

Order invalidating settlement application - SetCom cannot give retrospective effect

Summary – The High Court of Bombay in a recent case of Income tax Settlement Commission, Mum., (the Assessee) held the Settlement Commission cannot give retrospective effect to order invalidating settlement application of assessee

Facts

- The assessee had applied for settlement of its cases under section 245C. for assessment years 2008-09 to 2013-14. The Settlement Commission had passed an order under section 245D(2C) in which it was held that applications filed by assessee were not invalid and said applications could be proceeded further.
- The department raised contentions urging the Settlement Commission to hold that the settlement application in relation to those assessment years where no additional income was disclosed by the assessee should be treated to be invalid.
- The Settlement Commission passed its order under section 245D(4) in which, it excluded from the purview of the settlement those assessment years where 'NIL' or 'No disclosure of additional income' was made.
- The Settlement Commission declared that in relation to the concerned assessment years, the settlement application should not be allowed to proceed further from the stage of section 245D(2C) and that such declaration would take effect from 29-1-2015 i.e. retrospectively.

Held

- The question, to be decided was whether the Settlement Commission was justified in giving retrospective effect to the order invalidating the settlement application of the assessee in relation to certain assessment years.
- Section 245D makes detail provisions in respect of procedure on receipt of an application under section 245C, calling for a report from the Revenue Authorities within the specified time as per (2C) of section 245D, declaring the application in question as invalid upon receipt of report from Revenue authorities, etc.
- Section 245HA(1) *inter alia* provides that where an application made under section 245C has been declared as invalid, the proceedings before the Settlement Commission shall abate on such date.
- In view of these provisions, it is clear that once the Settlement Commission passes an order, whether legally permissible to do so or not, the Settlement Commission has no authority or jurisdiction to predate such order.
- When the Settlement Commission had no jurisdiction to give retrospective effect to its order, it makes no difference whether the revenue requested for the same or the assessee.

- The HC under the circumstances held that the observation/direction of retrospective effect of the order should be set aside and the earlier order passed by the Settlement Commission would take effect from such passing date.
- The HC disposed of the petition accordingly.