Chapter-6

Report of the Comptroller and Auditor General of India
6.1 General

Brief description of the silent provisions of section 245\(^1\) of the Income-Tax Act relating to the Commission is as under:

<table>
<thead>
<tr>
<th>Sub-Section</th>
<th>Topic</th>
<th>Brief Description</th>
</tr>
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</table>
| 245C (IT Act)\(^2\) | Application for settlement of cases | Application for settlement can be filed at any stage of a case containing true and full disclosure of income, not disclosed before assessing officer, showing the manner in which such income has been derived and additional tax payable on such income. Application cannot be filed unless:
(a) Return of income for the period has been furnished.  
(b) Additional income tax payable exceeds Rs.1 lakh  
Application filed once cannot be withdrawn. |
| 245D (IT Act)\(^3\) | Procedure for receipt of application | Settlement commission, on receipt of application, shall call for report from commissioner of Income Tax who shall submit within 45 days of the receipt of |

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\(^1\) Section 245 of Income-Tax Act, 1961  
\(^2\) Section 245C of Income-Tax Act, 1961  
\(^3\) Section 245D of Income-Tax Act, 1961
communication from the commission. If CIT fails to furnish the report within said period, the commission can make order without such report. On the basis of CIT's report the Settlement Commission may allow the application to be proceeded with or refuse to do so. No application shall be rejected unless an opportunity of being heard is given to applicant.

Where an order is passed by the commission allowing the settlement application to be proceeded with, a copy of the order along with a copy of statements and the other documents accompanying settlement application shall be forwarded to the commissioner of the Income Tax with direction that the commissioner shall furnish further report on the matters covered by the application and any other matter relating to the case within 45 days of the receipt of communication. If the report is not received within the stipulated period commission may pass the appropriate order without such report.
| **245DD**<sup>4</sup> (IT Act) | Provisional attachment to protect revenue | Applicant's property can be provisionally attached to protect the interest of revenue for six months which can be extended for a period not exceeding two years giving reasons in writing. |
| **245E**<sup>5</sup> (IT Act) | Re-opening of Completed proceeding | Any proceeding connected with the case, but completed by any income tax authority before the settlement application was made, can be re-opened. However, no proceeding shall be reopened if period between end of assessment year to which such proceeding relate and date of application for settlement exceeds nine years. |
| **245F**<sup>6</sup> (IT Act) | Exclusive jurisdiction of the Commission over the admitted application | After the application has been allowed to be proceeded with, the Commission have exclusive jurisdiction over the case till final orders are passed. During the period commission have all the powers vested in an income tax authority. |
| **245H**<sup>7</sup> (IT Act) | Immunity from prosecution and penalty if it is satisfied | Commission can grant immunity from prosecution and penalty if it is satisfied |

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<sup>4</sup> Section 245DD of Income-Tax Act, 1961  
<sup>5</sup> Section 245E of Income-Tax Act, 1961  
<sup>6</sup> Section 245F of Income-Tax Act, 1961  
<sup>7</sup> Section 245H of Income-Tax Act, 1961
| Chapter-6 | prosecution and penalty | that the applicant has co-operated in the proceeding and has made the full and true disclosure of his income. | From 1 June 1987 no such immunity can be granted where the proceedings for prosecution for any offence have been instituted before the application was filed. Immunity granted shall stand withdrawn if:-

(i) Applicant fails to pay sum, specified in the order of the commission, within specified periods or fails to comply with any other condition subject to which immunity was granted.

(ii) The commission is satisfied that the applicant has concealed any particular material or had given false Evidence. |

| 245HA (IT Act)\(^8\) | Power to send back the case to assessing Officer if assessee does not co-operate in the proceeding. | Commission can send back the case to assessing officer if the applicant / assessee does not co-operate in the proceedings. Assessing officer shall dispose of the case as if no application was made to Settlement Commission and shall be entitled to use all the materials |

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\(^8\) Section 245HA of Income-Tax Act, 1961
operate provided to Settlement Commission by the assesses / results of enquiry held and evidence recorded by commission during proceedings.

For the purpose of time limit, period during which case was pending before commission will be excluded.

| 245I\(^9\) (IT Act) | Order of the Commission to be conclusive | Every order of settlement passed shall be conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any proceeding under this Act.

The order of commission can only be challenged through a writ petition under article 226 of the Constitution of India in High Court or through Special Leave Petition under the Article 136 in the Supreme Court on the ground that while making such order, principles of natural justice has been violated or mandatory procedural requirements of law were not complied with or it is found that there is no nexus between the reasons given and decision taken.

| 245D (2C)\(^{10}\), Payment of | The applicant shall pay additional | |

\(^9\) Section 245I of Income-Tax Act, 1961
the sums due under order of settlement within 35 days of receipt of order served by Commission allowing application to be proceeded with or within such further time as may be allowed by Commission. In case of failure interest @15% on the amount remaining unpaid shall be levied from the date of expiry of the period of 35 days.

Similar provisions are applicable for recovery of amount due after making final orders by the Commission.

### 6.2 Settlement of cases under the Wealth-Tax Act

The provisions explained above, mutatis mutandis, apply to the settlement applications filed under section 22C(1) of Wealth-Tax Act, 1957 also. It may be pointed out that whereas in case of income tax no application shall be made unless the additional amount of income tax payable on income disclosed in the application exceeds Rs. 1 lakh, there is no such condition in the case of wealth-tax application.

Therefore, application for settlement of wealth-tax matters may be filed even if the additional tax on the wealth disclosed is less than Rs.1 lakh.

### 6.3 Objective of the review

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10 Section 245 of Income-Tax Act, 1961
The objective of the review, based on test check of records for the financial years 1994-95 to 1998-99, was to examine as to what extent the objectives for which the Settlement Commission was set up, have been fulfilled. The review further seeks to ascertain the implementation of the orders passed by the Commission.

6.4 Constraints

6.4.1 Non co-operation/Non-production of records by Settlement Commission

A reference was made to the Secretary, Settlement Commission, New Delhi vide letter No.140-RA (DT) \ Gr. IV\47-96 dated 14 January 2000 with a request to make available the records of Settlement Commission to audit for undertaking the review. It was clarified that the audit review would essentially evaluate the extent to which objectives of setting up of the Settlement Commission have been fulfilled. It was also clarified that the review would ascertain the implementations of the orders passed by the Commission and thereby strengthens the functioning of the Commission.

The Commission contended that the primary objective to set up the Commission was to provide a body comprising personal of integrity and outstanding ability, having special knowledge and experience in problems relating to direct taxes and business accounts for settling across the board tax liabilities in complicated cases. Thus it functions as a judicial tribunal whose orders are final and conclusive and against which no further appeals have been provided. These objectives will be defeated if audit would
conduct the review.

The Commission further informed that government had set up a review committee headed by Justice Mrs. S. Duggal in 1995 to evaluate the objectives of the Commission. The committee is of the opinion that the Commission had substantially achieved the objectives and has suggested creation of two additional benches.

The Settlement Commission—the Principle Bench as well as the Additional Benches, however, did not co-operate and make available any records to audit. Thereupon, the matter was reported to the Secretary to Government of India, Ministry of Finance, Department of Revenue\textsuperscript{12}. Bringing to his notice, that audit of the receipts is one of the important functions of the comptroller and Auditor General and the proposed review falls within the preview of CAG’s (Duties, Powers and Conditions of service) Act, 1971\textsuperscript{13}.

It was brought to the notice of the Revenue Secretary that provisions of the aforesaid Act vest unqualified discretion with CAG in all matters relating to auditing receipts and checking losses of revenue, safeguarding against laxity in tax administration and suggesting improvements to tax procedure and even fiscal statutes. It was also clarified that the intention of the audit is not to comment on judicial pronouncements of the Commission.

It was requested that suitable instructions be issued to the Commission to render help in the conduct of audit review and co-operate with the audit. However, there was no response to this

\textsuperscript{12} vide DO letter NO.826-RA (DT)\textbackslash 73-2000 dated 10 May, 2000
\textsuperscript{13} Comptroller and Auditor General of India, Report No.12A (2001), page 88, (Direct Taxes)
communication either from the department of Revenue or from the Settlement Commission.

6.4.2 Implications of Non-cooperation by Settlement Commission\(^{14}\)

As a result of non cooperation and non furnishing of records by commission, the audit faced several difficulties in conducting the review in as much as:

(i) In the absence of data relating to number of applications received, admitted, disposed of, and kept pending and tax involved, the trend of disposal of applications by the Commission and collection of taxes could not be effectively analysed and review had to be conducted on the basis of the records \ material made available by assessing officers\ Commissioner of Income Tax.

(ii) Comparative study of the number of cases disposed of during 1994-95 and 1995-96 and cases disposed of during 1996-97 to 1998-99 was greatly hampered to analyse whether there had been speedier disposal of cases after curtailing the period of furnishing the report by CIT from 120 days to 45 days with effect from 1 July 1995.

(iii) Age-wise analysis of cases pending before Settlement Commission was also hampered as it was undertaken on the basis of incomplete records of Commissioners of Income-Tax \ Assessing Officers.

\(^{14}\) Comptroller and Auditor General of India, Report No.12A (2001), page 89, (Direct Taxes)
(iv) Analysis of year-wise number of cases pending for admission before Settlement Commission for the year 1994-95 to 1998-99 had to be based on incomplete records of the Commissioners of Income Tax\Assessing Officers.

(v) Existence of any internal mechanism within the Settlement Commission for the speedier disposal of cases could not be ascertained.

(vi) Strenuous efforts were made by audit to ascertain the amount of revenue locked up due to delay in Settlement of cases from the records made available by the Commissioners of Income-Tax / Assessing officers.

(vii) Audit scrutiny in respect of applications, allowed to be proceeded with despite objections from the Commissioners of Income-Tax as to their admission was hampered in the absence of the records of Settlement Commission.

(viii) Audit check regarding immunities granted by Commission from prosecution and penalties with reference to cooperation of the applicant, full and true disclosure of income / net wealth could not be effectively carried out in absence of the records of Settlement Commission and audit checks were based on the records of the Assessing Officer who did not have the source records and other requisite details.

6.4.3 Records not produced by Commissioners of Income-Tax\15

\15 Comptroller and Auditor General of India, Report No.12A (2001), page 89-100, (Direct Taxes)
(a) In Tamil Nadu and Gujarat charges, records in respect of 32 cases, as detailed below were not made available by the Commissioners of Income-Tax as detailed below:

(b) Date and information in Madhya Pradesh charges requisitioned by audit were not furnished in spite of written requests. In Uttar Pradesh charges also statistical data was not made available by all Commissioners of Income-Tax.

(Table 9)

<table>
<thead>
<tr>
<th>CIT Charge</th>
<th>Number of Cases</th>
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</thead>
<tbody>
<tr>
<td>Tamil Nadu I, Chennai</td>
<td>5</td>
</tr>
<tr>
<td>Tamil Nadu III, Chennai</td>
<td>1</td>
</tr>
<tr>
<td>Tamil Nadu V, Chennai</td>
<td>3</td>
</tr>
<tr>
<td>Tamil Nadu Central I, Chennai</td>
<td>2</td>
</tr>
<tr>
<td>Madurai</td>
<td>1</td>
</tr>
<tr>
<td>Trichy</td>
<td>1</td>
</tr>
<tr>
<td>Ahmadabad I, Gujarat</td>
<td>1</td>
</tr>
<tr>
<td>Ahmadabad III, Gujarat</td>
<td>1</td>
</tr>
<tr>
<td>Surat, Gujarat</td>
<td>17</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>32</strong></td>
</tr>
</tbody>
</table>

6.5 Result of review

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16 Comptroller and Auditor General of India, Report No.12A (2001), page 90-91, (Direct Taxes)
Based on the test check of records, made available by Commissioners of Income Tax/assessing officers the results of the review are given below:

1. Delay ranging between 12 months to 32 months was noticed in admission of application by the Settlement Commission.

2. There were admissions of seven invalid applications in contravention of the provisions of the Income Tax Act.

3. Out of 1729 Settlement application filed before Settlement Commission from 1994-95 to 1998-99, only 624 (36%) application were disposed off. Pending 1105 application involved revenue effect of Rs. 11279.31 lakh include 22 cases pending for more than 5 years and 622 applications between 2 to 5 years.

   Disposal of cases by Settlement Commission for the last 20 years, from 1979-80 to 1998-99, revealed that percentage of pending cases continued to be much more than the cases disposed off. In individual cases delay in disposal ranged between 22 to 62 months.

4. The Average cost per case for settlement was Rs. 48,780 as per last 5 years data. Average percentage of cost with reference to demand created, for the year 1995-96 to 1999-2000 was 4.91 percent.

5. There is no time restriction for the Settlement Commission for disposal of cases.

6. Delay from one month to nine years for submission of reports by respective CIT’s in 253 cases was noticed.
7. Comparative study of number of cases disposed of between 1994-95 and 1995-96 and the cases disposed of during 1996-97 to 1998-99 revealed that there was no improvement in the disposal of cases even after the time limit for furnishing of report by CIT was reduced from 120 days to 45 days with effect from 1 July 1995.

8. Revenue locked up due to delay in final settlement of 236 cases was Rs. 2824.82 lakh.

9. In 51 cases penalty of Rs 325.14 lakh was waived by the Commission between 1994-95 to 1998-99.

10. Final orders of Settlement Commission were not given effect to for a period ranging from 3 months to 29 months. In seven cases no effect was given till March 2000 involving revenue effect of Rs. 17.81 lakh.

11. Additional tax / final demand and interest payable on late payments aggregating Rs. 3799-93 lakh had remained unpaid up to March 2000.

12. There was general absence of control registers in CIT offices to watch the movement of cases referred to the Settlement Commission.

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