

IT : It is well within jurisdiction of Commission at stage of sub-section (1) of section 245D to examine whether application for settlement fulfils statutory requirements contained in sub-section (1) of section 245C

IT : Unless decision of Commission is contrary to statutory provisions contained in Act, no interference would be warranted in exercise of writ jurisdiction



[2013] 31 taxmann.com 99 (Gujarat)

HIGH COURT OF GUJARAT

Vishnubhai Mafatlal Patel

v.

Assistant Commissioner of Income-tax*

AKIL KURESHI AND MS. SONIA GOKANI, JJ.

SPECIAL CIVIL APPLICATION NOS. 12060, 12061 & 12063 OF 2012

DECEMBER 4, 2012

Section 245D of the Income-tax Act, 1961 - Settlement Commission - Procedure on application under section 245C [Jurisdiction of Commission] - Whether it is well within jurisdiction of Commission at stage of sub-section (1) of section 245D to examine whether application for settlement fulfils statutory requirements contained in sub-section (1) of section 245C and to reject application if it comes to conclusion that such application does not fulfil legal requirements - Held, yes - Whether at that stage, if application is allowed to be proceeded with, such decision would be tentative in nature and it would still be open for Commission, if grounds are so available, to declare such an application invalid after obtaining report from Commissioner and giving an opportunity of being heard to applicant - Held, yes - Whether unless decision of Commission is contrary to statutory provisions contained in Act, interference in exercise of writ jurisdiction under article 226 of Constitution of India would not be warranted - Held, yes [Paras 12 and 19] [In favour of revenue]

FACTS

Facts

- Search operations were carried out at the residential and business premises of the assessee under section 132. He made disclosure of income of Rs. 48 crores in his statement recorded under section 132(4).
- Pending the proceedings under section 153A for assessment years 2008-09 to 2010-11 and under section 143(2) for the assessment year 2011-12, the assessee filed an application under section 245C before the Settlement Commission for the assessment years 2008-09 to 2011-12 wherein he disclosed additional income of Rs. 49.24 crores.
- The Commission rejected the application on the ground that requirements of section 245D(1) were not fulfilled.
- The assessee challenged the order of the Settlement Commission on the grounds that at the stage of section 245D(1), it was not open to the Commission to carry out any

detailed inquiry; and that, if the assessee was granted sufficient opportunity to produce additional documents and evidence during the course of hearing of the settlement proceedings, it would have done so and the Commission committed a grave error in shutting out any such further inquiry or an opportunity to the assessee to produce additional material.

Issues involved

- Whether at stage of section 245D(1), Settlement Commission can examine whether assessee's application fulfils legal requirements of section 245C(1)?
- Whether conclusion of Commission can be interfered in exercise of writ jurisdiction?

HELD

Scope of provisions

- From the perusal of statutory provisions pertaining to settlement cases, it can be gathered that an assessee may, at any stage of the case relating to him, make an application for settlement to the Commission under sub-section (1) of section 245C. Such application has to be made in a prescribed manner and is required to contain a full and true disclosure of the income of the assessee which had not been disclosed before the Assessing Officer and the manner in which such income had been derived besides such other particulars as may be prescribed. When such application is filed, it is to be treated in the manner provided in section 245D.
- Sub-section (1) of section 245D provides that on receipt of an application, the Settlement Commission shall, within seven days of receipt, issue a notice to the applicant requiring him to explain why such an application made by him be allowed to be proceeded with. On hearing the applicant, the Settlement Commission shall, within fourteen days from the date of the application, by an order in writing either reject the application or allow the application to be proceeded with. Proviso to sub-section (1) of section 245D provides that where no order has been passed by the Settlement Commission as aforesaid, the application shall be deemed to have been allowed to be proceeded with. [Para 7]
- Under sub-section (1) of section 245D, thus, the first stage of scrutinizing the application of settlement made by an assessee is envisaged. The statute does not provide for grounds on which Settlement Commission may reject such an application or allow the application to be proceeded with. There are, however, sufficient indications in the statute itself what would be the purpose and nature of scrutiny of Commission at that stage.
- At the stage of sub-section (1) of section 245D prime scrutiny of the Commission would be whether application of the assessee is in order and in conformity with the requirements of sub-section (1) of section 245C which would include filing of an application in the prescribed manner and also making necessary disclosures as required therein.
- There are also additional requirements of sub-section (1) of section 245C such as payment of requisite tax and interest thereon which would have been payable under the provisions of the Act, had the income disclosed in the application been declared by the assessee in the return of income before the Assessing Officer.
- It would, thus, be well within the jurisdiction of the Settlement Commission to

examine whether the application for settlement fulfils such requirements or not. Such scrutiny of course would be summary in nature. [Para 8]

Commission would have ample powers to examine whether an application of an assessee made under section 245C(1) fulfils legal requirements particularly, those provided in section 245C(1)

- Two things, therefore, emerge. Firstly, that at the stage of section 245D(1), the Commission would have ample powers to examine whether an application of an assessee made under section 245C(1) fulfils the legal requirements, particularly those provided in section 245C(1). Secondly, that such inquiry, however, shall have to be summary in nature.
- The later provisions of section 245D would also demonstrate that any decision of the Commission to allow the application to be proceeded with would only be prima facie in nature.
- Therefore, under section 245D(1), if the Commission, on a summary inquiry, comes to the conclusion that an application filed by the assessee under section 245C(1) does not fulfil the legal requirements, it would be within the jurisdiction of the Commission to reject the same. However, if it is allowed to be proceeded with, such decision would be tentative in nature. [Para 9]
- It emerges that an application which has been allowed to be proceeded or deemed to have been allowed to be proceeded under section 245D(1), it is still open to scrutiny by the Commission at the stage of sub-sections (2B) and (2C) of section 245D, this time with the assistance of the report of the Commission if so made within the prescribed time. On the basis of materials contained in such report and after giving an opportunity to the applicant of being heard, if the Commission is so satisfied, can declare the application to be invalid.
- This is the second stage where the Commission can scrutinize the validity of application for settlement made by the assessee under section 245C(1). Thus, even if the Commission had previously passed an order under section 245D(1) allowing the application to be proceeded with, it would still be open for the Commission, if grounds are so available, to declare such an application invalid after obtaining report from the Commissioner and giving an opportunity of being heard to the applicant. [Para 10]
- If, however, no such order is passed declaring an application as invalid, the Commission would, in terms of provisions of section 245D, proceed to decide the same on merits. Sub-section (3) thereof envisages calling for the records from the Commissioner and examining such records and carrying out such inquiry or investigation as the Commission thinks it necessary. Sub-section (4) empowers the Commission after giving an opportunity to the applicant and to the Commissioner to be heard, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner. [Para 11]
- The twin requirements for an assessee making an application for settlement under section 245C(1), of containing full and true disclosure of income which has not been disclosed before the Assessing Officer and the manner in which such income has been derived are, thus, of considerable importance and would be open for the Settlement Commission to examine the fulfilment thereof at several stages of the settlement proceedings.
- If, therefore, while at the threshold, considering the question whether such application

should be allowed to be proceeded with or be rejected, the Commission examined such questions on the basis of disclosure made by the applicants and the supporting materials produced along with the applications, the Commission did not commit any legal error.

- It was well within jurisdiction of the Commission at the stage of sub-section (1) of section 245D to examine whether application for settlement fulfils the statutory requirements contained in sub-section (1) of section 245C. [Para 12]

Summary nature of inquiry does not take away powers of Settlement Commission to reject application

- It is true that the order that the Settlement Commission has to pass under section 245D(1) comes with a rigid time frame. The scrutiny or the inquiry at that stage, therefore, necessarily shall have to be summary in nature. This, however, does not take away the powers of the Settlement Commission to reject the application for settlement which in its opinion does not satisfy the legal requirements and, more particularly, those contained in sub-section (1) of section 245C. [Para 13]

Commission was justified in rejecting assessee's application

- In the instant case, Settlement Commission noted that the assessee had made disclosure of large amount of income. The Commission desired to gather from the applicants the manner in which such income was derived. The Commission recorded that the representative of the applicants admitted that there was no evidence found during the search or otherwise with the applicants in this regard. It was further submitted that the applicants are old and reputed business leaders in their domain and the income earned has been mostly applied in the share capital of group companies. It was submitted before the Commission that the applicants used to participate in bidding process for securing the development work from the Government, Government agencies, public sector undertakings. Over a period of several decades, the applicants had achieved complete knowledge of the procedure, tactics and other technicalities of securing the contract from the Government and Government agencies, for which the applicants would receive remuneration in cash. [Para 14]
- The assessee's contentions were examined but the Commission was not convinced about the manner in which the income previously undisclosed was derived. In that view of the matter, the Commission kept the question of true and full disclosure open, unable to judge the same. [Para 15]

Conclusion of the Commission cannot be interfered in exercise of writ jurisdiction

- When the Settlement Commission examines an application in terms of statutory powers and finds that such application does not satisfy the legal requirements as contained in section 245C(1), unless such decision of the Commission is contrary to the statutory provisions contained in the Act, interference in exercise of writ jurisdiction under article 226 of the Constitution of India would not be warranted. [Para 19]

Assessee cannot be allowed to produce additional evidence to support application during settlement proceedings

- If on the basis of material on record, the Commission could have come to the conclusion that application was not valid, it had every authority to reject the same even at the stage of first screening under section 245D(1). The assessee's contention that if such application was allowed to be proceeded, it would have produced

additional materials in support of the requirement that the assessee made true and full disclosure of undisclosed income and the manner of deriving the same could not be accepted. The assessee were required to make an application and make such declarations as required under section 245C(1). They could not have hoped for or insisted upon a second innings to do so beyond the stage of section 245D(1). If otherwise such requirements of the Act were not fulfilled, the Commission was well within the powers to terminate such application without any further addo. [Para 19]

- In the result, the petitions fail and are dismissed. [Para 20]

CASES REFERRED TO

CIT v. Mahendra C. Shah [2008] 299 ITR 305/172 Taxman 58 (Guj.) (para 4.4), *Jyotendrasinhji v. S.I. Tripathi* [1993] 201 ITR 611/68 Taxman 59 (SC) (para 5), *Ajmera Housing Corpn. v. CIT* [2010] 326 ITR 642/193 Taxman 193 (SC) (para 5) and *Saurashtra Cement Ltd. v. Commissioner of Customs* 2012 (3) G.L.H. 235 (para 18).

S.N. Soparkar and **R.K. Patel** for the Petitioner. **Manish Bhatt** and **Ms. Mauna M. Bhatt** for the Respondent.

JUDGMENT

Akil Kureshi, J. - These petitions arise out of common background. They have been heard together and are being disposed of by this common judgment.

2. For the purpose of this order, we may notice the facts as arising in Special Civil Application No.12060/2012.

2.1 The petitioner is an individual and is assessed to tax as such. The petitioner claims to be engaged in the business of infrastructure development activities. On 5.10.2010, search operations were carried out at the residential and business premises of the petitioner under section 132 of the Income Tax Act, 1961 ("the Act" for short) . The petitioner made disclosure of income of Rs.48 crores in his statements which were recorded under section 132(4) of the Act. The proceedings under section 153A of the Act for assessment year 2008-2009 to 2010-2011 and under section 143(2) of the Act for the assessment year 2011-2012 were pending. On 28.5.2012, the petitioner filed an application under section 245C of the Act before Settlement Commission for the assessment years 2008-2009 to 2011-2012. The petitioner disclosed additional income of Rs.49,24,14,630/- for different years in the following manner :

Assessment Year	Additional Income of Rs. 49,24,14,630/- Disclosed in Return/Application filed					
	Return u/s 139 (1)	Return u/s 139(5) Revised After Search within the permitted time	Return u/s 153A	Before Settlement Commission	Total Income Disclosed due to Search	
2008-09	Nil	Nil	Nil	6,22,92,000	6,22,92,000	
2009-10	Nil	12,32,07,000	31,32,500	17,45,000	12,80,84,500	
2010-11	Nil	Nil	18,30,000	1,00,000	19,30,000	
2011-12	30,00,00,000	Nil	Nil	1,08,130	30,01,08,130	
Total	30,00,00,000	12,32,07,000	49,32,500	6,42,45,130	49,24,14,630	

2.2 We may recall that in the disclosures under section 132(4) of the Act the petitioner had disclosed a total income of Rs. 48 crores. The petitioner had therefore, paid additional tax and interest on the additional disclosures made before the Settlement Commission.

2.3 The application of the petitioner was taken for hearing on 6.6.2012 by the Settlement Commission. The Commission vide its impugned order dated 8.6.2012 rejected the application of the petitioner on the ground that requirements of section 245D(1) of the Act were not fulfilled. It is this order of the Settlement

Commission which the petitioner has challenged in this petition.

2.4 Before passing the impugned order the Settlement Commission heard the representative of the petitioner on the question of fulfillment of requirements of section 245C of the Act. The Commission noted that the petitioner was required to make true and full disclosures of the income as also the manner in which such income was derived. The Commission formed an opinion that the petitioner had not made true and full disclosures. Subsequent question of the manner in which such income having been derived therefore, cannot be examined. On its belief that the petitioner did not fulfill the requirements of section 245C of the Act, the Commission rejected the application at the very threshold which has prompted the petitioners to approach this Court.

3. Material facts are common in all the petitions.

4. Learned senior counsel Shri S.N.Soparkar appearing for Shri R.K.Patel for the petitioners taking us through the statutory provisions and case laws on the point submitted that the Commission committed grave error in rejecting the application at the very threshold. Counsel would contend that at the stage of section 245D(1) of the Act, it was not open to the Commission to carry out any detailed inquiry. The Commission therefore, committed grave error in examining the various aspects of the matter in order to come to the conclusion that the application was not maintainable.

4.1 Counsel further submitted that the petitioners had made full and true disclosures and also produced supporting materials. Commission without examining such aspects came to an erroneous conclusion.

4.2 Counsel further submitted that if the petitioners were granted sufficient opportunity to produce additional documents and evidence, if so required by the Commission during the course of hearing of the settlement proceedings, the petitioners would have done so. The Commission committed a grave error in shutting out any such further inquiry or an opportunity to the petitioners to produce additional material.

4.3 Counsel also took us through the impugned decision of the Commission to contend that the Commission's findings were dehors the material on record and the petitioners having made true and full disclosures, the application for settlement could not have been dismissed.

4.4 Counsel relied on the decision of Division Bench of this Court in case of *CIT v. Mahendra C. Shah* [2008] 299 ITR 305/172 Taxman 58, wherein in the context of immunity from penalty under section 271(1) (c) of the Act, in terms of explanation (5) thereof, which requires besides other conditions that the assessee should have in his statement under section 132(4) of the Act disclosed the manner in which income was earned, this Court held and observed that even if such statement does not specify the manner in which the income is derived, if the income is declared and the tax thereon is paid, there would be substantial compliance not warranting any further denial of the benefit of immunity.

5. On the other hand, learned senior counsel Shri Manish Bhatt for the Revenue opposed the petitions contending that the scope of judicial review against a decision of Settlement Commission is extremely narrow. This Court would not act as an appellate authority. When the Settlement Commission has come to certain factual findings, scope of interference by this Court would be narrow. Counsel further submitted that Commission had every authority to examine the validity of the statements made by the assessee. If at the very threshold it was found that such application did not satisfy the legal requirements, it was open for the Commission to reject the same without any further consideration. In the present case the Commission came to the conclusion that the petitioners had not made true and full disclosures about their income. Counsel relied on the following decisions:

- (1) In case of *Jyotendrasinhji v. S.I. Tripathi* [1993] 201 ITR 611/68 Taxman 59 (SC), in which the Apex Court held that though the order of Settlement Commission has been given finality, such finality would not bar a writ petition

before the High Court or jurisdiction of the Supreme Court, nevertheless, the scope of judicial review would be restricted to considering whether order is contrary to any provisions of the Income Tax Act.

- (2) In case of *Ajmera Housing Corpn. v. CIT* [\[2010\] 326 ITR 642/193 Taxman 193 \(SC\)](#), wherein the Apex Court put considerable stress on the requirement of an assessee approaching the Settlement Commission to make full and true disclosure of the income which had not been previously disclosed by the assessee. It was held that such requirement is a pre-condition for valid application under section 245C(1) of the Act. It was held that an assessee has no right to revise his disclosure.

6. Having thus heard learned counsel for the parties and having perused the documents on record, we may at the outset take note of statutory provisions applicable.

Chapter XIXA which was introduced in the Act in the year 1976, pertains to settlement of cases.

Settlement Commission is constituted under Section 245B of the Act. Section 245BA lays down the jurisdiction and powers of Settlement Commission.

Section 245C pertains to application for settlement of cases. Sub-section(1) thereof permits an assessee, at any stage of a case relating to him, make an application in such form and in such manner as may be prescribed, and containing a full and true disclosure of his income which has not been disclosed before the Assessing Officer, the manner in which such income has been derived, the additional amount of income-tax payable on such income and such other particulars as may be prescribed, to the Settlement Commission to have his case settled. It is further provided that application shall be disposed of in the manner hereinafter provided.

Section 245D of the Act pertains to procedure on receipt of an application under section 245C. Relevant portion of section 245D reads as under :

"245D. (1) On receipt of an application under section 245C, the Settlement Commission shall, within seven days from the date of receipt of the application, issue a notice to the applicant requiring him to explain as to why the application made by him be allowed to be proceeded with and on hearing the applicant, the Settlement Commission shall, within a period of fourteen days from the date of the application, by an order in writing, reject the application or allow the application to be proceeded with :

Provided that where no order has been passed, within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with.

(2B) The Settlement Commission shall, -

- (i) in respect of an application which is allowed to be proceeded with under sub-section (1), within 30 days from the date on which the application was under; or
- (ii) in respect of an application referred to in sub-section (2A) which is deemed to have been allowed to be proceeded with under that subsection, on or before the 7th day of August, 2007, call for a report from the Commissioner, and the Commissioner shall furnish the report within a period of thirty days of the receipt of communication from the Settlement Commission.

(2C) Where a report of the commissioner called for under sub-section (2B) has been furnished within

the period specified there in, the Settlement Commission may, on the basis of the report and within the period of fifteen days of the receipt of the report, by an order in writing, declare the application in question as invalid, and shall send the copy of such order to applicant and commissioner :

Provided that an application shall not be declared invalid unless an opportunity has been given to the applicant of being heard:

Provided further that where the commissioner has not furnished the report within the aforesaid period, the Settlement Commission shall proceed further in the matter without the report of the Commissioner.

(3) The Settlement Commission, in respect of-

- (i) an application which has not been declared invalid under sub-section (2C) ; or
- (ii) an application referred to in sub-section (2D) which has been allowed to be further proceeded with under that sub-section,

may call for the records from the Commissioner and after examination of such records, if the settlement commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the Commissioner to make or cause to be made such further enquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case, and the commissioner shall furnish the report within a period of ninety days on the receipt of communication from the Settlement Commission :

Provided that where the commissioner does not furnish the report within the aforesaid period, the Settlement Commission may proceed to pass an order under sub-section (4) without such report.

(4) After examination of the records and the report of the Commissioner, if any, received under-

- (i) sub-section (2B) or sub-section (3), or
- (ii) the provision of sub-section (1) as they stood immediately before their amendment by the Finance Act, 2007,

and after giving an opportunity to the applicant and to the commissioner to be heard, either in person or through a representative duly authorized in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the commissioner."

7. From the perusal of the statutory provisions noted above, it can be gathered that an assessee may at any stage of the case relating to him, make an application for settlement to the Commission under sub-section(1) of section 245C. Such application has to be made in a prescribed manner and is required to contain a full and true disclosure of the income of the assessee which had not been disclosed before the Assessing Officer and the manner in which such income had been derived besides such other particulars as may be prescribed. When such application is filed, it is to be treated in the manner provided in section 245D. Sub-section(1) of section 245D provides that, on receipt of an application, the Settlement Commission shall, within seven days of receipt, issue a notice to the applicant requiring him to explain why such an application made by him be allowed to be proceeded with. On hearing the applicant, the Settlement Commission shall, within fourteen days from the date of the application, by an order in writing either reject the application or allow the application to be proceeded with. Proviso to sub-section(1) of section 245D provides that where no order has been passed by the Settlement Commission as aforesaid, the application shall be deemed to have been allowed to be proceeded with.

8. Under sub-section (1) of section 245D thus, the first stage of scrutinising the application of settlement made by an assessee is envisaged. The statute does not provide for grounds on which Settlement Commission may reject such an application or allow the application to be proceeded with. There are however, sufficient indications in the statute itself what would be the purpose and nature of scrutiny of Commission at that stage. As already noted, sub-section(1) of section 245C an assessee may make an application for settlement in the prescribed manner containing true and full disclosure of income not previously disclosed before the Assessing Officer and the manner in which such income had been derived as also the additional amount of income-tax payable on such income and such other particulars as may be prescribed. At the stage of sub-section (1) of section 245D of the Act, therefore, prime scrutiny of the Commission would be whether application of the assessee is in order and in conformity with the requirements of sub-section (1) of section 245C which would include filing of an application in the prescribed manner and also making necessary disclosures as required therein. There are also additional requirements of sub-section (1) of section 245C such as payment of requisite tax and interest thereon which would have been payable under the provisions of the Act, had the income disclosed in the application been declared by the assessee in the return of income before the Assessing Officer. It would thus be well within the jurisdiction of the Settlement Commission to examine whether the application for settlement fulfills such requirements or not. Such scrutiny of-course would be summary in nature. We may recall that the Settlement Commission upon receipt of such an application within seven days thereof, has to issue notice to the assessee and pass a final order either rejecting the application or allowing the application to be proceeded within fourteen days of the date of application. Proviso to sub-section (1) of section 245D makes it further clear that when no such order is passed rejecting the application within the period prescribed, the application shall be deemed to have been allowed to be proceeded with.

9. Two things therefore, emerge. Firstly, that at the stage of section 245D(1) of the Act, the Commission would have ample powers to examine whether an application of an assessee made under section 245C(1) of the Act fulfills the legal requirements particularly, those provided in section 245C(1) of the Act. Secondly, that such inquiry however, shall have to be summary in nature. The later provisions of sections 245D would also demonstrate that any decision of the Commission to allow the application to be proceeded with would only be prima facie in nature. We would elaborate this aspect a little later. At this stage, therefore, we find that under section 245D(1) of the Act, if the Commission on a summary inquiry comes to the conclusion that an application filed by the assessee under section 245C(1) of the Act does not fulfill the legal requirements, it would be within the jurisdiction of the Commission to reject the same. However, if it is allowed to be proceeded with, such decision would be tentative in nature.

10. Section 245D(2B) provides that the Settlement Commission in respect of an application, which is allowed to be proceeded with under sub-section (1), within thirty days from the date on which the application was made, call for a report from the Commissioner, and the Commissioner shall furnish the report within a period of thirty days of the receipt of communication from the Settlement Commission. Sub-section(2C) further provides that where a report of the Commissioner under sub-section (2B) has been furnished within the prescribed period, the Settlement Commission may on the basis of the report within fifteen days of the receipt of the report by an order in writing, declare the application as invalid. Proviso to sub-section(2C) provides that no such declaration shall be made unless an opportunity is provided to the assessee of being heard. From such provisions, it thus emerges that an application which has been allowed to be proceeded or deemed to have been allowed to be proceeded under section 245D(1) of the Act, it is still open to scrutiny by the Commission at the stage of sub-section(2B) and (2C) of section 245D, this time with the assistance of the report of the Commission if so made within the prescribed time. On the basis of materials contained in such report and after giving an opportunity to the applicant of being heard, if the Commission is so satisfied, can declare the application to be invalid. This is the second stage where the Commission can scrutinise the validity of application for settlement made by the assessee under section 245C (1) of the Act. Thus even if the Commission had previously passed an order under section

245D(1) of the Act, allowing the application to be proceeded with, it would still be open for the Commission if grounds are so available, to declare such an application invalid after obtaining report from the Commissioner and giving an opportunity of being heard to the applicant.

11. If however, no such order is passed declaring an application as invalid, the Commission would in terms of provisions of section 245D of the Act, proceed to decide the same on merits. Sub-section (3) thereof envisages calling for the records from the Commissioner and examining such records and carrying out such inquiry or investigation as the Commission thinks it necessary. Sub-section (4) empowers the Commission after giving an opportunity to the applicant and to the Commissioner to be heard, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner.

12. The twin requirements for an assessee making an application for settlement under section 245C(1) of the Act, of containing full and true disclosure of income which has not been disclosed before the Assessing Officer and the manner in which such income has been derived, are thus of considerable importance and would be open for the Settlement Commission to examine the fulfillment thereof at several stages of the settlement proceedings. If therefore, while at the threshold, considering the question whether such application should be allowed to be proceeded with or be rejected, the Commission examined such questions on the basis of disclosure made by the applicants and the supporting material produced along with the applications, we do not see that the Commission committed any legal error. As already noted, it was well within the jurisdiction of the Commission at the stage of sub-section (1) of section 245D of the Act to examine whether application for settlement fulfills the statutory requirements contained in sub-section (1) of section 245C of the Act. At this stage we may refer to the decision of the Supreme Court in case of *Ajmera Housing Corpn.* (*supra*). It was a case in which the assessee had made certain disclosures in the initial application under section 245C(1) of the Act. Such disclosures were however, revised and additional income was disclosed in the revised annexures. The Apex Court held that the assessee had no right to revise an application under section 245C(1) of the Act and further that such revised annexure making further disclosure of undisclosed income alone was sufficient to establish that the initial application made by the assessee could not be entertained as it did not contain true and full disclosure of the undisclosed income and the manner in which such income had been derived.

13. It is true that the order that the Settlement Commission has to pass under section 245D(1) of the Act comes with a rigid time frame. The scrutiny or the inquiry at that stage, therefore, necessarily shall have to be summary in nature. This however, does not take away the powers of the Settlement Commission to reject the application for settlement which in its opinion does not satisfy the legal requirements and more particularly, those contained in sub-section (1) of section 245C of the Act.

14. With this background in mind, we may peruse the order of the Settlement Commission which is in challenge before us. In such order, the Settlement Commission noted that the petitioners had made disclosures of larger amount of income. Commission desired to gather from the applicants the manner in which such income was derived. The Commission recorded that the representative of the applicants admitted that there was no evidence found during the search or other-wise with the applicants in this regard. It was further submitted that the applicants are old and reputed business leaders in their domain and the income earned has been mostly applied in the share capital of group companies. It was submitted before the Commission that the applicants used to participate in bidding process for securing the development work from the government, government agencies, public sector undertakings. Over a period of several decades, the applicants had achieved complete knowledge of the procedure, tactics and other technicalities of securing the contract from the Government and Government agencies, for which the applicants would receive remuneration in cash. Such contentions were turned down by the Commission observing that :

"10.1 The above submission in the statement of facts was only read out by Learned AR and he admitted that there is not an iota of 'material' to relate to the so called 'manner' of earning income.

10.2 We have considered the facts of the case and also the submissions made by Learned AR. In our view the explanation offered by Learned AR is only a make believe story which is neither credible nor worthy of any credence. We would like to stress that it is not the question of 'sufficiency' of material which could be correlated to the manner in which additional income has been derived but the total absence of any material with which we are confronted in this case.

10.3 The provision under section 245C(1) of the Income-tax Act 1961 is quoted hereunder :

"245C(1) An assessee may, at any stage of a case relating to him, make an application in such form and in such manner as may be prescribed, and containing a full and true disclosure of his income which has not been disclosed before the Assessing Officer, the manner in which such income has been derived, the additional amount of income-tax payable on such income and such other particulars as may be prescribed, to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided."

It was further observed that :

There is not even a whisper to suggest that at the stage of admission of an application, the issue of the "manner in which such income has been derived" could be left open or ignored. This is, in fact, basic eligibility criterion.

It was concluded that :

"20. Thus we hold that the admissibility of an application under section 245C(1) of the Income-tax Act, 1961 and 22C(1) of the Wealth tax Act, 1957 is dependent upon fulfilling the twin requirements of true and full disclosure of income and the manner in which such income has been derived. In fact, unless and until the manner in which the income has been derived is properly disclosed, it would not be just and appropriate to arrive at the conclusion as to whether the disclosure of additional income is true and full or all the primary facts have been brought before the Commission. In view of this settled position of law and facts and circumstances of the case we here by hold that the requirements mentioned in section 245D(1) of the Income-tax Acts, 1961/ Wealth tax Act, 1957 have not been fulfilled in the case of both the applicants. For this reason we do not allow the applications to be proceeded with under section 245D(1) of the Income-tax Act, 1961/ Wealth tax Act, 1957 in the case of both the applicants."

15. From the above observations and findings of the Commission, it can be seen that the petitioners' contentions were examined but the Commission was not convinced about the manner in which the income previously undisclosed was derived. In that view of the matter, Commission kept the question of true and full disclosure open unable to judge the same.

16. Question is should such conclusion of the Commission be interfered in exercise of writ jurisdiction? The scope of judicial review in exercise of writ jurisdiction under Articles 226 and 227 of the Constitution of India while examining the validity of an order of the Settlement Commission has come up for consideration before various Courts in the past. In case of *Jyotendrasinhji (supra)*, the Apex Court held and observed that the sole overall limitation upon the Commission appears to be that it should act in accordance with the provisions of the Act. The scope of inquiry whether by the High Court under Article 226 or by the Supreme Court under Article 136 is also the same namely, whether the order of the Commission is contrary to any of the provisions of the Act and if so, has it prejudiced the petitioner apart from the ground of bias, fraud and malice, which, of course, constitute a separate and independent category.

17. This view has been reiterated in various later decisions by the Apex Court. It is true that such decisions pertain to the final adjudication of an application for settlement by the Commission. However, limitations recognized by the Courts in exercising powers of judicial review against the orders of the Settlement Commission, in our opinion, would not be of much difference even where an order of the Settlement Commission passed at the interim stage is called in question. Settlement Commission is a special body created and constituted for a special purpose. The order that the Settlement Commission may pass though is binding between the parties, does not lay down a ratio or a precedent.

18. In case of *Saurashtra Cement Ltd. v. Commissioner of Customs* 2012(3) G.L.H. 235, scope of judicial review by the Supreme Court against the order of Settlement Commission was examined in light of various decisions of the Apex Court and following observations were made :

"15. It is well settled that no finality clause in a statute would oust the jurisdiction of the High Court under Article 226 of the Constitution or that of the Supreme court under Article 32 or 136 of the Constitution. Nevertheless, the parameters of judicial intervention in a decision rendered by an administrative tribunal are well recognised and well laid down. Ordinarily, the court would interfere if the Tribunal has acted without jurisdiction or failed to exercise jurisdiction vested in it or the decision of the Tribunal is wholly arbitrary or perverse or malafide or is against the principles of natural justice or when such decision is ultra vires the Act or the same is based on irrelevant considerations.

16. When examining the scope of judicial review in relation to a decision of Settlement Commission, we must further bear in mind that the Settlement Commission is set up under the statute for settlement of revenue claims. Its decision is given finality and it also has power to grant immunity from prosecution, of course, subject to satisfaction of certain conditions. The scope of court's inquiry against the decision of the Settlement Commission, therefore, is necessarily very narrow. The Apex Court in the case of *State of U.P. And Another v. Johri Mal* reported in [2004] 4 SCC 714 observed that the scope and extent of power of judicial review of the High Court under Article 226 of the Constitution of India would vary from case to case, the nature of the order, the relevant statute as also other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi-judicial or administrative. It was observed that the power of judicial review is not intended to assume a supervisory role. The power is not intended either to review governance under the rule of law nor for the courts to step into the areas exclusively reserved by the *suprema lex* to the other organs of the State. The court observed that the limited scope of judicial review is

- (i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies;
- (ii) A petition for a judicial review would lie only on certain well-defined grounds
- (iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.
- (iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a Court is limited to seeing that the Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.
- (v) The courts cannot be called upon to undertake the government duties and functions. The court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a judge should not be invoked as a substitute for the judgment of

the legislative bodies. (*See Ira Munn v. State of Illinois.*)

17. Despite such narrow confines of judicial review of the decision of the Settlement Commission, it is undeniable that the jurisdiction under Article 226 of the Constitution is not totally ousted. In a given situation if the Settlement Commission has taken into consideration irrelevant facts and such consideration has gone into its decision-making process resulting into grave injustice and prejudice to the party then within the narrow confines of the judicial review, interference would still be open."

19. When the Settlement Commission examines an application in terms of statutory powers and finds that such application does not satisfy the legal requirements, as contained in section 245C(1) of the Act, in our view, unless such decision of the Commission is contrary to the statutory provisions contained in the Act, interference in exercise of writ jurisdiction under Article 226 of the Constitution of India would not be warranted. The counsel for the petitioners, as recorded earlier, made strenuous efforts to convince us that the Commission ought not to have summarily dismissed the application. We are afraid this cannot be the ground on which we would reverse the Commission's order. If on the basis of material on record, the Commission could have come to the conclusion that application was not valid, it had every authority to reject the same even at the stage of first screening under section 245D(1) of the Act. We are not convinced with the petitioners' contention that if such application was allowed to be proceeded, the petitioners would have produced additional materials in support of the requirement that the petitioner made true and full disclosure of undisclosed income and the manner of deriving the same. The petitioners were required to make an application and make such declarations as required under section 245C(1) of the Act. They could not have hoped for or insisted upon a second innings to do so beyond the stage of section 245D(1) of the Act. If other-wise such requirements of the Act were not fulfilled, the Commission was well within the powers to terminate such application without any further addo.

20. In the result, the petitions fail and are dismissed. Notice discharged.

Varsha

*In favour of revenue.