COMMISSIONER OF INCOME TAX, JALPAIGURI

v.

OM PRAKASH MITTAL

FEBRUARY 22, 2005

[MRS. RUMA PAL, ARIJIT PASAYAT AND C.K. THAKKER, JJ.]

Income Tax Act, 1961; Section 245 :

Income Tax Settlement Commission—Order of Settlement—Section 245—Scope and ambit of—Held : Foundation for settlement is filing of an application by assessee at any stage of a case—Full and true disclosure of the income is statutory requirement for consideration of the application provided additional tax on the undisclosed income not to exceed the prescribed limit—Merely because provisions under Section 245(I) provides that order of settlement is conclusive it does not take away the power of the Commission/Revenue to decide whether the settlement was obtained by fraud/misrepresentation—Misrepresentation/fraud implies no true and fair disclosure of the income, which is against the legislative intent—Since Revenue established that the order was obtained by misrepresentation, Commission could decide the issue afresh—Directions issued—Interpretation of Statutes.

Settlement Commission's power of settlement—Scope of—Discussed.

Order **vis-a-vis** *assessment—Distinction between.*

Words and Phrases :

'case'—Meaning of in the context of Section 245A(b) of the Income Tax Act, 1961.

Respondent-assessee filed an application for settlement in terms of Section 245C of the Income Tax Act before the Income Tax Settlement Commission. Assessee claimed to have received certain amount, as loan as disclosed by him in the application. The Settlement Commissioner passed an order treating the loan amount as advance. The order was challenged by Revenue Authorities by filing a petition under Section 245D(6) of the Act, which was rejected by the Commissioner. Hence the

present appeal filed by the Revenue.

It was contended by the Revenue that the application filed by them was not really for review; that there was no question of the subsequent Bench sitting in appeal over the earlier Bench's decision; that the jurisdiction under Section 245D(6) of the Act is exercisable when it is subsequently found by the Commission that the settlement had been obtained by fraud or misrepresentation of facts; that the investigating officer had stated that the alleged money lenders categorically denied to have advanced any loan; that there was inherent improbability in the assessee's stand that seven persons/money lenders would keep huge sums of money and would give money on the same day by cash; that since there was no assessment, question of furnishing certificates about assessment from unconnected persons, is sufficient to show misrepresentation of facts; and that no returns of income were filed by the lenders upto relevant time.

Assessee submitted that finality is attached to the order passed under Section 245D (4) in terms of Section 245I of the Act; that the order was obtained by fraud or misrepresentation of facts; that the Revenue cannot initiate any proceedings in terms of Section 245D(6) of the Act; that on mere unsubstantiated allegation regarding lack of capacity to advance loans, alleged inherent improbabilities, or the authorities giving a different version after having issued certificates, there is no scope for coming to the conclusion that there was any fraud or misrepresentation of facts. Thus, the Commission had rightly refused to accept the prayer made by the Revenue as it would have amounted to review of the earlier order and in essence would have amounted to the subsequent Bench sitting in appeal over the decision of the earlier Bench.

Disposing of the appeal, the Court

HELD: 1.1. The Income Tax Settlement Commission is not bound to proceed with any application filed under Section 245C of the Income Tax Act, as is clear from Section 245D of the Act. An assessee cannot approach the Commission for settlement of his case in respect of an income which has already been disclosed as contemplated is in the nature of voluntary disclosure of concerned income. The Commission's power of settlement has to be exercised in accordance with the provisions of the Act. Though the Commission has sufficient elbowroom in assessing the income of the applicant and it cannot make any order with terms of settlement

which would be in conflict with the mandatory provisions of the Act. The object of the legislature in introducing Section 245C is to see that protracted proceedings before the authorities or in Courts are avoided by resorting to settlement of cases. In this process an assessee cannot expect any reduction in amounts statutorily payable under the Act. [272-H; 273-A; 275-B, G-H] A B

1.2. It is a statutory requirement that a condition has to be incorporated in the order passed under sub-section (4) specifying that settlement shall be void if it is subsequently found by the Commission that it has been obtained by fraud or misrepresentation of facts. The decision whether the order has been obtained by fraud or misrepresentation of facts is that of the Commission. But it is not a requirement that the Commission must *suo motu* initiate the action. If the revenue has material to show that the order was obtained by fraud or misrepresentation of facts it certainly can move the Commission for decision on that issue. Otherwise, even if in a given case there is material in abundance to establish that the order was obtained by fraud or misrepresentation of facts, yet the void order would continue to be operative because of the fortuitous circumstance that the Commission does not *suo motu* initiate the proceeding. [276-B-C-D] C D

1.3. Merely because Section 245I of the Act provides that the order of Settlement is conclusive it does not take away the power of the Commission to decide whether the settlement order had been obtained by fraud or misrepresentation of facts. Any other interpretation would render sub-section (6) otiose. [276-D-E] E

2.1. The foundation for settlement is an application which assessee can file at any stage of a case relating to him in such form and in such manner as is prescribed. [276-G] F

2.2. The fundamental requirement of the application under Section 245C is that full and true disclosure of the income has to be made, along with the manner in which such income was derived. [276-H; 277-A] G

2.3. The Commission exercises power in respect of income which was not disclosed before the authorities in any proceeding, but are disclosed in the petition. It is not that any amount of undisclosed income can be brought to the notice of the Commission in the said petition. Commission exercises jurisdiction if the additional amount of tax on such undisclosed income is more than a particular figure (which at different points of time H

A exceeded rupees fifty thousand or rupees one hundred thousand, as the case may be). The assessee must have in addition furnished the return of income which he is or was required to furnish under any of the provisions of the Act. [277-C-D]

2.4. There is a purpose why the legislature has prescribed the B condition relating to declaration of the order void when it is obtained by fraud or misrepresentation of facts. If an order is obtained by fraud or misrepresentation of facts, it cannot be said that there was true and fair disclosure. Unlike Section 139 of the Act which provides for filing of revised return, there is no provision for revision of an application made C in terms of Section 245C of the Act. That shows clear legislative intent that the applicant for settlement has to make a true and fair declaration from the threshold. It is on the basis of the application received that the Commissioner calls for report to decide whether the application is to be rejected or permitted to be continued. The declaration so contemplated is in the nature of voluntary disclosure of concealed income, but it must be D true and fair disclosure. Voluntary disclosure and making a full and true disclosure of the income are necessary pre-conditions for invoking the Commission's jurisdiction. [277-E-F-G]

3.1. In the instant case, the Commission had really missed the true scope and ambit of Section 245D(6). If the Revenue was able to establish E that the earlier decision was void because of misrepresentation of the facts, certainly it was open to the Commission to decide that issue. It cannot be called by any stretch of imagination to be a review of the earlier judgment or the subsequent Bench sitting in appeal over the earlier Bench's decision. Further the conclusions of the Commission regarding the genuineness of F the loan transactions were arrived at without indicating reasons. It only referred to the respective stands and the submissions of the assessee's counsel. That was not the proper way to deal with the matter.

[276-E-F-G]

3.2. In the facts and circumstances of the case, the Commission is G directed to decide the matter afresh keeping in view the observations made by this Court. It is, however, made clear that no opinion is expressed on the facts of the case. [278-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5334 of 1999.

H From the Judgment and Order dated 28.1.99 of the Income Tax

Settlement Commission, Additional Bench, Calcutta in Settlement Applicant No. 1/1/3/1989-IT. A

Mohan Parasaran, Additional Solicitor General, T.A. Khan, Pritish Kapoor, B.V. Balram Das and Ms. Sushma Suri for the Appellant.

C.S. Agarwal, Sanjeev Kr. Singh, Pradeep Kr. Malik and Bhargava V. Desai Respondent. B

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Challenge in this appeal is to the order passed by the Income Tax Settlement Commission, Additional Bench Calcutta (in short the 'Commission'). By the impugned order it was held that the prayer made by the Commissioner of Income Tax, West Bengal-VIII, Calcutta (in short 'CIT') to declare the settlement order passed by the Commission on 18.9.1990 to be void and for withdrawing the benefits and immunities granted to the respondent-assessee was not acceptable. The order dated 18.9.1990 was passed under Section 245D(4) of the Income Tax Act, 1961 (in short the 'Act'). The application by the CIT for declaration of the said order to be void was made purportedly under Section 245D(6) of the Act. C D

The controversy in the present appeal has arisen in the following factual background : E

A search was conducted in the premises of the respondent (hereinafter referred to as the 'assessee') on 8.2.1989 and 9.2.1989 and certain seizures were made. The assessee filed an application for settlement in terms of Section 245C of the Act on 13.1.1989. It is relevant to note that application for settlement was made was the financial year 1985-86. The Settlement Commission passed an order on 18.9.1990 in terms of Section 245D(4). It is to be noted that in the application for settlement before the Commission the assessee claimed to have received Rs.1.5 crores from seven persons on 31.3.1985 in cash. All these seven persons were claimed to be residents of Sikkim and that the amounts were received by way of loan. The details of the receipts are as follows : F G

(i) Rs.20,00,000 From Shri Srinivas Agarwal, Singtam, Sikkim.

(ii) Rs.20,00,000 From Shri Hari Krishan Agarwal, Singtam, Sikkim.

(iii) Rs.20,00,000 From Shri Keshu Ram Agarwal, Melli, Sikkim. H

A (iv) Rs.20,00,000 From Shri Subhas Ch. Minda, Melli, Sikkim.

(v) Rs.20,00,000 From Shri Vinod Kr. Minda, Melli, Sikkim.

(vi) Rs.25,00,000 From Shri Gauri Shankar Agarwal, Melli, Sikkim.

(vii) Rs.25,00,000 From Shri Chandulal Agarwal, Melli, Sikkim.

B Certain documents were produced before the Commission to prove the genuineness of the aforesaid loans. The Commission accepted the stand of the assessee and did not cast any doubt on the credibility of sum of Rs.1.5 crores to have been advanced as loans. It appears that enquiries were conducted by the Central Bureau of Investigation (in short the 'CBI') at the request of C the revenue regarding the aforesaid loans, at Jorthang, Melli and Singtam. In the opinion of the CBI the alleged lenders had no means or financial capacity to advance huge loan to the assessee and were mere name lenders. When the investigating officer contacted the so called lenders, they denied having advanced any loan. Some of the certificates purportedly issued were not authentic. One of the persons i.e. the then Commissioner of Siliguri D municipality Mr. Rabin Paul admitted that he had no direct knowledge of the transaction and, therefore, the assessee had obtained the certificate by practising fraud. The further fact is that some of the lenders i.e. S/Shri Gauri Shankar Agarwal, Subhas Ch. Minda and Vinod Kr. Minda had made payment of tax to the Sikkim authorities after the order of settlement. It was projected before E the Commission at the first instance as if they were tax payers. Enquiries revealed that Shri Subhas Ch. Minda was not assessed to income tax up to the period 1985-86. Therefore, the submission made before the Commission that he was assessed regularly before the Sikkim authorities was false.

In the aforesaid background prayer was made by the CIT for declaration F of the order passed by the Commission to be void and for withdrawal of the benefits granted. The motion was opposed by the assessee according to whom the order of the Commission was final in terms of Section 245I. There was no power for any review of the earlier order and in any event the Commission had analysed the factual position. Fresh analysis would amount to sitting in G judgment over the earlier decision which power the Commission did not possess.

By the impugned order the Commission held that the stand taken by the assessee's counsel was correct. It was held that the department had not established that settlement order under Section 245D (4) dated 18.9.1990 was H obtained by the assessee by fraud and misrepresentation of facts. It was

further noted that under Section 245D(6) the Commission was not considering whether the loans of Rs.1.5 crores claimed to have been taken by the assessee from seven persons were genuine or not. It was held that if the Commission would go into merit regarding genuineness of the loans, that would amount to re-appraisal and re-evaluation of the evidence which was already apprised by the earlier Bench, and it would amount to sitting in judgment over the findings arrived at by the earlier Bench which was not legally permissible to the Commission to review its own decision. Further it was held that the CBI report did not merit acceptance as the alleged lenders were genuine persons who were admittedly contacted by the CBI officials. There was no statement recorded from them stating that they had not given the loans. Therefore, the petition under Section 245D(6) was rejected.

Mr. Mohan Parasaran, learned Additional Solicitor General appearing for the appellant submitted that approach of the Commission is legally not tenable. The Commission has not kept the scope and ambit of the power exercisable under Section 245D (6) of the Act in its proper perspective. The application filed by the appellant-revenue was not really for review. There was no question of any review involved. There was also no question of the subsequent Bench sitting in appeal over the earlier Bench's decision. The jurisdiction under Section 245D(6) is exercisable when it is subsequently found by the Commission that the settlement had been obtained by fraud or misrepresentation of facts. The Commission after having held that the case of the appellant was not covered by Section 245D(6) of the Act had given clean chit to the assessee by abruptly concluding that the stand presented by the assessee's counsel was acceptable. It also lightly brushed aside the evidentiary value of the materials placed on record to justify the stand of the revenue that the settlement order had been obtained by fraud or misrepresentation of facts. The fraud and/or misrepresentation of facts are tell tale. The investigating officer had categorically stated that the alleged lenders categorically denied to have advanced any loan. There was inherent improbability in the assessee's stand that seven persons would keep huge sums of money and would give money on the same day by cash. Since there was no assessment question of furnishing certificates about assessment from unconnected persons is sufficient to show misrepresentation of facts. No returns of income were filed by the lenders upto relevant time. Therefore, it was submitted that the order of the Commission needs to be set aside.

In response, Mr. C.S. Agarwal, learned counsel appearing for the assessee submitted that finality is attached to the order passed under Section

245D (4) in terms of Section 245I. It is only the Commission which has the power to initiate proceedings to set aside the order passed under Section 245D(4) if it on its own comes to the conclusion that the order was obtained by fraud or misrepresentation of facts. The revenue cannot initiate any proceedings in terms of Section 245D(6). Further, all the relevant aspects were considered by the Commission earlier. The CIT had ample opportunity to object to any statement made in the application for settlement. The Commission while dealing with the application had dealt with the aspects involved and had passed the order. On mere unsubstantiated allegation regarding lack of capacity to advance loans, alleged inherent improbabilities, or the authorities giving a different version after having issued certificates, there is no scope for coming to the conclusion that there was any fraud or misrepresentation of facts. Therefore, the Commission had rightly refused to accept the prayer made by the CIT as it would have amounted to review of the earlier order and in essence would have amounted to the subsequent Bench sitting in appeal over the decision of the earlier Bench.

Sections 245A to 245V are covered by Chapter XIXA of the Act.

A new Chapter XIX-A was introduced by the Taxation Laws (amendment) Act, 1975 (in short the 'Amendment Act') w.e.f. 1.4.1976. The Commission is constituted by the Central Government for the settlement of cases under Chapter XIX-A. The expression "case" as appearing in Section 245A(b) refers to any proceeding under the Act for the assessment or re-assessment of income of any person in respect of any year or years or by way of appeal or revision in connection with such assessment or re-assessment which may be pending before any income-tax authority on the date on which an application under sub-section (1) of Section 245C is made. It further provides that where any appeal or application for revision has been preferred after the expiry of the specified period and which has not been admitted then the same shall not be deemed to be a proceeding pending within the meaning of clause (b) of Section 245A. Scheme of Chapter XIX-A shows that the filing of application by the assessee is a unilateral act, and the department may not be aware of the same. It has to be noted that if an application for settlement is filed under Section 245C, it is not automatically admitted. Section 245D deals with procedure on receipt of an application under Section 245C. Under sub-section (1) thereof, the Commission after following the prescribed procedure can allow the application to be proceeded with or rejected. Only after the Commission allows the petition to be proceeded with, it exercises the power of settlement.

One basic feature of Chapter XIXA is that it relates to income which was not disclosed before the income-tax authorities. This is evident from Section 245C which reads as follows :

"*Section 245C : Application for settlement of cases.*

245C(1) : An assessee may, at any stage of a case relating to him, make an application in such form and in such manner as may be prescribed, and *containing a full and true disclosure of his income which has not been disclosed before the Assessing Officer,* the manner in which such income has been derived, the additional amount of income-tax payable on such income and such other particulars as may be prescribed, to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided :

Provided that no such application shall be made unless, -

(a) *the assessee has furnished the return of income which he is or was required to furnish under any of the provisions of this Act; and*

(b) the additional amount of income-tax payable on *the income disclosed* in the application exceeds one hundred thousand rupees.

(1A) For the purposes of sub-section (1) of this section and sub-sections (2A) to (2D) of section 245D, the additional amount of income-tax payable in respect of *the income disclosed* in an application made under sub-section (1) of this section shall be the amount calculated in accordance with the provisions of sub-sections (1B) to (1D).

(1B) *Where the income disclosed in the application relates to only one previous year,*

(i) if the applicant has not furnished a return in respect of the total income of that year (whether or not an assessment has been made in respect of the total income of that year), then, except in a case covered by clause (iii), tax shall be calculated on the income disclosed in the application as if such income were the total income;

(ii) if the applicant has furnished a return in respect of the total income of that year (whether or not an assessment has been made in pursuance of such return), tax shall be calculated on the aggregate of the total income returned and the income disclosed in the application

A as if such aggregate were the total income;

(iii) if the proceeding pending before the income-tax authority is in the nature of a proceeding for reassessment of the applicant under section 147 or by way of appeal or revision in connection with such reassessment, and the applicant has not furnished a return in respect B of the total income of that year in the course of such proceeding for reassessment, tax shall be calculated on the aggregate of the total income as assessed in the earlier proceeding for assessment under section 143 or section 144 or section 147 and the income disclosed in the application as if such aggregate were the total income.

C (1C) The additional amount of income-tax payable in respect of the *income disclosed in the application* relating to the previous year referred to in sub-section (1B) shall be,

(a) in a case referred to in clause (i) of that sub-section, the amount D of tax calculated under that clause;

(b) in a case referred to in clause (ii) of that sub-section, the amount of tax calculated under that clause as reduced by the amount of tax calculated on the total income returned for that year;

E (iii) in a case referred to in clause (iii) of that sub-section, the amount of tax calculated under that clause as reduced by the amount of tax calculated on the total income assessed in the earlier proceeding for assessment under section 143 or section 144 or section 147".

(Underlined for emphasis)

F Prior to substitution by Finance Act, 1987 w.e.f. 1.6.1987, the proviso to sub-section (1) read as follows :

"provided that no such application shall be made unless the additional amount of income tax payable on the income disclosed in G the application exceeds fifty thousand rupees."

The word "fifty thousand rupees" in the earlier proviso has been substituted by the expression "one hundred thousand rupees" by the Finance Act, 1995 w.e.f. 1.7.1995. Some changes were introduced by Finance Act, 1987 w.e.f. 1.6.1987 in sub section (1B) and (1C) which do not have much importance H for the present appeal.

The Commission is not bound to proceed with any application filed under Section 245C as is clear from Section 245D. The special provisions so far as relevant read as follows :

Section 245D : Procedure on receipt of an application under section 245C.

"*245D(1)*- On receipt of an application under section 245C, the Settlement Commission shall call for a report from the Commissioner and on the basis of the materials contained in such report and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, the Settlement Commission may, by order, allow the application to be proceeded with or reject the application :

Provided that an application shall not be rejected under this sub-section unless an opportunity has been given to the applicant of being heard :

Provided further that the Commissioner shall furnish the report within a period of forty-five days of the receipt of communication from the Settlement Commission in case of all applications made under section 245C on or after the 1st day of July, 1995 and if the Commissioner fails to furnish the report within the said period, the Settlement Commission may make the order without such report.

(2) x x x x x

(2A) Subject to the provisions of sub-section (2B), the assessee shall within thirty-five days of the receipt of a copy of the order under sub-section (1) allowing the application to be proceeded with, pay the additional amount of income-tax payable on the income disclosed in the application and shall furnish proof of such payment to the Settlement Commission.

(2B) If the Settlement Commission is satisfied, on an application made in this behalf by the assessee, that he is unable for good and sufficient reasons to pay the additional amount of income-tax referred to in sub-section (2A) within the time specified in that sub-section, it may extend the time for payment of the amount which remains unpaid or allow payment thereof by instalments if the assessee furnishes adequate security for the payment thereof.

(2C) Where the additional amount of income-tax is not paid within the time specified under sub-section (2A), then, whether or not the Settlement Commission has extended the time for payment of the amount which remains unpaid or has allowed payment thereof by instalments under sub-section (2B), the assessee shall be liable to pay simple interest at fifteen per cent per annum on the amount remaining unpaid from the date of expiry of the period of thirty-five days referred to in sub-section (2A).

(2D) x x x x x

(3) Where an application is allowed to be proceeded with under sub-section (1), the Settlement Commission may call for the relevant records from the Commissioner and after examination of such records, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the Commissioner to make or cause to be made such further enquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case.

(4) After examination of the records and the report of the Commissioner, received under sub-section (1), and the report, if any, of the Commissioner received under sub-section (3), and after giving an opportunity to the applicant and to the Commissioner to be heard, either in person or through a representative duly authorized in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner under sub-section (1) or sub-section (3).

(5) x x x x x

(6) *Every order passed under sub-section (4) shall provide* for the terms of settlement including any demand by way of tax, penalty or interest] the manner in which any sum due under the settlement shall be paid and all other matters to make the settlement effective and shall also provide *that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by*

fraud or misrepresentation of facts."

(underlined for emphasis)

Sub-section (1) of Section 245C makes it clear that at any stage of a case relating to him an assessee may make an application to the Commission disclosing fully and truly his income which has not been disclosed before the Assessing Officer. To put it differently, an assessee cannot approach the Commission for settlement of his case in respect of an income which has already been disclosed before the Assessing Officer. The income disclosed as contemplated is in the nature of voluntary disclosure of concerned income.

Section 245F dealing with powers and procedure of Settlement Commission provides that in addition to the powers conferred on the Settlement Commission under Chapter XIX-A, it has all the powers which are vested in the income-tax authority under the Act. Sub-section (2) is of vital importance and provides that where an application made under Section 245C has been allowed to be proceeded with under Section 245D, the Commission shall until an order is passed under sub-section (4) of Section 245D, subject to the provisions of sub-section (3) of that section have exclusive jurisdiction to exercise the powers and perform the functions of the income-tax authority under the Act in relation to the case. In essence, the Commission assumes jurisdiction to deal with the matter after it decides to proceed with the application and continues to have the jurisdiction till it makes an order under Section 245D. Section 245D(4) is the charging section and sub-section (6) prescribes the modalities to be adopted to give effect to the order. It has to be noted that the language used in Section 245D is "order" and not "assessment". The order is not described as the original assessment or regular assessment or re-assessment. In that sense, the Commission exercises a plenary jurisdiction.

The Commission's power of settlement has to be exercised in accordance with the provisions of the Act. Though the Commission has sufficient elbowroom in assessing the income of the applicant and it cannot make any order with a term of settlement which would be in conflict with the mandatory provisions of the Act like in the quantum and payment of tax and the interest. The object of the legislature, in introducing Section 245C is to see that protracted proceedings before the authorities or in Courts are avoided by resorting to settlement of cases. In this process an assessee cannot expect any reduction in amounts statutorily payable under the Act.

A A bare reading of Section 245D(6) shows that every order passed under sub-section (4) has to provide the terms of the settlement and also to provide that the settlement shall be void if it is found subsequently by the Commission that it has been obtained by fraud or by misrepresentation of facts. The plea of the assessee that the initiation of proceeding to find out as to whether the order has been obtained by fraud or misrepresentation of facts has to be B initiated by the Commission *suo motu* is not spelt out in the said sub-section. It is a statutory requirement that a condition has to be incorporated in the order passed under sub-section (4) specifying that settlement shall be void if it is subsequently found by the Commission that it has been obtained by fraud or misrepresentation of facts. The decision whether the order has been C obtained by fraud or misrepresentation of facts is that of the Commission. But it is not a requirement that the Commission must *suo motu* initiate the action. If the revenue has material to show that the order was obtained by fraud or misrepresentation of facts it certainly can move the Commission for decision on that issue. Otherwise, even if in a given case there is material in abundance to establish that the order was obtained by fraud or D misrepresentation of facts, yet the void order would continue to be operative because of the fortuitous circumstance that the Commission does not *suo motu* initiate the proceeding. Merely because Section 245I provides that the order of Settlement is conclusive it does not take away the power of the Commission to decide whether the settlement order had been obtained by E fraud or misrepresentation of facts. Any other interpretation would render sub-section (6) otiose. The Commission had really missed the true scope and ambit of Section 245D(6). If the CIT was able to establish that the earlier decision was void because of misrepresentation of the facts, certainly it was open to the Commission to decide that issue. It cannot be called by any stretch of imagination to be review of the earlier judgment or the subsequent F Bench sitting in appeal over the earlier Bench's decision. Further the conclusions of the Commission regarding the genuineness of the loan transactions were arrived at without indicating reasons. It only referred to the respective stands and the submissions of the assessee's counsel. That was not the proper way to deal with the matter.

G The foundation for settlement is an application which assessee can file at any stage of a case relating to him in such form and in such manner as is prescribed. The statutory mandate is that the application shall contain "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. The H fundamental requirement of the application under Section 245C is that full

and true disclosure of the income has to be made, along with the manner in which such income was derived. On receipt of the application, the Commission calls for report from the Commissioner and on the basis of the material contained in the report and having regard to the nature and circumstances of the case or complexity of the investigation involved therein, it can either reject the application or allow the application to be proceeded with as provided in Section 245D(1).

It has to be noted that the Commission exercises power in respect of income which was not disclosed before the authorities in any proceeding, but are disclosed in the petition under Section 245C. It is not that any amount of undisclosed income can be brought to the notice of the Commission in the said petition. Commission exercises jurisdiction if the additional amount of tax on such undisclosed income is more than a particular figure (which at different points of time exceeded rupees fifty thousand or rupees one hundred thousand, as the case may be). The assessee must have in addition furnished the return of income which he is or was required to furnish under any of the provisions of the Act. In essence the requirement is that there must be an income disclosed in a return furnished and undisclosed income disclosed to the Commission by a petition under Section 245C.

There is a purpose why the legislature has prescribed the condition relating to declaration of the order void when it is obtained by fraud or misrepresentation of facts. It cannot be said that there has been a true and fair declaration of income which is the pre-requisite for settlement by the Commission. If an order is obtained by fraud or misrepresentation of facts, it cannot be said that there was true and fair disclosure. It was noted here that unlike Section 139 of the Act which provides for filing of revised return, there is no provision for revision of an application made in terms of Section 245C. That shows clear legislative intent that the applicant for settlement has to make a true and fair declaration from the threshold. It is on the basis of the application received that the Commissioner calls for report to decide whether the application is to be rejected or permitted to be continued. The declaration contemplated in Section 245C is in the nature of voluntary disclosure of concealed income, but as noted above it must be true and fair disclosure. Voluntary disclosure and making a full and true disclosure of the income are necessary pre-conditions for invoking the Commission's jurisdiction.

In the aforesaid background it would be proper to direct the Commission

A to re-hear the matter. It shall be open to the parties to place any further material which they may choose to place for consideration in support of their respective stands. The Commission shall decide the matter afresh keeping in view the observations made above. It is, however, made clear that we have not expressed any opinion on the facts of the case.

B The appeal is accordingly disposed of. Costs made easy.

S.K.S. Appeals disposed of.