IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

Writ Appeal No. 2406 of 2021

M/s. Lion Dates Impex (P) Ltd
No.4, Sterling Road,
Nungambakkam
Chennai - 600 034
rep. by its Managing
Director P. Ponnudurai .. Appellant

Versus

1. The Chairman
   Income Tax Settlement Commission
   Principal Bench, New Delhi

2. Income Tax Settlement Commission
   Additional Bench
   No.640, Anna Salai
   Chennai - 600 035

3. Principal Commissioner of Income Tax
   Central-II, Chennai - 600 034

4. The Assistant Commissioner of Income Tax (AO)
   Central Circle-I
   Trichy .. Respondents

Appeal filed under Clause 15 of Letters Patent against the Order dated 03.09.2021 passed in W.P. No. 36950 of 2016 on the file of this Court.

For Appellant : Mr.Nithyesh and Vaibhav
For Mr.Palani Selvaraj

For Respondents : Mr. A.P. Srinivas
Senior Panel Counsel (Income Tax)

JUDGMENT

R.MAHADEVAN,J.

Questioning the validity and/or correctness of the order dated 03.09.2021 passed by the learned Judge in W.P. No. 36950 of 2016, the appellant / writ petitioner has preferred this writ appeal before this court.

2. The case projected by the appellant before the Writ Court is as follows:

2.1. The Managing Director of the appellant company along with his wife are engaged in the business of purchase and sale of dates, oats and honey as also manufacture of syrups, jams and squash under the brand 'Lion dates'. According to the appellant, they are regularly filing the returns of income along with tax audit report as required under Section 44AB of the Income Tax Act, 1961 (in short, “the Act”). While so, on 17.07.2013, search under Section 132 of the Act was conducted in various premises of the appellant, inclusive of the residences of the Directors. At the time of search, two sworn statements were recorded under Section 132 of the Act by two different officers of the

investigation wing. Subsequently, on 06.08.2013, another sworn statement was recorded under section 131 of the Act by the investigation officer.

2.2. On the basis of the search conducted and the documents seized, notices dated 28.01.2014 under Section 153A of the Act was issued relating to the assessment years from 2008-2009 to 2013-2014. For the assessment year 2007-2008, separate notice under Section 148 of the Act for reopening the assessment under section 147 was issued. In response to the notices issued under Section 153A of the Act, the appellant filed their returns of income on 01.03.2014. They also filed their return of income on 27.03.2004 in response to the notice issued for the Assessment year 2007-2008.

2.3. According to the appellant, upon the advice of the then Tax Consultant, the returns were filed, but several mistakes had crept in, with respect to the additional income offered in the returns filed to the notices under Section 153A of the Act and those mistakes were subsequently, rectified. Thereafter, the appellant filed a Settlement Application under Section 245C(1) of the Act on 02.03.2015 before the second respondent. In Para Nos.19 and 20 of the application, the appellant had given elaborate details as to the purpose and reason for which such application was filed. It was also stated that the appellant had truly, precisely and correctly disclosed all the income without any suppression, which was also supported by documentary proof. The second

respondent also admitted the Settlement Application and directed the department to file a report. Accordingly, a report dated 22.04.2005 under Section 245D(2B) read with Rule 6 of the Income Tax Settlement Commission Rules was filed. The second respondent commission, after considering the submissions made on both sides, passed an order dated 05.05.2015 under Section 245D (2C) and the operative portion of the same is extracted below:

> *"4.3 On the issue of full and true disclosure of income and application of provision of Sec.115JB, we find that the issues raised by the Ld. CIT (DR) need further examination and verification of records and would be open for the Bench during the course of proceedings u/s.245D of the Act. We are of the view that as of now, there are no adverse materials available on record to hold that the additional income disclosed by the applicant before the Settlement Commission was not full and true. The applicant is therefore allowed to be proceeded with as we are of the view that the Applicant has prima facie fulfilled the conditions prescribed u/s.245C (1), 245D (2C) of the Act. However, we may clarify that the decision to hold the SA "not valid" is without prejudice to initiation of penalty and launching of prosecution proceedings if required, on facts available on record at the relevant time in subsequent proceedings by the Commission.*
>
> *4.4 After considering all aspects of the matter, we therefore declare that the above settlement application filed by the applicant on 02.03.2015 for AYs 2007-2008 to 2014-2015 is held as not invalid."*

2.4. Pursuant to the above order passed by the Settlement Commission, the Principal Commissioner of Income Tax, filed a report dated 19.06.2015 under Rule 9 of the ITSC (Procedure) Rules, 1997 and as provided under Section 245D (3) of the Act before the Commission on 29.06.2015, in which the issues of difference between the unaccounted income and the income disclosed by the appellant under Section 132 (4) of the Act, were analysed. Repudiating the so-called differences, the appellant filed a detailed

reply before the Commission on 13.04.2016, in which all the points raised by the Department or the so-called differences between the unaccounted income and the actual income were clarified by the appellant with documentary evidence. Subsequently, the second respondent posted the case for hearing for final settlement under section 245D(4) on 23.06.2016, on the said date, the department filed a report raising new grounds which were not earlier taken in the Rule 9 report, as regards the unaccounted income arising from inflated purchases, deduction for 80IB claim, etc and the said report was forwarded to the appellant on 04.07.2016. To the said report, the appellant filed their reply explaining each and every issue including the additional issues along with evidence in the paper book.

2.5. On 14.09.2016, during the course of hearing, two separate submissions were filed by the Department viz., one dated 08.09.2016 and the another dated 14.09.2016. The first communication dated 08.09.2016 of the Principal Commissioner of Income Tax was enclosed with report dated 07.09.2016 of the JCIT, and a detailed reply dated 06.09.2016 of ACIT, Central 1, Trichy and it was reiterated therein that the appellant is not entitled to depreciation on the cost of any asset arising from any unaccounted investment made and prayed for issuing appropriate directions to the appellant to file all the relevant details for the expenses claimed for the Jam division for

verifying the admissibility of the claim. In the second communication dated 14.09.2016 enclosing the report of the JCIT dated 12.09.2016 and the report of the ACIT, it was stated that the appellant is not eligible for deduction under Section 801B on the ground that the syrup and jam divisions are not a new undertaking, but they were split up from the existing company. On 26.09.2016, when the case was posted for hearing, the appellant submitted their reply to the letters dated 08.09.2016 and 19.09.2016. On 29.09.2016, the JCIT, Central Range (i/c), Madurai filed a detailed report dated 28.09.2016 of the AO, ACIT(i/c), Central Circle-1, Trichy and the appellant made their submissions and on the said date, the settlement commission reserved the case for orders. On the very next day, i.e., 30.09.2016, the settlement commission passed the order rejecting the settlement application on the ground that the appellant has not provided full and true disclosure of their income and hence, the case could not be settled. Immediately, on the basis of the order of rejection dated 30.09.2016, the fourth respondent issued notices dated 03.10.2016, 05.10.2016 and 06.10.2016 under section 142(1) of the Act for the assessment years 2007-2008 to 2014-2015.

2.6. In those circumstances, the appellant preferred WP No. 36950 of 2016 to quash the order of the second respondent made in Settlement Application No.TN/CN52/2014-15/57/IT, dated 30.09.2016 and to direct the

first respondent to constitute a Special Bench under Section 245BA (5) of the Act, to hear the appellant's settlement application dated 02.03.2015 and forbearing the fourth respondent from proceeding further with respect to the assessment for the assessment years in question.

3.1. Opposing the writ petition, the third respondent filed a counter affidavit stating *inter alia* that the appellant has not come forward to truly and fully disclose the income and therefore, the Commission had rejected the Settlement Application filed by them. The claim made by the appellant on various accounts, is contrary to the records produced earlier. Above all, the appellant had produced the documents in a piece meal manner, as and when a particular issue was raised by the Department. Therefore, in the order dated 30.09.2016, in para No. 7.9.8, it was concluded that figures that were submitted by the appellant claiming deduction under Section 801B of the Act were altered after the department pointed out the same. In Para No.7.9.15 also, the Commission had referred to the report of the department stating that certain disclosure of additional income during the last hearing would amount to concealment of actual income. In Para No.9.8 of the order of the Commission it was further pointed out that the disclosure earlier made to this extent is not full and true and that, the appellant cannot disclose additional income in

instalments. Thus, the Commission had rightly held that the appellant did not disclose the full and true income in the application for settlement and therefore it is not maintainable.

3.2. The counter affidavit further proceeds to state that there was no deviation in the procedures followed by the Settlement Commission and the provisions contained under Chapter XIX A of the Act have been duly followed. It is also stated that the appellant was given a fair and reasonable opportunity of being heard on various dates; the appellant also submitted their replies to the various reports filed by the Department; and after considering the same, the Settlement Application was rejected by the Commission. However, the appellant, without discharging the mandatory requirements as prescribed under Section 245C (1) of the Act for availing the opportunity of settlement, made an attempt to shift the burden on the Department claiming that there was no valid investigation and sought to refer the matter to the Valuation Cell as contemplated under Section 142A of the Act. According to the third respondent, there was no necessity to refer the matter to the Valuation Cell as there was no material seized to indicate that an investment was caused in factories or buildings outside the books. In any event, the appellant submitted the application for settlement with inaccurate and contradictory statements and they were clearly brought to the notice of the Commission by the Department.

Therefore, the third respondent would justify the order passed by the Settlement Commission and prayed for dismissal of the writ petition.

4. By order dated 03.09.2021, the learned Judge dismissed the aforesaid writ petition, on the ground that the application submitted by the appellant under section 254 C of the Act, was rejected as not maintainable in view of the non-compliance of the mandatory conditions stipulated under the provisions and the appellant / assessee could not able to establish that he has filed an application with true and full disclosure of facts and thus, the appellant is not entitled for any relief.

5.1. The learned counsel appearing for the appellant, at the outset, submitted that the learned Judge without considering the grounds raised by the appellant in the writ petition as also the written submissions, simply reproduced the passages from the order of the second respondent, which was impugned in the writ petition, and concluded that there was no full and true disclosure of the income. In other words, the learned Judge has not independently dealt with the grounds raised by the appellant, but passed a cryptic order.

5.2. The learned counsel further proceeded to contend that the Director General of Income Tax, before whom the search report was filed, had become the Vice Chairman of the Settlement Commission and decided the settlement application against the appellant, whereas the functions of the Director General of Income Tax (Investigation) prescribed under the Organization Structure issued by the Central Board of Direct Taxes (CBDT) as part of Department of Revenue, Ministry of Finance clearly spelt out that the Director General of Income Tax (Investigation) shall have control, supervision and administers the Directors of Income Tax (Investigation), Commissioners of Income Tax (Central), the Directors of Commissioner of Income Tax, Additional/Joint/ Deputy Directors etc. While so, the Vice Chairman of the Second respondent Commission, in all fairness, ought to have adhered to the propriety and rescued him from hearing the appellant's Settlement Application to avoid conflict of interest. The Vice-Chairman of the second respondent Commission was the Director General of Income Tax (Investigation), Chennai from 09.10.2013 to 31.07.2015 and he was leading the entire investigation including the case of the appellant. After retirement on 31.07.2015, he joined as Member of the Settlement Commission on 01.08.2015 and became the Vice-Chairman of the second respondent Commission. Thus, the hearing of the Settlement Application filed by the appellant by the Vice Chairman of the

second respondent Commission has caused enormous prejudice to the appellant. In this context, the learned counsel placed reliance on the decision of the Hon'ble Supreme court in the case in ***Manak Lal v. Dr. Prem Chand Singhvi and others [AIR 1957 SC 425]*** and contended that mere apprehension as against the manner of functions and discharge of the quasi judicial authority is sufficient to establish bias. However, in para Nos. 4.9, 5.1, 5.2 and 5.3 of the counter affidavit, it was projected as though the Director General of Income Tax (Investigation), who had become the Vice-Chairman of the second respondent commission, has no role to play in the matter of investigation conducted against the appellant. According to the learned counsel, search was conducted by a team of officials under the orders or directions or supervision of the Director General of Income Tax (Investigation) who has subsequently became the Presiding Officer of the second respondent commission. While so, it cannot be said that the Vice Chairman of the second respondent has no role to play in relation to the investigation conducted in the premises of the appellant company.

5.3. The learned counsel for the appellant also placed reliance on the decision of the Hon'ble Supreme Court in the case reported in ***2004 (11) Supreme Court Cases 625*** wherein it was held that 'no man can be a judge of his own cause'. Reference was also made to the decision of this Court in ***AIR***

1957 Madras 623 (DB) wherein it was held that an order of an inferior Tribunal can be quashed if it is vitiated by bias. By pointing out the said decisions, it was contended that the Vice-Chairman of the second respondent commission had personal interest in the matter relating to search and investigation conducted in the premises of the appellant and therefore, the decision rendered by the Second respondent Commission is liable to be interfered with on the ground of bias.

5.4. The learned counsel for the appellant further contended that on 29.09.2016, a detailed report dated 28.09.2016 was filed by the department and it was also served on the appellant. However, the appellant had no occasion to submit their objections to the said report. The second respondent Commission, without providing time for the appellant to submit their objections, reserved the application for orders and hastily passed orders on the next day i.e., on 30.09.2016, which is in violation of the principles of natural justice.

5.5. The learned counsel for the appellant also submitted that as per Section 245D of the Act, the Settlement Commission can only direct the Principal Commissioner or Commissioner to make or cause to be made during the enquiry and furnish the report relating to the contents of the Settlement Application. However, by deviating the well settled procedure the second

respondent Commission directed the AO to be present to verify the reply submitted by the appellant and to file a report thereof. Accordingly, the AO has also filed a report stating that "on being directed by the Income Tax Settlement Commission on 26.09.2016 to verify certain details of the Company M/s.Lion Dates Impex Private Limited, Trichy with the pending application before the Additional Bench ITSC, Chennai.....". Thus, it is explicit that a direction was given to the AO to submit a report and thereby the second respondent had deviated from the well established procedure contemplated under Section 245D of the Act. However, the learned Judge, without referring to the same, has erroneously dismissed the writ petition, by the order impugned herein, which is liable to be set aside.

5.6. With respect to the claim of the appellant under Section 801B (11A) of the Act, it is submitted by the learned counsel that the benefits can be claimed when processing, preservation and packaging of fruits or vegetables are done. According to the learned counsel, the appellant had set up a State of Art International Standard Production Facility with imported machineries and equipments for producing dates, syrup and jam. The old unit using conventional process was dismantled and new unit was brought into existence during March 2011. The trial production in the new unit started after

obtaining Central Excise Registration and approval on 14.03.2011. However, without any basis, the Commission had rendered a finding that there is no new unit, as claimed by the appellant. It was also concluded that there is no separate books of accounts maintained; and no profit and loss account and balance sheets are filed, whereas there are materials available to show the new unit started functioning from March 2011. The learned counsel for the appellant further submitted that the claim of the appellant for deduction under Section 801B (11A) of the Act has been proved by adequate material documents, but the same was simply brushed aside by the Commission and the order of the Commission was also affirmed by the learned Judge, while dismissing the writ petition. With these averments, the learned counsel ultimately, prayed to allow this appeal by setting aside the order impugned herein as well as in the writ petition.

6.1. The learned counsel for the respondents vehemently contend that the Settlement Commission, after affording adequate opportunity to the appellant at each and every stage of the proceedings, rejected the Settlement Application as not maintainable. The Settlement Commission being a quasi judicial body, has given valid findings as to why the application for settlement submitted by the appellant, could not be entertained. Therefore, the conclusion reached by the Settlement cannot be interfered with by this Court. It is the

specific contention on the side of the respondents that the power of judicial review under Article 226 of The Constitution of India is exerciseable only with regard to the decision making process and not on the decision arrived at by the Commission. For this purpose, reliance was placed on the decision in the case of ***S.V. Shankar vs. Settlement Commission (IT & WT) [2007 (292) ITR 633 (Mad)]*** wherein the Division Bench of this Court held as follows:

> *"It may be noted that the jurisdiction of this Court under Article 226 of The Constitution of India is not that of the appellate Court. The provision for settlement under Chapter XIX-A is in the nature of a statutory arbitration to which a person may submit himself voluntarily. Hence, the power to review that may be exercised under Article 226 of The Constitution of India could only be in cases where there are mistakes apparent on the face of the record, but may not be exercised on the ground that the decision is erroneous."*

6.2. As regards the plea of bias, the learned counsel for the respondents would vehemently oppose the same as it was raised for the first time before the learned Judge. It is further stated that the Vice Chairman of the second respondent Commission was appointed as Member of the Commission only on 29.10.2015 and not on 01.08.2015, as averred by the appellant. Further, when the search operation was conducted on 17.07.2013, the Vice Chairman of the second respondent Commission was not the Director General of Income Tax (Investigation) as alleged by the appellant. The second respondent was appointed as Director General of Income Tax (Investigation) on 09th October 2013, much after the search was conducted in the premises of

the appellant. Therefore, the entire plea of bias raised by the appellant has no foundation and it has to fall. In this context, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Dr. G. Sarana vs. University of Lucknow [(1976) 3 Supreme Court Cases 585]*** wherein it was held as follows:

> *"14. From the above discussion, it clearly follows that what has to be seen in a case where there is an allegation of bias in respect of a member of an administrative board or body is whether there is a reasonable ground for believing that he was likely to have been biased. In other words whether there is substantial possibility of bias animating the mind of the member against the aggrieved party."*

6.3. According to the learned counsel for the respondents, at every stage of the proceeding, the appellant and his representative was heard, opportunities were given for submitting their objections and thereafter, on the basis of available materials, a decision was rendered by the Commission that the Settlement Application submitted is not maintainable. The Commission also clearly stated that the appellant is precluded from submitting new material as and when the Department points out certain anomaly. In other words, it was concluded that the appellant, in piece meal manner, had disclosed the income and therefore, what was disclosed is not the true and full disclosure of the income. While so, the appellant cannot be expected to attribute motive against the Vice Chairman of the Second respondent Commission, who has nothing to

do with the investigation or search conducted in the premises of the appellant at the relevant point of time.

6.4. As regards the deduction claimed by the appellant under Section 801B(11A) of the Act, it is stated by the learned counsel for the respondents that even during the year 2005-2006, the appellant made a claim for deduction upon construction of a new building and identifying the said building as "Syrup Unit". It was also stated by the appellant that such new building was constructed on 31.05.2016, which could be evident as per the Special Notice of Property Tax for new assessment. While so, the claim of the appellant as if the building was constructed only during March 2011 and therefore, they are entitled for depreciation, cannot be countenanced.

6.5. The learned counsel for the respondents also submitted that all the procedures contemplated under the Act have been followed in the matter of deciding the settlement application submitted by the appellant. The learned Judge, on considering the order passed by the Settlement Commission, had concluded that the appellant has not disclosed the true and accurate particulars relating to the income earned. In such circumstances, the learned counsel for the respondents prayed this Court to dismiss the appeal by confirming the order passed by the learned Judge.

7. We have heard the learned counsel for both sides and also perused the entire materials available on record.

8. Before we proceed further, it is necessary to look into the relevant provisions regarding the powers and functioning of the Settlement Commission. Chapter XIX-A of the Income Tax Act deals with Settlement of Cases. The relevant provisions read as under:

> *"**Section 245C. Application for settlement of cases**.—(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) in a case where proceedings for assessment or reassessment for any of the assessment years referred to in clause (b) of sub-section (1) of section 153A or clause (b) of sub-section (1) of section 153B in case of a person referred to in section 153A or section 153C have been initiated, the additional amount of income-tax payable on the income disclosed in the application exceeds fifty lakh rupees,*
> *(ia) in a case where—*
> *A) the applicant is related to the person referred to in clause (i) who has filed an application (hereafter in this sub-section referred to as -specified person?); and*
> *(B) the proceedings for assessment or re-assessment for any of the assessment years referred to in clause (b) of sub-section (1) of section 153Aor clause (b) of sub-section (1) of section 153B in case of the applicant, being a person referred to in section 153A or section 153C, have been initiated,the additional amount of income-tax payable on the income disclosed in the application exceeds ten lakh rupees,*
> *(ii) in any other case, the additional amount of income-tax payable on the income disclosed in the application exceeds ten lakh rupees,*

and 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.

……

(4) An assessee shall, on the date on which he makes an application under sub-section (1) to the Settlement Commission, also intimate the Assessing Officer in the prescribed manner of having made such application to the said Commission

***245D. Procedure on receipt of an application under section 245C**.—*
(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.
(2) A copy of every order under sub-section (1) shall be sent to the applicant and to the Principal Commissioner or Commissioner
……
(2B) The Settlement Commission shall,—
(i) 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; 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 sub-section, on or before the 7th day of August, 2007,
call for a report from the Principal Commissioner or Commissioner and the Principal Commissioner or 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 Principal Commissioner or 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 Principal Commissioner or 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 Principal Commissioner or

Commissioner] has not furnished the report within the aforesaid period, the Settlement Commission shall proceed further in the matter without the report of the Principal Commissioner or Commissioner

(2D) Where an application was made under sub-section (1) of section 245C before the 1st day of June, 2007 and an order under the provisions of sub-section (1) of this section, as they stood immediately before their amendment by the Finance Act, 2007, allowing the application to have been proceeded with, has been passed before the 1st day of June, 2007, but an order under the provisions of sub-section (4), as they stood immediately before their amendment by the Finance Act, 2007, was not passed before the 1st day of June, 2007, such application shall not be allowed to be further proceeded with unless the additional tax on the income disclosed in such application and the interest thereon, is, notwithstanding any extension of time already granted by the Settlement Commission, paid on or before the 31st day of July, 2007.

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 Principal Commissioner or 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 Principal Commissioner or 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 1[Principal Commissioner or Commissioner] shall furnish the report within a period of ninety days of the receipt of communication from the Settlement Commission:

Provided that where the Principal Commissioner or 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 the Principal Commissioner or Commissioner if any, received under—

(i) sub-section (2B) or sub-section (3), or

(ii) the provisions 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 Principal Commissioner or Commissioner to be heard, either in person or through a representative duly authorised 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 Principal Commissioner or Commissioner.

4A) The Settlement Commission shall pass an order under sub-section (4),—

(i) in respect of an application referred to in sub-section (2A) or sub-section (2D), on or before the 31st day of March, 2008;

(ii) in respect of an application made on or after the 1st day of June, 2007 but before the 1st day of June, 2010, within twelve months from the end of the month in which the application was made;

(iii) in respect of an application made on or after the 1st day of June, 2010, within eighteen months from the end of the month in which the application was made.

(5) Subject to the provisions of section 245BA, the materials brought on record before the Settlement Commission shall be considered by the Members of the concerned Bench before passing any order under sub-section (4) and, in relation to the passing of such order, the provisions of section 245BD shall apply.

(6) Every order passed under sub-section (4) shall provide for the terms of settlement including any demand by way of tax, penalty or interest, the manner in which any sum due under the settlement shall be paid and all other matters to make the settlement effective and shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.

(6A) Where any tax payable in pursuance of an order under sub-section (4) is not paid by the assessee within thirty-five days of the receipt of a copy of the order by him, then, whether or not the Settlement Commission has extended the time for payment of such tax or has allowed payment thereof by instalments, the assessee shall be liable to pay simple interest at one and one-fourth per cent for every month or part of a month on the amount remaining unpaid from the date of expiry of the period of thirty-five days aforesaid.

(6B) The Settlement Commission may, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (4)—

(a) at any time within a period of six months from the end of the month in which the order was passed; or

(b) at any time within the period of six months from the end of the month in which an application for rectification has been made by the Principal Commissioner or the Commissioner or the applicant, as the case may be:

***Provided** that no application for rectification shall be made by the Principal Commissioner or the Commissioner or the applicant after the expiry of six months from the end of the month in which an order under sub-section (4) is passed by the Settlement Commission:*

***Provided further** that an amendment which has the effect of modifying the liability of the applicant shall not be made under this sub-section unless the Settlement Commission has given notice to the applicant and the*

Principal Commissioner or Commissioner of its intention to do so and has allowed the applicant and the Principal Commissioner or Commissioner an opportunity of being heard.

(7) Where a settlement becomes void as provided under sub-section (6), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the income-tax authority concerned, may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the end of the financial year in which the settlement became void.

(8) For the removal of doubts, it is hereby declared that nothing contained in section 153 shall apply to any order passed under sub-section (4) or to any order of assessment, reassessment or recomputation required to be made by the Assessing Officer in pursuance of any directions contained in such order passed by the Settlement Commission and nothing contained in the proviso to sub-section (1) of section 186 shall apply to the cancellation of the registration of a firm required to be made in pursuance of any such directions as aforesaid.

Power of Settlement Commission to reopen completed proceedings.

245E. *If the Settlement Commission is of the opinion (the reasons for such opinion to be recorded by it in writing) that, for the proper disposal of the case pending before it, it is necessary or expedient to reopen any proceeding connected with the case but which has been completed under this Act by any income-tax authority before the application under section 245C was made, it may, with the concurrence of the applicant, reopen such proceeding and pass such order thereon as it thinks fit, as if the case in relation to which the application for settlement had been made by the applicant under that section covered such proceeding also :*

Provided *that no proceeding shall be reopened by the Settlement Commission under this section if the period between the end of the assessment year to which such a proceeding relates and the date of application for settlement under section 245C exceeds nine years :*

Provided further *that no proceeding shall be reopened by the Settlement Commission under this section in a case where an application under section 245C is made on or after the 1st day of June, 2007.*

Powers and procedure of Settlement Commission.

245F. (1) In addition to the powers conferred on the Settlement Commission under this Chapter, it shall have all the powers which are vested in an income-tax authority under this Act.

(2) Where an application made under section 245C has been allowed to be proceeded with under section 245D, the Settlement Commission shall, until an order is passed under sub-section (4) of section 245D, have, subject to the provisions of sub-section

(3) of that section, exclusive jurisdiction to exercise the powers and

perform the functions of an income-tax authority under this Act in relation to the case :

Provided that where an application has been made under section 245C on or after the 1st day of June, 2007, the Settlement Commission shall have such exclusive jurisdiction from the date on which the application was made:

Provided further that where—

(i) an application made on or after the 1st day of June, 2007, is rejected under sub-section (1) of section 245D; or

(ii) an application is not allowed to be proceeded with under sub-section (2A) of section 245D, or, as the case may be, is declared invalid under sub-section (2C) of that section; or

(iii) an application is not allowed to be further proceeded with under sub-section (2D) of section 245D,

the Settlement Commission, in respect of such application shall have such exclusive jurisdiction upto the date on which the application is rejected, or, not allowed to be proceeded with, or, declared invalid, or, not allowed to be further proceeded with, as the case may be.

(3) Notwithstanding anything contained in sub-section (2) and in the absence of any express direction to the contrary by the Settlement Commission, nothing contained in this section shall affect the operation of any other provision of this Act requiring the applicant to pay tax on the basis of self-assessment in relation to the matters before the Settlement Commission.

(4) For the removal of doubt, it is hereby declared that, in the absence of any express direction by the Settlement Commission to the contrary, nothing in this Chapter shall affect the operation of the provisions of this Act in so far as they relate to any matters other than those before the Settlement Commission.

(5) [* *]*

(6) [* *]*

(7) The Settlement Commission shall, subject to the provisions of this Chapter, have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

Inspection, etc., of reports.

245G. *No person shall be entitled to inspect, or obtain copies of, any reports made by any income-tax authority to the Settlement Commission; but the Settlement Commission may, in its discretion, furnish copies thereof to any such person on an application made to it in this behalf and on payment of the prescribed fee :*

Provided that, for the purpose of enabling any person whose case is under consideration to rebut any evidence brought on record against him in any such report, the Settlement Commission shall, on an application made in this behalf, and on payment of the prescribed fee by such person, furnish

him with a certified copy of any such report or part thereof relevant for the purpose.

Power of Settlement Commission to grant immunity from prosecution and penalty.

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

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

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

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

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

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 purposes 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.

Credit for tax paid in case of abatement of proceedings.

245HAA. *Where an application made under section 245C on or after the 1st day of June, 2007, is rejected under sub-section (1) of section 245D, or any other application made under section 245C is not allowed to be proceeded with under sub-section (2A) of section 245D or is declared invalid under sub-section (2C) of section 245D or has not been allowed to be further proceeded with under sub-section (2D) of section 245D or 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 Assessing Officer shall allow the credit for the tax and interest paid on or before the date of making the application or during the pendency of the case before the Settlement Commission.*

Order of settlement to be conclusive.

245-I. *Every order of settlement passed under sub-section (4) of section 245D shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force.*

Proceedings before Settlement Commission to be judicial proceedings.

245L*. Any proceeding under this Chapter before the Settlement Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860).*

Disclosure of information in the application for settlement of cases.

Rule 44CA.*(1) The Settlement Commission shall, while calling for a report from the Commissioner under sub-section (2B) of section 245D, forward a copy of the application in Form No. 34B ([(including the Annexure and the statements] and other documents accompanying such Annexure) along with a copy of the order under sub-section (1) of section 245D or, as the case may be, an intimation in respect of an application deemed to have been allowed to be proceeded with under sub-section (2A) of that section 245D.*

(2) Where an application has not been declared invalid under sub-section (2C) of section 245D or an application has been allowed to be further proceeded with under sub-section (2D) of that section, all the material and other information produced by the assessee before the Settlement Commission shall be sent to the Commissioner to enable him to furnish the report under sub-section (3) of section 245D.

(3) Where the proceeding before the Settlement Commission abates, the Commission shall send, all the material and other information produced by the assessee before the Commission and the results of any enquiry held or evidence recorded in the course of proceedings before it, to the Commissioner.

9. The relevant Rules under the Income Tax Settlement Commission (Procedure) Rules, 1997 are extracted hereunder:

Rule 6. Report of the Commissioner under sub-section (2B) of Section 245D.
The Commissioner shall furnish seven copies of report referred to in sub-section (2B) of Section 245D, to the Commission and one copy to the applicant simultaneously.

Filing of affidavit.
8. Where a fact, which is not borne out by or is contrary to the record relating to the case, is alleged in the settlement application (including the annexure and the statement or other documents accompanying such annexure), it shall be stated clearly and concisely and supported by a duly sworn affidavit.

Commissioner's further report

9. (1) Where an application has not been declared invalid under sub-section (2C) of Section 245D or an application has been allowed to be further proceeded with under sub-section (2D) of Section 245D, the information contained in the annexure and in the statements and other documents accompanying such annexure shall be sent to the Commissioner by the Commission with the direction that the Commissioner shall furnish a further report in seven copies within forty-five days of the receipt of said annexure or within such extended period as may be allowed by the Commission on a request made by the Commissioner.
(2) If the Commissioner fails to furnish his report on or before the expiry of the specified period of forty-five days or within further extended period as the Commission may allow, as the case may be, the Commission may proceed to hear the case without such report.
(3) A copy of the report of the Commissioner under sub-rule (1) of rule 9 shall be sent to the applicant by the Commission.

Applicant's Comments on Commissioner's report under rule 9.
9A.*(1) The applicant may furnish comments on the Commissioner's report received under rule 9 within fifteen days of the receipt of the copy of the said report by him or within such extended period as may be allowed by*

the Commission on a written request made by the applicant.
(2) The comments of the applicant shall be accompanied by a paper book in support thereof, having the specifications referred to in rule 7.
(3) If the applicant fails to furnish comments on or before the expiry of the specified period of fifteen days or within further extended period under sub-rule (1), the Commission may proceed further with the case without such comments.

Verification of additional facts.

***15**. Where in the course of any proceedings before the Commission any facts not contained in the settlement application (including the annexure and the statements and other documents accompanying such annexure) are sought to be relied upon, they shall be submitted to the Commission in writing and shall be verified in the same manner as provided for in the settlement application.*

10. A perusal of the above provisions indicate that the settlement commission is set into motion by the assessee, who though has failed to furnish all the particulars in the returns, files an application under Section 245C with annexures disclosing the supressed transaction or transactions and the additional income derived by him with a request to the commission to waive the penalty, interest and prosecution. It is an option exercised by the assessee to amicably settle the dispute instead of litigating the same before statutory authorities and the courts to buy peace of mind. After the application is made, the commission is to pass an order under Section 245D(1) initially rejecting the application or allowing the application to be proceeded with. Thereafter, a report is called from the commissioner under 245D (2B) read with Rule 6 and thereafter within 15 days from the date of the report, the commission must pass an order under Section 245D (2C) declaring the

application as valid or not and to proceed further. The commission, after an order is passed under section 245D(1) if is of the opinion that further investigations are necessary or particulars are to be called for, it can ask the commissioner to submit a report. Thereafter, with the report and after granting a personal hearing to the applicant, the commission is to pass an order under Section 245D (4) as it deems fit on the matters covered by the application and also by the report. The power is not only to lay down the terms of settlement but also includes the authority to reject the application. The final order under sub-section 4, if in case the settlement commission deems it fit to grant such reliefs as it may think, shall set forth the terms of settlement including demand by way of tax, penalty or interest, the mode of payment and shall also specify that such settlement shall be void if it is later found that it has been obtained by fraud or misrepresentation of facts. A conjoint reading of sub-sections 3, 4A, 6, 6B are all concerned with the final order to be passed or passed by the Commission under Section 4 and not with the orders passed under Section 245D (1) or (2C) of the Act. There is no provision under the Act to review or recall the order under sub-sections (1), (2C) and (4) and the power to rectify any mistake apparent from the record or amend any order passed by it referred in sub-section 6B is also confined only to an order under sub-section 4. The word “apparent” makes it clear that the mistake must be visible from the face

of the record and is not be discerned by a fishing and roving enquiry. As per section 245F, once an application is filed and until rejected, it is only the commission which has powers as that of an Income Tax Authority to deal with matters or issues before it within the scheme of settlement of cases and the Assessing Officer ceases to have any powers. The powers therein are not akin to the powers of an assessing authority making regular assessment or revision of assessment to accept or deny the explanation offered by the assessee, but rather the scope of enquiry would be confined to the true and full disclosure, co-operation with the commission and the manner in which such income has been derived. The powers are to be exercised keeping in mind the object of the settlement scheme provided under the Act for speedy disposal of the disputes. At every stage before the orders are passed, an opportunity including personal hearing is to be granted to controvert the report produced against him. As per sub-section (5), it is mandatory that the commission considers all the materials brought on record before passing any order under sub-section (4), implying that even documents and statements produced or made subsequent to the application, but before orders are passed, is to be considered by the commission. Whenever any report is obtained in the course of proceedings against any persons and it is incumbent upon the commission to furnish a copy to that person to enable him to rebut the contents of the report. Otherwise, the

order would be vitiated by non-compliance of the principles of natural justice and the provisions of Section 245G of the Act.

11. It is now necessary to look into the scope of interference with the findings of the Settlement Commission. Some of the decisions, in this context, are as follows:

(a) The Apex Court in ***CIT v. S.P. Jain*, [(1973) 3 SCC 824 : 1973 SCC (Tax)]** held as follows:

> *"18. In our view, the High Court and this Court have always the jurisdiction to intervene if it appears that either the Tribunal has misunderstood the statutory language, because the proper construction of the statutory language is a matter of law, or it has arrived at a finding based on no evidence or where the finding is inconsistent with the evidence or contradictory of it, or it has acted on material partly relevant and partly irrelevant or where the Tribunal draws upon its own imagination imports facts and circumstances not apparent from the record or bases its conclusions on mere conjectures or surmises or where no person judicially acting and properly instructed as to the relevant law could have come to the determination reached. In all such cases the findings arrived at are vitiated."*

(b) ***Sawarn Singh v. State of Punjab*, *[(1976) 2 SCC 868]*,** wherein, it was held by the Hon'ble Supreme Court as follows:

> "***12.*** *Before dealing with the contentions canvassed, it will be useful to notice the general principles indicating the limits of the jurisdiction of the High Court in writ proceedings under Article 226. It is well settled that certiorari jurisdiction can be exercised only for correcting errors of jurisdiction committed by inferior courts or tribunals. A writ of certiorari can be issued only in the exercise of supervisory jurisdiction which is different from appellate jurisdiction. The Court exercising special jurisdiction under Article 226 is not entitled to act as an appellate court. As was pointed out by this Court in Syed Yakoob case,*

> "*this limitation necessarily means that findings of fact reached by the inferior court or tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be.*"
>
> ***13.*** *In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice.*"

(c) In the judgment reported in ***R.B. Shreeram Durga Prasad and Fatehchand Nursing Das v. Settlement Commission (IT & WT), [(1989) 1 SCC 628 : 1989 SCC (Tax) 124],*** the Apex Court held as follows:

> "*7. We are definitely of the opinion that on the relevant date when the order was passed, that is to say, 24-8-1977 the order was a nullity because it was in violation of principles of natural justice. See in this connection, the principles enunciated by this Court in State of Orissa v. Dr. Binapani Dei [AIR 1967 SC 1269 : (1967) 2 SCR 625 : (1967) 2 LLJ 266] as also the observations in Administrative Law by H.W.R. Wade, 5th Edn., pp. 310-311 that the act in violation of the principles of natural justice or a quasi-judicial act in violation of the principles of natural justice is void or of no value. In Ridge v. Baldwin [1964 AC 40 : (1963) 2 WLR 935 : (1963) 2 All ER 66] and Anisminic Ltd. v. Foreign Compensation Commission [(1969) 2 AC 147: (1969) 2 WLR 163 : (1969) 1 All ER 208] the House of Lords in England has made it clear that breach of natural justice nullifies the order made in breach. If that is so then the order made in violation of the principles of natural justice was of no value. If that is so then the application made for the settlement under Section 245-C was still pending before the Commission when the amendment made by Finance Act of 1979 came into effect and the said amendment being procedural, it would govern the pending proceedings and the Commission would have the power to overrule the objections of the Commissioner. Dr. V. Gauri Shankar, appearing for the revenue, did not seriously contest that position. He accepted the position that the law as it is, after the amendment authorises the Commission to consider and overrule the Commissioner's objection. He also very fairly, in our opinion and [Vide Corrigendum No. F.3/Ed. B.J./61 dated 21-8-1989] rightly accepted the position that the appellant was entitled to be heard on the Commissioner's*

objections. It appears to us, therefore, if that is the position then, in our opinion, the appellant was entitled to be heard on the objections of the Commissioner. As mentioned hereinbefore, the only short ground which was sought to be canvassed before us was whether after the amended Act the order had been rightly set aside and whether the appellant had a right to be heard on the objections of the Commissioner. Mr Harish Salve, counsel for the appellant contends that it had a right to be heard. On the other hand Dr. V. Gauri Shankar, learned counsel for the respondents submitted that the order proceeded on the assumption that the objections had been heard. He did not, in fairness to him it must be conceded, contest that in a matter of this nature the appellant had a right to be heard. Reading the order, it appears to us, that though the appellant had made submissions on the Commissioner's objections but there was no clear opportunity given to the appellant to make submissions on the Commissioner's objections in the sense to demonstrate that the Commissioner was not justified in making the objections and secondly, the Commission should not accept or accede to the objections in the facts and circumstances of the present case. We are of the opinion that in view of the facts and circumstances of the case and in the context in which these objections had been made, it is necessary as a concomitant of the fulfilment of natural justice that the appellant should be heard on the objections made by the Commissioner. It is true that for the relevant orders for the years for which the Commissioner had objected the concealment had been upheld in the appeal before the appropriate authorities. But it may be that in spite of this concealment it may be possible for the appellant to demonstrate or to submit that in disclosure of concealed income for a spread over period settlement of the entire period should be allowed and not bifurcated in the manner sought to be suggested for the Commissioner's objections. This objection the appellant should have opportunity to make. In exercise of our power of judicial review of the decision of the Settlement Commission we are concerned with the legality of procedure followed and not with validity of the order. See the observations of Lord Hailsham in Chief Constable of the North Wales Police v. Evans [(1982) 1 WLR 1155] . Judicial review is concerned not with the decision but with the decision making process."

(d) In ***N. Krishnan v. Settlement Commission (IT & WT)*****, [1989 SCC OnLine Kar 87 : ILR 1990 Kar 404 : (1989) 180 ITR 585 : (1989) 80 CTR 15],** the Karnataka High Court held as follows:

"***14.*** *Even so, as regards the first question is concerned, it should be remembered that the power of judicial review of administrative action*

including those of Courts and Tribunals conferred on the High Courts under Articles 226 and 227, constitutes one of the basic structures of the Constitution. Therefore, irrespective of the nature of an administrative Tribunal or the width of its power or a provision in the relevant provision of law that its decision is final and conclusive, the High Court's power of judicial review remains unaffected, though the scope of judicial review might vary. That power can be curtailed or varied only by a constitutional provision. (See: H.V. Kamath v. Ahmed Ishaque) [AIR 1955 SC 233.] Moreover with reference to the Settlement Commission itself the question as to whether its decisions are appealable to the Supreme Court under Article 136 has been the subject matter of consideration by the Supreme Court in I.T. Commissioner v. B.N. Bhattacharjee [(1980) 3 SCC 54 : AIR 1979 SC 1724.] on a preliminary objection. The Supreme Court held thus:

> *"47. The preliminary objection raised by Shri A.K. Sen need not detain us because we are satisfied that the amplitude of Article 136 is wide enough to bring within its jurisdiction orders passed by the Settlement Commission. Any Judgment, decree, determination, sentence or order in any case or matter passed or made by any Court or Tribunal, comes within the correctional cognisance and review power of Article 136. The short question, then, is whether the Settlement Commission cannot come within the category of "Tribunals". To clinch the issue, Section 245L declares all proceedings before the Settlement Commission to be judicial proceedings. We have hardly any doubt that it is a Tribunal. Its powers are considerable; its determination affects the rights of parties; its obligations are quasi-judicial; the orders it makes at every stage have tremendous impact on the rights and liabilities of parties.*
>
> *xxxxxxxxx*
>
> *In short, Settlement Commissions are Tribunals. The preliminary point fails."*

Thus the Settlement Commission is held to be a Tribunal. That being the position, the petitioner is entitled to seek judicial review of the order of the Settlement Commission in a petition under Articles 226 and 227 of the Constitution of India. For these reasons, we answer the first question in the affirmative.

15……. In our opinion, many of the grounds on which arbitration award could be set aside, would not be available in view of the nature and jurisdiction of the Settlement Commission. We are of the view that a decision of Settlement Commission could be interfered with only.
(i) if grave procedural defect such as violation of the mandatory procedural requirements of the provisions in the Chapter XIX-A and/or violation of Rules of natural justice is made out;
(ii) if it is found that there is no nexus between the reasons given and the

decision taken by the Settlement Commission.
(iii) this Court cannot interfere either with an error of fact or error of law, alleged to have been committed by the Settlement Commission.

We answer the second question accordingly."

(e) In the judgment reported in ***R.B. Shreeram Durga Prasad and Fatehchand Nursing Das v. Settlement Commission (IT & WT)*****, [(1989) 1 SCC 628 : 1989 SCC (Tax) 124],** the Apex Court held as follows:

"***7.*** *We are definitely of the opinion that on the relevant date when the order was passed, that is to say, 24-8-1977 the order was a nullity because it was in violation of principles of natural justice. See in this connection, the principles enunciated by this Court in State of Orissa v. Dr. Binapani Dei [AIR 1967 SC 1269 : (1967) 2 SCR 625 : (1967) 2 LLJ 266] as also the observations in Administrative Law by H.W.R. Wade, 5th Edn., pp. 310-311 that the act in violation of the principles of natural justice or a quasi-judicial act in violation of the principles of natural justice is void or of no value. In Ridge v. Baldwin [1964 AC 40 : (1963) 2 WLR 935 : (1963) 2 All ER 66] and Anisminic Ltd. v. Foreign Compensation Commission [(1969) 2 AC 147 : (1969) 2 WLR 163 : (1969) 1 All ER 208] the House of Lords in England has made it clear that breach of natural justice nullifies the order made in breach. If that is so then the order made in violation of the principles of natural justice was of no value. If that is so then the application made for the settlement under Section 245-C was still pending before the Commission when the amendment made by Finance Act of 1979 came into effect and the said amendment being procedural, it would govern the pending proceedings and the Commission would have the power to overrule the objections of the Commissioner. Dr. V. Gauri Shankar, appearing for the revenue, did not seriously contest that position. He accepted the position that the law as it is, after the amendment authorises the Commission to consider and overrule the Commissioner's objection. He also very fairly, in our opinion and [Vide Corrigendum No. F.3/Ed. B.J./61 dated 21-8-1989] rightly accepted the position that the appellant was entitled to be heard on the Commissioner's objections. It appears to us, therefore, if that is the position then, in our opinion, the appellant was entitled to be heard on the objections of the Commissioner. As mentioned hereinbefore, the only short ground which was sought to be canvassed before us was whether after the amended Act the order had been rightly set aside and whether the appellant had a right to be heard on the objections of the Commissioner. Mr Harish Salve, counsel for the appellant contends that it had a right to be heard. On the other hand Dr. V. Gauri Shankar, learned counsel for the respondents submitted that the order proceeded on the assumption that the objections had been heard. He*

did not, in fairness to him it must be conceded, contest that in a matter of this nature the appellant had a right to be heard. Reading the order, it appears to us, that though the appellant had made submissions on the Commissioner's objections but there was no clear opportunity given to the appellant to make submissions on the Commissioner's objections in the sense to demonstrate that the Commissioner was not justified in making the objections and secondly, the Commission should not accept or accede to the objections in the facts and circumstances of the present case. We are of the opinion that in view of the facts and circumstances of the case and in the context in which these objections had been made, it is necessary as a concomitant of the fulfilment of natural justice that the appellant should be heard on the objections made by the Commissioner. It is true that for the relevant orders for the years for which the Commissioner had objected the concealment had been upheld in the appeal before the appropriate authorities. But it may be that in spite of this concealment it may be possible for the appellant to demonstrate or to submit that in disclosure of concealed income for a spread over period settlement of the entire period should be allowed and not bifurcated in the manner sought to be suggested for the Commissioner's objections. This objection the appellant should have opportunity to make. In exercise of our power of judicial review of the decision of the Settlement Commission we are concerned with the legality of procedure followed and not with validity of the order. See the observations of Lord Hailsham in Chief Constable of the North Wales Police v. Evans [(1982) 1 WLR 1155] . Judicial review is concerned not with the decision but with the decision making process."

(f) ***Dharamraj v. Chhitan*, *[(2006) 12 SCC 349 : 2006 SCC OnLine SC 1153],*** wherein, it was held as follows:

*"**18.** It is well-settled position of law by a catena of decisions of this Court that in the writ jurisdiction of the High Court, it is always permissible for it to correct the decision of the consolidation authorities or to declare the law on the basis of facts and proof of such facts. For this proposition, we may usefully refer to a decision of this Court in Mukunda Bore v. Bangshidhar Buragohain [(1980) 4 SCC 336 : 1982 SCC (Tax) 143 : AIR 1980 SC 1524] in which this Court indicated as to when the High Court can interfere with the orders of quasi-judicial authority. This observation may be quoted which is as follows: (SCC pp. 339-40, para 16)*

> *"16. While on facts the order of the Board under appeal is not impeccable, we must remember that under Article 226 of the Constitution, a finding of fact of a domestic tribunal cannot be interfered with. The High Court in the exercise of its special*

jurisdiction does not act as a court of appeal. It interferes only when there is a jurisdictional error apparent on the face of the record committed by the domestic tribunal. Such is not the case here. It is true that a finding based on no evidence or purely on surmises and conjectures or which is manifestly against the basic principles of natural justice, may be said to suffer from an error of law. In the instant case, the finding of the Board that the appellant does not possess the necessary financial capacity, is largely a finding of fact. Under Rule 206(2) of the Assam Excise Rules, an applicant for settlement of a shop is required to give full information regarding his financial capacity in the tender. Such information must include the details of sources of finance, cash in hand, bank balance, security assets, etc. Then, such information is verified by the inquiry officer"."

(g) ***Ajmera Housing Corpn. v. CIT*** **[(2010) 8 SCC 739 : 2010 SCC OnLine SC 918],** wherein, it was held by the Hon'ble Supreme Court as follows:

"***45.*** *Ultimately the High Court observed that:*
(i) since the Settlement Commission had not supplied the annexure filed on 19-9-1994, declaring additional income of Rs. 11.41 crores, due opportunity had not been given to the Revenue to place its stand properly;
(ii) huge amount of unexplained expenses, unexplained loans and unexplained surplus, total of which was more than Rs. 14 crores, was not taken into consideration while passing the final order; and
(iii) the Settlement Commission had imposed token penalty of Rs. 50 lakhs while on its own assessment leviable penalty would have been Rs. 562.87 lakhs. Further, if the amount which had not been taken into consideration while assessing the total undisclosed income was to be taken into account, the amount of leviable penalty would have been much more.
In the light of these facts, the High Court formed the opinion that it would be in the interest of justice to set aside the final order passed by the Settlement Commission and to remand the case back to it for fresh adjudication on the assessee's application.
46. *Bearing in mind the aforestated factual position, as emanating from the material on record, we find it difficult to persuade ourselves to agree with the learned counsel for the assessee that there was no justification for the order of remand by the High Court and that the order passed by the Settlement Commission should have been affirmed. We are satisfied that under the given scenario, the High Court was correct in making the order of remand and no good ground is made out for interference in exercise of our jurisdiction under Article 136 of the Constitution."*

(h) ***Union of India v. Asahi India Safety Glass Ltd., [(2015) 11 SCC 451 : 2015 SCC OnLine SC 518],*** wherein, it was held by the Hon'ble Supreme Court as follows:

> "***14.*** *From the aforesaid it becomes clear that the High Court has not interfered with the facts which were recorded by the Settlement Commission. On the contrary, the facts noted above remained undisputed. On those facts the High Court has simply stated the correct legal position where the Settlement Commission had gone wrong in law. Thus, the High Court has simply applied the correct principle of law on the admitted facts. This, according to us, was well within the powers of the High Court while exercising its jurisdiction under Article 226 of the Constitution. Such remand of the High Court has been held permissible in Jyotendrasinhji v. S.I. Tripathi[Jyotendrasinhji v. S.I. Tripathi, 1993 Supp (3) SCC 389 : (1993) 201 ITR 611] which was also concerning the powers of the Settlement Commission, albeit under Section 245-D(4) of the Income Tax Act. The principle of law remains the same and can be applied in case of orders passed by the Settlement Commission under the Central Excise Act as well."*

From the above judgments, it is clear that the power of the High Court to interfere with the orders of the Settlement Commission is available, when the commission has violated the procedures prescribed under the Act which includes the grant of opportunity and the obligation to consider the materials before the Commission. Similarly, when there are no nexus between the findings and the decision by the Tribunal, the order can be interfered. These grounds are in addition to the grounds of violation of the principles of natural justice, jurisdictional errors, against the provision, bias, fraud and malice. It is also settled law that a writ of certiorari can be issued by the High Court under Article 226 of the Constitution of India, when an administrative or a quasi-judicial authority, in the decision making process, considers irrelevant

materials by ignoring the relevant materials to draw its conclusion, the order can be interfered with.

12. In the case at hand, the settlement application filed by the appellant was rejected by the second respondent commission by order dated 30.09.2016 under section 245D(4) of the Act, on the ground that the appellant has not disclosed the full and true income in its application and hence, the same is not maintainable. It is the specific case of the appellant that such order of the settlement commission is in violation of the principles of natural justice and vitiated by the doctrine of bias. Besides this, the appellant contended that there are contradictions in the order passed by the settlement commission. On a perusal of the records, it could be seen that on the last date of hearing, i.e., on 29.09.2016, a 15 page detailed report was filed by the assessing officer through the Joint Commissioner and not forwarded by the Principal Commissioner, as mandated under the Act, before the settlement commission, but the same was relied upon by the second respondent and final order was passed on 30.09.2016, without providing any opportunity to the appellant to file its reply to the said report. That apart, in pursuance of the direction issued by the settlement commission, the regular proceedings were held by the assessing officer till 28.09.2016 in Trichy, whereas the proceedings before the

settlement commission were conducted at Chennai and the appellant was not provided an opportunity to put forth its case. Therefore, the respondent authorities have conducted the proceedings against the appellant in violation of the principles of natural justice.

13. The reading of the materials available on record would further disclose that the appellant did not raise the issue *qua* the exemption under section 80IB in the settlement application filed by them; in the Rule 6 and Rule 9 reports filed by the third respondent, there was no mention about the discrepancy with regard to the claim under section 80IB; and the order dated 05.05.2015 passed under section 245D(2B) of the Act, did not refer anything in this regard. Further, even before the search, the claim of section 80IB deduction was made in their return of income filed on 30.09.2012 for the assessment year 2012-13, which fact was also recorded in paras 4.7.2 and 4.7.9 of the order impugned in the writ petition. However, the said issue was raised by the assessing officer for the first time, in his report filed on 22.09.2016, to which, the appellant has properly responded by filing reply with material evidence. Even then, the settlement commission rejected the application on the ground that there is no true and full disclosure of income, which is completely illegal and unfair to the appellant.

14. It is also brought to the notice of this court that in para 7.3, the settlement commission has recorded that the claim of the appellant that a new unit has started in financial year 2011-12, is not factually correct, whereas in para 7.9.12, the settlement commission has stated that it cannot decide the principles of law. Further, in para 7.9.13, the settlement commission has recorded that there is no unit and hence, no claim under section 80IB is valid. Similarly, the settlement commission has given a declaration that in terms of section 80(1B)(11A), the dates and dates syrup are different products, but at the same time, in para 7.9.12, it was held that it can't lay down law. Thus, there are apparent contradictions on the face of record.

15. Further, it is to be noted that the ITSC issued many directions for investigation without any written orders under section 245(D)(3) of the Act; and the reports filed by the department were direclty relied on by the ITSC, without proper verification; and though the department furnished all the facts only from the materials produced by the appellant, the settlement commission rendered a finding that the appellant has not maintained separate books of accounts, profit and loss account and balance sheets. It is also evident from the documents enclosed in the typed set of papers that the appellant made earnest efforts to respond the reports filed by the department on each and every

occasion by furnishing the required documents available with them, so as to settle the matter peacefully, but they were not provided further opportunity to put forth their case and the settlement commission has hastily passed the order under section 245D(4) of the Act on 30.09.2016, i.e., on the next day of filing of the report by the assessing officer on 29.09.2016. Further, there are procedural violations in the conduct of the proceedings by the settlement commission, which vitiates the order passed against the appellant under section 245D(4) of the Act. However, the learned Judge failed to consider all these aspects and erred in dismissing the writ petition. Therefore, the learned counsel prayed to set aside the order of the learned Judge as well as the order of the settlement commission and remand the matter for fresh consideration.

16. That apart, it is pertinent to mention here that the Vice chairman of the settlement commission was the DGIT, when all the subsequent actions to the search, took place against the appellant. In such circumstances, the legal maxim “nemo judex in sua causa debet esse”, comes into operation. At this juncture, it will be useful to refer to the judgment of the Apex Court in ***A.K. Kraipak v. Union of India*****, (1969) 2 SCC 262,** wherein, while dealing with a situation where a candidate himself was part of the selection board, the Apex Court setting aside the entire selection, held as follows:

"***15.*** *It is unfortunate that Naqishbund was appointed as one of the members of the selection board. It is true that ordinarily the Chief Conservator of Forests in a State should be considered as the most appropriate person to be in the selection board. He must be expected to know his officers thoroughly, their weaknesses as well as their strength. His opinion as regards their suitability for selection to the All-India Service is entitled to great weight. But then under the circumstances it was improper to have included Naqishbund as a member of the selection board. He was one of the persons to be considered for selection. It is against all canons of justice to make a man judge in his own cause. It is true that he did not participate in the deliberations of the committee when his name was considered. But then the very fact that he was a member of the selection board must have had its own impact on the decision of the selection board. Further admittedly he participated in the deliberations of the selection board when the claims of his rivals particularly that of Basu was considered. He was also party to the preparation of the list of selected candidates in order of preference. At every stage of his participation in the deliberations of the selection board there was a conflict between his interest and duty. Under those circumstances it is difficult to believe that he could have been impartial. The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct. It was in the interest of Naqishbund to keep out his rivals in order to secure his position from further challenge. Naturally he was also interested in safeguarding his position while preparing the list of selected candidates.*

16. *The members of the selection board other than Naqishbund, each one of them separately, have filed affidavits in this Court swearing that Naqishbund in no manner influenced their decision in making the selections. In a group deliberation each member of the group is bound to influence the others, more so, if the member concerned is a person with special knowledge. His bias is likely to operate in a subtle manner. It is no wonder that the other members of the selection board are unaware of the extent to which his opinion influenced their conclusions. We are unable to accept the contention that in adjudging the suitability of the candidates the members of the board did not have any mutual discussion. It is not as if the records spoke of themselves. We are unable to believe that the members of selection board functioned like computers. At this stage it may also be noted that at the time the selections were made, the members of the selection board other than Naqishbund were not likely to have known that Basu had appealed against his supersession and that his appeal was*

pending before the State Government. Therefore there was no occasion for them to distrust the opinion expressed by Naqishbund. Hence the board in making the selections must necessarily have given weight to the opinion expressed by Naqishbund.

23. *One more argument of the learned Attorney General remains to be considered. He urged that even if we are to hold that Naqishbund should not have participated in the deliberations of the selection board while it considered the suitability of Basu, Baig and Kaul, there is no ground to set aside the selection of other officers. According to him it will be sufficient in the interest of justice if we direct that the cases of Basu, Baig and Kaul be reconsidered by a Board of which Naqishbund is not a member. Proceeding further he urged that under any circumstance no case is made out for disturbing the selection of the officers in the junior scale. We are unable to accept either of these contentions. As seen earlier Naqishbund was a party to the preparation of the select list in order of preference and that he is shown as No. 1 in the list. To that extent he was undoubtedly a judge in his own case, a circumstance which is abhorrent to our concept of justice. Now coming to the selection of the officers in the junior scale service, the selections to both the senior scale service as well as junior scale service were made from the same pool. Every officer who had put in service of 8 years or more, even if he was holding the post of an Assistant Conservator of Forests was eligible for being selected for the senior scale service. In fact some Assistant Conservators have been selected for the senior scale service. At the same time some of the officers who had put in more than eight years of service had been selected for the junior scale service. Hence it is not possible to separate the two sets of officers."*

17. In ***Union of India v. Ram Lakhan Sharma [*****(2018) 7 SCC 670 : (2018) 2 SCC (L&S) 356 : 2018 SCC OnLine SC 646],*** it was held by the Hon'ble Supreme Court as follows:

"***24.*** *The disciplinary proceedings are quasi-judicial proceedings and the Enquiry Officer is in the position of an independent adjudicator and is obliged to act fairly, impartially. The authority exercising quasi-judicial power has to act in good faith without bias, in a fair and impartial manner.*

26. *A Constitution Bench of this Court has elaborately considered and explained the principles of natural justice in A.K. Kraipak v. Union of India [A.K. Kraipak v. Union of India, (1969) 2 SCC 262 : AIR 1970 SC 150] . This Court held that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. The*

concept of natural justice has undergone a great deal of change in recent years. Initially recognised as consisting of two principles, that is, no one shall be a judge in his own cause and no decision shall be given against a party without affording him a reasonable hearing, various other facets have been recognised. In para 20 the following has been held: (SCC p. 272)

> "*20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely, (1) no one shall be a judge in his own case (nemo debet esse judex propria causa), and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and, that is, that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. ...*"

27. *In State of U.P. v. Saroj Kumar Sinha [State of U.P. v. Saroj Kumar Sinha, (2010) 2 SCC 772 : (2010) 1 SCC (L&S) 675] , this Court had laid down that Enquiry Officer is a quasi-judicial authority, he has to act as an independent adjudicator and he is not a representative of the department/disciplinary authority/Government. In paras 28 and 30 the following has been held: (SCC p. 782)*

> "*28. An Enquiry Officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.*
>
> ***
>
> *30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The Enquiry Officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a*

government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service."

31. *A Division Bench of the Madhya Pradesh High Court speaking through R.V. Raveendran, C.J. (as he then was) had occasion to consider the question of vitiation of the inquiry when the Enquiry Officer starts himself acting as prosecutor in Union of India v. Mohd. Naseem Siddiqui [Union of India v. Mohd. Naseem Siddiqui, ILR 2004 MP 821] . In the above case the Court considered Rule 9(9)(c) of the Railway Servants (Discipline and Appeal) Rules, 1968. The Division Bench while elaborating fundamental principles of natural justice enumerated the seven well-recognised facets in para 7 of the judgment which is to the following effect:*

"*7. One of the fundamental principles of natural justice is that no man shall be a judge in his own cause. This principle consists of seven well-recognised facets:*

(i) The adjudicator shall be impartial and free from bias,

(ii) The adjudicator shall not be the prosecutor,

(iii) The complainant shall not be an adjudicator,

(iv) A witness cannot be the adjudicator,

(v) The adjudicator must not import his personal knowledge of the facts of the case while inquiring into charges,

(vi) The adjudicator shall not decide on the dictates of his superiors or others,

(vii) The adjudicator shall decide the issue with reference to material on record and not reference to extraneous material or on extraneous considerations.

If any one of these fundamental rules is breached, the inquiry will be vitiated."

37. *The High Court having come to the conclusion that the Enquiry Officer has acted as prosecutor also, the capacity of independent adjudicator was lost while adversely affecting his independent role of adjudicator. In the circumstances, the principle of bias shall come into play and the High Court was right in setting aside the dismissal orders by giving liberty to the appellants to proceed with inquiry afresh. We make it clear that our observations as made above are in the facts of the present cases."*

The underlying ratio in the above case is that no man can be a prosecutor and also an adjudicator. In the case before us, the Vice chairman of the second respondent was the DGIT, when all the actions were taken against the

appellant i.e., notices under section 153A, notice under section 148, notice under section 142(1) and investigation report as well as the Rule 6 and Rule 9 reports filed before the settlement commission. Though it was contended on the side of the respondent / Revenue that the vice chairman of the second respondent has no role in the investigation or search conducted in the premises of the appellant, the same cannot be countenanced by this court, as the possibility of bias involved in this case, cannot be ruled out.

18. Chapter XIX-A contemplates assessment by settlement unlike chapter XIV which contemplates regular assessment proceedings. The scope of enquiry under Chapter XIX-A is restricted to true and full disclosure, co-operation with the commission and the disclosure of the mode of income. The disclosure as contemplated under scheme is true and full when that is not tainted with fraud or misrepresentation. What is to be seen is whether the materials produced are enough to subjectively satisfy oneself to the limited scope of enquiry for settlement. It is sufficient that the assessee discloses all the primary facts. Once, the primary facts are disclosed with materials, it satisfies the requirement of full and true disclosure. The applicant cannot be burdened with the responsibility to satisfy all the inferences that are drawn by the assessing officer or the commission. Considering the nature of the scheme,

that also is not the intention of the legislature. In this context, it is necessary to refer to the judgment of the Apex Court in ***Calcutta Discount Co. Ltd. v. ITO*, [(1961) 2 SCR 241 : AIR 1961 SC 372 : (1961) 41 ITR 191]**, wherein it was held as follows:

> "***10.*** *Does the duty however extend beyond the full and truthful disclosure of all primary facts? In our opinion, the answer to this question must be in the negative. Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else — far less the assessee — to tell the assessing authority what inferences whether of facts or — law should be drawn. Indeed, when it is remembered that people often differ as regards what inferences should be drawn from given facts, it will be meaningless to demand that the assessee must disclose what inferences — whether of facts or law he would draw from the primary facts.*
>
> ***11.*** *If from primary facts more inferences than one could be drawn, it would not be possible to say that the assessee should have drawn any particular inference and communicated it to the assessing authority. How could an assessee be charged with failure to communicate an inference, which he might or might not have drawn?*
>
> ***13.*** *We have therefore come to the conclusion that while the duty of the assessee is to disclose fully and truly all primary relevant facts, it does not extend beyond this."*

19. Admittedly, one can approach the settlement Commission only when there is an undisclosed income that escaped assessment. Therefore, it is completely unnecessary and beyond the scope of the commission to find fault or with the modus operandi of the assessee in arranging their tax liability, while deciding an application under Section 245D. In the present case, we are satisfied that the assessee has fully disclosed all the primary facts and

produced the documents in support of the same. At the cost of repetition, all the materials placed before the Commission are to be considered as per Section 245D (5). Therefore, we do not agree with the finding of the settlement commission that there is no full and true discloure of the income by the appellant and hence, the application is not maintainable. It is relevant to point out that no new materials were produced by the department to enable the settlement commission to take a different view that there was no true and full disclosure. Rather, the department and the settlement commission have embarked upon to alter their earlier view or inference, which cannot be a reason to thwart the application as not maintainable. The paradox in the functioning of settlement commission, comprising of senior members from the department, deviating from the neutrality of a quasi-judicial authority, would have invited our much attention if it had not been abolished and replaced with interim board. The Learned Judge, without going into the merits of the contentions raised on the side of the appellant, rendered specific findings, more particularly, when the allegations of principles of natural justice and violation of the procedures as alleged. Therefore, we have no hesitation to hold that the order of the settlement commission has been passed in violation of the principles of natural justice and against the procedures prescribed under the Income Tax Act and hence, the same is liable to be set aside and the matter

is remanded back for fresh consideration after giving opportunity to both the parties.

20. The next question that comes to the fore is as to whether the Interim Board can now decide the matter. In this connection, it is necessary to briefly take note of the relevant dates. The application before the settlement commission was filed on 02.03.2015. The order under section 245D(1) was passed by the settlement commission on 03.03.2015. After taking note of the reports filed by the department, the settlement commission rejected the application as not maintainable on 30.09.2016. The writ petition was filed before this Court in October 2016 and the same was dismissed on 03.09.2021. In the meantime, by Finance Act 2021, Sections 245A and 245B were amended by which the Settlement Commission ceased to exist, and "interim Board" was substituted. The Amendment Act came into force on 01/04/2021. By the amended provisions, initially, the Interim Board was entitled to entertain only applications which were pending.

21. Section 245A(eb) has defined the word "Pending applications" as follows:

> *"Pending application" means an application which was filed under section 245C and which fulfils the following conditions, namely: -*
> *(i)it was not declared invalid under sub-section (2C) of section 245D; and*

(ii)no order under sub-section (4) of section 245D was issued on or before the 31st day of January 2021 with respect to such application"

22. By the amendment, it was made clear that no application will be entertained after 01.02.2021. Thereafter, the Central Government has constituted Interim Board for Settlement *vide* Notification no. 91 of 2021 dated 10.08.2021. Subsequently, the following press release dated 07.09.2021 was issued by the Central Board of Direct Taxes.

Government of India
Ministry of Finance Department of Revenue
Central Board of Direct Taxes
New Delhi, 7th September, 2021

PRESS RELEASE

CBDT allows taxpayers an opportunity to file application for settlement

The Finance Act, 2021 has amended the provisions of the Income-tax Act, 1961 ("the Act") to inter alia provide that the Income-tax Settlement Commission ("ITSC") shall cease to operate with effect from 01.02.2021. Further, it has also been provided that no application for settlement can be filed on or after 01.02.2021, which was the date on which the Finance Bill, 2021 was laid before the Lok Sabha. In order to dispose off the pending settlement applications as on 31.01.2021, the Central Government has constituted Interim Board for Settlement (hereinafter referred to as the "Interim Board"), vide Notification no. 91 of 2021 dated 10.08.2021. The taxpayers, in the pending cases, have the option to withdraw their applications within the specified time and intimate the Assessing Officer about such withdrawal.

It has been represented that a number of taxpayers were in advanced stages of filing their application for settlement before the ITSC as on 01.02.2021. Further, some taxpayers have approached High Courts requesting that their applications for settlement may be accepted. In some cases, the Hon'ble High Courts have given interim relief and directed acceptance of applications of settlement even after 01.02.2021. This has resulted in uncertainty and protracted litigation.

In order to provide relief to the taxpayers who were eligible to file application as on 31.01.2021, but could not file the same due to cessation of ITSC vide Finance Act, 2021, it has been decided that applications for settlement can be filed by the tax payers by 30th September, 2021 before the Interim Board if the following conditions are satisfied:-

i. The assessee was eligible to file application for settlement on 31.01.2021 for the assessment years for which the application is sought to be filed (relevant assessment years); and

ii. all the relevant assessment proceedings of the assessee are pending as on the date of filing the application for settlement.

Such applications, subject to their validity, shall be deemed to be "pending applications" under clause (eb) of section 245A of the Act and shall be disposed of by the Interim Board as per the provisions of the Act.
It is clarified that taxpayers who have filed such applications shall not have the option to withdraw such applications as per the provisions of section 245M of the Act. Further, the taxpayers who have already filed application for settlement on or after 01.02.2021 as per the direction of the various High Courts and who are otherwise eligible to file such application, as per para 3 above, on the date of filing of the said application shall not be required to file such application again.

Legislative amendments in this regard shall be proposed in due course.

(Surabhi Ahluwalia)
Commissioner of Income Tax
(Media & Technical Policy)
Official Spokesperson, CBDT

23. The said press release was issued after several High Courts issued directions to entertain the applications for settlement. It was further stated that the assessees, who were eligible to file an application as on 31.01.2021 and where assessments are pending, would be eligible to file their application till 30th September 2021. It was also made clear that the applications filed by the assessees based on the directions of the High Courts would be entertained. Following the press release, an order under Section 119 (2) (b) of the Act came to be passed, which reads as follows:

" *ORDER*

Civic Centre,

New Delhi
Dated the 28.09.2021

Subject: Order under section 119(2)(b) of the Income Tax Act, 1961 for filing applications for settlement before the Interim Board for Settlement - reg.

The Finance Act, 2021 has amended the provisions of the Act to inter alia provide that the Income-tax Settlement Commission (ITSC) shall cease to operate with effect from 01.02.2021. Further, it has also been provided that no application for settlement can be filed on or after 01.02.2021, which was the date on which the Finance Bill, 2021 was laid before the Lok Sabha. In order to dispose off the pending settlement applications as on 31.01.2021, the Central Government has constituted Interim Board for Settlement (hereinafter referred to as the "Interim Board"), vide notification No. 91 of 2021 dated 10.08.2021.

2. Meanwhile, in order to avoid genuine hardship to number of taxpayers who were in the advanced stages of filing their application for settlement before the ITSC as on 01.02.2021 and also due to the hardship faced during the covid pandemic by the tax payers, the Central Board of Direct Taxes (referred to as the "Board") had provided relief vide Press Release dated 07.09.2021 thereby allowing assessees eligible to file application for settlement on 31.01.2021 to file such applications till the extended period of 30.09.2021.

3. In view of the above, the Board in exercise of its power under clause (b) of sub-section (2) of section 119 of the Income-tax Act, 1961 (the Act), in order to avoid genuine hardship to assessees authorizes the Commissioner of Income-tax, posted as Secretary to the Settlement Commission prior to 01.02.2021, to admit an appl ication for settlement on behalf of the Interim Board filed after 31.01.2021 ,which is the date mentioned in sub-section (5) of section 245C of the Act for filing such application, and before 30.09.2021 and treat such applications as valid and process them as "pending applications" as defined in clause (eb) of section 245A of the Act.

4. The above relaxation is available to the applications filed:-

(i) by the assessees who were eligible to file application for settlement on 31.01.2021 for the assessment years for which the application is sought to be filed (relevant assessment years); and

(ij where the relevant assessment proceedings of the assessee are pending as on the date of filing the application for settlement.

5. The Hindi version of the order shall follow."

24. The above order has been issued by exercising the powers under

Section 119 in line with the press release dated 07.09.2021. In the present case, pending the assessment proceedings relating to the assessment years from 2007-08 to 2014-15, the appellant filed the settlement application, which was rejected by the Settlement Commission on 30.09.2016, the challenge to the same was accepted by this Court. The writ petition was pending when the Settlement Commission was abolished and Interim Board was brought into operation. This court is of the view that the restrictive circumstances under which an Interim Board can entertain an application, is applicable only when an application is filed afresh or pending and not applicable to cases where the High Court in exercise of its powers under Article 226 of the Constitution of India, set asides an earlier order and remands back the matter for fresh consideration. The powers of the High Court which emanate from the Constitution cannot be curtailed by a law made by the legislature, such law being subordinate to the Constitution. It is not out of place to mention here that it is evident from the press release which was followed by the order dated 28.09.2021, various High Courts had earlier issued directions to entertain the applications for settlement and such applications were also entertained. While so, the contention of the counsel for the department that the interim board cannot entertain the old application, cannot be accepted. Upon the matter being remanded, the application filed by the Appellant would have to be

treated as a pending application and appropriate orders are to be passed after giving the appellant sufficient opportunity and by considering all the materials placed by them. Therefore, this court has no hesitation in remanding back the matter to the Interim Board, which shall dispose of the application within a period of six weeks from the date of receipt of this order on merits and in accordance with law, after giving sufficient opportunity to the appellant and the respondents and also by considering all the documents placed.

25. Accordingly, this appeal stands allowed by setting aside the order impugned in the writ petition as well as in this appeal. No costs. Consequently, connected miscellaneous petition is closed.

(R.M.D., J.) **(J.S.N.P., J.)**

27.06.2022

rsh
Index:Yes/no
Internet:Yes/No

R.MAHADEVAN, J.
and
J.SATHYA NARAYANA PRASAD, J.

rsh/rk

To

1. The Chairman
   Income Tax Settlement Commission
   Principal Bench, New Delhi

2. Income Tax Settlement Commission
   Additional Bench
   No.640, Anna Salai
   Chennai - 600 035

3. Principal Commissioner of Income Tax
   Central-II, Chennai - 600 034

4. The Assistant Commissioner of Income Tax (AO)
   Central Circle-I
   Trichy

WA No. 2406 of 2021

27.06.2022