Procedure of Filing Application before the Settlement Commission
3.1 General

Any assessee desirous of settling his case has to make an application under section 245C of Income Tax Act, 1961. It is made in form No. 34B.

Under Section 245F(7)\(^1\) of the Act the commission is empowered to regulate its own procedure and procedure of Benches thereof in all matters arising out of exercise of its powers or discharge of its function. In exercise of these powers, the commission had notified the Income-Tax Settlement Commission (Procedure) Rules, 1976 again in 1987. Which were replaced by Income-Tax Settlement Commission (Procedure) Rules 1997, finally, by notification no. 68R. 361(E)\(^2\) dated 4-7-97, the commission has notified the Rules 1997 w.e.f.4-7-98. It has introduced new rules viz 7 which relating to preparation to paper works, etc. Rule 15 is also new and under his rule chairman may, for the disposal of any particular case, constitute a special Bench consisting of at least five members drawn from all benches of the Commission. Under Rule 17 publication of the orders of the Special Bench will be at the discretion of the Chairman. Thus three new Rule viz 7,13 and 17 have been added without altering any of the Rules 1987. The Rules lay down the procedure for filing settlement applications before the commission.

3.2 Who can file application?

The tax payer desirous of settling his case is required to make an application under section 245C(1) in form No. 34B

\(^1\) Section 245B of Income-Tax Act, 1961

prescribed under Rule 44C\textsuperscript{3} of the Income-tax Rules, 1962, duly signed and verified as prescribed therein. This application is to be made in quintuplicate and has to be accompanied by a fee of Rs. 500/-. The fee has to be paid (with a Challan) in a branch of an authorised bank or a branch of State Bank Of India or a branch of Reserve Bank of India. Cheques, Drafts, Hundies or other negotiable instruments sent directly to the Commission, are not acceptable.

The settlement application shall be presented in person or by registered post to the Secretary or an authorised officer of the Bench within whose jurisdiction the case falls. A settlement application sent by post shall be deemed to have been presented on the day on which it is received in the office of the Commission.

3.3 Procedure for disposal

On receipt of an application, it is diarised, seen by the administrative officer, A.O./ Secretary and passed on to the technical assistant who verifies whether the application has been furnished in prescribed form giving the required particulars and has been properly verified and signed by the competent person and is accompanied with the prescribed fee of Rs. 500/-. In case there is any defect of the above nature, the application is returned to the applicant pointing out the defects, for re-submission after removing the same. While returning the application in original, one copy of it is retained for purpose of record and future reference. Such application need not be entered in the register maintained for the purpose. If the application does not suffer from any of the defects

\textsuperscript{3} Rule 44C of Income-Tax Rule, 1962
mentioned above, the same is entered in the register and a distinctive file number about it through letter. It is than closely scrutinised in accordance with the check list devised for the purpose.

*The main points checked in the application are as under:*

1. Whether the applicant has furnished the return of income as required under part (a) of proviso to section 245C(1).

2. Whether the additional amount of tax payable on income disclosed exceeds Rs. 1,00,000/- as required under part (b) of proviso to section 245C(1).

3. Whether calculation of additional tax payable as shown against column (2) of Annexure to the application is as given in the manner laid down in sub-sections (1B) to (1D) of section 245C.

4. In a case of search u/s 132, whether the application has been filed after expiry of 120 days from the date of seizer.

5. Whether there is a case pending before an Income-tax authority within the meaning of section 245A(b).

6. Whether the information against Column 10 of the application (Form No.34B) is provided separately or it is clubbed with the information given in the Annexure to the application. If it is clubbed, it should be called for separately.

7. Whether the information relating to Column 11 of the application is given separately or it is incorporated in the

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4 Sub-Section (1) of Section 245C of Income-Tax Act, 1961
5 Section 132 of Income-Tax Act, 1961
6 Section 245A proviso (b) of Income-Tax Act, 1961
application itself? If incorporated, it should be called for separately.

(8) Whether the Annexure to the application is accompanied by full and true statement of facts regarding the issues to be settled including terms of the Settlement as required in Col. 3 of the Annexure?

(9) Whether the manner in which the additional income disclosed has been derived is given as required in Col. 4 of the Annexure?

(10) Whether computation of total income for the year(s) for which the application is made, is given?

(11) Whether copies of relevant accounts as required in Notes (i), (ii) and (iii) to the Annexure, are attached?

(12) Whether full particulars of proceedings pending before income-tax authorities are given?

Where the application suffers from any of the defect at S. No. (1) to (5) as mentioned in the above check points, it is prima facia not maintainable. In such cases, a letter is written to the applicant drawing his attention to the condition laid down under section 245C (1) of the Act. He is also asked to show cause, why the application should not be rejected as being non maintainable. After the remedial action, if necessary the application is sent to Commissioner of Income –Tax (CIT) for his report under section 245D\(^7\) (1) of the Act. It is only when the application is to be prima facia maintainable a copy thereof (other than the information against column 10 & 11 of the application in the form 34B is

\(^7\) Sub-Section (1) of Section 245D of Income-Tax Act, 1961
forwarded to the concerned commissioner of Income-Tax as required under rule 6 of Income-Tax Settlement Commission (Procedure) Rules, 1987 to furnish the report under section 245D (1) of the Act within 45 days. The report is called for in a standard Performa which covers a lot of factual information. Commissioner of Income-Tax is required to comment in particular whether any complexity of investigation is involved.

On receipt of the Commissioner of Income-Tax’s report or even in cases where commissioner of Income-Tax’s report is not received within the period prescribed in second provision to Section 245D(1) the Secretary prepares a note regarding the prima facie admissibility of the case under section 245D(1) of the Act before the Commission. After considering Commissioner of Income-Tax’s report and secretary’s note the commission may straightway admit the application under section 245D (1) even without hearing the applicant or commissioner of Income-Tax. But in most of the cases the Commission direct them, that the case to be fixed for hearing. The applicant is entitled to take copy of Commissioner of Income-Tax’s report on payment of prescribed fee under Rule 44D of Income – Tax Rules, 1962.

3.4 Hearing of Parties

One of the views can be that in objection cases also the Settlement Commission has to give a hearing and after hearing both the sides decide whether the objection has been validly taken by the Commissioner and then pass an order either overruling the Commissioner’s objection and allowing the application to be proceed with or upholding the Commissioner’s order objection and
rejecting the application. This view is based mainly on the argument, that Commissioner cannot have veto power and application cannot be rejected unless hearing is given.

The Settlement Commission is a high-powered body with wide powers and the interpretation of the second proviso to sub-section (1)⁸ to mean that the moment the Commissioner object to the case being proceeded with, the Settlement Commission cannot proceed with the application at all, would be giving the Commissioner veto power over such a high body, which could not have been the intention of the legislature. The Commissioner can thwart the attempt of an applicant who genuinely and honestly wants to get his case settled by the Settlement Commission.

The Commission’s refusal to consider an application in such a case tantamount to rejection of his application and an application cannot be rejected unless a hearing is given to the applicant as provided in the first proviso to sub-section (1)⁹.

Since the second proviso is a part of sub-section (1), an order under that section has to be passed. If the legislature wanted some type of cases to be totally excluded from the purview of the Settlement Commission a provision should and would have been in section 245C itself.

If the Settlement Commission decides not to proceed with an application on the basis of objection raised by the Commissioner

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⁸ Second proviso to sub-section (1) of Section 245D of Income-tax Act, 1961

⁹ First proviso to sub-section (1) of Section 245D of Income-tax Act, 1961
under this proviso without giving a hearing to the applicant, the order is not a judicial order and is a nullity as it would be against the principle of natural justice. In support of this contention the following passage in Venkataramaiya’s law Lexicon may be quoted:

(a) That every person whose civil rights are affected must have a notice of a case he has to meet.
(b) That he must have reasonable opportunity of being heard in his defence.
(c) That the hearing must not be, by an impartial tribunal, i.e. by a person who is neither directly nor indirectly a party to the case or who has an interest in the litigation or is already biased against the party concerned.
(d) That the authority must act in good faith and not arbitrarily but reasonably.

It can be argued on the basis of the above that section 245D (1) firstly does not even require the Commissioner to grant a hearing before raising the objection and even if such a hearing is given by the Commissioner it will not meet the principles of natural justice as such a hearing will be by a party to the litigation. On the other hand, the Settlement Commission is a judicial body and has to give a hearing to the applicant and the Commissioner in cases where the latter objects to the application to be proceeded with on the grounds mentioned in sub-section (1). A taxpayer chooses

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11 Sub-section (1) of Section 245D of Income-tax Act, 1961
second machinery for settling his case. The order of the Settlement Commission allowing the application to be proceeded with is an order creating a right in favour of the applicant. If an order was to be passed rejecting an application and the applicant is denied the right, an order denying that right of being given a hearing, would be against the principles of natural justice and would be bad in law.

Not allowing any particular type of applicant or applicants to come before the Settlement Commission amounts to discrimination and any law which provides for such discrimination is ultra virus.

It can also be argued that the second proviso to sub-section (1) does not contemplate the Commissioner to object to an application for settlement being allowed to be proceeded with in all cases where a concealment or fraud is suspected because there is a distinction between the language used in section 271 (1)(c) and the second proviso. The second proviso contemplates that the concealment or fraud has to be established before the ultimate authority in accordance with the law on the subject and the evidence available with the department and its past experience in other cases. This view is not acceptable. What is the ultimate authority in these matters? The ultimate authority would appear to be the Supreme Court or any lower court or the Appellate Tribunal up to which the applicant goes in appeal.

In the argument, that the fraud or concealment is to be proved, before the “Final authority”, it would mean that the commissioner will have to wait till the time such as the “Final

12 Sub-section (1) C of Section 271 of Income-tax Act, 1961
authority”, gives a decision. This fallacious argument immediately raises at least two practical difficulties. One is that if the appeal goes to the Appellate Tribunal and above, the matter cannot be raised before the Settlement Commission and secondly if one have to wait for the outcome before the “Final authority”, whatever that term may mean, the commissioner will have to wait for a long time and most of the cases will be held up for the decision of the “Final authority”\textsuperscript{13}.

What the second proviso\textsuperscript{14} contemplates is the judgement of the Commissioner as to the concealment which has either been established or is likely to be established on the basis of the facts. It does not depend upon a decision of any other authority. Of course, in coming to the decision the Commissioner may and perhaps invariably call for a report from the officers working under him (Income-Tax officer, inspecting assistant Commissioner, etc ) dealing with case but the decision whether or not concealment has been established or likely to be established has to be his and his alone and similarly whether or not to object to the case being proceeded with by the Settlement Commission has also to be the Commissioner and of nobody else.

It may be mentioned that no provision for giving a hearing has been made after this proviso. This is very significant because

\textsuperscript{13} S.N.Nautial, T.S.Kasturi & K.D.Dwivedi, Settlement of Income-Tax cases, Page 45, Taxman(1980)

\textsuperscript{14} 2nd proviso to sub-section(1) of Section 245D of Income-tax Act, 1961
first proviso to sub-section (1) \(^{15}\) specifically mentions that an application shall not be rejected under sub-section (1) unless an opportunity had been given to the applicant of being heard. The second proviso is not followed by any such condition which very clearly indicates that no hearing in the type of a case mentioned in the second proviso was contemplated. Even otherwise, a hearing would be necessary where the authority giving the hearing has any power either to accept or reject a particular prayer. When it has not been given any jurisdiction over a particular case, there is no question of there being a hearing or a decision or an order.

The choice of words at different places in sub-section (1) makes the intention of the legislature very clear. The latter part of section 245D (1) reads:

“"The Settlement Commission may, by order, allow the application to be proceeded with or reject the application"\(^{16}\)

Immediately thereafter is the first proviso lays down that no application shall be rejected unless an opportunity had been given to the applicant of being heard. Since up to this point the Settlement Commission has the power and authority either to allow the application to be heard or to reject it, a provision for hearing has been made.

However, in the second proviso, the mandate is "an application shall not be proceeded with". The words very clearly indicate that the Settlement Commission does not have any power

\(^{15}\) 1\(^{st}\) proviso to sub-section(1) of Section 245D of Income-tax Act, 1961

\(^{16}\) Section 245D (1) of Income-tax Act, 1961
to take any decision except to say that it cannot proceed with the case and that is why the third set of words “application shall not be proceeded with” have been used. Thus there is no question of rejection of any application here.

3.5 Evidence

On receipt of an application under section 245C, the Settlement Committee may call for a report from the income tax authority concerned and on the basis of the materials contained in such report and having regard to the interests of the revenue and having regard to the nature and circumstances off the case or the complexity of the investigation involved therein, the Settlement Committee may, by order, allow all the matters covered by the application or any part thereof to be proceeded with or reject the application.

Provided that the matter covered by the application shall not be proceeded with if the Settlement Committee is of the opinion that concealment of particulars of the income on the part of the applicant or perpetration of fraud by him on any income-tax authority for evading any tax or other sum payable under this Act has been established by any income-tax authority.

As regards the veto power being given to the Commissioner, it appears that the legislature has deliberately given him this power. In fact, it is not only a power but duty as well. In the case of CIT v B.N. Bhattacharjee [1979], the Supreme Court has observed:

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17 Section 245D (1) Taxation Law (Amendment) Bill, 1973
18 CIT v B.N. Bhattacharjee [1979], 118 ITR 461/[1979] 1 Taxman 348
“We must realise that the Commissioner has a duty to the public revenue and more importantly, a duty to object to any assessee who is *prime facie* guilty of grave criminal conduct in the shape of concealment of income or perpetration of fraud getting away with it by invoking chapter XIXA”.

It would appear from a plain reading of the section concerned that once the application has been filed before the Settlement Commission, the commissioner cannot make any independent enquiry before deciding whether a concealment or fraud has been established or is likely to be established. Therefore, the date of filing of the application under section 245C is very important for the simple reason that once the Settlement Commission decides to allow a case to be proceeded with, it acquires an exclusive jurisdiction over the case with retrospective effect from the date of receipt of application. Thus it would appear that Commissioner’s objection has to be based on the information or material in the possession on the date of receipt of application. But is the Commissioner completely barred from considering any material which establishes concealment or which is likely to establish a concealment or fraud which the applicant disclose from the first time in the application which comes to the department possession after the filing of the settlement application by the applicant even though he has not caused any enquiry to be made after the date of receipt of the application?

The following situations discussed by way of illustrations will show the difficulty in expressing a precise and clear-cut opinion in the matter.
(1) The applicant does not have any history of concealment with the income-tax department. His returns have been more or less accepted even though in reality he has been concealing income on a large scale. He has a change of heart and files a settlement application giving with the application detail of concealed income and also mode of concealment. According to rule 6 of Income-Tax Settlement Commission (procedure) Rules¹⁹, 1997, a copy of the application is sent to the Commissioner calling for his report under sub-section (1). So the Commissioner comes to know of the concealment for the first time only from the assessee application.

(2) The Income-tax Officer finds cash credits in the assessee books and ask the assessee to prove them. The assessee instead of giving reply to the Income-tax Officer applies to the Settlement Commission for settlement of his case. He merely files an application without furnishing any particular of his concealed income and how it has been earned.

(3) The applicant in the application says that the cash credits may be added to his income because he cannot prove the source of the same. He does not admit that those cash credits were his income. In this case again, in our view, the Commissioner does not have any material in his possession on the date of application to object to the case being proceeded with by the Settlement Commission.

(4) The applicant not only says that the cash represent his own suppressed income but also gives the manner of earning such an income. In this case also on the date of application, the Commissioner does not have any material in his possession. Though at the time when he is sending his report under sub-section (1A) he may have a ground to hold that there was concealment of income. The wording of the section would appears to imply that the material on the basis of which the Commissioner may raise objection must be in his possession as a result of efforts on the part of the Income-tax Department and not on the basis of what the applicant disclosed to the Settlement Commission for the first time.

(5) The Income-tax Officer finds cash credits in the name of the persons who are known as “Hawala” dealers and who have at one time or the other admitted before the Income-tax Department that they deal only in “Hawala” or that they have “Hawala” business along with the some genuine business. The income-tax Officer asks the assessee to prove the cash credits in the name of such persons. The assessee instead of giving reply to the Income-tax Officer’s letter, come before the Settlement Commission.

(6) The Income-tax Officer writes letters of enquiry to an assessee, his bankers, purchasers, and sellers for a copy of his account in their books. Before the reply is received by him the assessee file an application before the Settlement Commission for settlement. Before the Settlement Commission asks the Commissioner under sub-section 245D (1) for his report or before the Commissioner sends his report to the Settlement Commission, the Income-tax Officer receives copies of assessee accounts from the
bank, the purchasers and the sellers which definitely shows that the bank transactions and trading transactions have been concealed or suppressed by the applicant from the department.

In such a case though on the date of application the Commissioner did not have any material in his possession which could have established or which was likely to establish that there was concealment of income, the Commissioner cannot close his eyes to the information which has come to his possession as a result of enquiries started by the department.

(7) An assessee premises are raided by the Income-tax Department and large quantities of books of accounts seized. The applicant files an application for settlement before the Settlement Commission and the latter calls for a report from the Commissioner under sub-section (1).

A question in this case arises whether the Commissioner can get the seized material examined after the receipt of the Settlement Commission’s letter and base his objection on the finding of such an examination of the seized books.

(8) The Income-tax Officer finds cash credits in the books of the applicant and asks him to prove the same. The assessee agrees to the addition of cash credits to his income. The assessment is made but the assessee goes in appeal before the Appellate Assistant Commissioner and while the appeal is pending, comes before the Settlement Commission for settlement.

It has been held by the Madras High Court in the case of CIT v. Krishna & Co.\(^{20}\) that in a case where the assessee himself has

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\(^{20}\) CIT v. Krishna & Co.\(^{20}\) [1979] 120 ITR 144 (H.C. Madras)
admitted that the amount (of cash credits) represented in his own income no further evidence would be necessary to show that it was the amount which represented his income, it represented his concealed income.

(9) The assessee files a return which is accepted by the Income-tax Officer. Later proceeding under section 147(a) are started against the assessee and he files a return of income showing much higher income than that in the original return. In this case also the Commissioner can object on the ground that concealment has been established or is likely to be established.

(10) The position will be same even in a case where during the course of assessment proceedings the assessee files a revised return *suo motu* showing a much higher income than was shown by him in the original return. The Commissioner can object to the case being proceeded on the ground that concealment has been established or is likely to be established. The view is supported by the judgement of the Gauhati High Court in the case of F.C. Aggarwal v CIT21.

### 3.6 Issuing of the Commission

Section 245D (2) provides that a copy of every order passed by the Commission under sub-section (1) shall be sent to the applicant and the Commissioner. Sub-section (3) provides that where an application is allowed to be proceeded with under sub-section (1), the Settlement Commission may call for the relevant records from the Commissioner and after examination of such records.

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21 F.C. Aggarwal v CIT21 [1976] 102 ITR 408(H.C. Gauhati)
If the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary it may ask the Commissioner to make or cause to be made such enquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case. According to this section, it is for the Settlement Commission to decide whether or not any further enquiry or investigation is necessary before disposing of the application.

It appears that the duty of making further enquiry or investigation has been given to the Commissioner because the Settlement Commission is not properly equipped or staffed to conduct such investigations, particularly in complex cases. It may be that the Settlement Commission exercise this power only in rare cases where the Commissioner’s report indicates or the Settlement Commission itself is satisfied that the assessee has not made a full and true disclosure of his state of affairs.

It is significant to not that the section enables the Commissioner to make or cause to be made enquiry and investigation and furnish a report not merely on the matters covered by the application but also any other matter relating to the case. One example of such other matter relating to a case can be the Commissioner’s finding after making such enquiry or investigation, that the income offered by the assessee is not taxable in that year alone but has to be spread over a number of earlier years by reopening such assessments under section 245E or 245F22.

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22 Section 245E & 245F of Income-Tax Act, 1961
This procedure, it is feared, may cause unnecessary delay in the settlement of the case which will defeat the purpose of setting up the Settlement Commission to provide cheap and quick justice. The delay may be caused by the reluctance of the concerned income tax authority to give to such reports the urgency and priority they deserve because he is generally over-worked or because credit for such a work may not be available to him as the final disposal of the case is not in his hands.

To remedy this situation two suggestions may be offered. Firstly, a time-limit may be statutorily provided for submission by the Commissioner reports under this sub-section. Secondly, the Settlement Commission may be suitably strengthened with man-power and the officers working in the Settlement Commission statutorily given power to make enquiries. It may be noted that the Directors, Deputy Directors and enquiry officer working on the Settlement Commission are not even mentioned, much less defined, in the Settlement Commission (Procedure) Rules 1997. Therefore they cannot perform any statutory functions under the Income-Tax Act, 1961. The officer of the Settlement Commission may therefore, be vested with the powers of making enquiries and investigations under the income-tax Act as the authorised officers of the income-tax Investigation Commission were vested under the Taxation on Income (Investigation Commission) Act, 1947.

3.7 Scrutiny of case papers

On receipt of the CIT's further report, the case papers including the application for settlement, its annexure, the CIT's report etc., are given to the Additional Director of
Investigation/Joint Director of Investigation for preparation of a report. Following guidelines have been issued to the ADI/JDI or processing the cases and submission of their reports to the Commission:-

(1) Investigation and enquiry should be generally confined to matters raised in the statement of facts or by the Commissioner of Income-tax in his report, but such other legal or factual issues which comes to the notice of the ADI/JDI in the course of verification of facts, should also be dealt with and brought out in his report.

(2) In cases where original computation of income is to be made by the Settlement Commission, draft computation of income must be insisted upon from the applicants in respect of each year admitted by the Commission. If the ADI/JDI finds any deficiencies in their Statement of Facts as required by the Rules he should promptly bring it to the notice of the Commission through the Director of Investigation.

(3) The ADI/JDI should be selective in recommending cases for reference under section 245D (3)23 to the Commissioner of Income-tax. It is only in cases where there is no cooperation from the applicants or where there are large differences in valuation of assets or a disclosure has been made before the CIT under section 273A24 or the CIT himself wants to make some enquiries before giving his report, that a recommendation in this regard may be made. It is not in all cases of search and seizure that a reference

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23 Sub-Section (3) of Section 245D of Income-Tax Act, 1961
24 Section 273A of Income-Tax Act, 1961
under section 245D (3) is required since with the help of appraisal report of the ADI and the order u/s 132(5), the ADI/JDI would be able to examine the issues and formulate his reports. It may be borne in mind that the machinery of section 245D (3) is not an alternative to the hearing by the Commission;

(4) While there should be a full and frank discussion with the applicant by the ADI/JDI and all the evidence gathered has to be made known to the applicant and his reaction obtained, the ADI/JDI should desist from persuading or coercing the applicant with the object of obtaining a settlement proposal;

(5) The Performa for report by the ADI/JDI approved by the Commission is intended to be a framework in which the reports are to be made without affecting narrative form of the report. In Part-III of the Performa where the issues raised in the Statement of Facts and CIT's report are to be discussed, the intention is that all the issues are focused in brief before the ADI/JDI takes up discussion of the same so that at the time of hearing not much time is wasted in knowing what are the issues to be settled.

Similarly, in Part-IV of the Performa while dealing with the issues, the ADI/JDI will highlight the areas of agreements and disagreements. It may be clarified that the ADI/JDI need not close the issue in case of agreement between the applicant's version and the Department's view in case he feels that the matter should be dealt with in some other manner. In Part V of the Performa, the ADI/JDI should give tentative computation of income based on his recommendations. Similarly, calculations of penalty and interest
should be based on the taxes and income as computed by the ADI/JDI.

(6) In the course of hearing the ADI/JDI should not give any commitment to the applicant or give an impression that his recommendations are final or represent the views of the Commission. The ADI/JDI will of course examine the entire case but based on concrete evidence and not on surmises and conjectures.

(7) After the DI has approved and submitted the report prepared by the ADI/JDI, the case is considered by the Commission for passing final orders under section 245D (4). Before such an order is passed, an opportunity of being heard is given both to the applicant and the CIT. The DI and the ADI/JDI are also present in the court to assist the Commission. The DI will orally brief the Commission about the ramifications of the cases before the hearing.

3.8 Order of the Commission

Sub-section (4) of section 245D, provides that the Settlement Commission should examine the records and the report of the Commissioner received under sub-section (1) and report under sub-section (3), if any, and there after give opportunity to the applicant and the Commissioner to be heard either in person or through a representative duly authorised in this behalf. This section further provide that the Settlement Commission should examine such further evidence as may be placed before it or obtained by it and then may, in accordance with the provision of the Act, pass such order as it thinks fit on the matters covered by the application or other matter relating to the case not covered by the application but
referred to in the report of the Commissioner under sub-section (1) or sub-section (3).

It is clear from the wording of sub-section (4) that the Settlement Commission need not confine itself to what is contained in the statement of facts filed by the applicant under rule 7 of the Settlement Commission (Procedure) Rules 1997. The words “after examining such further evidence as may be placed before it or obtained by it” indicates that it is open to the Settlement Commission to go beyond the statement of facts and collect whatever it thinks will be necessary to settle the case properly.

Sub-section (4) clearly indicates that the Settlement Commission should act in accordance with the provision of the Act while passing an order under this section. Therefore, it cannot pass any order which will be in violation of the specific provisions of the Income-Tax Act but otherwise it can pass any order it deems fit to settle the case.

For example, in computing the income of an applicant under the various heads, it cannot allow more expenses than are allowable under the various provisions of the Act but after having computed the income if it feels that the income could not have been earned in one years, it can allow it to be spread over, over a number of years, even though it cannot be said exactly how much income relates to any particular year. In such circumstances the income tax officer or the Commissioner cannot allow such spread over, because they are

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bound by section 69\(^{26}\) whereas section 245E gives to the Settlement Commission such power of spread over.

3.8.1 Order of Settlement to be conclusive (Section 245I)\(^{27}\)

Every order of Settlement passed under sub-section (4) of section 245D shall be conclusive as to the matters stated there in 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.

According to this section, every order of the Settlement Commission passed under section 245D (4) is final. The exception is provided by the words “save as otherwise provided in this chapter”. Such provision is to be found in sub-sections (6) and (7) of section 245D. As mentioned earlier, according to section 245D (6), a Settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts. Sub-section (7) of section 245D, provides that if settlement becomes void under Sub-Section (4) of Section 245D, the case goes out of the jurisdiction of the Settlement Commission and the Income tax Department has to take up the case afresh from the stage at which the case was allowed to be proceeded with by the Settlement Commission. However, the main question is whether the order of Settlement passed by the Settlement Commission is really final, i.e, it cannot be questioned at all before any authority. The answer to this question is in negative for the reason stated in the succeeding paragraphs.

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\(^{26}\) Section 69 of Income-Tax Act, 1961

\(^{27}\) Section 245I of Income-Tax Act, 1961
3.8.2 How final is the Settlement Commission’s order- order rectifiable

Any clerical or arithmetical mistake which is apparent from the records, can be rectified under section 35 of the 1922 Act or under section 154 of the 1961 Act, as the case may be, by the Settlement Commission on its own initiative or on an application made by the applicant or the Commissioner in this regard. Similarly, any glaring and obvious mistake of law which is apparent from record can also be corrected by the Settlement Commission. In the case of Venkatachalam v. Bombay Dyeing & Mfg. Co. Ltd, the Supreme Court has held at page 150 that:

“….. If a mistake of fact apparent from the record of the assessment order can be rectified under section 35 of the 1922 Act (corresponding to section 154 of the 1961 Act], we see no reason why a mistake of law which is glaring and obvious cannot be similarly rectified.”

3.8.3 Ex parte order cannot be cancelled

It may be noted here that an order passed by the Settlement Commission ex parte cannot be cancelled by it under section 27 of the 1922 Act or under section 146 of the 1961 Act, as the case may be, because the order passed by the Settlement Commission is under section 245D(4) and section 27 of the 1922 Act applies to an assessment order passed under section 23(4) of that Act and section

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146 of the 1961 Act, applies to ex parte order passed under section 144 of the latter Act.

3.8.4 Power of review own order

In certain circumstances, the Settlement Commission has power to review its own order. For example, in the case of CIT v. B.N. Bhattacharjee, it was held by the Supreme Court that having regard to the rulings of this Court in the case of Mohinder Singh Gill v. Chief Election Commission and Maneka Gandhi v. Union of India, the Settlement Commission’s decision to rehear and pass a de novo order cannot be said to be illegal.

The facts of this case are that the premises of Bhattacharjee were searched by the income-tax department and about Rs. 30 lakh in cash seized from him. His assessments in respect of the assessment years 1962-63 to 1972-73 were reopened and the total tax burden fixed came to over Rs. 60 lakhs plus about Rs. 35 lakh assessed for assessment year 1973-74. Prosecution under section 277 was also launched. Appeals to the appellate Assistant Commissioner brought only marginal relief. The assessee filed 12 appeals and the Income-tax Department filed 10 appeals before the Appellate Tribunal against the Appellate Assistant Commissioner’s decision. At this stage the applicant decided to go before the Settlement Commission for settlement of his case. To be able to do

29 Section 146 of Income-Tax Act, 1961
30 CIT v. B.N. Bhattacharjee (1979) 118 ITR 461[1979] 1 Taxman 348
32 Maneka Gandhi v. Union of India [1978] 1 SCC 248
this he addressed a letter to the Appellate Tribune seeking to withdraw his appeals as required under section 245M\textsuperscript{33}.

Since departmental appeals were also pending before the Appellate Tribunal, Bhattacharyajee simultaneously approached the Central Board of Direct Taxes requesting it to instruct the concerned officer of the Income-tax Department to withdraw all the pending appeals filed by the Department before the Tribunal. The department appeals before the Appellate Tribunal were also withdrawn and the Appellate Tribunal passed orders dismissing the appeals filed by the applicant as well as the Department as withdrawn. The applicant then applied to the Settlement Commission under section 245C for settlement of his case. The Settlement Commission called for report under section 245D (1) from the Commissioner who objected under the second proviso to section 245D (1), as it was then, to the Settlement Commission allowing the case to be proceeded with on the ground that prosecution proceedings for concealment of Income and also false verification in the return were already pending before the Chief Metropolitan Magistrate and that he did not see this as a fit case to be proceeded with by the Settlement Commission.

After corresponding with the applicant and without giving a hearing, the Settlement Commission by their order, dated February 3, 1978, informed the applicant that as the Commissioner had objected under the second proviso to section 245D(1), the Settlement Commission would not allow the applicant to be proceeded with. The applicant urged the Settlement Commission to

\textsuperscript{33} Section 245M of Income-Tax Act, 1961
review its order dated February 3, 1978 on the ground that the principle of natural justice had not been complied with as no hearing to the applicant as well as the Commissioner, the Settlement Commission reversed their original order and decided that the application for the settlement shall be considered on merits.

The Union of India, through the Commissioner concerned, challenged the Settlement Commission’s decision on jurisdictional and other legal grounds. One of the main arguments of the revenue was that there was no power of review available to the Settlement Commission, once it had declined to proceed with the application for settlement. Therefore, the reopening of the settlement proceeding was invalid. As mentioned earlier, the Supreme Court did not accept the arguments and held that the Settlement Commission had the power to review its own order.

In this connection reference may able be made to the Punjab High Court’s decision in the case of Mangat Ram Kuthiala v. CIT34. The learned judges have observed at page 10:

“…. The learned Advocate-General has pressed that through there is inherent power in a judicial tribunal like a court to recall and quash its order in certain exceptional and rare circumstances, there is no such inherent power in a quasi-judicial tribunal. Now, it is a settled rule that a judicial Tribunal can recall and quash its own order in exceptional and rare cases when it is shown that it was obtained by fraud or by palpable mistake or was made in utter ignorance of a statutory provision and the like. The learned Advocate-General does not admit that the same rule applies in the

34 Mangat Ram Kuthiala v. CIT34 [1960] 38 ITR 1
case of quasi-judicial tribunals. It appears to me that his emphasis is on the class of tribunal ignoring the nature of proceedings. The rule has bearing upon the nature of proceeding and not necessarily on the class of the tribunal. It is the judicial proceeding in which such a rule is made applicable. If the judicial proceedings are before a tribunal like a court it is a judicial tribunal and if they are before an administrative tribunal it is a quasi-judicial tribunal. It appears to me that for the application of the rule the class of the tribunal is not a material matter but what is of substance and material is the nature of the proceedings before the tribunal. If the proceedings are in the nature of judicial proceedings, then, irrespective of the class of the tribunal, the rule will apply, and if an order has been obtained from or has been made by a judicial, and if an order has been obtained from or has been made by a judicial or a quasi-judicial tribunal because of practice of fraud, or because of palpable mistake, or because of ignorance of clear statutory provision and the like, it has inherent power to recall such an order, quash it, and make an order on merit and according to law in the end of justice."

The honourable judges had derived support for their judgment from the decision in the case of Bhagwan Radha Kishen v. CIT\textsuperscript{35}.

3.8.5 Appeal/Writ against Settlement Commission’s order

A writ against the Settlement Commission’s order can be filed before the High Court under article 226 \textsuperscript{36} or before the

\textsuperscript{35} Bhagwan Radha Kishen v. CIT [1952] 22 ITR 104 (All.)

\textsuperscript{36} Article 226 of the Constitution of India
Supreme Court under article 32\textsuperscript{37} of the Constitution of India. Appeal against the Settlement Commission’s order can also be filed before the Supreme Court under article 136\textsuperscript{38} of the Constitution of India.


text

Articles 32, 136(1) and 226 of the Constitution are reproduced below:

“32. Remedies for enforcement of right conferred by this part. —

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including write in the nature of habeas corpus, mandamus, prohibition, quo warrantor and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2)\textsuperscript{39}, Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause(2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.”

“136. Special leave to appeal by the Supreme Court —

(1) Notwithstanding anywhere in this Chapter, the Supreme Court may, in its discretion grant special leave to appeal from any

\begin{thebibliography}{9}

\bibitem{37} Article 32 of the Constitution of India
\bibitem{38} article 136 of the Constitution of India
\bibitem{39} Clause (1) & (2)Article 32 of the Constitution of India
\end{thebibliography}
judgment, decree determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India."

“226. Power of High Courts to issue certain writs —

(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories, directions, order or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person in not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without —

(a) furnishing to such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two
weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next cat afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.”

3.9 Whether Settlement Commission is a tribunal

The question whether the Settlement Commission is a “tribunal” has been answered in the affirmative by the Supreme Court in the case of CIT v. B.N. Bhattacharjee 40 (supra) in the following words at page 480:

“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 cognizance and review power of articles 136. The short question, then, is whether the Settlement Commission cannot come within category of “Tribunals”. To clinch the issue, section 245L 41 declares all proceedings before the Settlement Commission to be judicial

40 CIT v. B.N. Bhattacharjee (1979) 118 ITR 461[1979] 1 Taxman 348
41 Section 245L of Income-Tax Act, 1961
proceeding. We have hardly any doubt that it is a tribunal. Its powers are considerable; its determination affects the right of parties; its obligations are quasi-judicial; the order it makes at every stage have tremendous impact on the rights and liabilities of parties. When a body is created by statute and clothed with authority to determine rights and duties of parties and to impose pains and penalties on them it satisfies the test laid down in Associated Cement Co.’s\textsuperscript{42} case. A constitutional Bench of this court in that case has indicated the quintessential test in this regard and we need only extract a portion of the head note relevant to this aspect:

‘In considering the question about the status of any body or authority as a tribunal under the article, the consideration about the presence of all or some of the trappings of a court is really not decisive. The presence of some of the trappings may assist the determination of the question as to whether the power exercising by the authority which processed the said trappings, is the judicial power of the State or not. The main and basic test however is whether the adjudicating power which a particular authority is empowered to exercise, has been conferred on it by a statute and can be described as a part of the State’s inherent power exercised in discharging its judicial function.’

The expending jurisprudence of administrative tribunals to which some eminent judges, cradled in Dicean concepts, in the early days of English law, has come to stay whether we call it the new despotism or the pragmatic instrumentality of dispensing justice

\textsuperscript{42} Associated Cement Co. Ltd. v. P.S. Sharma [1965] 2 SCR 366
untrammeled by the complexities and mystiques which are part of the processual heredity of courts. The Franks Committee rightly said:

‘Reflection on the general, social and economic change of recent decades convinces us that tribunal as a system for adjudication has come to stay.’

‘The advantage which tribunals had over courts’, states Seervai in his classic work on the Constitution of India, ‘lay in cheapness, accessibility, freedom from technicality, expedition and expert knowledge of their particular subject’. A casual perusal of Chapter XIXA\(^43\) convinces the discerning eye that the Settlement Commission exercise many powers which affect for good or otherwise, the rights of the parties before it and vests in it powers to grant immunity from prosecution and penalty, to investigate into many matters and to enjoy conclusiveness regarding its orders or settlement. In short, Settlement Commissions are Tribunals…..’

In this connection, it will be useful to mention the views of that eminent English Jurist Lord Denning on the subject as to the finality of the order of a tribunal which here means the Commission. In his book, A Discipline of Law\(^44\), he says:

“\(I\) threw out a suggestion by way of an obiter dictum in Taylor v. National Assistance Board\(^45\):”

\(^{43}\) Chapter XIXA of Income-Tax Act, 1961

\(^{44}\) Jurist Lord Denning, A Discipline of Law (Butterworth’s, 1969 edition), Para 2, p 69

\(^{45}\) Taylor v. National Assistance Board [1957] P 101
‘The remedy is not excluded by the fact that the determination of the Board is by Statute made ‘finally’ : parliament gives the impress of finality to the decisions of the Board on the condition that they are rigid in accordance with the law and the queens court can issue a declaration to see that, that condition is fulfilled.’

‘That dictum was destined to have important consequences. Expanded a little it meant that Parliament only conferred jurisdiction on a Tribunal or Board on condition that it made its determination in accordance with the law. If it went wrong in law, it went outside the jurisdiction conferred on it. Its decision was therefore void. It had jurisdiction to decide rightly but no jurisdiction to decide wrongly.”

Lord Denning says further at page 71:

“So we ourselves dug up the new ground. I applied my dictum in Taylor’s case and said:

‘The Act of 1946 provides that ‘any decision of a claim or question ……. Shall be final’. Do these words preclude the Court of Queen’s Bench from issuing certiorari to bring up the decision?

This is a question which we did not discuss in R. v. Northumberland Compensation Appeal Tribunal46, ex parte Shaw, because it did not these arise. It does arise here, and on looking again into the old books I find it very well settled that the remedy by certiorari is never to be taken away by any statute except by the most clear and explicit words. The word ‘final’ is not enough. That

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46 R. v. Northumberland Compensation Appeal Tribunal, ex parte Shaw, [1952] 1 All ER 122
only means ‘without appeal’. It does not mean ‘without recourse to certiorari’. It makes the decision final on the facts but not final on the law. Notwithstanding that the decision is by a statute made ‘final’, certiorari can still issue for excess of jurisdiction or for error of law on the face of the record’.

Thus it would be seen that as far as legal points are concerned, the Settlement Commission’s order though said to be conclusive under this section, can be questioned and a genuine hardship got relieved.

**Ex parte order** - A question may arise as to whether in the case of non-co-operation by an applicant, the Settlement Commission can pass *ex parte* orders. It will be seen that section 245C nowhere provides for filing of a statement of facts by the applicant. This provision is contained in the rules. Obviously the intention was that obtaining such a statement of facts would facilitate the disposal of the case by the Settlement Commission. Therefore, there is no legal obligation on the Settlement Commission to wait indefinitely for the applicant to file the statement of facts. The rules do not provide any time limit for filing the statement of facts.

However, the Settlement Commission may call for it within a reasonable period. Therefore, if an applicant does not file the statement of facts, verified in the prescribed manner, within that time or extended time, if any, allowed by the Settlement Commission, it will be open to the Settlement Commission to pass *ex-parte* orders in the absence of co-operation from an applicant. Such power is inherent or implied in the body which has power to
call for some documents/papers/returns/report/statements. Otherwise it would be easy for an applicant to completely stall the income-tax proceeding for the relevant years by having his case admitted and then not caring to file the statement of facts. Once the case is admitted, the income-tax authorities cease to have jurisdiction over the case. However, it should be mentioned that the Settlement Commission can dispose of the matter only on the merits. The various rulings given by the courts in respect of best judgement, assessment made by the Income-Tax Officer’s apply with equal force to an ex-parte settlement made by the Settlement Commission. In this connection, the decision in the cases of Abdul Baree Chowdhury v. CIT\textsuperscript{47}, CIT v. Laxminnarain Badridas\textsuperscript{48} and State of Orissa v. Singh Deo\textsuperscript{49} may be seen.

3.10 Appeal or Re-opening of Assessments

(a) Re-opening of completed assessments (section 245E)

In view of section 245A (b), an application for settlement can be made only in respect of the assessment years for which proceedings are pending. However, if the Settlement Commission is of the opinion (reasons for such opinion to be recorded by it in writing) that, for proper disposal of the case pending before it, it is necessary or expedient to reopen any proceeding connected with the case but which had been completed by an Income-tax Act, 1922 (11 of 1922) or under this Act by any Income-Tax authority before the application under section 245C was made, it may with the

\textsuperscript{47} Abdul Baree Chowdhury v. CIT 5 ITC 352

\textsuperscript{48} CIT v. Laxminnarain Badridas [1973] 5 ITR 170 (PC)

\textsuperscript{49} State of Orissa v. Singh Deo [1970] 76 ITR 690 (SC)
concurrence of the applicant, reopen such proceedings 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 years also. No proceedings, however, shall be re-opened by the Commission if the period between the end of assessment year to which such a proceeding relates and the date of application for settlement under section 245C exceeds nine years. No proceedings are to be reopened if it only serves the interest of the applicant50.

(b) Exclusive jurisdiction of the commission (u/s 245F)51

Under section 245F, the Commission has exclusive jurisdiction over the matters contained in the settlement application from the date an order is passed by it under section 245D(1) to the date an order under section 245D(4) is passed. However, there is no bar on the power of the ITO to make an order of assessment during the period of making an application and passing of the order under section 245D(1) by the Commission allowing the application to be proceeded with. This order will, however, be rendered in fructuous, once the application is allowed to be proceeded with in respect of the assessment year in question and the settlement made thereafter u/s 245D(4) will be final.

(c) Immunity from prosecution and imposition of penalty (245H)52.

Under section 245H(1), the Commission, may if it is satisfied that the applicant has cooperated with it in the proceedings before

50 CIT vs. Paharpur Cooling Towers Pvt. Ltd. 219 ITR 618 SC
51 Section 245F of Income-Tax Act, 1961
52 Section 245H of Income-Tax Act, 1961
it and has made a full and true disclosure of his income and the manner in which such income has been derived, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under the Income-tax Act or under the Indian Penal Code or under any other Central Acts and also either wholly or in part, from the imposition of penalty under the Income-tax Act, 1961 with respect to the case covered by the settlement. However, w.e.f 01.06.1987 no such immunity can be granted by the Commission in cases where the proceedings for prosecution for any such offence have been instituted before the date of receipt of the application under section 245C.

Settlement applications invariably contain a prayer for waiver of penalty and interest and for granting immunity from prosecution. Request of the applicant in this regard is examined by the Commission on the facts and circumstances of each case and a specific finding is given on these points.

(d) Power of the commission to send a case back to the income-tax officer (u/s 245HA)

If the Commission is of the opinion that the applicant has not cooperated with the Commission it may send the case back to the ITO who shall there upon dispose of the case in accordance with the provisions of the Income-tax Act as if no application u/s 245C was made. In such a situation the A.O. shall also be entitled to use all the materials and other information produced by the applicant before the Commission or the results of the enquiry or the evidence recorded by it in course of its proceedings. For the purpose of time limits prescribed under various sections mentioned in section
245HA (3), the period commencing with the date of application u/s 245C to the date of sending the case back to the ITO shall be excluded.

(e) Order of settlement to be conclusive (u/s 245I)\(^33\)

Every order of the settlement passed by the Commission u/s 245D(4) shall be conclusive as to the matters stated therein unless such an order becomes void on the ground of fraud or misrepresentation of facts. However, since the Commission is a Tribunal its order is amenable to appeals to the Supreme Court under Article 136 of the Constitution by special leave.\(^54\)

(f) Bar on subsequent application for settlement in certain cases (u/s 245K)

Where an order passed by the Commission u/s 245D (4) provides for the imposition of penalty for concealment of income or the applicant is convicted of any offence under Chapter XXII of the Income-tax Act in relation to that case or the case is sent back to the A.O. by the Commission u/s 245HA, the applicant shall not be entitled to apply for settlement under section 245C in relation to any other matter.

3.11 Rectification / Review of the Orders of the Settlement Commission by the High Courts

1. Patel Desai and Co. & Meera Industries v ACIT & Others\(^55\)

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\(^{33}\) Section 245I of Income-Tax Act, 1961

\(^{54}\) CIT v B. N. Bhattacharjee, 118 ITR 461 (SC)

\(^{55}\) Patel Desai and Co. & Meera Industries v ACIT & Others, 243 ITR 689 (AP) 110 Taxman 531 (AP)
In exercise of writ jurisdiction u/s 226 it is not opened to the High Court to decide whether the conclusion recorded by the Settlement Commission on a question of fact and even law is correct or not. The conclusions reached by a Settlement Commission cannot be nullified except under very limited circumstances such as violation of mandatory procedural requirements, violation of rules of natural justice or lack of nexus between reasons given and the decision taken by the Settlement Commission. In the above case, it was decided that the deduction of development expenditure disallowed as Capital Expenditure by the Income-tax Settlement Commission could not be altered by writ of certiorari. The judicial review power of High Court cannot be extended to review of administrative actions or findings of quasi-judicial Tribunal.

2. C.A. Abraham v ACIT

The High Court’s powers of judicial review on decision of the Settlement Commission are very restrictive. In this case, the Assessing Officer and the Settlement Commission proceeded on the basis that the income dealt with in the orders was only undisclosed income and the same had been taken into consideration for the purpose of assessment of block period. So, while exercising jurisdiction under Article 226 of the Constitution, the fact whether that income was undisclosed income or the income other than undisclosed income would not be gone into. So, it could not be said that the Settlement Commission had followed an illegal procedure, so as to enable the High Court to interfere with the orders of the Commission.

56 C.A. Abraham v ACIT, 109 Taxman 16(Mad)

The Commission has the inherent jurisdiction to rectify a wrong committed by it when that wrong causes prejudice to a party for which that party is not responsible. In a case where the Commission had directed the ITO to examine the old books of account and other documents relied on by the applicant in support of his claim of HUF and the applicant submitted a lot of material before the ITO and he made further verifications of the claim of the applicant. But the order u/s 245D(4) was passed by the Commission without taking into consideration the material furnished by the applicant to the ITO and the enquiries made by him in this regard, the Commission recalled its order and reopened the case for fresh hearing and disposal.

4. Shri Hanooram Bhagwanlal, Ujjain

The Commission does not have the power to review its own order if the matter raised by the applicant has been properly considered and a conscious decision has been taken thereon. In a case where the assessee filed a miscellaneous application claiming that during the course of hearing it was stated by the Commission that the matter was a petty one and they were inclined to allow it, however, the final order was contrary to this and on verification of the records the Commission found that after hearing both the sides, a speaking order was passed giving reasons in support of its decision, there did not appear to be any mistake apparent from the

57 M/s. Bhanwar Lal Kanhya Lal, Sarangpur, F.No. 15/1/36/79/IT, ITSC Delhi Order dated 05.02.1987
58 Shri Hanooram Bhagwanlal, Ujjain, F.No.15/1/29/78-IT, ITSC Delhi Order dated 31.01.1987
record and the case could not be reopened or reviewed by the Commission.

5. **M/s.H.B. Chemicals, Jallandar City**\(^{59}\)

In a case where an objection was raised by the applicant for review or rectification of the order passed by the Commission rejecting the application on the ground that the sequence of certain dates had gone unnoticed or their effect had not been properly appreciated as a result of which a mistake had crept in, it was held that there was no mistake apparent on the record and the prayer of the applicant merely was for revaluing and re-examining the evidence and the report of the Commissioner. The application was accordingly rejected.

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\(^{59}\) M/s.H.B. Chemicals, Jallandar City, F.No.18A/1/76/81-IT,ITSC Delhi Order dated 10.11.1983