenge the order of the Commission. In this case the Commission is of the view that as the petitioner did not disclose full and true income and the source thereof, there is no complexity. Section 245D(a) will come into play only if additional tax is paid. By so contending she prayed for the dismissal of the writ petition.

6. From the above rival contentions, the point to be resolved is whether the order of the Settlement Commission impugned in this writ petition is legally sustainable or not ?

7. From the reading of section 245C(1) and its proviso along with section 245D(1) of the Act, it is clear that in order to have an order of admission of the case of the assessee to be settled before the Commission, the following conditions must be fulfilled :

(a) There must be a 'case' as defined under section 245A(b) of the Act, relating to the assessee;

(b) The assessee must make an application in such form and in such manner as may be prescribed; (Form 34B - Rules 44C and 44CA of the Income-tax Rules);

(c) The application must contain full and true disclosure of the assessee's income which has not been disclosed before the Assessing Officer;

(d) It should contain the manner in which such income has been derived;

(e) The additional amount of income-tax payable on such income;

(f) and such other particulars as may be prescribed—(a) to (f) section 245C;

(g) The assessee should have furnished the return of income for the years for which the application has been made for settlement.

(h) The additional amount of income-tax payable on the income disclosed in the application should exceed Rs. 1,00,000 - (g) & (h) proviso to section 245C;

(i) Such amount should have been calculated in accordance with the provisions of sub-sections (1B) to (1D) of section 245C of the Act. (Sub-section (1D) is relevant for the instant case which speaks about the application made for more than one previous year);

(j) The Settlement Commission should, having regard to the nature and circumstances of the case or complexity of the investigation involved therein, either to reject or allow the assessee to proceed with the case by passing an order of admission. (Section 245D)

8. As per the scheme of the provision, the assessee may (on his option) at any stage of a case relating to him make an application under section 245C. That application has to be made in Form 34B as per rules 44C and 44CA of the Income-tax Rules and shall contain full and true disclosure of the assessee's income which was not disclosed before the Assessing Officer and contained full and true disclosure of the manner in which such income has been derived and additional amount of income-tax payable on such income. The application shall also contain such other particulars as required under Form 34B.

9. Thus, it is manifestly clear that the assessee who makes an application should make a full and true disclosure of the income which is not disclosed before the Assessing Officer and the manner in which such income has been derived, which is a pre-condition or a mandatory requirement for maintaining an application under section 245C read with rules 44C, 44CA. If such an application fulfilling all the conditions prescribed under section 245C is filed, the procedure to be followed in disposal of the

application has been stated in section 245D of the Act. The first sentence of the said section reads that "on receipt of an application under section 245C" the Settlement Commission shall call for the report from the Commissioner and on the basis of the materials contained in such report and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, the Settlement Commission, shall, wherever it is possible, by order, reject the application or allow the application to be proceeded with within a period of one year from the end of month in which such application was made under section 245C. The proviso appended thereto provides that the application shall not be rejected unless an opportunity has been given to the applicant of being heard.

**10.** It is apparent from the impugned order that the assessee-petitioner has not made full and true disclosure of the income before the Settlement Commission. Before the Settlement Commission, the petitioner filed a cash flow statement and contended that his mother Mrs. C. Seshammal had executed a Will under which she bequeathed the sum of Rs. 12.5 lakhs which has been used by the petitioner towards construction of the hospital and hotel building. On a perusal of the copy of the Will produced before the Settlement Commission, having regard to the recital contained therein to the effect that a sum of Rs. 12.5 lakhs has been given away to the petitioner for the purpose of constructing nursing home, the Settlement Commission has opined that the document produced though claimed to be a Will, it is really a gift deed inasmuch as Will operates in favour of the beneficiaries only after the death of the testator. But, in the case of the petitioner the sum of Rs. 12.5 lakhs has been paid by the testator during her lifetime itself, *i.e.*, on the date of the execution of the deed. On that information and the further fact that even assuming that the said amount is regarded as gift, the petitioner admittedly did not file any gift tax return and the further fact that in the absence of any evidence forthcoming from the petitioner as to the source of the amount stated to have been given to the petitioner by his mother, the Commission has come to the conclusion that even the source of the amount stated to have been given by the petitioner's mother remained unproved. In addition to that, from the cash flow statement for the different assessment years filed by the petitioner, the Commission found that investment in fresh assets and higher amounts of investment in existing assets had been shown in addition to the claim made for the receipt of fresh loans and gifts for most of the years which had not been established. On the abovesaid conclusion, the Commission has rejected the application of the petitioner on the ground that the petitioner had not made full and true disclosure of his income and thus did not satisfy the condition for admission of an application under section 245C(1) of the Act for all the assessment years.

**11.** Of-course the issue as to the complexity which is required to be considered by the Commission on the basis of the information contained in the report of the Commissioner and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein is also considered by the Commission in the impugned order. However, the said consideration was invited by the petitioner, who has argued before the Commission about the full and true disclosure and complexity of investigation and about the additional income-tax payable on the disclosed income in the application. As an argument has been advanced before the Commission, the Commission was constrained to consider the same and observed that there is no complexity involved in that case. It is clear from the order of the Commission which states that the application was liable to be rejected on the sole ground of absence of full and true disclosure and also the complexity of the investigation involved in the case of the applicant. Hence, the finding arrived at on facts without the report of the Commissioner cannot vitiate the order for the reasons that in this case, one of the condition precedent for maintaining an application under section 245C, *i.e.*, full and true disclosure of the income which has not been disclosed before the Assessing Officer, is lacking. The application itself cannot be termed as an application filed as required under section 245C read with the connected rules. The further fact in this case is that the appellant participated in the enquiry having full knowledge about the non-receipt of the report from the Commissioner. Having so participated and obtained an adverse order, now it is not open to him to turn around and contend that in the absence of the report of the Commissioner under section 245D(1), the order non-suiting the petitioner for settlement is a procedural irregularity and liable to be set aside. The same is hit by the principle of acquiescence. (*See Jai Narain Parasrampuriah v. Pushpa Devi Saraf* [2006] 7 SCC 756).

**12.** In addition to the reason stated above, which are applicable for all the assessment years, which are under consideration, for the assessment year 1990-91, there was a shortfall of admitted tax payable in a sum of Rs. 2,010 for which there was no acceptable reason stated by the petitioner. Payment of admitted tax is mandatory for admission of appeal which is also not complied with by the assessee for the said assessment year. (*See CIT v. Smt. G.A. Samantha Kamini* [2003] [259 ITR 215](#)<sup>1</sup> (Mad.).

**13.** In respect of the assessment year 1997-98, the petitioner has not filed the return in response to the notice under section 147, an assessment under section 144 was framed. As per section 245C(1) of the Act filing of return is mandatory, which has also made the application of the petitioner not maintainable.

**14.** It is well-settled that no assessee is allowed to approach the Commission without disclosing full and true income and such true, full and honest disclosure is a pre-condition for invoking the Commission's jurisdiction under section 245C of the Income-tax Act, 1961. An application to the Commission is not intended to enable a dishonest assessee to continue his dishonest conduct

and still claim benefit which can be conferred by the Commission if the Commission were to ultimately make an order of settlement *vide CIT v. Income-tax Settlement Commission* [2000] [246 ITR 63](#)<sup>2</sup> (Bom.) and *V.M. Shaik Mohammed Rowther v. Settlement Commission* [1999] [236 ITR 581](#)<sup>3</sup> (Mad.).

**15.** Learned senior counsel for the petitioner submitted that the order vitiates the decision-making process as well as suffers from 'decisive error' because all errors of law are now jurisdictional. In order to support his contention, he relied on the decision of the Supreme Court in the case of *Reliance Airport Developers (P.) Ltd. v. Airport Authority of India* [2006] 10 SCC 1. As we have already concluded that the application made by the petitioner under section 245C, in the absence of full and true disclosure of the income which the petitioner has not disclosed before the Assessing Officer and the manner in which it was derived could not be regarded as an application as required under section 245C(1), the contention that the impugned order is vitiated because of the jurisdictional error does not further the case of the petitioner.

**16.** The other contention is that the settlement commission, by the impugned order felt disabled to proceed solely on the alleged ground that the case lacked complexity of the investigation involved, is not correct as it is not the sole requirement of the provision. He relied on the decision of the Bombay High Court in the case of *Centurion Bank of Punjab Ltd. v. Income-tax Settlement Commission* [2007] [290 ITR 555](#)<sup>4</sup>. As stated above, the non-disclosure of full and true income and its source disentitled the petitioner to have his matter settled by filing an application under section 245C and the finding on the complexity was invited finding, as much was argued about complexity of the case before the Commission. The contention that the complexity of the investigation involved is not the sole criteria has to be rejected. Hence the reliance placed on the judgments are misplaced, when the application filed by the petitioner itself is not in conformity with the requirements of section 245C of the Act. So is the argument as to the misconstruction of the provisions of giving power to the Commission to act. Reliance placed on the decision of the Supreme Court in the cases of *M.L. Sethi v. R.P. Kapur* [1972] 2 SCC 427 and the case of *Chairman and Managing Director, United Commercial Bank v. P.C. Kakkar* [2003] 4 SCC 364 are also misplaced one.

**17.** As we have come to the conclusion that the order of the Settlement Commission non-suited the petitioner for admission of the case for settlement requires no interference, the other contention as to the abatement of proceedings at this point of time, is of no consequence. Hence, the contention raised and judgment relied on are not considered.

**18.** For the foregoing reasons, we are of the view that the writ petition is liable to be dismissed and it is accordingly dismissed. No costs. The connected miscellaneous petition is consequently dismissed.