

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 17177 of 2013****With****R/SPECIAL CIVIL APPLICATION NO. 17179 of 2013****With****R/SPECIAL CIVIL APPLICATION NO. 17180 of 2013****With****R/SPECIAL CIVIL APPLICATION NO. 17181 of 2013****With****R/SPECIAL CIVIL APPLICATION NO. 17182 of 2013****With****R/SPECIAL CIVIL APPLICATION NO. 17183 of 2013****With****R/SPECIAL CIVIL APPLICATION NO. 17184 of 2013****With****R/SPECIAL CIVIL APPLICATION NO. 17185 of 2013****With****R/SPECIAL CIVIL APPLICATION NO. 17186 of 2013****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE M.R. SHAH****sd/-****and****HONOURABLE MR.JUSTICE A.Y. KOGJE****sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

COMMISSIONER OF INCOME TAX - CENTRAL II**Versus****INCOME TAX SETTLEMENT COMMISSION**

Appearance:

MR MANISH R BHATT, SENIOR ADVOCATE WITH MRS MAUNA M BHATT(174)
ADVOCATE for the PETITIONER(s)
MR MIHIR JOSHI, SENIOR ADVOCATE WITH MS MEGHA JANI(1028) ADVOCATE for
RESPONDENT(s) No. 2
RULE SERVED(64) for the RESPONDENT(s) No. 1
=====

CORAM: HONOURABLE MR.JUSTICE M.R. SHAH
and
HONOURABLE MR.JUSTICE A.Y. KOGJE

Date : 25/07/2018

COMMON C.A.V. JUDGMENT

(PER : HONOURABLE MR.JUSTICE M.R. SHAH)

1. As common questions of law and facts arise in this group of petitions and in respect of the same assessee - the respondent with respect to different assessment years, all these petitions are decided and disposed of together by this common judgment and order.

2. By way of these petitions under Article 226 of the Constitution of India, the common petitioner – Department i.e. the Commissioner of Income tax (Central) (Circle-II), Ahmedabad, has prayed for an appropriate writ, direction or order to quash and set aside the impugned order(s) dated 04.12.2007 and 27.12.2012 insofar as it does not allow the Settlement Application preferred by respondent No.2 to be proceeded with for all Assessment Years as stated in the settlement application and to direct respondent No.1

Settlement Commission to pass final orders under Section 245D(4) with regard to the said remaining Assessment Years. The petitioner has also prayed to quash and set aside the order dated 19.06.2013 rendered under Section 154 read with Section 245D(6B) of the Act and to direct the Settlement Commission to allow the same and to hear the settlement application on merits insofar as the remaining assessment years are concerned.

3. The facts leading to the present Special Civil Application in nutshell are as under:

For the sake of convenience, the facts in Special Civil Application No.17177/2013 are narrated and the said Special Civil Application is treated as lead matter.

3.1 That respondent No.2 – assessee, part of the Comed Group, filed an application under Section 245C(1) of the Income Tax Act, 1961 (“the Act” for short) before the respondent No.1 - Income Tax Settlement Commission (“the Settlement Commission” for short). It appears that as such, the settlement applications under Section 245C(1) numbering eleven, were filed in respect of nine assesseees of the Comed Group of Vadodara, the details of which are as under:-

Sr. No.	Name of the applicant	Application No.	A.Y.s for which application made	Date of filing application
1	M/s.Jay Bee Distributors Pvt. Ltd.	PJB/AHCC-II/128/2006-07/IT	1999-2000 to 2004-05	07.02.2007
2	M/s.Jay Bee Distributors Pvt. Ltd.	GJ/BACC-II/152/2006-07/IT	2005-06	30.03.2007
3	M/s.Pax Laboratories Pvt. Ltd.	GJ/BACC-II/101/2006-07/IT	1999-2000 to 2004-05	08.12.2006
4	M/s.Tad Pharma Ltd.	GJ/BACC-II/096/2006-07/IT	1999-2000 to 2004-05	08.12.2006
5	Shri Jagjitsingh Channa	GJ/BACC-II/099/2006-07/IT	1999-2000 to 2005-06	08.12.2006
6	Mrs.Satvinder Paul Kaur Sethi	GJ/BACC-II/118/2006-07/IT	1999-2000 to 2005-06	29.12.2006
7	Shri Kuldeep Singh Mehta	GJ/BACC-II/097/2006-07/IT	1999-2000 to 2004-05	08.12.2006
8	Mrs.Paramjit Kaur Mehta	GJ/BACC-II/095/2006-07/IT	1999-2000 to 2005-06	08.12.2006
9	M/s.Comed Chemicals Ltd.	GJ/BACC-II/025/2006-07/IT	1999-2000 to 2004-05	22.08.2006
10	M/s.Comed Chemicals Ltd.	GJ/BACC-II/094/2006-07/IT	2005-06	08.12.2006
11	M/s.Comed Laboratories Ltd.	GJ/BACC-II/100/2006-07/IT	2001-2002 to 2004-2005	08.12.2006

3.2 Thus, in the case of Comed Chemicals Ltd., two settlement applications were made under Section 245C(1), one for A.Y. 1999-2000 to 2004-05 filed on 22.08.2006 and another for A.Y. 2005-06 filed on 08.12.2006. In the case of Jay Bee Distributors Pvt. Ltd. also, two settlement applications were made, one for A.Y. 1999-2000 to 2004-05 filed on 07.02.2007 and another for A.Y. 2005-06 filed on 30.03.2007. It appears that in the case of other two assesses, only one application for each of the assessee was filed for multiple assessment years as above.

3.3 It is the case on behalf of the petitioner that thereafter, respondent No.1 as learned Settlement Commission, Mumbai, passed an order under Section 245D(4) on 27.12.2012 in respect of the above applications and it was found that the said order has been passed considering only some of the assessment years incorporated in each of the applications whereas, the remaining assessment years of the respective applications have not been considered and decided in the said order passed under Section 245D(4) dated

27.12.2012. The assessment years for which such orders were passed in respect of the applications are as below:-

Sr. No .	Name of the applicant	A.Y.s for which application allowed to be proceeded and final orders were passed u/s.245D(4)	Date of Order u/s.245D(2 A) and 2(C)
1	M/s.Jay Bee Distributors Pvt. Ltd.	2004-05	04.12.2007
2	M/s.Jay Bee Distributors Pvt. Ltd.	2005-06	04.12.2007
3	M/s.Pax Laboratories Pvt. Ltd.	2003-04	04.12.2007
4	M/s.Tad Pharma Ltd.	2001-02	04.12.2007
5	Shri Jagjitsingh Channa	2003-04 & 2005-06	04.12.2007
6	Mrs.Satvinder Paul Kaur Sethi	2003 -04 to 2004-05	04.12.2007
7	Shri Kuldeep Singh Mehta	1999-2000 to 2004-05	04.12.2007
8	Mrs.Paramjit Kaur Mehta	2004-05 & 2005-06	04.12.2007
9	M/s.Comed Chemicals Ltd.	1999-2000 to 2000-01 & 2004-05	04.12.2007
10	M/s.Comed Chemicals Ltd.	2005-06	04.12.2007
11	M/s.Comed Laboratories Ltd.	2004-2005	04.12.2007

3.4 The assessment years of the respective applications

which were not considered in the order dated 27.12.2012 passed under Section 245D(4) are as below:

Sr. No	Name of the applicant	A.Y.s for which no orders have been passed rejecting the application partly
1	M/s.Jay Bee Distributors Pvt. Ltd.	1999-2000 to 2003-04
2	M/s.Pax Laboratories Pvt. Ltd.	1999-2000 to 02-03 & 04-05
3	M/s.Tad Pharma Ltd.	1999-2000, 2000-01, 2002-03 to 04-05
4	Shri Jagjitsingh Channa	1999-2000 to 2002-03 & 2004-05
5	Mrs.Satvinder Paul Kaur Sethi	1999-2000 to 2002-03
6	Mrs.Paramjit Kaur Mehta	1999-2000 to 2003-04
7	M/s.Comed Chemicals Ltd.	2001-02 to 2003-04
8	M/s.Comed Laboratories Ltd.	2001-2002 to 2003-04

3.5 It is the case on behalf of the petitioner that it was found by the Department thereafter that in respect of all the above eleven applications, orders were passed on 04.12.2007 allowing the applications to be proceeded with further under the provisions of pre-amended Section 245D(2A) and Section 245D(2C) of the Act in respect of some of the Assessment Years out of the Assessment Years for which the settlement applications were filed.

3.6 It is the case on behalf of the petitioner – Department that as settlement applications were preferred under Section 245C of the Act before the first day of June 2007, but no order was passed under the pre-amended provisions of sub-section 91) of Section 245C, the applications have to be deemed to be allowed to be proceed with as on 31st July, 2007, if the due amount of tax on the income disclosed in the said settlement application and interest thereon have been paid on 31st July, 2007. It is the case on behalf of the petitioner that such application could be treated as invalid only in the condition if additional tax on income disclosed in such applications and the interest thereon have not been paid on or before 31st July, 2007. Therefore, it is the case on behalf of the petitioner that the order dated 04.12.2007 passed by the Settlement Commission to proceed further with the settlement applications in respect of some of the Assessment Years only and not for all the Assessment Years for which the applications were filed is absolutely illegal, wholly without jurisdiction and contrary to the provisions of the Act.

3.7 It appears that thereafter, the Revenue / Department submitted the application(s) before the Settlement Commission under Section 154 read with Section 245D(6) of the Act and requested to consider the settlement

application(s) for the remaining years for which the order(s) are not passed under Section 245D(1) of the Act. That the learned Settlement Commission vide order dated 19.06.2013, has rejected the said applications holding that the order under Section 245D(6B) to rectify the order under Section 245D(4) dated 27.12.2012 would tantamount to review/ recall which is not permissible under the provisions of law.

3.8 Hence, the Revenue has preferred the present Special Civil Applications for the aforesaid reliefs.

At this stage, it is required to be noted that the Department has also amended the petition making averments challenging the order passed under Section 245D(4) on merits. However, there is no prayer to quash and set aside the order(s) passed under section 245D(4) in respect of the years for which the orders under Section 245D(4) have been passed.

4. Shri M.R.Bhatt, learned Senior Advocate has appeared on behalf of the Revenue and Shri Mihir Joshi, learned Senior Advocate has appeared for Ms.Megha Jani, learned advocate appearing on behalf of the respondent- assessee in all these petitions.

4.1 It is submitted by Shri M.R.Bhatt, learned Senior Advocate appearing on behalf of the Revenue that the order passed by the Settlement Commission not to consider the settlement application for the remaining years dated 04.12.2007 and considering the settlement applications for some Assessment Years only is absolutely illegal and wholly without jurisdiction and contrary to the provisions of the Act.

4.2 It is vehemently submitted by Shri M.R.Bhatt, learned Senior Advocate appearing on behalf of the Revenue that clause (b) of Section 245A defines "case" to mean any proceedings under the Act, which may be pending before the Income Tax Authority on the date on which an application under Section 245C(1) is made. As per Section 245C, an assessee at any stage of a case relating to him may make an application containing a full and true disclosure of his income which has not been disclosed before the Assessing Officer. Section 245D(1) requires the application of mind by the Settlement Commission as to whether the application made by an assessee should be allowed to be proceeded with and an order in writing either rejecting the application or allowing the application to be proceeded with is required to be passed. However, in a case where application for settlement was made under Section 245C before the first day of June 2007, and an

order under Section 245D(1) has not been made before the first day of June 2007, “such application shall be deemed to have been allowed to be proceeded with if the additional tax on the income disclosed in such application and the interest thereon is paid on or before 31st of July, 2007”.

4.3 It is further submitted by Shri M.R.Bhatt, learned Senior Advocate appearing on behalf of the Revenue that in the instant case, application for settlement was filed by the assessee prior to 01.06.2007 and no order under Section 245D(1) was made by the Settlement Commission before 01.06.2007. Thus, the application filed by the assessee for all the years was deemed to have been allowed to be proceeded with. The only requirement thereupon is that if an additional income is disclosed before the Settlement Commission, which was earlier not disclosed before the Assessing Officer, then the additional tax and interest thereon was required to be paid on or before 31.07.2007. Thus, the Section clearly indicates that in view of the deeming provision, no adjudication was required on the part of the Settlement Commission to decide as to whether any application was required to be allowed to be proceeded further or to be rejected. At the cost of repetition, it is reiterated that once the three conditions enumerated in Section 245D(2A) stood fulfilled, the entire application with

regard to all the years which is the subject matter of such application, is required to be treated as deemed to have been allowed to be proceeded further.

4.4 It is further submitted by Shri M.R.Bhatt, learned Senior Advocate appearing on behalf of the Revenue that the main contention of the respondent-assessee appears to be that in respect of the Assessment Years for which the application is not allowed to be proceeded further, there was no additional disclosure and, therefore, no tax and interest thereon was required to be paid or so paid before 31.07.2007. This contention is wholly misconceived. It is submitted that in a Settlement application, the assessee may as well not disclose any additional income which was hitherto not disclosed before the Assessing Officer but still requests for settlement of this case. In respect of the years in which no additional income was disclosed before the Settlement Commission, there was no question of payment of additional tax and interest thereon, before 31.07.2007. Thus, there being no shortfall of payment of additional taxes, the composite application for various Assessment Years was required to be deemed to have been proceeded further.

4.5 It is submitted by Shri M.R.Bhatt, learned Senior

Advocate appearing on behalf of the Revenue that in the light of the above, any intimation under Section 245D(2A) noting that only for some years, the application was allowed to be proceeded further, whether received by the petitioner or not, would pale into insignificance.

4.6 It is submitted by Shri M.R.Bhatt, learned Senior Advocate appearing on behalf of the Revenue that what was served on the petitioner – Department was the communication dated 04.12.2007 (at Annexure-A to the affidavit-in-rejoinder). It is submitted that this communication clearly mentions that application under reference was deemed to have been allowed to be proceeded with under Section 245D(2A). It is further submitted by learned Senior Advocate that in Paragraph-2 of the said communication, the Commissioner was requested to furnish a report “on the matter(s) covered by the application”. In Paragraph-4 of the said communication, it is also noted that in relation to the assessment years “covered by the settlement application” in view of the provisions of Section 245F(2), the Settlement Commission had exclusive jurisdiction to exercise the powers and perform the functions of an Income Tax Authority. It is submitted that based on this communication, the petitioner furnished report under Rule 9 of the Income Tax Settlement Commission (Procedure) Rules, 1997 for all the

years covered in the application.

4.7 It is further submitted by Shri M.R.Bhatt, learned Senior Advocate appearing on behalf of the Revenue that pages 114 to 118 of the compilation are the proceedings sheet (internal documents) of Commission. The same were not served nor any order was passed as contemplated under Section 245D(2C) of the Act. It is submitted that the only communication received was dated 04.12.2007 (page 163) which required the petitioner to furnish a report on the “matters covered by the application”. It is submitted that admittedly, matters covered under the Settlement application preferred by the assessee were for various years.

In support of his above submissions, Shri M.R.Bhatt, learned Senior Advocate appearing on behalf of the Revenue has heavily relied upon the decision in the case of ***Principal Commissioner of Income-tax (Central) v. Settlement Commission*** reported in ***386 ITR 660 (Gujarat)***.

4.8 It is further submitted by Shri M.R.Bhatt, learned Senior Advocate appearing on behalf of the Revenue that in the instant case, there is no order under Section 245D(2C) of the Act communicated to the petitioner. It is submitted that

therefore, as per the Scheme of the Act, it is only at the time of hearing i.e. 245D(4) that the grievance with regard to non-admission of the settlement application for few years was raised (page 41) and the decision of the settlement application is at page 51.

4.9 It is further submitted by Shri M.R.Bhatt, learned Senior Advocate appearing on behalf of the Revenue that the communication of the same date, i.e. 04.12.2007 which is at Pages 26 to 36 was not received by the petitioner. It is submitted that on this aspect, in the rectification application, several averments were made to justify as to how said communication was not received by the petitioner.

4.10. It is further submitted by Shri M.R.Bhatt, learned Senior Advocate appearing on behalf of the Revenue that in any view of the matter, when at the time of final hearing before the Settlement Commission, the aspect that the applications were allowed to be proceeded with only for some assessment years was brought to the notice of the petitioner, detailed submissions were made and even written arguments were filed.

4.11 Shri M.R.Bhatt, learned Senior Advocate appearing

on behalf of the Revenue has further submitted that the fact that the Department specifically argued the said issue is also noted by the Settlement Commission in the order passed under Section 245D(4) of the Act. It is further submitted that even after the order passed under Section 245D(4), despite rectification application having been filed, the Settlement Commission has refused to rectify this error apparent on the record.

4.12 It is further submitted by Shri M.R.Bhatt, learned Senior Advocate appearing on behalf of the Revenue that it is a settled position of law that there cannot be any estoppel against the statutory provisions. It is submitted that therefore, reliance placed on the part of the assess on the decision of the Hon'ble Supreme Court in the case of **Dilboo (Smt.)(Dead) by LRs. And Others v. Dhanraji (Smt.) (Dead) And Others** reported in **(2000)7 SCC 702** is therefore not correct and as such, the same shall not be applicable to the facts of the case on hand. It is further submitted by Shri Bhatt that even the reliance placed on the part of the assess on the decision of this Court in the case of **Ashish Prafulkumar Patel** reported in **(2017)86 taxmann.com 124** is misplaced. It is submitted that in the said decision, this Court held that when the assessee had paid additional tax and interest by

31.07.2007 for the said Assessment Years, the proceedings would not abate. It is submitted that applying the same analogy, in the event the assessee has paid the tax and interest in respect of the income disclosed in the application, as contemplated under Section 245C(1D), in view of the deeming provision of Section 245D(2A), the entire application was deemed to have been allowed to be proceeded further.

4.13 It is further submitted by Shri M.R.Bhatt, learned Senior Advocate appearing on behalf of the Revenue that in the present case, as such, the petitioner came to learn about non-admission of the application for few years at the time of hearing under Section 245D(4). That thereafter, when the Department submitted the application under 154 read with Section 245D(6), the same ought to have been allowed by the Settlement Commission.

4.14 It is further submitted by Shri M.R.Bhatt, learned Senior Advocate appearing on behalf of the Revenue that even the orders passed by the Settlement Commission allowing certain claims of the assessee which are the subject-matter of Special Civil Application Nos.17177/2013, 17181/2013 and 17185/2013, are erroneous.

4.15 It is further submitted by Shri M.R.Bhatt, learned Senior Advocate appearing on behalf of the Revenue that in the case of M/s.Comed Chemicals Limited – Special Civil Application No.17177/2013, the learned Settlement Commission allowed deduction under Section 80IA in respect of undisclosed income. It is submitted that while allowing the deduction under Section 80IA, there is no finding recorded by the Settlement Commission that the same is ‘derived’ from the industrial activity. It is submitted that for deduction under Section 80IA, the nexus is required to be established that the stated income is ‘derived’ from the industrial undertaking. That in the instant case, the assessee claimed deduction under Section 80IA in respect of undisclosed income admitted before the Settlement Commission. That in fact, the Settlement Commission itself in the case of other assessees has held that such deduction is not allowable.

4.16 It is further submitted by Shri M.R.Bhatt, learned Senior Advocate appearing on behalf of the Revenue that the assessee’s reliance on the decision of this Court in the case of ***CIT v. Suman Paper Board Limited – (2009) 314 ITR 119*** is misplaced. It is submitted that in the said decision, a categorical finding was recorded that the undisclosed income was under the head of “business income” from industrial

undertaking as the only activity of the assessee whereas in the instant case, there is no such finding. It is submitted that in view of the above, even on merits also, the order passed under Section 245D(4) of the Act deserves to be quashed and set aside.

4.17 It is further submitted by Shri M.R.Bhatt, learned Senior Advocate appearing on behalf of the Revenue that the orders passed under Section 245D(4) in the case of assessee Kuldipsingh Mehta and Satvinder Paul Kaur Sethi (Special Civil Applications No.17181/2013 and 17185/2013) are also erroneous and the same deserve to be quashed and set aside.

4.18 It is further submitted by Shri M.R.Bhatt, learned Senior Advocate appearing on behalf of the Revenue in respect of the revision in disclosure in Special Civil Applications No.17181/2013 and 17185/2013, a perusal of the documents on record (pages 66 and 67) would go to show that as against the initial additional disclosure before the Settlement Commission of Rs.87,390/- for A.Y. 2002-03, additional income of Rs.12 lakhs was made. Similarly, as against the initial disclosure of Rs.2 lakhs for A.Y. 2005-06, additional disclosure of Rs.22 lakhs was made (page 67). It is submitted that this Court in the case of **Principal Commissioner of Income Tax**

v. Nilkanth Developers reported in **(2016)73 taxmann.com 76**, has been pleased to hold in similar circumstances that since disclosure revised by the assessee was substantial, the order of the Settlement Commission on this aspect accepting the additional disclosure was liable to be set aside. That the respondent-assessee has relied upon the decision in the case of **CIT v. ITSE** reported in **(2016)75 taxmann.com 103**. It is submitted that however, the fact situation available in the said reported decision is entirely different inasmuch as in the reported decision, additional disclosure was very marginal.

4.19 It is submitted by Shri M.R.Bhatt, learned Senior Advocate appearing on behalf of the Revenue that therefore, even on merits also, the order passed under Section 245D(4) of the Act deserves to be quashed and set aside.

Making above submissions, it is requested to allow the present petitions.

5. Shri Mihir Joshi, learned Senior Advocate appearing on behalf of the respondent-assessee has vehemently submitted that as such, the petitioner – Commissioner has no locus to make a grievance against an order of the Settlement

Commission holding that the settlement application would not be proceeded with in respect of certain assessment years. It is submitted that the law provides for settlement only at the instance of an assessee and there is no question of the Department compelling a settlement on the assessee. It is further submitted that by an order of the Settlement Commission not allowing settlement application to be proceeded further, the Department suffers no prejudice since if the settlement application is rejected/ not allowed to be proceeded with, the assessee would be subject to regular assessment under law. It is submitted that therefore in fact, the petition at the instance of the Department is not maintainable at all.

5.1 It is further submitted by Shri Mihir Joshi, learned Senior Advocate appearing on behalf of the respondent-assessee that even otherwise, the petition filed on 30.10.2013 challenging the order dated 04.12.2007 is grossly barred by principles of delay, laches, acquiescence and waiver.

5.2 It is further submitted by Shri Mihir Joshi, learned Senior Advocate appearing on behalf of the respondent-assessee that the orders dated 19.11.2007 and 04.12.2007 cannot be held to be invalid on the ground that the same are

not envisaged to be passed under the provisions of the Act. Though Section 245D(2A) of the Act provides for a deeming fiction by which the settlement application is deemed to be allowed to be proceeded with without the requirement of any order under Section 245D(1) of the Act, such deeming fiction is not absolute and will operate only if the additional tax on the income disclosed in such application and interest thereon is paid on or before 31.07.2007. Section 245D(2B) of the Act provides that the Settlement Commission should call for a report from the Commissioner in respect of a subject application and sub-section 2C provides for passing of an order in writing by the Settlement Commission declaring the application in question as invalid based on the report of the Commissioner or otherwise. The Commissioner of Income Tax submitted a report dated 22.08.2007 (to be found at Page 191 Para (V)(i) of the affidavit-in-rejoinder of the Commissioner) regarding payment of additional tax and on such basis the Settlement Commission was bound to pass an order regarding validity/ invalidity of the application under Section 245D(2C) read with (2A) of the Act, which it has done in the instant case which is clearly contemplated under the aforesaid provisions. The contention of the Department that the order under Section 245D(2C) of the Act can only be regarding invalidity, while in

the instant case the subject order refers to validity of certain applications is untenable since an order which holds application in respect of three years to be valid, by necessary implication holds the application for the balance years as invalid and the form of expression cannot govern the substance which is as contemplated under the relevant provision.

5.3 It is further submitted by Shri Mihir Joshi, learned Senior Advocate appearing on behalf of the respondent-assessee that it is obvious from the Scheme of the Act that out of the various eventualities contemplated for invalidation, if no additional income is disclosed for the year in question and no additional tax comes to be paid in respect of such year, the settlement application insofar as that year is concerned would be rendered invalid because the requirement of an application for settlement is for disclosure hitherto undisclosed income and payment of additional tax thereon. It is submitted that a conjoint reading of Section 245C(1) and Section 245C(1A) and Section 245(1D) of the Act makes it clear that the additional amount of income tax and consequentially the disclosure of undisclosed income is relatable to each of the years covered in the application. The contention of the petitioner that the application for settlement cannot be split in parts and be

allowed to proceed further with respect to some of the assessment years and rejected for some has been specifically considered and negatived by this Court in the judgment in the case of **Ashish Prafulbhai Patel v. Income-tax Settlement Commission** reported in **(2017)86 taxmann.com 124** (Paragraph No.26).

5.4 Now so far as the submission on behalf of the petitioner that the Settlement Commission has erred in not permitting the petitioner to seek reconsideration of the orders dated 04.12.2007 and in rejecting the rectification application filed by the petitioner by incorrectly holding that the petitioner had received the orders dated 04.12.2007 and could not be permitted to indirectly seek a review thereof in the course of final hearing of the subject applications, since the said orders had not been served on the petitioner in the manner contemplated under the Act, and has not been received by the petitioner and therefore the Settlement Commission ought to have reconsidered the orders dated 04.12.2007 at the stage of passing the final order on 27.12.2012, it is vehemently submitted on behalf of the respondent – assessee that the Settlement Commission had no power or jurisdiction to reconsider the order passed under Section 245D(2C) read with Section 245D(2A) of the Act dated 19.11.2007 and 04.12.2007.

It is submitted that as such, the proceedings relating to the applications in respect of the assessment orders stood concluded by the order dated 19.11.2007 as communicated on 04.12.2007 and the settlement application for the balance years only been under consideration during which the validity of the earlier order would not be an issue at all.

5.5 It is further submitted by Shri Mihir Joshi, learned Senior Advocate appearing on behalf of the respondent-assessee that the petitioner is not entitled to tide over the gross delay of nearly five years in challenging the subject order. Firstly, the order dated 19.11.2007 is part of the record of the proceedings before the Settlement Commission. The order/ communication dated 04.12.2007 conveying that the application only in respect of particular years was to be proceeded with has been received by the Department in some cases as admitted in the application for rectification filed by the Department. That the said orders were part of the annexures filed by the respondent in a writ petition filed before this Court being Special Civil Application No.5208/2008 as Annexure-D thereto. It is submitted that secondly, the petitioner has admittedly received a communication from the Settlement Commission of the same date i.e. 04.12.2007 under Section 245D(3) of the act calling for the report in

respect of the subject application which clearly indicates in the subject that the application was in respect of 1999-2000, 2000-01, and 2004-05. This has been admitted to have been received by the petitioner. Moreover, the Settlement Commission has recorded the facts regarding the knowledge of the Department regarding the subject orders. It is therefore submitted that the petitioner had received a copy of the subject orders and in any case must be deemed to have knowledge of the same on account of the fact that the same were part of the record of the Settlement Commission that some orders in respect of the settlement applications which were of the Comed Group as a whole had been received by the Department, that the orders were part of the writ petition filed by the respondent and served on the Department and that the communication dated 04.12.2007 calling for the report specifically refers to the application being proceeded with only for some of the years. It is submitted that the fact of passing of the order of 04.12.2007 could in any case have been discovered by due diligence and deemed knowledge should also be attributed to the petitioner - [(2000)7 SCC 702] (Paragraph-20).

5.6 Now so far as the submission on behalf of the petitioner on the legality and validity of the order(s) passed by

the Settlement Commission under Section 245D(4) with respect to some of the orders (Special Civil Applications No.17177/2013, 17181/2013 and 17185/2013) is concerned, it is vehemently submitted by Shri Mihir Joshi, learned Senior Advocate appearing on behalf of the respondent-assessee that as such in absence of any specific prayer to quash and set aside the same, this Court may not entertain and/or consider such submissions. It is submitted that even such grounds are taken only in amendment.

5.7 It is further submitted by Shri Mihir Joshi, learned Senior Advocate appearing on behalf of the respondent-assessee that even on merits also, the challenge to the order(s) under Section 245D(4) on merits is not sustainable. It is submitted that the disclosure of the assessee who is a part of the Comed group should be considered in the context of the additional income offered to tax by the Comed Group as a whole and in such context the amount of additional income is a fraction of the additional income disclosed by the group and offered in a spirit of settlement and rejection of the application is not warranted as held by this Hon'ble Court in the case reported in ***Principal Commissioner of Income-tax, Central v. Income Tax Settlement Commission - (2017)83 taxmann.com 123*** and ***Commissioner of***

Income-tax – I v. Income Tax Settlement Commission & Anr. - (2016)75 taxmann.com 103. The other two contentions as referred to above regarding the same being beyond the relief prayed for and beyond the scope of judicial review are reiterated. Additionally, it is submitted that the Settlement Commission in the subject order dated 27.12.2012 has specifically recorded that the voluntary offering of additional income by the assessee was not being objected to by the Departmental Representative.

Making above submissions and relying upon the above decisions, it is requested to dismiss the present petitions.

6. In rejoinder and on the objection raised on behalf of the respondent-assessee that as there is no specific prayer challenging the order(s) under Section 245D(4), it is submitted by Shri Bhatt, learned Senior Advocate appearing on behalf of the Revenue that as such, the writ petition enumerates the specific ground relatable to the challenge. It is submitted that necessary documents/ facts are available on record. That the petitioner essentially challenges the decision making process on the part of the Settlement Commission. That in such a situation, even in absence of prayer, since all the facts are

available and parties have also advanced arguments on merits of the same, this Court may entertain the said challenge. In support of his above submissions and request, Shri Bhatt, learned Senior Advocate appearing on behalf of the petitioner-Revenue has relied upon the decisions of Hon'ble Supreme Court in the case of **Godrej Sara Lee Limited v. Assistant Commissioner (AA) And Another** reported in **(2009)14 SCC 338** (Paragraphs 9, 11, & 13) and **Joshi Technologies International Inc. v. Union of India And Others** reported in **(2015)7 SCC 728** (Paragraphs 49 to 51).

7. Heard learned counsel appearing for respective parties at length. At the outset, it is required to be noted that the present petition is preferred by the Department/ Revenue challenging the order passed by the Settlement Commission in proceeding further with the settlement applications only for some of the years and not for all the years for which the assessee filed/ submitted the settlement application. Therefore, the first and foremost question which is required to be considered is the locus of the Department to challenge the order passed by the Settlement Commission in considering the application submitted by the assessee only for some of the years and not for all the years for which the assessee had submitted the application. Therefore, the question which is

posed for consideration of this Court is whether the Department/ Revenue can be said to be an “aggrieved person” / “aggrieved party” against the decision of the Settlement Commission to not consider the settlement application for all the years for which the application was submitted by the assessee?

7.1 Considering Section 245 of the Income Tax Act, it provides remedy to the assessee to approach the Settlement Commission and pray for settlement by offering undisclosed income and offering to pay the tax on the same. Therefore, it is the assessee who approaches the learned Settlement Commission for settlement as per Section 245 of the Act. Therefore, if at all anybody who can be said to be aggrieved by the rejection of the application by the Settlement Commission and/or non-consideration of the application for settlement for which the settlement application is submitted, is the assessee who approaches the learned Settlement Commission. The Department/ Revenue cannot therefore be said to be aggrieved by the decision of the Settlement Commission in rejecting and/or not proceeding further with the settlement application for the years for which the application is submitted by the assessee.

Even considering the Scheme of Section 245 of the Act, no such right is conferred in favour of the Department against rejection of the settlement application submitted by the assessee. Even otherwise, considering the consequences of rejecting and/or declaring the settlement application invalid by the Settlement Commission, the Department/ Revenue cannot be said to be aggrieved. On rejecting and/or declaring the settlement application invalid, the consequences shall be that the assessment proceedings/ proceedings initiated against the assessee shall have to be proceeded further as if the assessee has not approached the learned Settlement Commission. If the settlement application is allowed and the order is passed as per Section 245D(4) of the Act and the assessee makes payment of tax, penalty and interest as per the order passed by the Settlement Commission, in that case, the assessee may get the benefit of immunity from prosecution and penalty etc. as per Section 245H of the Act. Therefore, the object and purpose of the proceedings before the Settlement Commission is to put an end to the dispute at the instance of the assessee and the assessee may approach the Settlement Commission for settlement to avoid prosecution and penalty. On the other hand, if the settlement application is rejected and/or declared invalid, the necessary

consequences of abatement of proceedings before the Settlement Commission as provided under Section 245HA shall follow. Section 245HA of the Act reads as under:-

"Abatement of proceeding before Settlement Commission.

245HA. (1) Where -

- (i) *an application made under section 245C on or after the 1st day of June, 2007 has been rejected under sub-section (1) of section 245D, or*
- (ii) *an application made under section 245C has not been allowed to be proceeded with under sub-section (2A) or further proceeded with under sub-section (2D) of section 245D; or*
- (iii) *an application made under section 245C has been declared as invalid under sub-section (2C) of section 245D; or*
- (iiia) *in respect of any application made under section 245C, an order under sub-section (4) of section 245D has been passed not providing for the terms of settlement; or*
- (iv) *in respect of any other application made under section 245C, an order under sub-section (4) of section 245D has not been passed within the time or period specified under sub-section (4A) of section 245D,*

the proceedings before the Settlement Commission shall abate on the specified date.

Explanation: - For the purposes of this sub-section, "specified date" means--

(a) in respect of an application referred to in clause (i) , the day on which the application was rejected;

(b) in respect of an application referred to in clause (ii), the 31st day of July, 2007;

(c) in respect of an application referred to in clause (iii), the last day of the month in which the application was declared invalid;

(ca) in respect of an application referred to clause (iiia), the day on which the order under sub-section (4) of section 245D was passed not providing for the terms of settlement;

(d) in respect of an application referred to in clause (iv), on the date on which the time or period specified in sub-section (4A) of section 245D expires.

(2) Where a proceeding before the Settlement Commission abates, the Assessing Officer, or, as the case may be, any other income-tax authority before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance with the provisions of this Act as if no application under section 245C had been

made.

(3) For the purposes of sub-section (2), the Assessing Officer, or, as the case may be, other income-tax authority, shall be entitled to use all the material and other information produced by the assessee before the Settlement Commission or the results of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it, as if such material, information, inquiry and evidence had been produced before the Assessing Officer or other income-tax authority or held or recorded by him in the course of the proceedings before him.

(4) For the purpose of the time-limit under sections 149, 153, 153B, 154, 155, 158BE and 231 and for the purposes of payment of interest under section 243 or 244 or, as the case may be, section 244A, for making the assessment or reassessment under sub-section (2), the period commencing on and from the date of the application to the Settlement commission under section 245C and ending with "specified date" referred to in sub-section (1) shall be excluded; and where the assessee is a firm, for the purposes of the time-limit for cancellation of registration of the firm under sub-section (1) of section 186, the period aforesaid shall, likewise, be excluded."

Therefore, considering the Scheme of Section 245HA and the object and purpose of proceedings before the Settlement Commission under Section 245 of the Act, we are of the opinion that against the order passed by the Settlement Commission either rejecting and/or declaring the application invalid and/or considering the application for some of the years and not considering the application for all the years for which the application is submitted, only the assessee/ applicant can be said to be aggrieved. Therefore, the present petition at the instance of the Revenue challenging the order passed by the Settlement Commission not considering the settlement application for all the years for which the application was submitted is not required to be considered further on merits as the petitioner-Department cannot be said to be aggrieved by such an order.

7.2 For the reasons stated hereinabove therefore, even the submission on behalf of the Department at the instance of the Department that the applications were preferred before the amendment, i.e. prior to 1st June, 2007, and the order under Section 245D(1) has not been made before the 1st day of June, 2007, and therefore, such applications shall be deemed to have been allowed to be proceeded further, is not required to be entertained. For the reasons stated hereinabove, it is

the assessee who has approached the Settlement Commission by way of application can make a grievance that in view of the deemed allowing the application, his application ought to have been considered for all the years for which the application was submitted.

8. Number of submissions have been made by learned counsel appearing on behalf of the Revenue on whether the order dated 04.12.2007 by which the Settlement Commission decided to proceed further with the settlement application for some of the years only was received by the Department or not. Considering the material on record, it can be said that there are disputed questions of fact on the aforesaid. However, considering the subsequent communication which as such was received in which it is specifically mentioned and the Report was called only for some of years for which the order dated 04.12.2007 was passed, it can be said that the Department had the knowledge. That thereafter, the Settlement Commission has passed the final order under Section 245D(4) of the Act with respect to some of the years for which the order was passed dated 04.12.2007. Only thereafter, the Department woke up and submitted the rectification application which is rightly rejected by the Settlement Commission.

9. Now so far as challenge to the impugned order passed by the learned Settlement Commission on merits, in case of Special Civil Applications Nos.17177/2013, 17181/2013 and 17185/2013 is concerned, at the outset, it is required to be noted that challenge to the order passed by the Settlement Commission on merits is by way of amendment and when the petition was preferred originally, no such averments were made. Even thereafter, there is no specific prayer to quash and set aside the order passed by the Settlement Commission on merits.

9.1 Even otherwise, even on merits, insofar as the order passed by the Settlement Commission impugned in respect of the assessee of Special Civil Applications Nos.17177/2013, 17181/2013 and 17185/2013 is concerned, it cannot be said that the same suffers from any procedural lapse and/or that the principles of natural justice have been violated. Therefore, considering the limited scope of judicial review as pronounced by the Hon'ble Supreme Court as well this Court in a catena of decisions, the order passed by the Settlement Commission is not required to be interfered with. As observed by the Hon'ble Supreme Court and this Court in a catena of decisions, the Court is not required to consider the legality and validity of the order passed by the Settlement Commission as an appeal

against the order passed by the Assessing Officer.

10. In view of the above and for the reasons stated above, all these deserve to be dismissed and are accordingly dismissed. Rule is discharged.

sd/-
(M.R. SHAH, J)

sd/-
(A.Y. KOGJE, J)

sunil

