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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2421 OF 2007

Mr. Hassan Ali Khan, )  
1, Tulip, Valentina Soceity )  
North Main Road, Koregaon Park, )  
Pune-41 011. )..PETITIONER

Versus

1.Settlement Commission, )  
Mahalaxmi Chambers, Mumbai-34.)  
2.The Commissioner of Income-tax) )  
Central 1, Old CGO Building, )  
Mumbai-400 020. )  
3.The Deputy Commissioner of )  
Income-tax, Central Cir.(2) )  
Old CGO Building, M.K.Road, )  
Mumbai-400 020. )  
4.Union of India, Aayakar Bhavan) )  
M.K. Road, Mumbai-400 020. )..RESPONDENTS

WITH

WRIT PETITION NO.2422 OF 2007

Mrs.Raheema H.Khan, )

1, Tulip, Valentina Soceity )  
North Main Road, Koregaon Park, )  
Pune-41 011. )..PETITIONER

Versus

1.Settlement Commission, )  
Mahalaxmi Chambers, Mumbai-34.)  
2.The Commissioner of Income-tax)  
Central 1, Old CGO Building, )  
Mumbai-400 020. )  
3.The Deputy Commissioner of )  
Income-tax, Central Cir.(2) )  
Old CGO Building, M.K.Road, )  
Mumbai-400 020. )  
4.Union of India, Aayakar Bhavan)  
M.K. Road, Mumbai-400 020. )..RESPONDENTS

Mr.Y.P. Trivedi, Senior Counsel with Mr. Pankaj  
R. Toprani, for the Petitioner.

Mr. B.M. Chatterji with Mrs. P.P. Bhosale and Mr.  
P.S.Sahadevan, for the Respondents.

WITH

WRIT PETITION NO.2423 OF 2007

Mrs.Rheema H. Khan, )  
1, Tulip, Valentina Soceity )  
North Main Road, Koregaon Park, )  
Pune-41 011. )..PETITIONER

Versus

1. Settlement Commission, )  
Mahalaxmi Chambers, Mumbai-34.)
2. The Commissioner of Income-tax )  
Central 1, Old CGO Building, )  
Mumbai-400 020. )
3. The Deputy Commissioner of )  
Income-tax, Central Cir.(2) )  
Old CGO Building, M.K.Road, )  
Mumbai-400 020. )
4. Union of India, Aayakar Bhavan )  
M.K. Road, Mumbai-400 020. )..RESPONDENTS

Mr. J.D. Mistry with Mr. Pankaj R. Toprani, for the  
Petitioner.

Mr. B.M. Chatterji with Mrs. P.P. Bhosale and Mr.  
P.S.Sahadevan, for the Respondents.

**CORAM: F.I. REBELLO &  
R.S.MOHITE, JJ.  
DATED: 28TH JANUARY, 2008**

**JUDGMENT (PER F.I. REBELLO, J.):**

. Rule in all the Petitions. By consent,  
heard forthwith.

2. All these petitions have been disposed off  
by this common judgment as the facts are more or  
less similar as also the issue involved. The  
petitioners are husband and wife. The petitions  
have been filed pursuant to the rejection of their  
Applications by the Settlement Commission. For the

purpose of deciding the controversy the relevant facts as pleaded in Writ Petition No.2421 of 2007 are being referred to.

3. Petitioner in Writ Petition No.2421 of 2007 is the husband of Petitioner in Writ Petition Nos.2422 of 2007 and 2423 of 2007. A search was conducted in the premises of the petitioner on 5th and 6th January, 2007. The petitioners filed Income-tax return on 23rd May, 2007 for the Assessment Year 2000-01 to 2007-08. On 28th May, 2007 the petitioner filed an Application for settlement before the Settlement Commission. It is the case of the petitioner that on 21st August, 2007 the 1st Respondent made an order constituting the Special Bench. The Special Bench of the Settlement Commission after hearing the parties by its order dated 12th September, 2007 was pleased to reject the application by holding that the applications for settlement did not contain a full and true disclosure of income/wealth of the petitioners. As the Application was held to be invalid the Application was dismissed. The order passed was a common order in all the Applications. It may be clarified that the Applications in Writ Petition No.2421 of 2007 and Writ Petition No.2422 of 2007 are under the provisions of the Income Tax Act whereas the Application in Writ Petition No.2423 of

2007 was under the Wealth Tax Act.

4. The case of the petitioners is that at any stage of a case it was open under the provisions of Section 245(1) of the Income Tax Act to make an application. The petitioners made the application and also deposited the tax on the amount admitted as also interest thereon. The Applications, therefore, having met all requirements ought to have been entertained. The Settlement Commission, it is set out, passed the order in gross breach of the principles of natural justice. The requirement of fair hearing, it is set out, was to make available to the petitioners all the documents relied upon by the Revenue and an opportunity to cross examine the persons whose statements had been relied upon. In spite of repeated requests the petitioner was not given copies of the documents relied upon by the Revenue. The Respondent No.1, has entertained and perhaps relied upon evidence which was produced by the Revenue at the hearing of the settlement application behind the back of the petitioners. At one stage in the course of the hearing, the petitioner was asked to leave the premises and only Revenue was represented before the members of the Settlement Commission. Such an act, would infract the principles of natural justice as the petitioner would have no knowledge of what transpired in those

proceedings without having an opportunity. The statements of one Philip Anandraj were relied upon which did not even have a remote connection with the petitioners and the petitioners were not given an opportunity to cross examine him. From the order, it appears that the respondent No.1 was not entertaining the application as both from the documents found from Shri Philip Anandraj and question put to him and his answer and the documents received from the possession of Shri Kashinath Tapuriah indicate voluminous dealings in foreign exchange and that the petitioner was under investigation by government agencies and that final conclusion by such agencies had not been drawn. These circumstances, it was set out, have nothing to do with the maintainability of a settlement application. The fact that the petitioner was under investigation would be of no consequences. The finding by the Settlement Commission that the petitioner had not made full and true disclosure of his income was vague and is in gross breach of the law laid down by this Court in Centurion Bank of Punjab vs. ITSC 290 ITR 555, where it is held that merely remarking that there was no full and true disclosure was not sufficient and it had to be justified by specifying the basis and particulars. The provisions of section 245D as substituted by the Finance Act, 2007 have materially altered the

provisions relating to the Settlement Commission. The amendment requires holding, whether an application is invalid. The expression "invalid" it is submitted, is of wide import. Reference is then made to the report submitted by the 2nd Respondent under Section 245D(2B) which was given to the 1st respondent on 28th August, 2007 wherein the Respondent No.2 opposed the application made by the petitioner on the ground that there was no true and full disclosure. The other averments need not be referred to for deciding the controversy.

5. In so far as Petitioner Mrs. Rheema H. Khan is concerned, it is set out that no documents were found from her possession and as such there were no reasons to reject the application made by her under the provisions of the Income Tax Act before the Settlement Commission.

6. Similarly, it is set out that the requirement for consideration and/or ascertainment of Wealth Tax are different from that of Income Tax Act. The Settlement Commission did not address itself to this issue and along with the application under the Income Tax Act also rejected the application under the Wealth Tax Act.

7. The respondents have filed the reply through

Krishna Prabhakar, Deputy Commissioner of Income Tax. Various averments made by the petitioners have been dealt with. It is set out that considering the language of Section 245C it was open to the Settlement Commission to treat the application as invalid if it does not contain a full and true disclosure of the income which has not been disclosed before the Assessing Officer and the manner in which such income has been derived. The settlement application, it is set out, was filed by the petitioners on 28th May, 2007. The respondent No.1 called for a report from the respondent No.2 and the report was submitted to the Settlement Commission in 28th August, 2007. The petitioner was given an opportunity to be heard on 11th September, 2007 and 12th September, 2007. The copies of the documents relied upon by the respondent No.2 was furnished by way of paper book. The averment that the petitioner was not given copies of the documents is denied and reiterated that the paper book was furnished to the petitioner as directed by the respondent No.1. The petitioner was supplied the report prepared under Section 245D(2B) by the respondent No.2. The petitioner did not apply for copies of the document with respondent No.3 except for the first time vide letter of the petitioner dated 31st October, 2007 addressed to the Additional Director of Income Tax (Investigation) Mumbai. The

authorised representative of the petitioner was afforded facility to take extract and copies of the seized documents and a part of the same were taken by Shri Arvind I. Patel, Chartered Accountant on 26th November, 2007. In respect of the statement of Shri Philip Anandraj it set out that the extract of the statement pertains to documents which belong to the petitioner which were kept in the premises owned by the petitioner. In the matter of cross examination of Shri Philip Anandraj, it is submitted that the petitioner did not make a demand nor sought an opportunity to cross examine Shri Anandraj. The findings of Respondent No.1 were preliminary findings on the basis of the facts and circumstances of the case taking an over all perception of the pending issue to decide the validity of the application. The petitioner is under investigation by the Income Tax Department and the Enforcement Directorate and the proceedings are still pending. There are serious allegations of cross border transactions which are to be investigated. As already pointed out in so far as the so-called seized documents they were made available to the petitioners at the direction of the respondent No.1. There is specific averment denying the allegations against respondent No.1. that they relied upon the documents which were not shown to the petitioners. The averments in the petition have been replied to

parawise.

8. In the course of the hearing considering that it was orally argued that the petitioners representative was asked to leave the premises at the time of hearing and only officers of Revenue were before the Commission, a communication of 13th September, 2007 has been placed before us which is addressed by Alka Tyagi, Commissioner of Income Tax(DR), ITSC, ITSC, Additional Bench, Mumbai to the Commissioner of Income-Tax (Central)-I, Mumbai. It is set out therein that in respect of the documents contained in the paperbook privilege was claimed and the request was also made for in-camera hearing of the submissions on the said documents. In-camera hearing was held where the Hon'ble Members of the Commission discussed the contents of the paper book who decided that it will serve ends of justice if the petitioners were given copy of the documents for their proper rebuttal. A rejoinder has been filed.

9. At the hearing of these petitions on behalf of the petitioners learned Counsel have submitted as under:-

(1) the application was treated as invalid without complying with the principles of natural justice and fair play. It is

submitted that the petitioner was not given a fair opportunity in as much as the documents relied upon were not made available.

(2) That the hearing was held behind the back of the petitioners in as much as the petitioners representative was asked to withdraw from the proceedings and the Commission only heard the Officers of the Revenue. It is, therefore, submitted that the order on this count is liable to be set aside.

(3) The statements recorded were considered without giving an opportunity to the petitioners to cross examine the persons who made the statement more specifically Mr. Philip Anandraj.

(4) The expression "invalid" has not been defined. Reliance is placed on the Dictionary meaning as also on Article 255 of the Constitution of India. On the facts and circumstances it is submitted that it was not open to respondent No.1 to have treated the application as invalid.

(5) The order of the Commission, it is submitted, suffers from non-application of mind in as much as the correct predicates which ought to have applied have not been applied and on that count also the order is liable to be set aside.

(6) A Special Bench was constituted. The reasons given for constitution of the Bench are not available. The material relied upon by the Chairman has not been disclosed to the petitioners and at any rate in the notice served on the petitioner and the reasons given therein a Special Bench could not have been constituted.

(7) The Settlement Commission, it is submitted, framed the issues and answered the same without giving the petitioners an opportunity, which are binding on the petitioners.

(8) In so far as Petitioner in Writ Petition No.2422 of 2007, it is submitted that no documents purportedly incriminating the petitioner have been found. In these circumstances the action of the Settlement Commission in rejecting the application of

the petitioner in Writ Petition No.2422 of 2007 is without jurisdiction.

(9) At any rate it is submitted that the test for considering the Wealth Tax application are different from Income Tax Applications. The Commission applying the same yardstick to the Wealth Tax application of the petitioner in Writ Petition No.2423 of 2007 acted without jurisdiction and consequently the order rejecting the Application as invalid be set aside.

10. The Settlement Commission while rejecting the Applications noted the contention of the petitioner that the income as disclosed was from horse racing and the petitioners, contention that coming from a family of trained horse owners they were in advantageous position to make huge winnings in races. The Commission noted arguments advanced on behalf of Revenue wherein they have pointed out that the income that has been made from stake money and the various other contentions as advanced have been set out. The Commissioner agreed with the contention raised on behalf of the Petitioners that since all the taxes due on the additional income and wealth disclosed by them before them have been paid before 31st July, 2007, the Applications are deemed

to have been allowed to be proceeded with and what is to be considered is the validity or otherwise of the applications. It noted that the applications for settlement would be considered valid if it contains a full and true disclosure of income/wealth of the applicant which has not been disclosed before the Assessing Officer along with the manner in which such income of wealth has been derived. The extract of the questions put to the petitioner regarding one Shri Philip Anandraj who was found in the house of the petitioners when the search operations were conducted have been narrated. Various documents indicating dealings in foreign exchange and also referable to one Kashinath Tapuriah at Kolkata were noted. Contention of the petitioner that he earned income from horse racing was considered and dealt with. The Commission held it was unable to accept that the income as disclosed being full and true.

11. At the outset we may refer to some relevant provisions of the Act. For that purpose we may reproduce relevant portion of Section 245C (1) which reads as under:-

"(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:

Provided that no such application shall be made unless--

(i) the additional amount of income-tax payable on the income disclosed in the application exceeds three lakh rupees; and

(ii) such tax and the interest thereon, which would have been paid under the provisions of this Act had the income disclosed in the application been declared in the return of income before the Assessing Officer on the date of application, has been paid on or before the date of making the application and the proof of such payment is attached with the application."

. The important criteria, therefore, is (1) full and true disclosure of income which has not been disclosed and (2) the manner in which such income has been derived.

Similarly the relevant provisions of Section 245D(1) reads as under:-

(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.

. Section 245-I makes the order of settlement

passed under sub-section (4) of Section 245-D conclusive as to what is stated therein. In our case the Commission did not proceed to this stage. Under Section 245-L proceedings before the Settlement Commission are deemed to be judicial proceedings for the purposes set out therein.

12. Section 245-C had come up for consideration before the Supreme Court in **Commissioner of Income Tax vs. Express Newspaper Ltd., 206 ITR 443 (SC)**. It may be mentioned that though the judgment was pronounced in the year 1994 there are no amendments to the Section after the judgment, except some omissions which are not relevant for our discussion. Considering the expression 'disclosure' in Section 245-C this is what the Court observed:-

"The idea underlying the said words [in the main limb of sub-s.(1A)] is self-evident. The disclosure under S.245C must be of an income not disclosed before the Assessing Officer. If the Assessing Officer (or the IT authority) has already discovered it and has either gathered the material to establish the particulars of such income or fraud fully or is at a stage of investigation/enquiries where the material gathered by him is likely to establish the

particulars of such income or fraud, the assessee cannot be allowed to defeat or forestall, as the case may be, the entire exercise of the IT authorities just by approaching the Commission. In such a case, it cannot be said that he is acting voluntarily or in good faith. He should not be allowed to take advantage of the comparatively easy course of settlement. He must be allowed to face the normal channels of assessment/appeal, etc., Sec.245C is meant for those assesses who seek to disclose income not disclosed before the officer including "the manner in which such income has been derived". If the Department already knows and has gathered particulars of such income and the manner in which it has been derived, there is no 'disclosure' by the assessee. Let it be remembered that the words in question [in S.245D(1A)] are not words of limitation nor are they meant to help unscrupulous assessees. Chapter XIX is a part of the IT Act and must be construed consistent with the overall scheme and object. The Chapter is meant for those assessees who want to disclose income not disclosed till then together with the manner in which the said income is derived. It is

not meant for those who come after the event, i.e. after the discovery of the particulars of income and its source - or discovery of particulars of fraud perpetrated by the assessee, as the case may be - nor even to those who come to the Commission to forestall the investigation/enquiries which have reached a stage where the Department is in possession of material which though not sufficient to establish such concealment or fraud, is such that it is likely to establish - it may be some more material is required to establish it fully. The Commission has to keep all this in mind while deciding whether to allow the application to be proceeded before it or to reject it."

The Commission, therefore, would be bound by this judgment whilst considering the applications of the petitioners. The Petitioners too have come before this Court after a search was conducted and documents seized relating to foreign exchange dealings.

13. The various contentions as urged on behalf of the petitioners as to violation of principles of natural justice and fair play can now be considered.

All documents relied upon considering the averments were made available though some at the stage of hearing. Secondly, the Settlement Commission may not have followed the correct procedure in hearing the application for privilege of documents by revenue, by directing the petitioners to leave the premises. In our opinion this by itself cannot vitiate the proceedings. From the letter addressed by the Commissioner of Income Tax (DR) dated 13th September, 2007, it would be clear that revenue had sought privilege in respect of those documents and for an in-camera hearing. The Settlement Commission granted in-camera hearing without hearing the representatives of the petitioners. In our opinion in such circumstances the petitioners will have to make out a case of prejudice. The Settlement Commission, on the contrary rejected the claim of privilege and directed the Revenue to make available the paperbook of the documents. It is, therefore, not possible to accept the contention on behalf of the petitioners that on account of being kept out of the hearing the decision of the Commission is vitiated. The scope at the stage of deciding whether there is a true and full disclosure and to treat the application as valid or invalid in our opinion would not require making available any witness whose statements were recorded for cross examination as long as the material and the

statement of witnesses which were recorded was made available. The investigation by authorities cannot be frustrated merely because the petitioners after the search operations discovered material chose to file their return and an application to the Commission.

. It is no doubt true that an application for settlement, if rejected does result in civil consequences. In the instant case the statements recorded were made available to the petitioners. The statements were of a person who was found in the house of the petitioners when the search and seizure operations were carried out. The contents of the statements were put to the petitioner and that statement was also made available. In these circumstances in our opinion it really cannot be said that there was a failure of principles of natural justice and fair play. The hearing contemplated under Section 245-D (2C) is an opportunity to the person who makes the application to put forward his case as disclosed in the application and to be made available the report submitted by the Commission. This was complied with.

14. It was then argued that the document was made available at the time of hearing and as such no

sufficient opportunity was given to the petitioners. We pointedly asked the learned Counsel to show us any single averment in the petition or any application moved before the Settlement Commission that they were prejudiced on that count and that more time should be granted to them. The learned Counsel was unable to show, that any such objection was raised before the Settlement Commission, neither is there any specific averment made in the petition that such a request was made and denied. Except vague allegations as to violation of principles of natural justice and fair play there is no specific averment.. When a party seeks to challenge an order on the ground that he did not have an effective opportunity it must be specifically pleaded to enable the respondents to meet such a contention and for this Court to consider whether any prejudice was occasioned for failure on that count. On the contrary from the findings of the Commission we note that the petitioners have dealt with the documents which were placed by the Revenue before the Commission. In our opinion, therefore, that contention must be rejected.

15. Questions 6 and 7 as framed on the constitution of the Special Bench and the binding character of its findings can now be dealt with. The power to constitute a Special Bench is conferred

on the Chairman of the Commission under Section 245BA(5A). It is, therefore, not a case of non-existence of power. The question is whether the petitioners can contend that because of the constitution of a Special Bench any prejudice has been occasioned to them. The only contention as urged is that the reasons for constitution of the Bench and the material relied upon for that purpose has not been disclosed. On a consideration of Section 245BA(5A) of the Income Tax Act it is clear that power is conferred on the Chairman for disposal of a particular case to constitute a Special Bench. The gravamen of the argument on behalf of the petitioners was that the Commission has referred to complexities without even the respondents raising such a contention. In our opinion that discretion to constitute a Bench if there be a case which requires to be decided by Special Bench is that of the Chairman of the Commission. The petitioners themselves in their applications have set out various facts. This was the material which was available to the Chairman. In item No.10 of Form 34B the Petitioners themselves set out the nature and circumstances of the case and the complexities of investigations which are involved. If the Chairman, therefore, has borrowed phraseology used by the Petitioners themselves it is not open to the Petitioners now to contend that such material was

not available to the Chairman. In our opinion apart from the fact that there is no requirement to disclose reasons considering the power of constituting the Special Bench and the contents of the settlement application of the petitioners it cannot be said that the action of the Chairman was without jurisdiction or exercise of power was illegal. In these circumstances in our opinion the said question would not arise for consideration.

. It is also sought to be contended that the Commission has framed issues and answered the same which are binding on the petitioners. A perusal of Section 245J would indicate that what is binding is only the final order made under Section 245D(4). The findings given by the Settlement Commission are for the purpose of considering whether the application is to be treated as invalid. In the instant case no such findings have been given under Section 245D(4) which are binding on the petitioners. The contention urged, therefore, is totally devoid of merit.

16. It was also argued that the Section 245D(2C) as now introduced by Finance Act 2007 w.e.f. 1st June, 2007 has conferred power on the Commission to treat the application as "invalid". The expression "invalid" has not been defined under the Act and

would therefore, require consideration. It is submitted that the Commission at the prima facie stage could not have held the application as invalid considering that the Petitioners have complied with the other requirements. The expression "invalid", it is pointed out, is used in Article 255 of the Constitution of India. Section 245D(2C) reads as under:-

"245D(2C). Where a report of the Commissioner called for under sub-section (2B) has been furnished within the period specified therein, the Settlement Commission may, on the basis of the report and within a 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 the applicant and the 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 manner without

the report of the Commissioner."

. As the expression "invalid" is not defined in the Act, what is its true import. In K.J. Aiyar's Judicial Dictionary, "Invalid" is equated with the word "void". Referring to Black's Law Dictionary, 6th Edition the word "void" has been given meanings such as null, ineffectual, nugatory, having no legal force or binding effect, unable, in law, to support the purpose for which it was intended. In State of Kerala vs. M.K.Kunhikannan Nambiar, AIR 1996 S,C,906 it has been held that word "void" has a relative rather than an absolute meaning, it only conveys the idea that the order is invalid or illegal. It can be avoided. There are degrees of invalidity depending upon the gravity of the infirmity, as to whether it is, fundamental or otherwise.

. Learned Counsel had relied upon definition of the word "invalid" from Concise Law Dictionary, Abridged Edition 1997 where the word "invalid" is described as under:-

"The word 'invalid' has precisely the same meaning as the two words 'not valid.'

Of no force; without legal force; void."

From the meaning assigned to the expression void it includes an act which would be invalid. In that context if we examine the phraseology of Section 245D(2C) it would be clear firstly that the application must meet the requirements of Section 245-C(1). In other words complying with the requirements of full and true disclosure and the manner in which such income has been derived. On complying with those requirements the next step would be to follow the procedure under Section 245D. It is not as if the moment an application is made and there is compliance of the requirements of Section 245-D that the Commission is bound to entertain the application and allow it. The Commission has athen to consider whether the application is invalid under Section 245-D(2C). The Commission must be satisfied from the report of the Commissioner and on hearing the applicant that the application not invalid. The Settlement Commission can treat the application as invalid meaning thereby non - est if the Applicant has not made a true and full disclosure and further must disclose how the income has been derived. The expression "invalid" will have to be given a meaning of 'non est', in other words as if not made on and from the inception. If on the material it arrives at a conclusion even prima facie that there was no true

and full disclosure it has then the right to declare the application as invalid. Read in this context there is power conferred on the Commission based on the material before it, to form an opinion if the party has concealed facts and/or not made true disclosure during a search operation.

. Reliance was placed on the Judgment in **Centurion Bank of Punjab Ltd. vs. Income-tax Settlement Commission & Ors., [2007] 290 ITR 555 (Bom.)**. The learned Bench of this Court on the facts held that mere statement that there was no full and true disclosure is not sufficient. The learned Bench noted that the Commission proceeded on an erroneous assumption that the Commission can entertain the application only if the complexities of the investigations are involved and that a fair reading of Section 245-D(1) indicate that there are three circumstances which ought to be considered. This judgment had come up for consideration in **Haji N. Abdulla vs. Income Tax Settlement Commission & Ors., Writ Petition No.1427 of 2007 decided on 8th October, 2007**. Both these judgments were considering application which were made and disposed off before the Finance Act, 2007 w.e.f. 1st June, 2007. What has to be considered now is Section 245D(2C). We have discussed what is invalid.

. Next reference was also made to the judgment in **Shakti Metal Box and Anr. vs. Union of India & Ors., 204 ITR 450 Punjab and Haryana.** The issue in that case was when an application was filed before the Settlement Commission and was admitted whether there was a power in the Commission to order launching of prosecution. The issue therein was completely different from what is in issue here. The ratio of that judgment would be of no assistance to the petitioners. . In the instant case the petitioners had come before the Commission on the ground that the income which they were disclosing was income from horse racing. There was material before the Settlement Commission that there were acts which would constitute foreign exchange dealings without following the due procedure of law. If there was prima facie such material it is always open to the Commission to have rejected the application made by the petitioners. Once the decision is taken by the Settlement Commission, which acts in a quasi judicial capacity, it is for the petitioners to point out that there has been either a failure to exercise jurisdiction or the exercise of jurisdiction is based on an assumption not warranted or that the order suffers from an error of law apparent on the face of the record when it holds the application to be invalid. It is only in these cases will this Court exercise its extra

ordinary jurisdiction subject of course to the discretion it has. The Section as it now stands does not involve deciding the complexities of a case. The Commission on the material placed before it has treated the application as invalid. It is not a case where the Commission could not have taken such a decision or the decision taken is based on no material and/or decision which is totally perverse warranting this Court to draw an inference that the order suffers from error of law apparent on the face of the record. Even otherwise as explained earlier these were applications made after a search operation when prima facie material of evasion has come on record and is prima facie contrary the source of income which is disclosed. Considering the ratio of Express Newspaper Ltd. (supra) the exercise of jurisdiction in such cases ought not to be normally invoked if material had come on record during the course of search. It is so in this case. In our opinion the order of the Settlement Commission cannot be said to have suffered from either want of jurisdiction, excess of jurisdiction or disclosing an error of law apparent on the face of the record. The contention, therefore, urged on that count has to be rejected.

17. Considering the rejection of this contention the Question No.5 as framed will have to be rejected

as the Commission addressed itself to the question which it ought to have addressed. Once that be so the point No.5 as framed also is devoid of any merit.

18. In respect of the petitioner in Writ Petition No.2422 of 2007 it is sought to be contended that no incriminating documents were found from that petitioner and in these circumstances the Commission ought not to have rejected the application made by this Petitioner. In the instant case this petitioner is the wife of the petitioner in Writ Petition No.2421 of 2007. They share a house from which the documents were seized. These documents pertain to prima facie evasion of foreign exchange. Therefore, it cannot be said that merely because no documents were found in possession of this petitioner the documents found could not have been considered. The petitioner was disclosing income based on purported earning of horse racing. If the case of husband could not be accepted, in our opinion, it will be difficult to accept the case of this petitioner.

19. It was also contended that in so far as Writ Petition No.2423 of 2007 is concerned, the tests applicable for consideration of application under the Wealth Tax Act are different from what has to be

considered while dealing with the applications under the Income Tax Act as in so far as Wealth Tax Act is concerned, the application is based on the assets disclosed. In our opinion this is besides the point. The Commission in entertaining an application had to decide whether the petitioners had come to it with a case which was bonafide and without suppression of material facts. Once the Commission found on considering the material before it that the application was not bonafide it was open to the said Commission even in respect of an application under the Wealth Tax Act to treat the application as invalid. In our opinion no fault can also be found in that context.

20. For the aforesaid reasons in our opinion there is no merit in these petitions. In the light of that Rule discharged. There shall be no order as to costs.

(R.S.MOHITE, J.)

(F.I.REBELLO, J.)