Chapter-7

Conclusion And Suggestions
7.1 General

The setting up and functioning of Settlement Commission drew sharp reaction from all quarters including the Apex Court; but whatever may have been the views, reactions, aspersions, reservations or criticisms, the utility of Settlement Commission in settling complicated tax matters in the last about 30 years cannot but be appreciated.

It has done commendable service to both the exchequer and the taxpayer by disposing off a number of cases effectively and amicably which would have otherwise been litigated for a fairly long period, thus, blocking collection of rightful taxes to the nation and causing wasteful loss of time, energy and money in appeals and counter appeals. Though it appears theoretically wrong to afford concessions to the errant and evasive taxpayers, the nation cannot afford to be very rigid in this regard.

7.2 The Finance Act (2007)\(^1\)

The Finance Act, 2007 has made sweeping changes with regard to provisions relating to Settlement Commission with effect from 1.6.2007. Hence new provisos have been discussed. The new provisos are beneficiaries in collection of Income-Tax.

7.2.1 Meaning of “Case” [section 245A (b)]\(^2\)

“Case” means any proceeding for assessment under this Act, of any person in respect of any assessment or any assessment years which may be pending before an assessing Officer on the

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\(^2\) Section 245A(b) of Income-Tax Act, 1961
date on which an application under section 245C (1) is made. From this, it may be observed that the application for settlement can be made only for that proceeding for assessment which is pending before the Assessing Officer. However, in the case of the following proceedings though pending for assessment before the Assessing Officer, the assessee shall not be allowed to make the application to the Settlement Commission:

1. A proceeding, for assessment or re-assessment or re-computation under section 147\(^3\). These proceeding shall be deemed to have commenced from the date on which a notice under section 148\(^4\) is issued.

2. A proceeding for assessment or re-assessment for any of six assessment years referred to in section 153A (b) in case of a person whose assessment in case of search/requisition is to be done under section 153A\(^5\) or in case of any other person whose assessment in case of such search/requisition is to done under section 153C. These proceeding shall be deemed to have commenced on the date of initiation of the search under section 132\(^6\) or requisition under section 132A.

3. A proceeding for assessment or re-assessment for the assessment year relevant to the previous year in which search is conducted under section 132 or books are requisitioned under section 132A of a person referred to in

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\(^3\) Section 147 of Income-Tax Act, 1961
\(^4\) Section 148 of Income-Tax Act, 1961
\(^5\) Section 153A of Income-Tax Act, 1961
\(^6\) Section 132 of Income-Tax Act, 1961
section 153A or section 153C. These proceeding shall be deemed to have commenced on the date of initiation of the search under section 132 or requisition under section 132A.

4. A proceeding for making fresh assessment in pursuance of an order under section 254\(^7\) or section 263\(^8\) or section 264\(^9\), setting aside or cancelling an assessment. These proceeding shall be deemed to have commenced from the date on which the order under section 254 or section 263 or section 264, setting aside or cancelling an assessment was passed.

A proceeding for assessment for any assessment year, other than the proceedings of assessment or re-assessment referred to in clause (i) or clause (ii), or clause (iii), or clause (iv) above, shall be deemed to have commenced from the 1st day of the assessment year and concluded on the date on which the assessment is made.

7.2.2 **Compute additional amount of Income-Tax payable**

As per section 245C (1A), the additional amount of income tax payable in respect of income to be disclosed in the application for settlement shall be calculated in the following two situations:

(A) *Where the income disclosed in the application relates to only one previous year [section 245C (1B) and (1C)]*\(^{10}\).

In this case, there can be two situations and the total income and the additional tax payable shall be calculated under each situation separately:

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7 Section 254 of Income-Tax Act, 1961  
8 Section 255 of Income-Tax Act, 1961  
9 Section 263 of Income-Tax Act, 1961  
10 Section 245C(1b) & 245 (1c) of Income-Tax Act, 1961
### Situation

<table>
<thead>
<tr>
<th>Situation</th>
<th>Deemed total income for calculating tax</th>
<th>Amount of additional income tax payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Where the applicant has not furnished a return in respect of total income of that year</td>
<td>It shall be income disclosed in the application</td>
<td>Tax on deemed total income computed as per column 2</td>
</tr>
<tr>
<td>2. Where the applicant has furnished a return in respect of the total income of that year</td>
<td>It shall be aggregate of total income returned and the income disclosed in application</td>
<td>Tax on the deemed total income computed as per column 2 minus tax on the income returned</td>
</tr>
</tbody>
</table>

(B) Where the income disclosed in application relates to more than one previous year [section 245 C (1D)]

It will be computed as under:

1. Treat each of the previous years as separate year.

2. Compute the additional tax payable as per (A) above for each of such years.

3. Aggregate the amount of additional amount of income tax payable for each year computed under step 2 above.

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11 Section 245C(1D) of Income-Tax Act, 1961
7.2.3 To allow or reject application after hearing explanation

[Section 245D (1)]

On receipt of an application under section 245C, the Settlement Commission shall:

(a) Within 7 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

(b) On hearing the applicant, the Settlement Commission shall, within a period of 14 days from the date of application reject or allow the application to be proceeded with.

However, where no order has been passed within the aforesaid period 14 days by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with.

7.2.4 Order of rejection or acceptance to be communicated

[Section 245D (2)]

A copy of the above order of rejection or acceptance passed by Settlement Commission under section 245D (1) shall be sent to the applicant and to the Commissioner.

7.2.5 To call for report from commissioner [Section 245D (2B)]

The Settlement Commission shall in respect of an application which is allowed to be proceeded with under section

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12 Section 245D(1) of Income-Tax Act, 1961
13 Section 245D(2) of Income-Tax Act, 1961
14 Section 245D(2b) of Income-Tax Act, 1961
245D (1), within 30 days from the date on which application was made, call for a report from the Commissioner by forwarding a copy of the application in Form no. 34B (other than the annexure and statements and other documents accompany such annexure) along with a copy of the order under section 245D (1). The Commissioner shall furnish the report within a period of 30 days of the receipt of communication from the Settlement Commission. Where the commissioner has not furnished the report within the aforesaid period, the Settlement Commission shall proceed further in the matter without the report of the Commissioner.

7.2.6 Application can be declared to be invalid [Section 245D (2B)]

Where a report of the Commissioner called for under section 245D (2B) has been furnished within the period specified therein, the Settlement Commission may, on the basis of the report and within a period of 15 days of the receipt of the report, by an order in writing, declare the application in question as invalid, and shall send the copy of such order to the applicant and the Commissioner. However, an application shall not be declared invalid unless an opportunity has been given to the applicant of being heard.

7.2.7 Power to call for record and ask for further inquiry [Section 245D (3)]

The Settlement Commission, in respect of an application which has not been declared invalid under section 245D(2C) shall

15 Section 245D (2B) of Income-Tax Act, 1961
16 Section 245D(3) of Income-Tax Act, 1961
send the information contained in the annexure to the application in form no. 34B and in this statements and other documents accompanying such annexure to the Commissioner and may call for the record from the Commissioner and after examination of such records, if the Settlement Commission is of the opinion that any further inquiry or investigation in the matter is necessary, it may direct the Commissioner to make or cause to be made such further inquiry or investigation and furnish a report on the matters covered by application and any other matter relating to the case and the Commissioner shall furnish the report within 90 days of the receipt of the communication of the Settlement Commission. However, where the commissioner does not furnish the report within the aforesaid period, the Settlement Commission may proceed to pass an order under section 245D (4) without such report.

7.2.8 Power of Settlement Commission to order provisional attachment to protect revenue [Section 245DD (1)]

Where, during the pendency of any proceeding before it, the Settlement Commission is of the opinion that for the purpose of protecting the interest of revenue, it is necessary to do so, it may, by order, attach provisionally any property belonging to the applicant in the manner provided in the second schedule.

Provisional attachment shall ceased to have effect after 6 months [section 245DD (2)]: Every provisional attachment made by the Settlement Commission under section 245DD (1) shall cease

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17 Section 245DD(1) of Income-Tax Act, 1961
18 Section 245DD(2) of Income-Tax Act, 1961
to have effect after the expiry of a period of 6 months from the date of the order made under section 245D (1).

7.2.9 **Power of Settlement Commission to reopen completed proceeding [Section 245E]**

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 1/6/2007.

7.2.10 **Settlement Commission has same Power as conferred by Income-Tax Act on Income-Tax Authority [Section 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 has been made under section 245C on or after 1/6/2007, the Settlement Commission shall have such exclusive jurisdiction from the date on which the application was made and till the date, order is passed by the Settlement Commission under section245D (4).

However, where-

i) An application made on or after 1/6/2007, is rejected under section 245D (1); or

ii) An application is declared invalid under section 245D(2C).

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19 Section 245F of Income-Tax Act, 1961
20 Section 245D(4) of Income-Tax Act, 1961
21 Section 245D(1) of Income-Tax Act, 1961
22 Section 245D(2C) of Income-Tax Act, 1961
The settlement Commission, in respect of such application shall have such exclusive jurisdiction up to the date on which the application is rejected, or, declared invalid, as the case may be.

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

7.2.11 Power of Settlement Commission to grant immunity from prosecution and penalty [Section 245H]

The Settlement Commission shall not grant immunity from prosecution for any offence under the Indian Penal Code or under any Central Act other than this Act and the Wealth-Tax Act, 1957 to a person who makes an application under section 245C on or after 1/6/2007. Hence, no immunity from prosecution can be granted, under any other law if application is made on or after 1/6/2007.

7.2.12 Time period for passing a order [Section 245D (4A)]

The Settlement Commission shall pass an order under section 245D (4), in respect of an application made on or after 1/6/2007, within 12 months from the end of the month in which application was made.

7.2.13 Credit for tax paid in case of abatement of proceeding [Section 245HAA]

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23 Section 245H of Income-Tax Act, 1961
24 Section 245D(4A) of Income-Tax Act, 1961
Where an application made under section 245C on or after the 1/6/2007, is rejected under section 245D (1), or an order under section 245D (4) has not been passed within the time or period specified under section 245D (4A), 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.

7.2.14 Bar on subsequent Application for settlement [Section 245K][26]

Where a person has made an application under section 245C on or after the 1/6/2007 and if such application has been allowed to be proceeded with under section 245D (1), such person shall not be subsequently entitled to make an application under section 245C.

7.3 Direct Tax Code 2010

<table>
<thead>
<tr>
<th>Existing Section</th>
<th>Proposed DTC Bill 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>245A</td>
<td>Proposed Corresponding</td>
</tr>
<tr>
<td>245B</td>
<td>Provision of Direct Tax Code</td>
</tr>
<tr>
<td>245BA</td>
<td>Bill 2010, Chapter XVII, Clauses</td>
</tr>
<tr>
<td>245BC</td>
<td>268 to 290 deals with Settlement</td>
</tr>
<tr>
<td>245BD</td>
<td>268 to 290 deals with Settlement</td>
</tr>
<tr>
<td>245C</td>
<td>268 to 290 deals with Settlement</td>
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<tr>
<td>245D</td>
<td>268 to 290 deals with Settlement</td>
</tr>
<tr>
<td>245DD</td>
<td>268 to 290 deals with Settlement</td>
</tr>
</tbody>
</table>

[26] Section 245K of Income-Tax Act, 1961
The good step taken by legislature is that the assessee can approach the Settlement commission only during the pendency before the Assessing officer. Earlier, assessee even trying their luck up to the stage of CIT (A). Thus the assessee cannot buy time, moreover, only when the Tax involved is 50 lakhs (in search & Seizer cases) and 5 lakhs (in other cases) the Settlement Commission can be approached. Thus, the dignity of the Commission has been maintained. They cannot be bothered with small cases. It is sincerely hoped that only genuine cases will be entertained. The Commission should not end up as a last shelter of Tax evaders and recalcitrant assessee.

7.4 Conclusion and Suggestions

7.4.1 Conclusions

The Wanchoo Committee had recommended for a settlement machinery to have settlement with the Tax-payee at any stage of proceedings considering each case on merits subject to full
disclosure, not only of the income, but of the modus operandi of its build up, thus sealing off chances of continued evasion.

Hence, we suggest that, a high level separate body, within the department, to ensure a “fair, prompt and independent” settlement, Audit has, however, notice that the Settlement Commission has not been setting the cases promptly. The pending cases continue to be as high as 1892 on 31 March 1999. The cost of settlement of cases is also very high. In the year 1999-2000 the average cost of disposal per case was Rs. 83,300. The average cost per case for the last 5 year (1995-96 to 1999-2000) was Rs. 48780. The very objective of the setting up the Commission has been defeated is as much as:

(i) There has not been speedier disposal of cases.
(ii) The Commission has failed to settle the cases at low cost.

7.4.2 Suggestions

(A) The institution of the Settlement Commission has failed to achieve the objectives for which it was set up. The Government may consider winding up this institution.

(B) For the pending cases, it is recommended that:

(I) Time limit for final disposal of applications by the Settlement Commission be prescribed.

(II) Internal check be established within the Commission to monitor the adjustment of applications filed so far with the Settlement Commission.