

SetCom gets flak from High Court for disposing of application without considering objections raised by revenue

Summary – The High Court of Bombay in a recent case of Sai Prasad Properties Ltd., (the Assessee) held that An application under section 245D(2C) has to be disposed of after considering objections raised by revenue supported by some reasons

Facts

- The respondent assessee filed a Settlement application for the assessment years 2011-12 to 2013-14 under section 245C(1).
- In terms of section 245D(2B), the petitioner-revenue furnished a report praying that the Settlement application filed was invalid on the grounds that no additional income had been declared in the application, no proceedings were pending before the Assessing Officer and that there had been failure on the part of the applicant to make full and true disclosure in its application.
- The Settlement Commission disposed of the petitioner's objection by passing an order under section 245D(2C) holding the application as valid and allowed to be proceeded with.
- On writ petition by the revenue:

Held

- In the instant case no reasons are indicated as to why the objections raised by the petitioner are not acceptable to the Settlement Commission. This Court in *CIT v. Income Tax Settlement Commission (No. 2)* [2014] 365 ITR 87 has held that an application under section 245D(2C) has to be disposed of after considering the objections raised by the revenue supported by some modicum of reasons. In the absence of some consideration of the objections, the entire exercise under section 245D(2C) would render the provisions redundant. Mere recording of submissions without considering why the submissions are acceptable or not, would clearly exhibit non-application of mind.
- In view of section 245F(2) when an application under section 245C has been allowed to be proceeded with under section 245D(1) then all powers and functions of authorities under the Act are vested in the Settlement Commission. This exclusive jurisdiction of the Settlement Commission continues till it either rejects the application or finally disposes of the application under section 245D(4). The authorities under the Act have no jurisdiction to issue any notices under the Act for assessment and/or penalty in respect of the assessment years of which the Settlement Commission is seized of the matter.
- The revenue, accepts the above position and states that no further proceedings would be taken in respect of penalty notices already issued and no further penalty notices would be issued to the

petitioner. This position will continue till the Settlement Commission either rejects the application under section 245D(2C) or finally disposes of the application under section 245D. The Statement made on behalf of the revenue is accepted.

- Accordingly, accepting the said statement on behalf of the revenue, the petition is disposed of by setting aside the impugned order dated 19-5-2014 passed by the Settlement Commission and restoring the application dated 27-3-2014 before the Settlement Commission for fresh disposal under section 245D(2C) in accordance with principles of natural justice.