

# SECTION 245H/INCOME-TAX ACT

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[2009] 185 TAXMAN 381 (ALL.)  
**HIGH COURT OF ALLAHABAD**

*Rama Nath\**

v.

*Special Chief Judicial Magistrate, Allahabad*

**A.K. ROOPANWAL, J.**

CRIMINAL MISC. APPLICATION NO. 13193 OF 1987

AUGUST 14, 2008

**Section 245H, read with section 245J, of the Income-tax Act, 1961 - Settlement Commission - Immunity from prosecution/penalty - Assessment years 1968-69 and 1972-73 to 1975-76 - Whether during existence of immunity from prosecution granted by Settlement Commission under section 245H if an assessee does not obey directions of Settlement Commission and makes default in payment, assessing authority may impose penalty upon him and all amount, i.e, sum assessed as per directions of Settlement Commission and penalty imposed may be recovered in accordance with provisions of Chapter XVII, but no criminal prosecution can be launched against assessee - Held, yes - Whether if income-tax authorities want to prosecute person concerned for his lapse committed after order of Settlement Commission, they have to get immunity granted by Settlement Commission cancelled under section 245H(2); they cannot straightaway go for prosecution - Held, yes**

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## FACTS

For the relevant assessment years, the assessee filed his returns. The department found the said returns to be untrue on the basis of the search and seizure operation conducted under section 132(1) at the business and residential premises of the assessee in which the department recovered huge cash, ornaments and documents. The assessee approached the Settlement Commission, which decided the matter and directed the department to raise demands. It also granted immunity to the assessee from prosecution under the Act. The department determined the assessee's income as per the directions of the Settlement Commission and raised demand but the said demand was not fulfilled by the assessee. Therefore, the department imposed penalty on him under section 221. As the assessee wilfully evaded the payment of tax, penalty and interest, the department launched the prosecution under section 276C(2), read with section 278C, which was challenged by the assessee in the instant application on the ground that as the Settlement Commission had granted immunity to him from prosecution for any offence, no prosecution could be launched against him.

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## HELD

*A look at the provision of section 245H would reveal that the Settlement Commission has the power to grant immunity from prosecution with respect to the case covered by the settlement. Such immunity shall cease to have effect only under two conditions. Firstly, if the assessee fails to pay any sum specified in the order of settlement passed under sub-section (4) of section 245D within the time specified in such order or within such further time as may be allowed by the Settlement Commission or fails to comply with any other condition subject to which the immunity was granted and secondly, if the immunity is withdrawn by the Settlement Commission under section 245H(2). [Para 10]*

*The order of the Settlement Commission dated 10-8-1983 showed that no specific sum was ordered to be paid by the Settlement Commission within the stipulated time nor the immunity was dependent upon the fulfilment of any condition. Therefore, the immunity from prosecution could not be said to have ceased by virtue of section 245H(1A). [Para 11]*

*It was also not apparent from the record that immunity was ever withdrawn by the Settlement Commission. Hence, it was also not a case of withdrawal of immunity under section 245H(2). [Para 12]*

*Thus, the immunity from the prosecution was still existing in favour of the assessee. [Para 13]*

*Section 245J specifically lays down that any sum specified in the order of settlement may be recovered and any penalty for default in making the payment of such sum may be imposed and recovered in accordance with the provisions of Chapter XVII. [Para 15]*

*Thus, it is amply clear that if an assessee does not obey directions of the Settlement Commission and makes default in payment,*

*the assessing authority may impose penalty upon him and all the amount, i.e., sum assessed as per directions of the Settlement Commission and the penalty imposed may be recovered in accordance with the provisions of Chapter XVII. Section 245J does not give any power to the assessing authority to launch prosecution, in case the order of the Settlement Commission is not obeyed and/or the penalty imposed is not paid. Section 276C(2) would come into play only when the matter is not taken to the Settlement Commission. If the matter has been taken to the Settlement Commission, then the provisions of sections 245H and 245J would only be applicable. It is because of the fact that when a specific provision has been made for the non-compliance of the order of the Settlement Commission, then only that provision would be resorted to and the normal course prescribed for the default cannot be adopted by the income-tax authorities as contemplated under section 276C. If the income-tax authorities want to prosecute the person concerned for his lapse committed after the order of the Settlement Commission, they have to get the immunity granted by the Settlement Commission cancelled under section 245H(2). They cannot straightaway go for the prosecution if the order of the Settlement Commission is not complied with, otherwise it would amount to sitting over the Settlement Commission by the income-tax authorities, which would be against the spirit of incorporation of the special provision of the settlement. [Para 16]*

*Thus, in the light of the provision of section 245J, the Income-tax department could not resort to the prosecution of the applicant for the default as complained of by it in the concerned complaints. [Para 17]*

*In the result, the applications were to be allowed. The proceedings of the criminal cases were to be quashed. [Para 18]*

**Krishna Agrawal** for the Applicant. **A.K. Upadhyay** for the Respondent.

## **JUDGMENT**

1. As all the above applications under section 482, Cr.P.C. have the same question for decision, hence, these are being decided together.

2. By means of Application No. 13189/87 a request has been made for quashing the entire criminal proceedings of Complaint Case No. 3255/87. Application No. 13190/87 has been moved for quashing the entire criminal proceedings of Complaint Case No. 3253/87. Application No. 13191/87 has been moved for quashing the entire criminal proceedings of Complaint Case No. 3256/87. Application No. 13192/87 has been moved for quashing the entire criminal proceedings of Complaint Case No. 4287/87. Application No. 13193/87 has been moved for quashing the entire criminal proceedings of Complaint Case No. 3252/87.

3. It appears from the facts of the case that the applicant was an assessee of the Income-tax Department during the assessment years mentioned in the complaints which are the subject-matter of these petitions. He filed the income-tax returns for the assessment years 1968-69, 1972-73, 1973-74, 1974-75, 1975-76. These returns were verified by the accused Rama Nath as karta of Hindu Undivided Family Sri Badri Das Kailash Nath. These returns were found to be untrue on the basis of the search and seizure operation conducted under section 132(1) of the Income-tax Act at the business and residential premises of the applicant in which huge cash, ornaments and documents were recovered. The applicant went before the Settlement Commission on 13-4-1982 and the Settlement Commission decided the matter *vide* order dated 10-8-1983. Commission directed the Income -tax Department to raise demands as per its directions given in the order dated 10-8-1983. The Settlement Commission also granted immunity to the applicant from prosecution under the Income-tax Act.

4. The Income-tax Department determined the income as per directions of the Settlement Commission and raised demand of income-tax and interest but this demand was not fulfilled. Therefore, the penalty was imposed against the applicant. The orders of imposing penalty under section 221 of the Income-tax Act were challenged by the applicant before the Commissioner of Income-tax in which partial relief was given to him by the Commissioner of Income-tax *vide* its order dated 22-2-1989. The order of the Commissioner, Income-tax dated 22-2-1989 was challenged by the Income-tax Department before the Income-tax Appellate Tribunal and the Tribunal dismissed the appeals of the department. Thereafter, the matter was taken to the Supreme Court of India by the Income-tax Department from where also no relief was granted to the department.

5. As the applicant had wilfully evaded the payment of tax, penalty and interest, hence, he was prosecuted by means of the aforesaid complaints by the Income-tax Department which have been challenged by the applicant in the present applications.

6. Heard Mr. Krishna Agrawal, learned counsel for the applicant, Mr. A.K. Upadhyay for the Income-tax Department and perused the record.

7. Mr. Agrawal argued that the Settlement Commission had granted immunity to the applicant from prosecution for any offence under the Income-tax Act or under the Indian Penal Code or any other Central Act for the time being in force in exercise of the powers conferred upon the Commission under section 245H of the Income-tax Act, hence, no prosecution can be launched against him for the non-payment of income-tax, interest or penalty, if any. If any amount of the department in this regard, remains due against the applicant, that can be realised under the provisions of section 245J of the Income-tax Act, 1961.

8. To the above argument, it was said by Mr. Upadhyay that the demand for income-tax interest and penalty was made after the order of the Settlement Commission and when this demand was not fulfilled, the prosecution was launched under section 276C(2) read with section 278C of the Income-tax Act entirely on a new cause of action which arose after the order of the

Settlement Commission and the provisions of sections 245H and 245J would not be applicable in the present case.

9. For appreciating the arguments of the parties it would be expedient to refer the provisions of section 245H of the Income-tax Act.

"245H. *Power of Settlement Commission to grant immunity from prosecution and penalty.*—(1) The Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 245C has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1860) or under any other Central Act for the time being in force and also either wholly or in part from the imposition of any penalty under this Act, with respect to the case covered by the settlement:

**Provided** that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under section 245C :

**Provided further** that the Settlement Commission shall not grant immunity from prosecution for any offence under the Indian Penal Code (45 of 1860) or under any Central Act other than this Act and the Wealth-tax Act, 1957 (27 of 1957) to a person who makes an application under section 245C on or after the 1st day of June, 2007.

(1A) An immunity granted to a person under sub-section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of settlement passed under sub-section (4) of section 245D within the time specified in such order or within such further time as may be allowed by the Settlement Commission, or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.

(2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Settlement Commission, if it is satisfied that such person had, in the course of the settlement proceedings, concealed any particulars material to the settlement or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the settlement and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted."

10. A look at the above provision would reveal that the Settlement Commission has the power to grant immunity from prosecution with respect to the case covered by the Settlement. Such immunity shall cease to have effect only under two conditions. Firstly, if the assessee fails to pay any sum specified in the order of Settlement passed under sub-section (4) of section 245D within the time specified in such order or within such further time as may be allowed by the Settlement Commission or fails to comply with any other condition subject to which the immunity was granted and secondly, if the immunity is withdrawn by the Settlement Commission under section 245H(2) of the Income-tax Act.

11. The order of Settlement Commission dated 10-8-1983 which is available in the connected file No. 13188/87 shows that no specific sum was ordered to be paid by the Settlement Commission within the stipulated time nor the immunity was dependant upon the fulfilment of any condition. Therefore, the immunity from prosecution cannot be said to have ceased by virtue of section 245H(1)(A).

12. It is also not apparent from the record that immunity was ever withdrawn by the Settlement Commission, hence, it is also not a case of withdrawal of immunity under section 245H(2) of the Income-tax Act.

13. Thus, it appears to me that the immunity from the prosecution is still existing in favour of the applicant.

14. Now the question arises as to whether during the existence of such immunity from prosecution any criminal prosecution can be launched for the non-payment of the amount which was assessed by the Income-tax Authorities as directed by the Settlement Commission. In this regard a reference to section 245J of the Income-tax Act would be relevant.

15. Section 245J specifically lays down that any sum specified in the order of Settlement may be recovered and any penalty for default in making the payment of such sum may be imposed and recovered in accordance with the provisions of Chapter XVII of the Income-tax Act.

16. Thus, it is amply clear that if an assessee does not obey the directions of the Settlement Commission and makes default in the payment, the Assessing Authority may impose penalty upon him and all the amount *i.e.*, the sum assessed as per directions of the Settlement Commission and the penalty imposed may be recovered in accordance with the provisions of Chapter XVII of the Income-tax Act. Section 245J does not give any power to the Assessing Authority to launch prosecution in case the order of the Settlement Commission is not obeyed and/or the penalty imposed is not paid. Section 276C(2) would come into play only when the matter is not taken to the Settlement Commission. If the matter had been taken to the Settlement Commission, then the provisions of sections 245H and 245J would only be applicable. It is because of the fact that when a specific provision has been made for the non-compliance of the order of the Settlement Commission, then only that provision would be resorted to and the normal course prescribed for the default cannot be adopted by the Income-tax Authorities as contemplated under section 276C of the Income-tax Act. If the Income-tax Authorities wanted to prosecute the person concerned for his lapse committed after the order of the Settlement Commission, they shall have to get the immunity granted by the Settlement Commission cancelled under section 245H(2) of the Income-tax Act. They cannot straightaway go for prosecution if the order of the Settlement Commission is not complied with otherwise it would amount to sitting over the Settlement Commission by the Income-tax Authorities which would be against the spirit of incorporation of the special provision of settlement in the Income-tax Act.

17. Thus, I am of the view that in the light of the provision of section 245J the Income-tax Department cannot resort to the

prosecution of the applicant for the default as complained of by it in the concerned complaints.

**18.** In the result, the applications are allowed. The proceedings of Criminal Case Nos. 3255/87, 3253/87, 3256/87, 4287/87, 3252/87 are, hereby, quashed.