

## **Dept. couldn't be said to be aggrieved if SetCom rejected assessee's application**

**Summary – The High Court of Gujarat in a recent case of Commissioner of Income-tax, Central-II., (the Assessee) held that No right file to application before Settlement Commission is conferred in favour of department against rejection of settlement application submitted by assessee**

### **Facts**

- Assessee-company filed two applications under section 245C(1) before the Income Tax Settlement Commission, one for assessment years 1999-2000 to 2004-05 and another for assessment year 2005-06.
- Settlement Commission passed an order under section 245D(4) considering only some of the assessment years incorporated in each of the applications whereas the remaining assessment years of the respective applications had not been considered and decided.
- It is the case on behalf of the petitioner that the order dated 4-12-2007 passed by the Settlement Commission to proceed further with the settlement applications in respect of some of the assessment years only and not for all the assessment years for which the applications were filed was absolutely illegal, wholly without jurisdiction and contrary to the provisions of the Act.
- Department submitted the application(s) before the Settlement Commission under section 154 read with section 245D(6) and requested to consider the settlement application(s) for the remaining years for which the order(s) were not passed under section 245D(1).
- Settlement Commission had rejected the said applications holding that the order under section 245D(6B) to rectify the order under section 245D(4) would tantamount to review/recall which is not permissible under the provisions of law.
- The revenue had preferred the present Special Civil Applications.

### **Held**

- Section 245 provides remedy to the assessee to approach the Settlement Commission and pray for settlement by offering undisclosed income and offering to pay the tax on the same. Therefore, it is the assessee who approaches the Settlement Commission for settlement as per section 245. Therefore, if at all anybody who can be said to be aggrieved by the rejection of the application by the Settlement Commission and/or non-consideration of the application for settlement for which the settlement application is submitted, is the assessee who approaches the Settlement Commission. The department/revenue cannot, therefore, be said to be aggrieved by the decision of the Settlement Commission in rejecting and/or not proceeding further with the settlement application for the years for which the application is submitted by the assessee.
- Even considering the scheme of section 245, no such right is conferred in favour of the department against rejection of the settlement application submitted by the assessee. Even otherwise,

considering the consequences of rejecting and/or declaring the settlement application invalid by the Settlement Commission, the department/revenue cannot be said to be aggrieved. On rejecting and/or declaring the settlement application invalid, the consequences shall be that the assessment proceedings/proceedings initiated against the assessee shall have to be proceeded further as if the assessee has not approached the Settlement Commission. If the settlement application is allowed and the order is passed as per section 245D(4) and the assessee makes payment of tax, penalty and interest as per the order passed by the Settlement Commission, in that case, the assessee may get the benefit of immunity from prosecution and penalty, etc., as per section 245H. Therefore, the object and purpose of the proceedings before the Settlement Commission is to put an end to the dispute at the instance of the assessee and the assessee may approach the Settlement Commission for settlement to avoid prosecution and penalty and, if the settlement application is rejected and/or declared invalid, the necessary consequences of abatement of proceedings before the Settlement Commission as provided under section 245HA shall follow.

- Therefore, considering the scheme of section 245HA and the object and purpose of proceedings before the Settlement Commission under section 245 against the order passed by the Settlement Commission either rejecting and/or declaring the application invalid and/or considering the application for some of the years and not considering the application for all the years for which the application is submitted, only the assessee/applicant can be said to be aggrieved. Therefore, the present petition at the instance of the revenue challenging the order passed by the Settlement Commission not considering the settlement application for all the years for which the application was submitted is not required to be considered further on merits as the department cannot be said to be aggrieved by such an order.
- Therefore, even the submission on behalf of the department at the instance of the department that the applications were preferred before the amendment, *i.e.* prior to 1-6-2007, and the order under section 245D(1) has not been made before the *1st day of June, 2007*, and, therefore, such applications shall be deemed to have been allowed to be proceeded further, is not required to be entertained. For, it is the assessee who has approached the Settlement Commission by way of application can make a grievance that in view of the deemed allowing the application, his application ought to have been considered for all the years for which the application was submitted.
- Even otherwise, even on merits, insofar as the order passed by the Settlement Commission is concerned, it cannot be said that the same suffers from any procedural lapse and/or that the principles of natural justice have been violated. Therefore, considering the limited scope of judicial review as pronounced by the Supreme Court as well this Court the order passed by the Settlement Commission is not required to be interfered with.
- In view of the above and for the reasons stated above, all these deserve to be dismissed.