

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
O.O.C.J.**

**WRIT PETITION NO. 2320 OF 2018**

Mandhana Industries Ltd .. Petitioner

*Versus*

Principal Commissioner of Income Tax  
(Central) 1 & Anr. .. Respondents

- .....
- Mr. Jehangir Mistri, Senior Counsel a/w Mr. Nishant Thakkar and Mr. Hiten Chande for the Petitioner
  - Mr. Suresh Kumar for the Respondents
- .....

**CORAM : AKIL KURESHI &  
M.S. SANKLECHA, JJ.**

**DATE : FEBRUARY 4, 2019.**

**ORAL JUDGMENT** (Per Akil Kureshi, J.)

**1.** We have heard learned counsel for the parties at length.

**2.** The petitioner Mandhana Industries Ltd, a public limited company has challenged an order dated 28.2.2018 passed by the Principal Commissioner of Income Tax, copy of which produced at 'Annexure Q' to the petition. By the said order, the Commissioner had rejected the revision application filed by the petitioner company under Section 264 of the Income

Tax Act, 1961 ("the Act" for short).

**3.** The petitioner is engaged in the business of manufacturing textiles and garments. The petitioner has set up its manufacturing units at two locations i.e Tarapur in Maharashtra and at Bangalore. The petitioner would point out that the Government of India had launched the Technology Upgradation Fund Scheme ("the scheme" for short) w.e.f. 1.4.1999. Under the scheme, to encourage investment in technology upgradation in textile and jute industry, certain financial assistance was made available to domestic industry. Said benefit would be available for modernization or expansion of the existing units as also for setting up new units of textiles and jute industry.

**4.** The petitioner received reimbursement of interest expenses under the said scheme for assessment years 2006-07 to 2013-14, breakup of which is as under:-

AY	Net TUF Claim (Rupees in Crore)
06-07	1.48
07-08	4.74
08-09	5.92

09-10	8.44
10-11	13.07
11-12	15.44
12-13	18.27
13-14	12.78
<b>TOTAL</b>	<b>80.15</b>

5. The petitioner periodically filed the returns of income for all the above mentioned assessment years and offered the subsidy benefits received from Government of India under the said scheme to tax as revenue receipt. The petitioner was subjected to search operation on 11.1.2012. By that time, the petitioner's assessment for certain years were already completed under Section 143(3) of the Act. The rest were not. Pending assessment under Section 153A of the Act pursuant to the search, the petitioner applied to the Settlement Commission for settlement of all cases under a joint application filed on 22.10.2013. This petition did not contain the Settlement Application and accompanying documents. We had, therefore, requested the learned counsel for the petitioner to make said documents available. These documents have, accordingly, been supplied to us which are taken on record.

**6.** The petitioner's application for settlement after passing through the various stages envisaged under the Act, came to be finally disposed of by the Settlement Commission by an order dated 30.8.2014 (as at 'Annexure M' to the petition). In such order, the Settlement Commission concluded as under:-

" Considering all these aspects of the case, we are of the view that end of justice would be met by making an addition of Rs. 1,25,00,000/- to the profits disclosed by the applicant in A.Ys. 2009-10 to 2012-13 pro-rate in the proportion of unsubstantiated purchases as below:-

(1)	(2)	(3)	(4)	(5)	(6)
A.Yr.	Amount of unsubstantiated purchases detected		Total Col 3 +4 (% total)	Amount disclosed by applicant in the application	Amount further added
	u/S. 132	u/S. 133A			
2009-10	10,99,51,420	-	10,99,51,420 (10.7%)	44,43,071	13,37,500
2010-11	6,36,28,326	3,67,38,131	10,03,66,457 (9.8%)	21,11,745	12,25,000
2011-12	1,75,67,465	27,59,54,128	29,35,21,593 (28.7%)	70,49,598	35,87,500
2012-13	52,06,10,910		52,06,10,910 (100%)	3,42,64,024	1,25,00,000

**7.** The Settlement Commission imposed certain conditions on which the settlement was based and granted immunity to the petitioner from penalty and prosecution under the Act. The terms and conditions of the settlement for enjoying

such immunity read thus:-

"11. Coming to the terms of settlement, the applicant has sought following terms of settlement in the application.

1. Determination of income for all assessment years covered by the application.
2. Waiver of interest chargeable under any section of the Income Tax Act, 1961
3. Granting of immunity from penalty under section of the Income Tax Act, 1961 in respect of the income disclosed by the applicant company and determined by the commission.
4. Granting of immunity from prosecution under various sections of the Income Tax Act, 1961
5. Adjustment of refund against payment of taxes due as per application and also as per the order 245D(4) of the Income Tax Act, 1961
6. Adjustment of the seized cash of Rs. 64,58,000/- against tax / interest due for settlement application filed by the applicant.
7. Any other term that may be considered necessary at the time of settlement application hearing."

The total income is determined for all the years as per enclosure. Interest is to be charged up to the date of passing of the order under Section 245D(1) of the Act. In view of the following decisions of the Hon'ble Supreme Court in case of Brijlal Vs. CIT (2010) 328 ITR 477 (SC). We are satisfied that there has been no attempt to conceal any material facts before us and also the applicant has fully co-operated in the proceedings before us. Therefore, immunity from Penalty under the Income Tax Act, 1961 as prayed for by the applicant is granted. For same reasons, Immunity from Prosecution under the Income Tax Act, 1961 as prayed for by the applicant is also granted. The A.O. is directed to adjust refund pending after verification while giving effect to order u/S. 245D(4) of the Income Tax Act, 1961, including adjustment of seized cash

amounting to Rs. 64,58,000/-.

12. The immunity granted to the applicant, however, may be withdrawn if the Commission is satisfied that the applicant has in the course of the settlement proceedings, concealed any particular material to the settlement, or has given false evidence. Thereupon, the applicant may be tried for the offence for which immunity was granted, or for any offence for which the applicant appears to have been guilty in connection with the settlement, and the applicant shall also become liable to the imposition of penalty under the Act to which the applicant would have been liable had such immunity not been granted. This order shall be void if it is subsequently found by the Commission that the same has been obtained by fraud or misrepresentation of the facts."

**8.** The Assessing Officer passed individual orders for each assessment year covered in the order of settlement giving effect to the Settlement Commission's order and termed as "Order giving effect to Settlement Commission's Order". The copy of one such order dated 26.9.2014 passed by him for the assessment year 2009-10 is at page 197 of the paper book. We may reproduce the contents of the order which read thus:-

**"ORDER GIVING EFFECT TO SETTLEMENT COMMISSION'S ORDER**

In pursuance to the order of the Settlement Commission, Additional Bench, Mumbai's order No. MH/MUCC-I/021/2013-14/IT dated 30.8.2014, the income of the assessee company as compared by the Settlement Commission as under:-

Income returned as per return	Rs. 18,11,96,847/-
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Add: Additional Income offered in SOF	Rs. 1,69,11,761/-
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	Rs. 19,81,08,608/-
 Add: Further addition during hearing u/S 245D(4) on account of unsubstantiated purchases as per para 10	 Rs. 13,37,500/-
	-----
<b>Total Income</b>	<b>Rs. 19,94,46,108/-</b>
	=====
<b>Total income u/S. 115JB Rs. 56,15,14,131/-</b>	

Since the tax on book profit u/S. 115JB is **less than** the tax on total income, the assessee is liable to pay tax on the total income computed under the normal provisions of the Act other than Section 115JB.

Assessed accordingly. Calculation of Tax and interest payable are incorporated in Income Tax Computation Form (ITNS150A), Credit of taxes paid given. Demand Notice as per the provisions of section 245D(6) of the I.T. Act is issued"

**9.** The Assessing Officer passed similar individual orders for each assessment year covered under the settlement. It is not necessary to record contents of all of them.

**10.** The petitioner thereupon filed a common petition for revision before the Commissioner of Income Tax. In such revision petition, the petitioner took up the question of taxing subsidy amount received from the Government of India under the said scheme and argued that the subsidy being in the nature of capital receipt, was not liable to be

taxed, both while computing the assessee's book profit under the Minimum Alternative Tax (MAT) provisions and under the normal provisions under the Act. The petitioner relied on several decisions in support of this contention. The petitioner further contended that despite such legal position, the subsidy was erroneously offered to tax during all the said assessment years. It was argued that the powers of the Commissioner under Section 264 of the Act are wide enough to entertain such contention. It was contended that the issue which was not adjudicated by the Settlement Commission was open to revision under Section 264 of the Act.

**11.** Curiously, however, the petitioner did not point out which order it wishes the Commissioner to revise. Petitioner's averments and prayers titled as "Conclusions" may be noted:-

"E. Revision of settlement commission order

29. In view of the above, it is clear that TUF subsidy received by the MIL is capital receipt in nature and not chargeable to tax. However, inadvertently the same was offered to tax in AY 2006-07 till AY 2013-14. Accordingly, we request your Honour to consider this revision application of the MIL and direct the AO to re-compute the income by excluding the TUF subsidy from the total income.



30. Reference in this regard is also invited to the decision in the case of C. Parikh & Co. Vs. CIT 138 ITR 689 (All) wherein it has been held that the revisional powers conferred by Sec. 264 on the CIT are very wide and it is also open to the CIT to entertain even a new ground, not urged before the lower authorities, while exercising revisional powers. Further, the Allahabad High Court in the case of Rashtriya Vikas Ltd Vs. CIT 99 CTR 68 (All) has held that a new claim for deduction made by the assessee in revision petition is to be examined on merits."

.....

**H. Conclusion**

39. In view of the above submission, we would request your honour to consider the following:

- Application should be admitted and delay if any, should be condoned;
- Matter in application should be decided on merits of the case;
- Merely offering of TUF subsidy as income in the return, will not make capital receipt as revenue receipt;
- TUS subsidy should be treated as capital receipt in view of scheme of the subsidy, judicial precedent on the topic and prospective amendment made in the Income Tax Act.

We request your Honour to provide us an opportunity to personally appear before you and furnish additional submissions. We will be glad to submit any further information or clarification as may be required.

**12.** To explain the delay in filing the revision petition, the petitioner contended that:-

"F. **Time Limit for application under Section 264 of the Act**

31. As per section 264(3) of the Act, time limit for making application under Section 264 of the Act is one year from the date on which the order in question is communicated to the Assessee.

32. In the present case, the settlement commission order dated 30 August 2014. However, the time limit for making application under section 264 of the Act is to be seen from the date on which amendment is brought into statute i.e 14 May 2015.

Section 2(24) of the Act is amended from 14 May 2015 (i.e date on which President given its acceptance to Finance Bill 2015 and it became Finance Act 2015).

33. By way of aforesaid amendment with prospective effect, it is being made clear that subsidy received from government is chargeable to tax as revenue receipt and the said amendment is made with prospective effect. Therefore, time limit for making application should be taken from the aforesaid date and the application is well within the time and hence, the same should be accepted and matter should be decided on merits of the case.
34. **Without prejudice to above**, the assessee prays before your honour to condone the delay of approximate one year from the date of settlement commission order in filing of present application (if date for counting time limit is computed from date of settlement commission order). In this regard, it is humbly submitted that the delay in filing the application is purely attributable to the lack of clarity under the Income Tax Act and the same was clarified by Finance Act 2015 on 14 May 2015. Hence, Assessee has sufficient cause for making delay application and the same should be condoned and it is humbly prayed that matter should be decided on merits of the case."

**13.** The Commissioner, by the impugned order, dismissed the revision petition on three grounds namely:-

- i. That the petitioner had failed to explain the delay in filing the revision petition. Issue discussed in this context was whether the revision petition can be treated as being 270 days beyond the period of limitation prescribed, reconning the period of limitation

from the date of the order of Settlement Commission or whether the limitation should be considered from the date the assessment orders (in given cases) were passed by the Assessing Officer. The Commissioner held that in either case, the petitioner had failed to show sufficient cause preventing it from filing the revision petition within the time prescribed;

- ii. The Commissioner was also of the opinion that he had no powers to revise the order of Settlement Commission and essentially, granting relief to the petitioner as prayed for would amount to exercising such powers;
- iii. On merits also, the Commissioner was of the opinion that the petitioner was not correct in contending that the subsidy in question was of capital nature and therefore, not taxable.

It is this order of the Commissioner which the petitioner has challenged in this petition.

**14.** We have heard learned counsel for the petitioner at considerable length. In so far as the Commissioner's objections to the revision petition on the grounds of delay and taxability of the subsidy in question are concerned, we are prepared to proceed on the basis that the petitioner has arguable case. However, if ultimately, we come to the conclusion that the Commissioner had no power to entertain the revision petition in present set of facts and circumstances, these issues would become purely academic.

We would focus our attention only on this aspect.

**15.** To summarize the relevant facts, the petitioner had applied for settlement of all assessment cases for the period between assessment years 2006-07 to 2013-14. The Settlement Commission after making certain additions to disclosures made by the petitioner passed final order of settlement granting immunity to the petitioner from penalty and prosecution subject to conditions. The Assessing Officer passed individual orders giving effect to the order of Settlement Commission after which the petitioner applied for revision to the Commissioner and raised dispute about taxability of the subsidy.

**16.** In this context, Mr. Mistri, the learned senior counsel appearing for the petitioner took us extensively through the various provisions of the Act and contended that :-

- I. The Commissioner of Income Tax erred in rejecting the application under Section 264 of the Act on the ground that order of the Income Tax Settlement Commission cannot be revised being an authority not subordinate to the CIT.
  - a. Order sought to be revised is the order passed by the Assessing Officer after the order passed by Commission, therefore, CIT

under Section 264 has jurisdiction to revise such an order passed by an authority subordinate to him [Section 264(1)].

- b. Revision application under Section 264 is maintainable as order of the Commission is conclusive only on the issues which are decided by it.
  - i. Section 245D(4) - Commission passes order only on the matters which are covered in the application made by the assessee and any other matter referred by the CIT in its report.
  - ii. Section 245-I - Order of Commission is conclusive only on the matter which is covered by such order.
  - iii. Section 245F(4) - All other provisions of the Act apply to the matter other than before Commission.
  - iv. As can be seen in the present case for AY 2009-10, where before the order of Commission, the petitioner was assessed under MAT. However, after the order of Commission, AO passed the order assessing the income of the Petitioner under normal provisions of the Act.
  - v. Order passed by the AO after the order of the Commission can be revised under Section 264 of the Act *Vaata Infra Vs. ITO (229 Taxman 373)(Mad)*.

Therefore, the CIT had jurisdiction to consider this matter which was not at all dealt with by the Commission on its order.

On the other hand, Mr. Suresh Kumar for the Revenue opposed the petition contending that the Commissioner correctly held that he had no power to revise the order of the Settlement Commission.

**17.** In order to appreciate and consider such contentions, we may refer to the provisions contained in the Act. Chapter XIX-A was added to the Act by Taxation Laws (Amendment) Act 1975 w.e.f. 1.4.1976. This was pursuant to Direct Tax Inquiry Committee's final report submitted in the month of December 1971. Section 245A contained in the said chapter is a definition provision defining various terms for the purpose of said chapter. The term "case" has been defined in clause (b) of Section 245A as to mean any proceedings for assessment under this Act, of any person in respect of any assessment year or assessment years which may be pending before an Assessing Officer on the date on which an application under sub-section (1) of Section 245C is made. We may record that this definition requires that the case should be pending before the Assessing Officer is amended w.e.f 1.6.2007, prior to which a "case" in terms of said definition would include also the proceedings pending before the appellate or revisional stage.

**18.** Section 245BA of the Act pertains to jurisdiction and powers of Settlement Commission and lays down the

procedure for constitution and decision of the Settlement Commission Benches. Sub-section (5A) of Section 245BA provides that notwithstanding anything contained in the earlier provisions of the said Section, the Chairman may, for the disposal of any particular case, constitute a Special Bench consisting of more than three members. Reference in this sub-section is thus "for the disposal of any particular case". Likewise proviso to sub-section 5 of Section 245BA also provides that if at any state of the hearing of any such case or matter, it appears to the Presiding Officer that the case or matter is of such a nature that it ought to be heard by a Bench consisting of three members, the case or matter may be referred by the Presiding Officer of such Bench to the Chairman for transfer to such Bench as the Chairman may deem fit. We are conscious that this proviso refers to a case as well as to a matter to which expression some elaboration will be necessary and would be made later.

**19.** Section 245C of the Act pertains to application for settlement of cases. Sub-section (1) to Section 245C provides that an assessee may, at any stage of a case

relating to him, make an application in prescribed formant and in prescribed manner containing full and true disclosures of his income which has not been disclosed before the Assessing Officer, the manner in which such income has been derived, the additional amount of income tax payable on such income and such other particulars as may be prescribed, to have his case settled by the Settlement Commission. Sub-section (1A) of Section 245C provides that for the purpose of sub-section (1), the additional amount of income tax payable in respect of the income disclosed in an application made under sub-section (1) shall be the amount calculated in accordance with the provisions of sub-sections (1B) to (1D). Sub-sections (1B) to (1D) essentially provide for computing additional tax liability to be paid by the applicant of settlement, depending upon the various situations.

**20.** Section 245D of the Act pertains to procedure on receipt of an application under Section 245C. This section contains a detail procedure that the Commission would follow upon the assessee filing application under Section 245C of the Act. Sub-section (2B) of Section 245D envisages sending



a report from Principal Commissioner or the Commissioner to the Settlement Commission within prescribed time. Under sub-section (2C) of Section 245D, upon receipt of the said report, the Commission by passing order may declare that the application for settlement as invalid. A settlement application which has not been declared so invalid would be considered by the Settlement Commission for passing order under Section 245D (4) of the Act after the same passes through the stage of sub-section (3) thereof. Sub-section 4 of Section 245D reads thus:-

"(4) After examination of the records and the report of the [Principal Commissioner or] Commissioner, if any, received under-

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

(ii) the provisions of sub-section (1) as they stood immediately before their amendment by the Finance Act, 2007,

and after giving an opportunity to the applicant and to the [Principal Commissioner or] Commissioner to be heard either in person or through a representation duly authorized in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the [Principal Commissioner or] Commissioner.

Sub-section (5) to Section 245D provides that subject to the provisions of Section 245BA, the materials brought on

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

Sub-section (6) of Section 245D provides that every order passed under sub-section (4) shall provide for the terms of settlement including any demand by way of tax, penalty or interest, the manner in which any sum due under the settlement shall be paid and all other matters to make the settlement effective and shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.

Sub-section (7) of Section 245D provides that if the settlement becomes void as provided under sub-section (6), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the income tax authority concerned, may, notwithstanding anything

contained in any other provisions of this Act, compete such proceedings at any time before the expiry of two years from the end of the financial year in which the settlement became void.

**21.** Section 245F of the Act pertains to powers and procedure of Settlement Commission and reads as under:-

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

**(2) Where an application made under section 245C has been allowed to be proceeded with under section 245D, the Settlement Commission shall, until an order is passed under sub- section (4) of section 245D, have, subject to the provisions of sub- section (3) of that section, exclusive jurisdiction to exercise the powers and perform the functions of an income- tax authority under this Act in relation to the case:**

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

**Provided further that where -**

- (i) an application made on or after the 1st day of June, 2007, is rejected under sub-section (1) of Section 245D; or**
- (ii) an application is not allowed to be proceeded with under sub-section (2A) of Section 245D, or, as the case may be, is declared invalid under sub-section (2C) of that section; or**
- (iii) an application is not allowed to be further**

proceeded with under sub-section (2D) of Section 245D, the Settlement Commission, in respect of such application shall have such exclusive jurisdiction upto the date on which the application is rejected, or, not allowed to be proceeded with, or, declared invalid, or, not allowed to be further proceeded with, as the case may be.]

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

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

(5) .....

(6) .....

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

**22.** Section 245H of the Act pertains to power of Settlement Commission to grant immunity from prosecution and penalty. Section 245HA pertains to abatement of proceeding before Settlement Commission. Sub-section (1) of Section 245HA provides for time limit for completion of settlement

proceedings and if not so completed, the proceeding would abate on the specified date. Sub-section (2) of Section 245HA provides that where a proceeding before the Settlement Commission abates, the Assessing Officer, or, as the case may be, any other income tax authority before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance with the provisions of the Act as if no application under Section 245C had been made.

**23.** Section 245I of the Act pertains to order of settlement to be conclusive and reads as under:-

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

**24.** These are the provisions which would come up for interpretation as we proceed further with the discussion. For the time being, we may notice that in the application for settlement which the petitioner filed under Section 245C(1) of the Act, the reference in the first annexure was to the amount of income tax which has not been disclosed before

the Assessing Officer. This application contains annexure C which gives particulars of the issues to be settled and revolves around the determination and quantification of income for all assessment years under the application for settlement. Annexure D to the application contains the manner of earning undisclosed income. In response to the said application, the Revenue had submitted the report before the Commission in terms of Rule 9 of the Income Tax Settlement Commission (Procedure) Rules, 1997 ("the Rules" for short) and objected to the disclosures made by the assessee contending that the same were not sufficient looking to the assessee's scale of operation and activities. In response to such report, the petitioner had filed a rejoinder in terms of Rule 9A of the Rules. A brief point to be noted from such materials at this stage would be that the entire focus of the Settlement Commission on the application of settlement filed by the petitioner was on the income not disclosed before the Assessing Officer, the manner of earning such income and truthfulness of the declaration made by the assessee. Before the Settlement Commission, the question of taxability of the subsidy income was nowhere in horizon.

**25.** It was pursuant to such application of the petitioner that the Settlement Commission passed the final order of settlement making certain additions to the declaration made by the petitioner and granting immunity from penalty and prosecution subject to fulfillment of the conditions contained in the order. The Assessing Officer, therefore, while carrying out the terms of settlement and the order passed by the Settlement Commission, had limited jurisdiction of only giving effect to the directives contained therein. The question of correctness of taxing the subsidy income was neither raised, nor in our opinion could have been raised before him. We are conscious that the powers of the Commissioner for revision under Section 264 of the Act are not seen to be co-terminus with the powers of the Assessing Officer. The Commissioner may as well entertain a ground, a claim or a contention of the assessee which may not have been raised either in the return or before the Assessing Officer during the course of the assessment. However, the question is could the petitioner have in the present facts of the case raised the question of taxability of subsidy before the Commissioner.

**26.** As noted, the Act contains detail provisions in Chapter XIX-A for settlement of cases. An application for settlement can be made under sub-section (1) of Section 245C of the Act. This can be made at any stage of a case relating to the assessee. The term 'case' has been defined to mean any proceedings for assessment under this Act of any person in respect of any assessment year or assessment years which may be pending before the Assessing Officer on the date on which the application under sub-section (1) of Section 245C is made. In other words, the application for settlement can be filed as long as the proceedings for assessment of the return is pending before the Assessing Officer. The previous definition of word 'case' would cover within its scope any proceedings of assessment pending also before the appellate or revisional stage. This amendment, however, is of no importance for our discussion. What is important to note is that in whatever form the word 'case' may have been defined, the settlement application should be filed only as long as such 'case' is pending.



**27.** Once such application is filed, the same would be considered by the Settlement Commission as provided under Section 245F of the Act which lays down powers and procedure of Settlement Commission. Sub-section (1) to Section 245F as noted above provides that the Settlement Commission shall have all the powers which are vested in an income tax authority under the Act. Sub-section (2) of Section 245F further provides that where an application made under Section 245C has been allowed to be proceeded with under Section 245D, the Settlement Commission shall, until an order is passed under sub-section (4) of Section 245D, have, subject to the provisions of sub-section (3) of that section, exclusive jurisdiction to exercise the powers and perform the functions of an income tax authority under the Act. As per the first proviso to sub-section (2), in relation to application for settlement made on or before 1.6.2007, the Settlement Commission would have such exclusive jurisdiction from the date on which such application was made.

**28.** Further proviso to sub-section (2) provides that such exclusive jurisdiction would continue upto the date on which the application is rejected, or, not allowed to proceed with or declared invalid. Sub-section (4) of Section 245F provides for removal of doubt, in absence of any express direction by the Settlement Commission, nothing contained in the Chapter shall affect the operation of the provisions of the Act in so far as they relate to any matters other than those before the Settlement Commission.

**29.** In the context of our discussion, this Section 245F is of utmost importance. In clear terms, it signifies the intention of the legislature to vest jurisdiction in relation to a case in one authority; be it Assessing Officer or Settlement Commission. In relation to application for settlement filed after 1.6.2007, once it is filed, the Settlement Commission would have exclusive jurisdiction in relation to the case, the Commission would enjoy all the powers of the Assessing Authority and the Assessing Officer would have no power to deal with the assessment. This position would continue till the application for settlement is rejected, or not allowed to

be proceeded further or declared invalid, or until an order is passed under Section 245D(4) of the Act.

**30.** Sub-section (4) of Section 245F merely provides that for removal of doubt in absence of any express direction by the Settlement Commission to the contrary, nothing in this Chapter shall affect the operation of the provisions of the Act in so far as they relate to any matters other than those before the Settlement Commission by virtue of Section 245F in relation to a case would be confined to matters covered in application for settlement or in the report of the Commission. Any other view would require the Assessing Officer to continue with the assessment minus the matters before the Settlement Commission, thus giving rise to two parallel proceedings.

**31.** On reading the provisions contained in Chapter XIX-A of the Act, a clear picture that emerges is that an assessee can apply for settlement of a case as long as same is pending. Once such an application is filed (and in case of application filed before 1.6.2007) allowed to proceed further, all powers

vested in income tax authority would vest in Settlement Commission in relation to such a case. The Settlement Commission would continue to enjoy such exclusive jurisdiction till the application is either rejected, declared as invalid or not allowed to proceed further. As provided in sub-section (2) of Section 245HA, where the proceedings before the Settlement Commission abate, the Assessing Officer or the Income Tax Authority as the case may be before whom the proceedings at the time of making the application is pending, would dispose of the case in accordance with the provisions of the Act as if no application under Section 245C has been made. Likewise under sub-section (7) of Section 245D, where a settlement becomes void, the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded and the concerned income tax authority would complete such proceedings at any time before expiry of two years from the end of financial year in which the settlement became void. These provisions make it abundantly clear that a case could either be dealt with by the concerned income tax authority or the

Settlement Commission but not both. As long as the application for settlement is pending before the Settlement Commission, the Settlement Commission enjoys exclusive jurisdiction over the case, to the exclusion of the any authority ousting the jurisdiction of the concerned income tax authority. Where the application for settlement either abates or becomes void, the Authority before whom the proceedings were pending on the date of filing of the application for settlement would pass order in terms of provisions of the Act. The Act, thus envisages only one order concerning a case of the assessee, it may either be an order of settlement passed by the Settlement Commission or an order of assessment passed by the Assessing Officer but not both. We are conscious, the proviso to sub-section (5) of Section 245BA mentions a case or a matter which can be referred to a bench of three members of the Commission. This distinction, however, can be easily explained. In a given situation a 'case' may require attention of three members. Situation may also arise where only a matter arising in a case but not the entire case may require reference. Even Mr. Mistri, learned counsel for the petitioner did not argue to the

contrary. His contention, if we understand correctly was that the Settlement Commission would pass order only in respect of matters before it and no other. Therefore, the revenue authorities while giving effect to the order of Settlement Commission are bound to consider issues which are not part of settlement proceedings.

**32.** In our opinion, such a contention cannot be accepted. We have referred to the relevant provisions contained in Chapter XIX-A of the Act and come to the conclusion that once an application for settlement of a case is filed before the Settlement Commission and is allowed to pass through various stages under Section 245D of the Act, it is only the Settlement Commission which can pass any order concerning such a case. At all stages, the Act refers to a case for which an application for settlement can be filed, a case which the Settlement Commission considers for settlement, a case the Commission either allows to be settled or does not allow to be so settled. The Act does not envisage a return of an assessee to be split into two parts, one for consideration before the Settlement Commission by way of settlement and

another for normal assessment at the hands of the Assessing Officer or the appellate or the revisional authority. In other words, if an application for settlement is allowed and the case is settled, the entire assessment for the assessment years in question would stand settled. On the other hand, if such an application is rejected, not allowed to be proceeded further or declared as void or abates, the concerned Authority would proceed further from the stage at which the proceedings were pending when the application for settlement was made and would get time prescribed under the said chapter to complete such assessment. In fact, this is how the petitioner also understood the provisions. This is evident from the fact that in its application for settlement to the Commission, it prayed for determination of the income of the assessment years concerned. The prayer of the petitioner in its application was not restricted only to the undisclosed income disclosed in the application.

**33.** We are not called upon to decide whether before the Settlement Commission, the petitioner could have either in the application for settlement or later on raised the

contention that though in the return filed, offered to tax, the subsidy in reality was not taxable. What we are called upon to answer is whether the petitioner having filed an application for settlement who had raised no dispute during the entire settlement proceedings till the settlement was ordered by the Commission, can now urge the Assessing Officer to entertain such a question or urge the Commissioner of Income Tax to examine such an issue in exercise of revisional powers. Answer to the question has to be in the negative. Any other view, this would give rise to the two parallel proceedings in relation to the same assessment years concerning the assessee which in our opinion, the Act does not envisage.

**34.** Learned counsel Mr. Mistri would, however, contended that the sole ground on which the Commissioner has rejected the revision petition in context of this issue is that he had no power to revise the order of the Settlement Commission. He contended that order of the Commissioner can be tested only on the basis of reasons cited by him.



**35.** There are several difficulties in accepting this contention. Firstly, though the petitioner may have worded the prayer before the Commissioner differently, to grant the prayer of the petitioner would require the Commissioner to travel beyond the order of Settlement Commission which as held by us he could not do. His mere expression that he cannot revise the order of the Settlement Commission, therefore, would not be fatal to the order.

**36.** Secondly, the writ jurisdiction of the High Court cannot be put in such a straight jacket. High Court is not bound by the reasons sited by the Commissioner. If it is found that the Commissioner has no authority to grant prayer made in the revision petition filed before him, the Court would not ask him to do so merely because he has sited reasons which may not appear to be sound.

**37.** Thirdly the petitioner would not be satisfied with mere quashing of the order of the Commissioner. The petitioner in order to succeed would require substantive relief. It is in this context the petitioner after praying for quashing the

revisonal order of the Commissioner has further prayed as under:-

"b. this Hon'ble Court may be pleased to issue a Writ of Mandamus and / or any other appropriate writ order or direction under Article 226 of the Constitution of India directing the respondents to treat the subsidy received under the said scheme as being capital in nature, not eligible to tax, issue the refund of Rs. 24.01 crore with interest in accordance with law and accordingly, allow the revision application."

When we find that this prayer could not have been granted by the Commissioner, even if the ground of rejection of the revision petition by the Commissioner may not be entirely convincing, quashing the order of the Commissioner would be issuing a futile writ.

**38.** We do not understand which order the petitioner seeks revision of. It could not have been the order of Settlement Commission which is clearly the stand of the petitioner, though while explaining delay, the petitioner has taken the order of the Settlement Commission as the starting point for computing delay. If the petitioner seeks revision of the order passed by the Assessing Officer giving effect to the order of Settlement Commission as held by us, such order

was not erroneous giving rise to a revisable order. If the petitioner wanted to argue that the benefit should have been given by the Commissioner revising the original assessment (completely ignoring the settlement proceedings), the revision petition was delayed by several years and not 270 odd days as contended by the petitioner. Perhaps conscious of these difficulties, the petitioner in the revision petition has not challenged any specific order. We wonder if in a provision under Section 264 of the Act, the petitioner can seek relief from the Commissioner without seeking revision of any order.

**39.** The reliance by the petitioner upon the decision of the Madras High Court in the case of **Vaata Infra Vs. I.T.O.**<sup>1</sup> is inappropriate in the context of the facts of this case. In the above case, the Settlement Commission had accepted the revised offer of the additional income filed by the petitioner therein. However, it further directed the Assessing Officer to compute the total income, interest and penalty payable in terms of the order of the Settlement Commission. The petitioner therein, was aggrieved by the demand of interest computed by the Assessing Officer on the

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1 2015(229) Taxmann 373

ground that the same is not in accordance with the order of the Settlement Commission. It was in the above context that the Madras High Court had directed the petitioner therein to file a revision application under Section 264 of the Act. The facts herein are completely different. Most importantly it is not the case of the petitioner herein that the working out of the demand consequent to the order of the Settlement Commission was not in terms of the order.

**40.** Having thus come to our independent conclusions on the basis of the provisions contained in the Act, we may refer to certain decisions of the High Courts and the Supreme Court in the context of settlement proceedings under the said Chapter.

**41.** In case of **CIT Vs. Express Newspapers Ltd<sup>2</sup>**, the facts were that the assessee had filed an application for settlement in which it had not disclosed any income earlier before the Assessing Officer but merely offered a small part of loss claimed by it for the said assessment years to tax. In this context, the Supreme Court reiterated that an

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<sup>2</sup> (1994) 2 SCC 374

application under Section 254C can be made only in respect of the income not disclosed by the assessee before the Assessing Officer. It was further observed as under:-

"19. The idea underlying the said words [in the main limb of sub-section (I-A)] is self-evident. The disclosure under Section 245-C must be of an income not disclosed before the Assessing Officer. If the Assessing Officer (or the income tax authority) has already discovered it and has either gathered the material to establish the particulars of such income or fraud fully or is at a stage of investigation/enquiries where the material gathered by him is likely to establish the particulars of such income or fraud, the assessee cannot be allowed to defeat or forestall, as the case may be, the entire exercise of the income tax authorities just by approaching the Commission. In such a case, it cannot be said that he is acting voluntarily or in good faith. He should not be allowed to take advantage of the comparatively easy course of settlement. He must be allowed to face the normal channels of assessment/appeal etc. Section 245-C is meant for those assesseees who seek to disclose income not disclosed before the Officer including "the manner in which such income has been derived". If the department already knows and has gathered particulars of such income and the manner in which it has been derived, there is no 'disclosure' by the assessee. Let it be remembered that the words in question [in Section 245-D(I-A)] are not words of limitation nor are they meant to help unscrupulous assesseees. Chapter XIX-A is a part of the Income Tax Act and must be construed consistent with the overall scheme and object. The chapter is meant for those assesseees who want to disclose income not disclosed till then together with the manner in which the said income is derived. It is not meant for those who come after the event, i.e., after the discovery of the particulars of income and its source or discovery of particulars of fraud perpetrated by the

assessee, as the case may be nor even to those who come to the Commission to forestall the investigation/inquiries which have reached a stage where the department is in possession of material which though not sufficient to establish such concealment or fraud, is such that it is likely to establish it maybe some more material is required to establish it fully. The Commission has to keep all this in mind while deciding whether to allow the application to be proceeded before it or to reject it."

**42.** In case of **CIT Vs. Paharpur Cooling Towers Pvt Ltd**<sup>3</sup> once again the provisions contained in Chapter XIX-A came up for consideration before the Supreme Court. It was observed that once an application is admitted by the Commission, the Commission takes over all the proceedings relating to that case which may be pending before any Authority under the Act.

**43.** In case of **CIT Vs. Om Prakash Mittal**<sup>4</sup>, it was observed that the Commission assumes jurisdiction to deal with the matter after it decides to proceed with the application and continues to have jurisdiction till it makes an order under Section 245D. It was further observed that the object of the legislature, in introducing Section 245C is to see that protracted proceedings before the authorities or in

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3 (1996) 8 SCC 154

4 (2005) 2 SCC 751

Courts are avoided by resorting to settlement of cases. In this process an assessee cannot expect any reduction in amounts statutorily payable under the Act. It was further observed as under:-

"17. It has to be noted that the Commission exercises power in respect of income which was not disclosed before the authorities in any proceeding, but are disclosed in the petition under Section 245-C. It is not that any amount of undisclosed income can be brought to the notice of the Commission in the said petition. Commission exercises jurisdiction if the additional amount of tax on such undisclosed income is more than a particular figure (which at different points of time exceeded rupees fifty thousand or rupees one hundred thousand, as the case may be). The assessee must have in addition furnished the return of income which he is or was required to furnish under any of the provisions of the Act. In essence the requirement is that there must be an income disclosed in a return furnished and undisclosed income disclosed to the Commission by a petition under Section 245-C."

**44.** In case of **Brij Lal & Ors Vs. CIT**<sup>5</sup>, the Constitution Bench of the Supreme Court in a reference considered various aspects concerning the powers and procedure before the Settlement Commission in context of terminal point for charging the interest and powers of the Settlement Commission to rectify its own order. Though in the said case of Brij Lal (supra), the focus of the Supreme Court was on a

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5 (2011) 1 SCC 1

different situation, nevertheless, by analyzing the provisions contained in Chapter XIX-A, the Court made certain observations which are relevant for our purpose. It was observed that considering the provisions contained in Chapter XIX-A, it would appear that the Act brings into Chapter XIX-A various provisions of the Act and thus, the provisions of Section 245C and 245D have to be read by keeping in mind various provisions of the Act and the concepts of self-assessment, assessment, regular assessment and computation of total income which have been engrafted in Chapter XIX-A. It was observed as under:-

"27. Thus, the special procedure under Section 245C and 245D in Chapter XIX-A shows that a special type of computation of total income is engrafted in the said provisions which is nothing but assessment which takes place at Section 245D(1) stage. However, in that computation, one finds that provisions dealing with a regular assessment, self-assessment and levy and computation of interest for default in payment of advance tax, etc. are engrafted.

[See Sections 245-C(1-B), 245-C(1-C), 245-D(6), 245-F(3) in addition to Sections 215(3), 234-A(4) and 234-B(4).]

31. With the filing of the settlement application and after such application is allowed to be proceeded with under Section 245-D(1), intimation under Section 143(1), regular assessment under Sections 143(3)/144 and re-assessment under Section 147 lose their existence as under Sections 245-C(1-A) and (1-B) it is only the income disclosed in the return of income before the A.O. alone which



survives for consideration by the Settlement Commission for settling the amount of income which is not disclosed in the return.

35. As stated, till the Settlement Commission decides to admit the case under section 245D(1) the proceedings under the normal provisions remain open. But, once the Commission admits the case after being satisfied that the disclosure is full and true then the proceedings commence with the Settlement Commission. In the meantime, applicant has to pay the additional amount of tax with interest without which the application for settlement would not be maintainable. Thus, interest under section 234-B would be payable up to the stage of section 245-D(1). Our view is supported by the amendment made by Finance Act of 2007 w.e.f. 1.6.2007 in which interest is required to be paid for maintainability of the Application for Settlement.

39. Moreover, as stated above, under the Act, there is a difference between assessment in law [regular assessment or assessment under section 143(1)] and assessment by settlement under Chapter XIX-A. The order under section 245-D(4) is not an order of regular assessment. It is neither an order under section 143(1) or section 143(3) or section 144. Under sections 139 to 158, the process of assessment involves the filing of the return under section 139 or under section 142; inquiry by the A.O. under sections 142 and 143 and making of the order of assessment by the A.O. under section 143(3) or under section 144 and issuing of notice of demand under section 156 on the basis of the assessment order. The making of the order of assessment is an integral part of the process of assessment. No such steps are required to be followed in the case of proceedings under Chapter XIX-A. The said Chapter contemplates the taxability determined with respect to undisclosed income only by the process of settlement/ arbitration. Thus, the nature of the orders under Sections 143(1), 143(4) and 144 is different from the orders of the

Settlement Commission under section 245D(4)."

**45.** The Division Bench of this Court in the case of **Major Metals Ltd Vs. Union of India & Ors.**<sup>6</sup> considered a situation where the assessee had applied for settlement of its case. The Commissioner filed detailed report opposing such application. The Settlement Commission passed the order directing the Commissioner to conduct further inquiry and investigation and to submit a report. However, due to shortage of time, the inquiry could not be completed. The Settlement Commission had doubted the unsecured loans shown by the assessee in the return. The Settlement Commission eventually passed the order of settlement assessing total amount of Rs. 6.18 crore (rounded off) concerning two separate assessment years representing the additional income of the assessee, inter alia holding that the assessee had introduced its own money in the form of share application money. The assessee challenged the said order of Settlement Commission before the High Court arguing that the Settlement Commission had no jurisdiction while passing its order under Section 245D(4) of the Act to deal with the issues which were neither raised in the application of the

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6 [2013] 359 ITR 450 (Bom)

petitioner nor in the report of the Commissioner submitted under Section 245D(3) of the Act. It was argued that the Settlement Commission would have no jurisdiction to travel beyond the subject matter of the application and the report of the Commissioner. This Court relied upon the decisions of the Supreme Court in the case of Express Newspapers Ltd (supra) and Brij Lal (supra) and held that the Act does not contemplate a parallel proceeding before the Settlement Commission and before the Assessing Officer, once the Settlement Commission has decided to proceed with the application under Section 245D(1) of the Act. It was held and observed as under:-

"13.....

Simply put, under sub-section (4) the Settlement Commission is empowered to pass orders in accordance with the provisions of the Act after examining the records and the report of the Commissioner, if any and upon examining such further evidence as may be placed before it or obtained by it. The Settlement Commission is upon the plain language of the provision not confined merely to examining the report of the Commissioner. As seen earlier, the Commission is not constricted from proceeding further where the Commissioner does not submit a report at all. The evidence which the Commission examines is that which is placed before it or obtained by it. Evidence which is obtained by the Commission is that which emerges on the initiative or directions of the Commission. The Commission is in other words not designed to act as a passive spectator - confined to what

the assessee discloses. The Commission can act proactively in gathering or obtaining evidence. The statute confers upon it the power to settle a case, which is nothing but an assessment. The settlement is intended to be final, comprehensive and conclusive. The orders which the Settlement Commission passes are on matters covered by the application and on any other matter relating to the case not covered by the application but referred to in the report of the Commissioner. The Settlement Commission, therefore, can pass orders on matters covered by the application and on any other matter relating to the case which is referred to in the report of the Commissioner, though not covered by the application.

15. The provisions of Chapter XIX-A emphasise that the object underlying the constitution of the Settlement Commission is the settlement of cases under the chapter. A case, as noted earlier is defined to mean any proceeding for assessment under the Act which is pending before the Assessing Officer on the date when an application for settlement is made under Section 245C. The assessment is the subject of the case which is to be settled. An applicant who moves the Settlement Commission under Section 245C has to do so on the basis of a true and full disclosure of his income which has not been disclosed before the Assessing Officer. Disclosure of income which has not been disclosed before the Assessing Officer is essential to the validity of the application. The application is to have the case settled. Under sub-section (1B) of Section 245C, where the income disclosed in the application relates to one previous year, if the applicant has furnished a return in respect of total income of that year, the tax has to be calculated on the aggregate of the total income returned and the income disclosed in the application as if such aggregate were the total income. The Settlement Commission is empowered to call for a report of the Commissioner at two stages. The first stage arises under sub-section (2B) of Section 245D where, inter alia, an application has been allowed to be proceeded with under sub-section (1). There, the

Settlement Commission shall call for a report. The second stage is under sub-section (3) of Section 245D where, inter alia, the Settlement Commission has not declared an application as invalid under sub-section (2C). In both the cases the report of the Commissioner is not a condition precedent for the Settlement Commission to proceed further with the settlement of the case. If the Commissioner does not submit his report to the Commission, that does not bring an end to the proceeding before the Commission. On the contrary, both the second proviso to sub-section (2C) and the proviso to sub-section (3), make it abundantly clear that the Settlement Commission is empowered to proceed further even in a situation where the Commissioner does not furnish a report within the prescribed period. Once the Settlement Commission is seized of the proceedings and an application under Section 245C has been allowed to be proceeded with under Section 245D, the Settlement Commission has exclusive jurisdiction to exercise the powers and to perform the functions of an income tax authority under the Act in relation to the case. When the Settlement Commission decides to proceed with a case under Section 245D(1), it assumes exclusive jurisdiction in regard to the assessment. That is because the Settlement Commission is then seized of the case in respect of which a settlement is sought and the expression "case" itself is defined to mean any proceeding for assessment under the Act which is pending before the Assessing Officer. The Act does not contemplate a parallel proceeding before the Settlement Commission and before the Assessing Officer, once the Settlement Commission has decided to proceed with the application under Section 245D(1). So long as the proceedings remain before the Settlement Commission, it is that authority alone which has jurisdiction in all matters pertaining to assessment. The jurisdiction of the Settlement Commission is to pass orders (i) on matters covered by the application; and (ii) on any other matter relating to the case, not covered by the application but referred to in the report of the Commissioner.

18. ....

The nature of the determination by the Commissioner does not determine the jurisdiction of the Commission. The expression relating to the case is an expression of width and amplitude. The report of the Commissioner furnished in pursuance of the directions of the Settlement Commission under Section 245D(3) cannot be read in a sense disjointed from the terms of reference made by the Commission to him. The report refers to the matters upon which he was called upon to investigate. All those matters would fall within the jurisdiction of the Commission as matters relating to the case and referred to in the report of the Commissioner. Consequently even on a literal and textual construction of Section 245D(4), we are satisfied that the Settlement Commission acted within the parameters of its jurisdiction in the present case. The position which emerges on a plain and literal construction of the language of the statute is supported by even a contextual construction. Parliament intended that the entire assessment is before the Settlement Commission. The Commission completes the process of assessment - as the decision in Brij Lal holds - as part of the settlement of the case. Until the Settlement Commission is seized of the proceedings, there is no parallel assessment contemplated in law. Comprehensiveness, finality and conclusiveness are the three attributes of the function assigned to the Commission. That object is achieved when the entire assessment is completed, as part of the jurisdiction to settle a case. To dilute this position would defeat the object which Parliament intended to achieve. Once an assessee moves the Settlement Commission, the statute expressly mandates that the application cannot be withdrawn. Unless the Commission in a given case decides to reject the application, it is entitled to resolve the case by settlement. An assessee who moves the Settlement Commission cannot be allowed to be anything other than fair and candid. Nor can he assert an unqualified right that the Settlement Commission should either accept what he discloses or leave him to another round of

assessment before the Assessing Officer."

**46.** In case of **Shalibhadra Developers Vs. Secretary**<sup>7</sup>, the Division Bench of Gujarat High Court in context of the question of pendency of a case when an application for settlement is filed by the assessee has observed as under:-

"32. The statutory provisions noted above manifest intention of the legislature to vest the jurisdiction to process a case of the assessee either in the Settlement Commission or in the Assessing Officer. No sooner an application for settlement is filed under sub-section(1) of section 245C of the Act, the Assessing Officer would be divested of his jurisdiction to assess the return further. The jurisdiction would vest solely and exclusively in the Settlement Commission. If for some reason as envisaged under section 245D of the Act, proceeding for settlement becomes void, under sub-section(7) thereof, the proceedings before the Assessing Officer would be deemed to have revived upon which he would complete the assessment within the extended time frame provided therein. The overwhelming intention of the legislature thus is that there can be only one order concerning an assessment, be it by the Assessing Officer termed as order of assessment or by the Settlement Commission termed as settlement order. There cannot be one order of assessment by Assessing Officer for the same period for which the Commission would also pass the order of settlement. "

**47.** We are conscious that on the issue of when can an order of assessment be stated to have been passed, the view taken by the Gujarat High Court in Shalibhadra Developers

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<sup>7</sup> [2016] 74 taxmann.com 152 (Gujarat)

(supra) is somewhat different from the view expressed by this Court in the case of **CIT Vs. Income Tax Settlement Commission**<sup>8</sup>. However, reference to this judgment is made confined to the observations noted above.

**48.** We are not oblivious to the decision of the Delhi High Court in the case of **Agson Global Pvt Ltd & Ors. Vs. Income Tax Settlement Commission & Ors.**<sup>9</sup> in which some of the observations made may seem to be running contrary to the observations and conclusions in the decision of this Court in the case of Major Metals Ltd (supra). However, the decision of this Court in the case of Major Metals Ltd (supra) was not brought to the notice of the Court in case of Agson Global Pvt Ltd (supra) and further the question arising before the said Court was whether the Settlement Commission would have power to call for special audit of accounts of the assessee in terms of Section 142(2A) of the Act.

**49.** In view of above, we do not find any merit in this

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8 [2015] 375 ITR 483 (Bom)

9 [2016] 380 ITR 342 (Del)



petition. The petition is, therefore, dismissed.

**50.** At this stage, the learned counsel for the petitioner prayed that a certificate may be granted that the case involves a substantial question of law or general importance. We do not find this to be a fit case for qualifying such a certificate. Request is rejected.

**[ M.S. SANKLECHA, J. ]**

**[ AKIL KURESHI, J ]**