

Disclosure of additional income during settlement didn't show that initial offer wasn't true: HC

Summary – The High Court of Gujarat in a recent case of Commissioner of Income-tax-I., (the Assessee) held that Where during course of proceedings before Settlement Commission, if revised enhanced offer of income was made by assessee, same is to be considered by Settlement Commission

Facts

- A survey proceedings were initiated by the Assessing Officer at the business premises of assessee and the Assessing Officer found evidence indicating undisclosed amount.
- The assessee accepted the quantum of undisclosed income and agreed to pay tax on undisclosed amount. When proceedings came to be initiated, the assessee filed an application before the settlement commission. The Settlement Commission sought for a detailed report from the Commissioner. The Commissioner filed the same. He also filed the letter by the assessee stating the willingness to accept undisclosed income.
- Further, additional undisclosed income was declared by the assessee. The settlement commission accepted the same.
- The Commissioner contended that the settlement commission has no right to revise application and accept additionally disclosed amount during settlement proceedings.
- On appeal before the High Court003A

Held

- The findings arrived at by the commission is just and proper and the respondents have disclosed additional income in the spirit of settlement during the course of proceedings and, therefore, in the absence of any non-disclosure deliberately on part of the respondent, the commission has exercised due discretion vested in law and, therefore, such finding of fact does not deserve to be disturbed or substituted.
- The application submitted by the respondents have been dealt with were within the schedule prescribed by the provision of law. A detailed procedure has been observed while exercising power under section 244D so much so that a report has also been examined thoroughly by the said commission. During the course of hearing proper opportunity was also given to the respective parties and, therefore, amount which have been determined by the said commission are just and proper. The issue before the Court in the background of this fact is whether during the course of hearing even the amount which has been increased by way of additional disclosure can be entertained or considered by the commission or not?
- If during the course of proceedings, the revised offers are being generated then in the nature of spirit of Settlement, the same is permitted to be considered by the Commission. In case of *Ajmera*

Housing Corpn. v. CIT [[2010](#)] 326 ITR 642/193 Taxman 193 (SC) it was held that where revised offers of tax was in the nature of spirit of settlement, same cannot be seen in strict sense of abandoning initial disclosures and replacing the same by fresh disclosures on the basis of such revised offers. What in essence the assessee did was to raise their offers marginally to put an end to the entire dispute through settlement or in the spirit of settlement as is referred to in the said letter. This cannot be seen as accepting that original or initial declaration was not true and full disclosure thereby paving way for the application of judgment in the case of *Ajmera Housing Corpn. (supra)*.

- The commission has thoroughly examined minutely all the details related to the issue in question and arrived at a particular finding which cannot be substituted. In the background of these facts and circumstances, resultantly, the petition deserves to be dismissed.