

## Proposed Amendments for Settlement Commission

A forum named as Settlement Commission was set up in 1976 on the basis of recommendations of Direct Taxes Enquiry Committee headed by the former Chief Justice of Supreme Court, Shri K. N. Wanchoo. The objective of establishing this high-powered forum was to ensure effective and speedy disposal of complex cases so as to minimize the long drawn litigation between the assessee and the department and to ensure speedy and early collection of revenue.

The relevant provisions were inserted by the Taxation Amendment Act, 1975 w.e.f. 01.04.1976 in the form of chapter XIX – A of the I.T. Act in sections 245A to 245M of the Income tax Act.

### Present scheme

The present scheme relating to Settlement Commission provides vide section 245C(1) that an assessee can make an application to the Settlement Commission at any stage of a case relating to him. The term case is defined vide clause (b) of section 245A providing that there should be pendency of proceedings on the date of filing the application before the Income Tax Authority. In other words a case, which can be referred to the Settlement Commission under the present scheme, is any assessment or reassessment proceeding pending before the A.O. or CIT (A).

The proposed amendment to section 245A takes away the following types of proceedings from the purview of Settlement Commission.

- ❖ Assessment or reassessment proceedings initiated by issuance of notice under section 148.
- ❖ Assessment or reassessment proceedings triggered by search under section 132.

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- ❖ De novo assessment proceedings arising from the order of the Hon'ble Tribunal setting aside the assessment or order of the Commissioner of Income tax under section 263 or 264.

The definition of "case" is proposed to be amended to exclude proceedings of the above-noted nature. The explanation proposed to be inserted seeks to clarify that the assessment or reassessment proceedings shall be deemed to have commenced on issuance of notice under section 148. Similarly the assessment or reassessment proceedings shall be deemed to have been triggered under section 153A or Sec. 153C on initiation of Search under section 132 or requisition under section 132A. The assessment or reassessment proceedings shall be out of the purview of the word "case" as soon as orders under section 254 or section 263 or section 264 have been passed.

### Composition of the Bench

Section 245A(g) defining "Vice Chairman" is sought to be amended by inserting the phrase "and includes a member who is Senior amongst the members of a Bench". As a result of this proposed change, in absence of Vice Chairman, the Senior member will be eligible to function as head of the Bench.

### Additional tax payable

Proviso to sub-section (1) of section 245C provides at present that the additional tax payable on the basis of the application of the assessee should exceed Rs. 1,00,000/-. The proposed amendment seeks to enhance the requirement from Rs. 1,00,000/- to Rs. 3,00,000/. In other words the applicant coming before the Settlement Commission shall have to offer to pay additional tax of Rs. 3,00,000/-.

The law at present does not require the applicant to make payment of tax on admitted income before filing the application. In other

words there was no requirement of payment of self-assessment tax on the additionally admitted income.

The Finance Bill seeks to provide that the applications made before 1<sup>st</sup> day of June, 2007 and for which order under section 245D(1) has not been passed as on 1<sup>st</sup> June, 2007, such application shall be deemed to have been allowed to be proceeded with if the additional tax on the income disclosed in such application and the interest thereon is paid on or before 31<sup>st</sup> July, 2007. Thus, the applicants of cases awaiting order under section 245D(1) shall have to pay tax on admitted income on or before 31<sup>st</sup> July 2007. On such payment, the application shall be deemed to have been admitted.

However, the proviso proposed to be inserted seeks to provide that tax along with interest payable on the income disclosed in the application is required to be paid before making the application and proof of such payment is required to be filed along with the application.

### **Furnishing copy of application to A.O**

The law at present does not require the applicant to forward a copy of the application to the A.O. The Settlement Commission forwards copy of the non-confidential part of the application to the A.O. The confidential part of the application is forwarded to the A.O. only after the Settlement Commission admits the application. By the proposed amendment in section 245C, sub-section 4 is sought to be inserted to provide that the applicant shall forward a copy of the application to the A.O.

### **Procedure on receipt of application**

The Finance Bill seeks to substitute sub section 1 of section 245D w.e.f. 1<sup>st</sup> day of June 2007 to provide that the Settlement Commission shall within 7 days from the receipt of the application issue a notice to the applicant requiring him to explain as to why the application made by him should be allowed to be proceeded with and on hearing the applicant the Settlement Commission shall within 14 days from the date of application by an order in writing either

reject the application or allow the application to be proceeded with. Where the Settlement Commission has passed no order within the aforesaid period, the application shall be deemed to have been allowed to be proceeded with. The Commission shall within a period of 30 days from the date of application made on or after 1<sup>st</sup> June, 2007 and in respect of pending applications for which the applicants are required to pay tax on or before 31<sup>st</sup> July, 2007 on or before 7<sup>th</sup> August, 2007 call for report from the Commissioner of Income tax (CIT) and the Commissioner shall submit a report within 30 days from the date of receipt of communication from the Settlement Commission.

Proposed sub-section 2C of section 245D seeks to provide that the Settlement Commission may on the basis of the report of the CIT and within a period of 15 days from the receipt of such report by an order in writing declare the application in question as invalid. However, no such application shall be declared as invalid unless an opportunity has been given to the applicant of being heard. A copy of the order declaring the application invalid is required to be forwarded to the applicant and the Commissioner.

If the Commissioner does not submit his report within the prescribed period of 30 days, the Settlement Commission shall proceed without the report of the Commissioner.

### **Time limit**

The present law does not provide for any time limit for disposing of the application. The Finance Bill seeks to insert section 245D(4A) laying down that the applications presently pending with the Commission are required to be disposed off on or before 31<sup>st</sup> day of March, 2008 and the applications made on or after 1<sup>st</sup> June, 2007 shall be disposed of within a period of 9 months from the end of the month in which application is made.

### **Unlimited time for attachment of property**

The Settlement Commission is empowered vide section 245DD to provisionally attach any property belonging to the applicant. However,

the proviso to section 245DD(2) restricted total period of attachment to 2 years. The proposed amendment seeks to delete this period of 2 years. In other words the attachment can be continued without the time limit of 2 years.

### Power to re-open other years

Section 245E enabled the Settlement Commission to order reopening of assessment where no proceedings are pending and therefore the matter has not been brought before the Commission by the applicant vide his application. This power is sought to be removed by the proposed amendment in respect of applications made on or after 1<sup>st</sup> day of June 2007.

### Power to grant Immunity

The Settlement Commission is empowered by the section 245H(1) to grant immunity from prosecution for any offence under the Income tax Act or under the IPC or under any other Central Act for the time being in force and also wholly or partly from imposition of any penalty under the Income tax Act with respect to cases covered by the Settlement. The Finance Bill seeks to insert proviso to sub-section 1 to section 245H to lay down that the Settlement Commission shall not grant immunity for prosecution for any offence under the Indian Penal Code or under any Central Act other than the Income tax Act and the Wealth tax Act to a person who makes application u/s. 245C on or after 1<sup>st</sup> day of June, 2007.

### Abatement of proceedings before Settlement Commission

Section 245HA is sought to be inserted to provide that the proceedings before the Settlement Commission shall abate on specified date. Explanation to section 245HA(1) defines specified dates as under:

1. In case of application rejected under section 245C(i), on the date of rejection.
2. In case of application where tax is required to be paid on or before 31<sup>st</sup> July 2007 and tax has not been paid.

3. In case of applications declared invalid, the date on which the application is declared as invalid.
4. In case of applications where order is not passed by the Settlement Commission on or before the expiry of period specified under section 245D(4A).

The Finance Bill seeks to provide that the application shall abate if the Commission fails to pass an order on or before 31<sup>st</sup> March 2008 in cases where applications have been made before 1<sup>st</sup> June 2007 and within 9 months from the date of filing application in case of applications filed on or after 1<sup>st</sup> June 2007.

### One settlement application in life time

The insertion of sub-section 2 to section 245A seeks to provide that a person who makes application under section 245C on or after 1<sup>st</sup> June 2007 shall not be entitled to make an application under section 245C(1) any time in future.

Amendments for Settlement Commission under indirect tax laws

Similar amendments are proposed for Settlement Commission under the indirect tax laws.

### Conclusion

The proposed amendments will considerably curtail the scope of the Settlement Commission. It would have been more honest to scrap the provisions altogether rather than make them redundant in the manner in which it is sought to be done.

The doors of the Settlement Commission will no longer be open for the cases where the department has initiated the proceedings for taxing the allegedly escaped income. It seems that the objective is no longer avoiding long drawn litigation and thereby ensure speedy collection of tax. Perhaps the entire blame for the delays in disposal of cases by the Settlement Commission is sought to be solely put on the applicants, ignoring the hard reality that in most cases delays are attributable to the administration and not to the applicants. □