Assessee need not disclose additional income in every year covered by settlement application

Summary – The ITSC, MUMBAI SPECIAL BENCH in a recent case of Neptune Developers & Construction (P.) Ltd., (the Assessee) held that Application for settlement may be admitted by ITSC where additional income and/or additional tax liability is disclosed for some years and no additional income and/or additional tax liability is disclosed for the remaining years so long as the amount of additional income-tax payable on income disclosed in application for settlement exceeds the threshold limits of Rupees fifty lakhs/Rupees ten lakhs specified in proviso below section 245C(1)

Facts

- It is the 'total income' consisting of disclosed income and undisclosed income that is determined and terms of settlement arrived at. This does not mean that for a given year in the final order there cannot be '*nil*' additional income. Thus, there is nothing in law to presume that for every admitted year there should be additional income in the final order and terms of settlement should be offered year-wise for every year. The additional income disclosed in a year may be treated '*nil*' and shifted to another year by the Commission. This would mean that for the initial year the additional income would be '*nil*'. The disclosed income in the return may be increased in the final order leading to additional income being brought to tax though it was disclosed as 'nil' in the application. Yet once the application is accepted, as conditions in section 245C(1) are fulfilled, there is no compulsion that in the final order there should be additional income for every year and terms of settlement should be given for every year.
- There is nothing to presume that in the final order, the returned income cannot be increased or that the additional income disclosed cannot be made '*nil*' and shifted to another year and brought to tax. Thus, there is no need to conclude that for every year there should be additional income and terms of settlement.
- What we are to look at as per Chapter XIX-A is to whether the 'case' is being settled or not since when the application it filed it is the intention of the applicant to have the 'case' settled. This would mean that the 'case' is being settled. It may involved assessment years for which additional income is disclosed for some years and no additional income is disclosed for the remaining years. Hence what is envisaged in law is that the 'case' is to be settled.
- It is also to be seen that under sections 153A/153C in search cases assessment proceedings for the last six years get reopened or abated as the case may be. When an assessee want to approach the Commission to get the case settled it is only appropriate that all the years are admitted as per application and part of the application is not sent back with respect to years where the additional income is *nil*. This argument is also valid.
- The legislature thought it fit to make changes including or excluding certain proceedings such as cases reopened under section 147 or search cases at different points of time in the past. Had it been their intention that for assessment years for which no additional income is disclosed should not be

entertained by the Commission, they would have specifically introduced such a provision. Since no such provision is explicitly introduced the arguments of the ARs are held to be reasonable.

Held (Conclusion)

- In view of the above discussion and the provisions of law explained, we hold that there need not be disclosure of additional income in every year that is covered by the application.
- As to whether in each of the years wherein additional income has been disclosed, there has to be additional tax liability, it can be said for sure that the additional tax liability as per the application should exceed the threshold limit as mentioned in proviso to section 245C(1) such that the application could be admitted.