

SetCom wasn't required to adjudicate Commissioner's objection that full and true disclosure wasn't made by assessee

Summary – The High Court of Karnataka in a recent case of RNS Infrastructure Ltd., (the Assessee) held that Adjudication is not required on Commissioner's report which is submitted in first instance objecting settlement application on ground that there was no full and true disclosure as Settlement Commission has to pass final order after obtaining further report of Commissioner and after being satisfied that there was full and true disclosure

Facts

- The assessee filed an application for settlement of its case before the Settlement Commission. The Settlement Commission proceeded with the application and called for report from the Commissioner.
- The Commissioner, in the report, objected application on ground that there was no full and true disclosure and requisite tax had also not been paid. The Commissioner argued that the Settlement Commission was required to adjudicate on objection filed by him.
- The Settlement Commissioner, however, chose to proceed with further enquiry.
- On writ, the Commissioner contended that the Settlement Commission could not assume jurisdiction to consider the application without adjudicating his objection.

Held

- From perusal of order of the Settlement Commission, it is evident that the Settlement Commission has satisfied itself that the application of the assessee has made, what is claimed as, a 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 and the additional income tax payable on such income.
- Even assuming that the Settlement Commission has glossed over the initial report submitted by the Commissioner, as the procedure contemplates a further report to be submitted by the Commissioner, after examination of the annexure to the application, statements and other documents accompanying such annexure and on the basis of a further enquiry, if any, all of which is not made available to the Commissioner in the first instance, and the Settlement Commission being in a position to still address the question whether a full and true disclosure of the income which was not disclosed before the Assessing Officer and being required to pass an appropriate order, the revenue cannot be said to be prejudiced in any fashion.
- Therefore, no procedural violation is caused by the Settlement Commission. It has only taken a *prima facie* view that the application is not invalid. A final order will necessarily have to be passed

under section 245D(4) only after obtaining the report of the Commissioner under rule 9 and after being satisfied that there is full and true disclosure by the applicant.

- The report submitted in the first instance by the Commissioner is 'primarily on the nature of the case and the complexities of the investigation, as the annexure filed in support of the disclosure of undisclosed income and the manner in which such income had been derived are treated as confidential and are not supplied to the Commissioner', as observed by the Apex Court in the case of *Ajmera Housing Corpn. v. CIT* [\[2010\] 326 ITR 642/193 Taxman 193](#). The question of an 'adjudication on the said report, which is termed as 'objection', by the Commissioner, at that stage - does not arise.
- Hence, the petition is without merit and is dismissed.