SETTLEMENT COMMISSION
UNDER DIRECT TAX LAWS IN INDIA:
A CRITICAL STUDY

(Summary)

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.

The main objective of the present study is as under:

2. Acquainting and summarizing the various causes, which have been found responsible for the tax evasion.
3. Enumerating the steps and appropriate suggestions, which may benefit for the settlement of disputes arising between tax payers and Income Tax Authorities?

The present study is based on the secondary data which were collected through various sources as detailed below:
1. Income tax Law–4th edition by Chaturvedi & Pithisaria
2. Law of Income tax–9th edition by Sampat Iyengar’s
3. D. M. Harish on Income tax
4. Income tax by Kanga and Palkhivala
5. Current tax Reporters
6. Income tax Law 2005
7. Income tax Rule 2005
8. Income tax Reporters
9. Direct tax Circulars
10. Indian tax laws by A.N.Aiyar’s
11. Income tax in India by V.S. Sundaram’s
12. Taxman
14. Texpert (CD)
15. Income tax Law and Practice by Vinod K. Singhania
16. Law and Practice by Girish Ahuja

The other secondary data which were collected through various sources i.e. Income-tax Reporter, Central Tax Reporter various newspapers viz. Economic Times, Business India etc, as well as from the office of Ministry of Finance, Report of comptroller and Auditor General of India.

The purpose of the current study is to specify the main causes which are responsible for the disputes between both the parties i.e. tax payers and the tax collecting agencies. Further, the researcher will highlight the various steps to improve the present condition which may be beneficial for policy makers, academicians and for the whole economy.
The first chapter relates to ‘Introduction’ which briefly hint at the concept of ‘income’ ‘tax’, need of taxation, tax disputes due to tax avoidance and tax evasion, Income-Tax Settlement Commission - its legislative the ground, main objective, the object of settlement, whether settlement .. a new concept, criticism of its functioning, unique features of its functioning and above all, its indispensable utility in the present set up and circumstances.

The second chapter highlight the constitution, jurisdiction and powers of the Settlement Commission and incongruities and lacunae found therein and the changes required in law.

The procedure for filing of an application before the Settlement Commission and its disposal along with relevant definitions has been discussed in chapter three. Chapter-IV deal with the provisions of interest, penalties, and prosecution under different circumstances.

The fifth chapter deal with the Wealth-Tax and collection of Tax under the Act 1957. The report of Comptroller and Auditor General of India has been discussed in chapter six. Chapter of conclusion and suggestion as usual includes the conclusion of the whole study and also necessary suggestions in this regard.

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.

“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 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. These proceeding shall be deemed to have
   commenced from the date on which a notice under section 148 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 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 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 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 or section 263 or section 264, 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.

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:

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

<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</td>
<td>It shall be income disclosed in the</td>
<td>Tax on deemed total income computed as per column 2</td>
</tr>
<tr>
<td>income of that year</td>
<td>application</td>
<td></td>
</tr>
<tr>
<td>2. Where the applicant has furnished a return in respect of the total</td>
<td>It shall be aggregate of total income</td>
<td>Tax on the deemed total income computed as per column 2 minus tax on the</td>
</tr>
<tr>
<td>income of that year</td>
<td>returned and the income disclosed in</td>
<td>income returned</td>
</tr>
<tr>
<td></td>
<td>application</td>
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</tbody>
</table>

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.
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.

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.

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

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.

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

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. Every provisional attachment made by the Settlement Commission under section 245D D (1) shall cease to have effect after the expiry of a period of 6 months from the date of the order made under section 245D D (1).
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.

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 section 245D (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).

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.

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.
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.

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.

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.

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.
(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 should be prescribed.

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

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