HIGH COURT OF MADHYA PRADESH BENCH : INDORE

(Division Bench: Hon'ble Shri P.K. Jaiswal &
Hon'ble Shri J. K. Jain, JJ.)

Writ Petition No.6313/2014

Commissioner of Income Tax (Central) & another
Versus
M/s Keti Construction Ltd. & another

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PRESENCE :

Shri R. L. Jain, learned Senior Counsel with Ms. Veena Mandlik, learned counsel for the petitioners.

Shri Manoj Munshi, learned counsel for the respondent No.1.

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O R D E R
(07/07/2015)

Per P.K. Jaiswal, J.

The Commissioner of Income Tax (Central), Bhopal has challenged the order passed by the Settlement Commission 26.05.2014 (Annexure-P/4) under the provisions of sub-section 2C of Section 245D of the Income Tax Act, 1961 (in short "the Act").

2. Brief facts of the case that the respondent No.1 is a limited company and is engaged in the business of construction of infrastructure projects.

3. On 05.05.2011, search and seizure operations were conducted by the Investigating Wing under Section 132 of the Act. The preliminary estimates undisclosed income of Rs.2,40,04,38,487/- was shown in the years under consideration. The cases were centralised with the DCIT (Central), Indore and notices under Section 153A were issued

for the assessment year 2006-07 to 2011-12 on 02.04.2012. Notice under Section 143(2) was issued for the assessment year 2012-13 on 27.08.2013.

4. In compliance to the notices, the respondent No.1 filed returns of income, as detailed in the table below :-

A.Ys.	Date of filing of return U/s 153A	Income shown in return filed U/s 139(1)	Income shown in the return U/s 153A	Additional income offered in the return filed U/s 153A
2007-08	05/31/12	6415910	6662640	246730
2008-09	05/31/12	5875730	12957790	7082060
2009-10	05/31/12	970460	76064720	75086809
2010-11	05/31/12	11598650	92862960	81264310
2011-12	05/29/12	202032280	2020322800	183759754

5. Subsequently on 10.03.2014, the respondent No.1-assessee filed an affidavit dated 07.03.2014 requesting to treat the returns filed under Section 153A as withdrawn and also to treat the returns filed under Section 139(1) as "Returns filed in compliance to notices under Section 153A".

6. Thereafter, the respondent No.1 filed a settlement application under Section 245C(1) of the Act before the Settlement Commission for settlement of its cases on 28.03.2014 claiming to show full and true estimate of undisclosed income for the years as under :-

Asstt. Years	A.Y. 2006-07	A.Y. 2007-08	A.Y. 2008-09	A.Y. 2009-10	A.Y. 2010-11	A.Y. 2011-12	A.Y. 2012-13	Total
Addl. Income	0.5	0.5	0.5	0.5	0.5	0.5	1.55	Rs.1.58 crores

7. It is not in dispute that subsequent to the search, the respondent No.1 filed the returns of income under Section 139(1) and after issue of 153A notices for the assessment years 2006-07 to 2011-12, the respondent No.1 has offered to tax the

amount amounting to Rs.34,74,47,123/- which is the total amount admitted under Section 132(4) under the aforesaid years.

8. At the time of admission of the application under Section 245C(1), an objection was raised by the petitioners that the respondent No.1 upon filing the returns under Section 153A on 10.09.2013, 29.05.2012 and 31.05.2012 and under Section 139(A) for the assessment year 2012-13 has not paid the self assessment tax in relation to the income declared in the returns. It is also pointed out that the respondent has paid the taxes and interest only on the additional income of Rs.1.58 crores disclosed before the Settlement Commission on 28.03.2014. The objection of the petitioners before the Settlement Commission was that the aggregate amount of additional income declared in the return of income under Section 153A and as increased by the additional income offered in settlement application should have been paid by the assessee under Section 245C of the Act. The respondent No.1 has paid tax only on the additional income offered before the Settlement Commission (Rs.1.58 crores) and the tax payable on the additional income offered in the returns of income (Rs.34,74,47,123/-) has not been paid by the respondent No.1 on or before filing the settlement application and hence, the settlement application is not valid as per Section 245C of the Act.

9. The Settlement Commission admitted the application by order dated 10.04.2014 (Annexure-P/2) under Section 245D (1) has held as follows :-

> *17. We have carefully considered the submissions made by the AR requesting for admission of the application. We find that the conditions regarding the threshold limit for the quantum of tax on additional income, payment of additional tax and*

interest thereupon, and existence of pendency of proceedings are, all, fulfilled. The applicant has also paid the requisite fees of Rs.500/- under Section 245C(2) and the receipt for the same is also enclosed with the application. Filing of this application has also been intimated to the AO on the same day of the filing of the application.

17.1 As far as non-payment of self assessment tax on the returned income u/s. 153A is concerned no specific provision exists in the Act. However, we find straight from the decision of the ITSC, Chennai Bench in the case of M/s. Radha Realty Ltd. on this issue. In our considered opinion, admission of application u/s. 245D(1) cannot be denied.

17.2 As regards the manner of earning of income is concerned, we find that the same has been adequately explained by the A.R. and the same has also been discussed in the settlement application. As to the claim of making the true and full disclosure, we are of the considered opinion that as of now, the disclosure made is true and full as we do not have any material to hold otherwise.

18. For the above mentioned reasons, the application is admitted and allowed to be proceeded with further for the A.Yrs. 2006-07 to 2012-13.

10. The Settlement Commission called a detailed report from the petitioners under Section 245D (2-B) of the Act. The petitioners submitted its detailed report and stated that sufficient compliance to Section 245C (4) read with Rule 44C(4) has not been made. It is also pointed that full and true disclosure of income was not made by the respondent No.1 in their application dated 28.03.2014 and raised the following objections :-

Full and true disclosure of income and the manner in which such income derived

In this case search and seizure was conducted by the department on 05.05.2011. during the investigation documents were found which indicated concealment of income by the assessee. Th preliminary estimates (discussed in Annex B)

show undisclosed incomes of Rs.240,04,38,487/- in the years under consideration. However it is noted that the assessee had offered total undisclosed income of Rs.1,58,00,000/- in the settlement application filed before the Settlement Commission u/s 245C of the Act. Thus the undisclosed income determined by the department is in excess to the quantum of additional undisclosed income declared before the Settlement Commission and thus it cannot be treated as full and true disclosure of undisclosed income.

It may be observed that the total undisclosed income of the assessee based on investigation and documents seized during the search, statements of the assessee and other relevant documents works out to Rs.240,04,38,487/-. However it is noted that the assessee has offered undisclosed income of Rs.1,58,00,000/- in the settlement application filed before the Settlement Commission u/s 245C of the Act and Rs.34,74,39,663/- before the AO in the return of income filed in response to notice u/s 153A. He has however failed to honour the undisclosed income offered before the AO and has not paid the taxes due therein. In the absence of the statement of facts and the confidential portion of the settlement application made by the assessee, the nature of the undisclosed income and its basis of computation could not be ascertained by this office.

In the light of the above observations, I am of the considered view that the total undisclosed income of Rs.1,58,00,000/- offered before the Settlement Commission by the assessee cannot be held to be full and true disclosure of income since it is far below the estimated undisclosed income of Rs.240,04,38,487/- determined on the basis of the seized documents and enquiries conducted by the department. As a matter of fact the undisclosed income of Rs.1,58,00,000/- offered before the Settlement Commission u/s 245C is even far below the undisclosed income of Rs.34,74,39,663/- surrendered u/s 132(4) and suo moto offered to tax in return of income filed u/s 153A. Thus the additional income of Rs.1,58,00,000/- disclosed u/s 245C cannot be less than the undisclosed income suo moto offered to tax u/s 153A. Thus the meagre income of Rs.1,58,00,000/- cannot be held to be full

and true disclosure u/s 245C of the Act and therefore the settlement application deserves to be rejected by the Settlement Commission.

Further I would like to state that the order passed by the Settlement Commission allowing the settlement application to be proceeded with u/s 245D(1) is erroneous since the assessee had not paid the taxes and interest on the additional income declared in return of income u/s 153A and as increased by the additional income offered before the Settlement Commission. Thus on the merits of the case and the legal position on the issue as contained in proviso to section 245C (1) read with sub-section 1D of the Act, the commission should have rejected the settlement application u/s 245D (1) of the Act. The facts of the case of M/s Radha Realty Ltd. Decided by the ITSC Chennai Bench relied upon by the ITSC Mumbai Bench in the present case could not be ascertained for want of citation and settlement application number and therefore it is not known as to how the cites case is applicable to the present case.

It may be relevant to mention here that the tax payable on the returned income u/s 153A has been subjected to recovery proceedings wherein bank accounts and debtors have been attached u/s 226(3) of the Act before filing of settlement application. Further prosecution proceedings u/s 276C (2) have also been initiated by the AO before the filing of the settlement application and the approval of the CIT (Central) u/s 279 is pending for want of legal opinion of the prosecution counsel.

In view of the above, I am to hold that the assessee has not made full and true disclosure of income before the Settlement Commission u/s 245C and the assessee has not even paid the tax payable on the returned income u/s 153A of the Act and hence the application of the assessee is not maintainable and deserves to be declared invalid. I therefore oppose the admission of such application which is not in conformity with the provisions of section 245C of the Act. It is therefore requested that the Commission may pass appropriate order in declaring the said application as invalid u/s 245D (2C) of the Act.

11. During proceedings before the Settlement Commission, it was argued by the learned counsel for the respondent No.1 that the alleged income of Rs.240.04 crores stood fully taxed in the hands of the four companies belonging to the group namely, 1) Keti Infrastructure Pvt. Ltd., 2) M/s Keti Highway Developers Pvt. Ltd., 3) M/s Keti Toll Infrastructure Pvt. Ltd. and 4) M/s Keti Buildcon Pvt. Ltd. and that further addition of the same amounts in the hands of the respondent company cannot be made because the same income cannot be taxed twice. The respondent No.2 passed an order dated 26.05.2014 under Section 245D (2C) (Annexure-P/4) holding that the settlement application is "not invalid one".

12. The respondent No.2 in its order dated 26.05.2014 under Section 245D (2C) had concluded that:-

> *"As far as true and full disclosure is concerned we are of the view that the department has already taxed the income in the hands of four SPVs companies and therefore income of Rs.240 Crores which is being proposed as belonging to the applicant company cannot be taxed again. The applicant has disclosed before us the income of Rs.1.58 Crores which is stated to have been earned by giving machineries and equipments on hire. In these circumstances it cannot be stated that applicant has not disclosed its true and full income. We have already held in our order passed on 10-04-2014 u/s 245D(1) that what is required by the applicant, in respect of payment of taxes and interest is such payment on the income disclosed before us. The applicant has done so. In view of the above we hold that the application does not suffer from any infirmity and therefore is held not to be invalid one. It is allowed to be proceed further."*

13. The submission of the learned Senior Counsel for the petitioners is that the assessee was required to make payment of taxes and interest on the additional income declared

before the Settlement Commission, which is inclusive of the undisclosed income declared in the return of income filed under Section 153A. He submits that the assessee has declared additional income of Rs.1.58 crores before the Settlement Commission, which is not in conformity with the voluntary disclosure of income of Rs.34.74 crores duly declared in its return under Section 153A. The assessee had not paid the taxes and interest on the additional income declared in the return of income under Section 153A and as increased by the additional income offered before the Settlement Commission.

14. On 31.05.2012, i.e., after 12 months, respondent No.1 filed its return under Section 153A wherein the entire disclosure of additional income has been offered to tax. Thus, the respondent No.1 has suo moto filed return under Section 153A declaring the surrendered income. At no point of time prior to 07.03.2014 (i.e., up to about 34 months from the date of voluntary disclosure by the assessee), the respondent No.1 disputed the genuineness of the disclosure made by Shri Kedarmal Jakhetia on behalf of the company. This aspect was not considered by the Settlement Commission while passing the impugned order.

15. In reply, learned counsel for the respondent No.1 submits that under Section 245C of the Act, respondent No.1 is required to disclose in the application before the Settlement Commission and to pay taxes and interests on such income which has not been disclosed before the Assessing Officer. It is submitted that the respondent No.1 has disclosed the income of Rs.1.58 crores in the settlement application, which was never disclosed before the Assessing Officer and has also paid the taxes and interests of Rs.67.51 lacs. Thus, the respondent has

complied with the condition of Section 245C of the Act for filing an application for settlement. In respect of declaration of income, during search and seizure, it is submitted that since such disclosure was obtained by the search party by exercising duress and coercion, therefore the respondent by filing an affidavit dated 07.03.2014 retracted the entire disclosure being obtained under duress and coercion, therefore, not binding upon the respondent. It is also pointed out that they have withdrawn the return of income filed under Section 153A vide letter dated 07.03.2014 filed on 10.03.2014 for each of the assessment year and stick to the return filed under Section 139(5) read with Section 139(1) of the Act. He further submits that, in case of withdrawal and retraction of declared income during the search, no liability can be legally fastened upon the respondent unless proper and due assessment of income has been completed by the Revenue under the provisions of the Act. The Settlement Commission before passing the impugned order has given proper opportunity of hearing to the petitioners and after considering all the grounds which have been raised by the petitioners herein held that the application filed under Section 245A of the Act is not invalid one and has allowed to proceed further on merit. Thus, there is no violation of any of the mandatory provisions of Chapter XIX of the Act and prayed for dismissal of the writ petition.

16. Having thus heard learned counsel for the parties and having perused the documents on record, the facts emerged more or less as undisputed. Such undisputed facts are that assessment for the year 2006-07 to 2012-13, the respondent No.1 made an application to the Settlement Commission for settlement of the case. In such an application, the respondent declared an undisclosed income of Rs.1.58,00,000/-. For the

said years, respondent No.1 had filed returns of income under Section 139 (1) of the Income Tax Act, 1961 and after issue of Section 153-A notices for the assessment years 2006-07 to 2011 to 2013, he has offered to tax amount, amounting to Rs.34,74,39,663/-, which is total amount admitted under Section 132 (4) under the aforesaid years, but the tax and interest computed *suo moto* was not paid and was shown as payable. Notice under Section 153-A for the year 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12 was issued on 02.04.2012 and for 2012-13 notice under Section 153-A was issued on 27.08.2013. Respondent No.1 filed his return under Section 153-A for the year 2006-07 on 10.09.2013; for the years 2007-08 to 2010-11 on 31.05.2012; for the year 2011-12 on 29.05.2012 and for the year 2012-13 on 30.09.2012 and additional income offered in the return filed under Section 153-A for the aforesaid assessment years was Rs.34,74,39,663/-. A short question is whether the respondent was required to deposit additional tax on Rs.34,74,39,663/- and due to non-payment of taxes due there in the application is valid under Section 245-D (2C) of the Act.

17. It is well-settled that judicial review of this Court to interfere with the order is not barred with the order of the Settlement Commission only if it is found to be "contrary to any of the provisions of the Act", the law settled by the Apex Court in the case of **Jyotendrasinghji vs. S. I. Tripathi** reported in **[1993] 201 ITR 611 (SC).**

18. The Apex Court in the case of **CIT vs. Express Newspapers Ltd.** reported in **[1994] 206 ITR 443 (SC)** has held the following:-

> *"For a proper delineation of the jurisdiction of the Commission, it is necessary to bear in mind the*

language of sub-section (1) of Section 245C. It provides that at any stage of a case relating to him, an assessee may make an application to the Commission disclosing fully and truly income which has not been disclosed before the Assessing Officer. He must also disclose how the said income has been derived by him besides certain other particulars. This means that an assessee cannot approach the Commission for settlement of his case with respect to income already disclosed before the Assessing Officer. An application under Section 245C is maintainable only if it discloses income which has not been disclosed before the Assessing Officer. The disclosure contemplated by section 245C is thus in the nature of voluntary disclosure of concealed income. Unless the income so disclosed exceeds Rs. 50, 000/-, the application under section 245C is not maintainable."

19. The Apex Court in the case of **Commissioner of Income Tax vs. Om Prakash Mittal** reported in **[2005] 246 (SC)** has observed the following :-

"The foundation for settlement is an application which assessee can file at any stage of a case relating to him in such form and in such manner as is prescribed. The statutory mandate is that the application shall contain "full and true disclosure" of the income which has not been disclosed before the assessing officer, the manner in which such income has been derived. The fundamental requirement of the application under Section 245C is that full and true disclosure of the income has to be made, along with the manner in which such income was derived. On receipt of the application, the Commission calls for report from the Commissioner and on the basis of the material contained in the report and having regard to the nature and circumstances of the case or complexity of the investigation involved therein, it can either reject the application or allow the application to be proceeded with as provided in Section 245D(1).

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 245C. 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 245C.

There is a purpose why the legislature has prescribed the condition relating to declaration of the order void when it is obtained by fraud or misrepresentation of facts. It cannot be said that there has been a true and fair declaration of income which is the pre- requisite for settlement by the Commission. If an order is obtained by fraud or misrepresentation of facts, it cannot be said that there was true and fair disclosure. It was noted here that unlike Section 139 of the Act which provides for filing of revised return, there is no provision for revision of an application made in terms of Section 245C. That shows clear legislative intent that the applicant for settlement has to make a true and fair declaration from the threshold. It is on the basis of the application received that the Commissioner calls for report to decide whether the application is to be rejected or permitted to be continued. The declaration contemplated in Section 245C is in the nature of voluntary disclosure of concealed income, but as noted above it must be true and fair disclosure. Voluntary disclosure and making a full and true disclosure of the income are necessary pre-conditions for invoking the Commission's jurisdiction."

20. Section 245C pertains to the application for settlement of cases. Sub section (1) of Section 245C provides inter alia that an assessee may, at any stage of a case relating to

him, make an application in prescribed form and manner containing a full and true disclosure of his income which has not been disclosed, the manner in which such income has been derived, the additional amount of income tax payable on such income to the Settlement Commission to have the case settled. Proviso to sub section (1) of Section 245C inter alia requires the applicant to pay such tax and interest thereon which would have been paid under the provisions of the Act had the income disclosed in the application been declared in the return of income before the Assessing Officer on the date of application and the proof of such payment to be attached with the application.

21. Section 245D of the Act pertains to procedure on receipt of an application under Section 245C. Under sub section (1) of Section 245D on receipt of an application under Section 245C, the settlement commission, within seven days from the receipt of the application, would issue a notice to the applicant requiring him to explain why the application made by him be allowed to be proceeded with. On hearing the applicant, the Settlement Commission, within 14 days from the date of the application, pass an order in writing either rejecting the application or allowing the application to be proceeded with. Proviso to sub section (1) of Section 245D provides that where no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed to be proceed with.

22. Under said section (2B) of Section 245D of the Act, the Settlement Commission with respect to the applications which have been allowed to be or deemed to have been allowed to be proceeded with shall call for a report from the Commissioner which would be furnished by the Commissioner

within 30 days from the receipt of communication from the Settlement Commission.

23. Under sub section (2C) of Section 245D of the Act, the Settlement Commission would proceeded to pass an order on the basis of the report by the Commissioner within 15 days of the receipt of the report if so found appropriate declaring the application as invalid after giving an opportunity of being heard to the applicant. Further proviso to sub-section (2C) makes it clear that where the Commissioner has not furnished the report within the period prescribed, the Settlement Commission would proceed further in the matter without the report of the Commissioner. Sub sections (3) and (4) of Section 245D of the Act pertain to the power of the Settlement Commission to call for the records from the Commissioner and to direct further enquiry or investigation, if necessary, and to pass such order as it thinks fit.

24. Sub-section (4A) of Section 245D of the Act lays down time limit for passing order under sub section (4). Under Section 245H the Settlement Commission has the power to grant immunity from prosecution and penalty. Section 245HA pertains to abatement of proceedings before the Settlement Commission, in particular, it provides that where in respect of any application under Section 245C and order under sub section (4) of Section 245D has not been passed within the time or period specified under sub section (4A) of Section 245D of the Act, the proceedings before the Settlement Commission shall abate on the specified date.

25. Some of these provisions were referred to in order to appreciate that the proceedings before the Settlement Commission under Chapter XIXA of the Act are special

proceedings aimed at simplifying the procedure for bringing within the tax-net otherwise undisclosed income by an assessee with the temptation to avoid prosecution and penalty. These special provisions, therefore, have been made in the said Chapter in order to bring about an early end to such settlement proceedings. Different stages envisaged after an assessee makes an application for settlement of his case come with time limits. For example, as we saw, on receipt of an application under Section 245C of the Act, the Settlement Commission would, within 7 days from the date of the receipt of the application, issue a notice to the applicant. Within 14 days from the date of the application, the Settlement Commission would pass an order in writing either rejecting or allowing the application to be proceeded with. If no such order is passed within such time, the application would be deemed to have been allowed to be proceeded with. Likewise, a report called for from the Commissioner under sub section (2B) of Section 245D of the Act has to be furnished within 30 days of the communication by the Settlement Commission. Sub section (4A) of Section 245D lays down time limits for passing orders under sub section (4) in terms of Section 245HA (1) (iv). If no such order is passed within the time prescribed, the proceedings before the Settlement Commission would abate from such date. Thus, it can be seen that the proceedings before the Settlement Commission have to be completed within the time frame and various stages envisaged under Section 245D of the Act also come with various time frames.

26. Bearing in mind this general scheme of settlement of cases contained in Chapter XIXA we may peruse more closely sub sections (1A) to (1D) of Section 245C of the Act. Before that we may recall, under sub section (1) of Section 245C of the Act,

the applicant for settlement of a case has to deposit additional amount of income tax payable on “such income”, reference to this being the disclosure of his income which has not been disclosed before the Assessing Officer. Sub section (1A) of Section 245 C prescribes the manner in which the additional amount of income tax payable in terms of sub section (1) of Section 245 C in respect of income disclosed in an application made under the said sub section shall be computed by providing that the same shall be calculated in accordance with the provisions of sub sections (1B) to (1D). Sub section (1B) envisages two situations; first is where the applicant had not furnished a return in which case the tax shall be calculated on the income disclosed in the settlement application considering such income as total income of the assessee. The second situation is and with respect to which we are concerned, where the applicant had furnished return in respect of the total income of the assessment year under consideration, in such a case, the tax would 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. In terms of Clause (ii) of said section (1B) therefore the tax would be calculated on the aggregate of the returned total income and the disclosed income, treating the aggregate thereof as the total income of the applicant. Sub section (1C) of Section 245C provides for the additional amount of income tax payable in respect of income disclosed. Clause (b) thereof which covers our situation provides that the amount of tax calculated under Section 245 C (1B) (ii) shall be reduced by the amount of tax calculated in the total income returned for that year.

27. In simple terms, therefore, where an assesssee has furnished return of income and applies for settlement of his

case, one has to calculate his total income for the purpose of the said provision by aggregating the total income returned and the income disclosed in the application. Applicant's liability to pay additional tax would be the amount of tax calculated on such total income minus the amount of tax calculated on the total income returned for that year.

28. Sub-section (1B) and (1C) of Section 245 C thus provide for a special formula for arriving at an applicant's liability to pay additional tax for maintaining an application for settlement. Such special formula contains a deeming fiction. Such deeming fiction for the purpose of calculating additional tax payable defines term “total income” in artificial manner. Use of the deeming fiction is the well known legislative device to give rise to an artificial situation or fiction. Such device can be created not necessarily by using the term “deemed to be”. The expression “as if” is also seen as giving rise to a deeming fiction.

29. In case of *Dargah Committee V. State of Rajasthan* AIR 1962 SC 574, the Supreme Court considered a regulation section which provided that any money recoverable by the committee shall be recovered as if it were a tax levied by the committee on the property and shall be charged thereon. In this context, it was observed that if the fiction introduced by the said section is to be deemed as if it were a tax it is obvious that full effect must be given to this legal fiction. In case of *Khemka & Co. (Agencies) (P.) Ltd. Vs State of Maharashtra* [1975] 2 SCC 22 the Supreme court had the occasion to consider the deeming provision enacted by using expression “as if”. Section 9 (2) of the Central Sales Tax adopted the machinery for assessment, reassessment, collection and enforcement of tax including penalty if any of the State under the Sales tax law of the State as

if the tax or penalty were payable under the sales tax law of the State.

30. In the present case, legislature has created a deeming fiction by providing that the tax of the applicant would 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. this device is created for a special purpose and has a localized effect. It comes into existence only for the purpose of calculating the tax to be deposited by an applicant for settlement of a case. In such a situation, the aggregate of the total income returned and the income disclosed would be considered as total income.

31. Under the circumstances, the contention of the Counsel for the respondent No.1 that the term “total income” should be construed as defined under Section 5 of the Act for the purpose of calculating additional tax of an applicant for settlement of a case cannot be accepted. This is for multiple reasons. Firstly, as discussed earlier Clause (ii) of Sub Section (1B) of Section 245C of the Act gives rise to deeming fiction where total income has to be considered if the aggregate of the total income returned and the income disclosed would be the total income. Such deeming fiction must be allowed its full effect. Secondly, the very same clause uses the term “total income” returned in a different context and the aggregate of the total income returned and the income disclosed which would partake the character of a total income for this limited purpose. Thirdly, such deeming fiction cannot be discarded by bringing into consideration such term used elsewhere by the legislature. It is well known that legislature provides for definition of various terms frequently used in the statues. The definition

section usually comes with the expression “unless the context otherwise provides” or “unless there is anything repugnant to”. Such definition section defines various terms repeatedly used in a statue which would carry the meaning as contained in the definition. It is also well known that the statue defines often times terms for the special purpose of a section or even for a sub-section. Examples are replete in the Act itself where the definitions are provided only for the purposes of a particular section or even a sub-section. In the present case, this formula which contains a special definition for a special purpose would, therefore, have its effect only for Section 245C. Being a special provision it would prevail over any other general term of a concept contained in the Act. Section 245 C (1) of the Act also requires the applicant to provide besides other details, true and full disclosure of his income which has not been disclosed before the Assessing Officer and amount of income tax payable on “such income”. Reference to “such income”thus is the income disclosed in the settlement application which was not disclosed before the Assessing Officer.

32. The reason for the legislature to provide a simple formula is not far to seek. As noted, the different stages before the Settlement Commission once an application is made by the assessee for settlement of his case, comes with time frame. Even the final order which the Settlement Commission may pass has a deadline beyond which if no order is passed, the proceedings would abate. At a stage where the Settlement Commission is required to ascertain where an assessee applicant has paid the additional tax with interest thereon only upon which application can be allowed to proceed further, no complex exercise or verification is envisaged. If the concept of total income contained in the Act is imported as such a stage, it can

give rise to multiple disputes and lengthy debates with respect to the total income of an assessee and whether full tax on such income has been paid or not. At such a stage, the legislature does not envisage the Commission to go into a complex exercise of ascertaining the total income of the assessee and further ascertaining his tax liability on such income. The legislature has, therefore, provided for a simple formula possible of a simple arithmetical application. It may be that in a given case the assessee may be entitled to a refund once the Settlement Commission passes its final order. Such isolated case, however, would not govern the interpretation of sub sections (1B) and (1C) of Section 245C. Any such interpretation would given rise to complex consideration by the Settlement Commission of the assessee's total income not as defined in sub section (1B) to but as otherwise understood and referred to in Section 5 of the Act. Likewise, the computation of the tax on such total income and the resultant liability of the assessee for paying additional tax also would become a complex exercise. In income tax proceedings multiple claims, of deductions and exemptions give rise to often times complex considerations. Often the liability itself is fluctuating due to Court pronouncements. Sometimes a legal question or interpretation of a provision may be in the virgin field not covered by any Court judgment. The legislature never intended that at the stage of ascertaining whether the assessee has deposited the additional tax on an application made for settlement of the case, such complex exercise should be undertaken by the Settlement Commission. Further, in our opinion, accepting any such interpretation would defeat the very purpose of introducing the simplicity of computation of “total income” of an assessee for the purpose of the said provision and his liability to pay additional tax with interest

thereon.

33. In view of the foregoing discussion, we uphold the contentions of the Revenue by holding that the assessee had not paid the self-assessment tax in the return of income under Section 153-A and 143(2) of the Act for the assessment years 2007-08 to 2012-13, the application was not valid and quashed the order dated 26.05.2014 (Annexure R/4) passed by the Settlement Commission, Mumbai.

34. The writ petition is allowed with no order as to costs.

(P. K. Jaiswal)
Judge

(Jarat Kumar Jain)
Judge

gp
rcp