REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6827-6848 0F 2010
(ARISING OUT OF S.L.P. (C) NOS. 26364-26385 of 2009)

AJMERA HOUSING CORPORATION & ANR. ETC. ETC. -- APPELLANTS

VERSUS

COMMISSIONER OF INCOME TAX -- RESPONDENT

JUDGMENT

D.K. JAIN, J.:

1. Leave granted.

2. These appeals, by special leave, arise out of the judgment and order dated 8th July, 2009 delivered by the High Court of Judicature at Bombay in a batch of 22 writ petitions. By the impugned common judgment, the High Court has set aside order dated 29th January, 1999 passed by the Income Tax Settlement Commission (for short "the

Settlement Commission") under Section 245D(4) of the Income Tax Act, 1961 (for short "the Act"), and has remanded all the proceedings back to the Settlement Commission for a fresh consideration in the light of the observations made in the impugned judgment.

3. Since the case has had a chequered history and, in fact, the present appeal is the second round of litigation between the parties before this Court, in order to appreciate the questions raised, it would be necessary to take notice of the foundational facts in greater detail. The Ajmera Group of firms, consisting of mainly 4 firms and their partners are engaged in the business of land development and building/construction. For the sake of convenience, facts relating to the main firm viz. M/s. Ajmera Housing Corporation, Bombay (hereinafter referred to as "the assessee"), in which other firms and partners have stakes, are being noticed. These are:

In January, 1989 and again in December, 1992, searches were conducted at the premises of the Group under Section 132(1) of the Act and voluminous books of account, loose papers and other documents were seized during the second search. Files, loose papers and a computer together with its hard disk were seized from the residence of one B.L. Vora, Accountant of

Ajmera Group. In his statement B.L. Vora admitted that he was managing secret books and documents in code words as per the instructions given to him by one Chhotalal Ajmera, who was controlling the whole Ajmera Group.

On the basis of the seized documents, assessment for the assessment year 1989-90 was completed, determining the total income at Rs.18.93 crores as against the returned income of Rs.70 lakhs. Similarly, assessment for the assessment year 1990-91 was completed at Rs.4.01 crores as against the returned income of Rs.4 lakhs. An addition of Rs.90 lakhs was also made to the returned income for the assessment year 1991-92. Prior to the completion of assessment for the said assessment years, an order under Section 132(5) of the Act was passed determining the concealed income of the group at Rs.200.60 crores for the assessment year 1993-94

4. On 30th September, 1993 the assessee filed an application under Section 245C(1) of the Act before the Settlement Commission, disclosing an additional income of Rs.1,94,33,580/- for the assessment years 1989-90 to 1993-94, in addition to the income declared in the returns of income submitted by them earlier. The Settlement Commission called for a report from the Commissioner of Income

Tax, (for short "the Commissioner") in terms of Section 245D(1) of the Act read with Rule 6 of the Income Tax Settlement Commission (Procedure) Rules, 1987 (for short "the 1987 Rules"). On 27th January, 1994, the Commissioner, while objecting to the entertainment of the application for settlement submitted by the assessee, as not being a full and true disclosure of their income, suggested that, at any rate, the income of the group should not be settled at less than Rs. 223.55 crores.

5. Arguments on the question of whether or not the Settlement Commission should proceed with the application were concluded on 12th September, 1994 and orders were reserved. However, on 19th September, 1994, the assessee filed a revised settlement application containing "confidential annexure and related papers", declaring therein an additional income of Rs.11.41 crores. On 17th November, 1994, the Settlement Commission passed an order under Section 245D(1) of the Act deciding to proceed with the application. Accordingly, the Settlement Commission asked the Commissioner to submit a further report, as required under Rule 8 of the 1987 Rules. The Commissioner in his elaborate report dated 30th August, 1995, while observing that the income disclosed by the assessee should not

be treated as true and correct, reported that the total unaccounted income of the assessee was to the tune of Rs.187.09 crores. A yearwise summary of unaccounted receipts and investments made by the assessee, compiled on the basis of the seized books of account and documents, was submitted with the report. It appears that on 20th October, 1997, the Commissioner sent to the Settlement Commission a general note on reconciliation of various annexures to the earlier report, submitted on 30th August, 1995.

6. Hearing in the case commenced before the Settlement Commission on 6th October, 1998 and various hearings took place thereafter, but some time in the year 1999 the assessee made a further disclosure of undisclosed income of Rs.2.76 crores, apparently during the course of hearing, as no application/letter to that effect is on record. Hearings concluded on 14th October, 1998.

7. Vide his letter dated 6th January, 1999, the departmental representative furnished to the Settlement Commission some clarifications regarding the taxability of advance booking amounts received by the assessee. In the said letter, the Commissioner requested the Settlement Commission to examine the question of identifying the "so called"

persons who had booked the flats because this information would be necessary in order to locate them. Instead of responding to the said issue raised by the Commissioner, the assessee, by their letter dated 25th January, 1999, revised their statement of facts and offered an "ad-hoc income of Rs.1 crore for the assessment year 1992-93 and Rs.6 crores for the assessment year 1993-94 to cover up any discrepancies and/or any unforeseen contingencies". On 29th January, 1999, the Settlement Commission passed the final order under Section 245D(4), determining the total income of the assessee for assessment years 1989-90 to 1993-94 at Rs.42.58 crores. Observing that the assessee had co-operated during the proceedings before it, the Settlement Commission imposed a "token" penalty of Rs.50 lakhs as against the minimum leviable penalty of Rs.562.87 lakhs, as per its own assessment. The Settlement Commission also granted immunity to the assessee against prosecution and in respect of other penalties under the Act.

8. Dis-satisfied with the order by the Settlement Commission, the Commissioner challenged it by preferring a writ petition in the High Court of Bombay. Holding that the Settlement Commission had not given any finding as to whether there was full and true disclosure of

the income by the assessee, by a strongly worded order, dated 28th July, 2000, the High Court allowed the writ petition and set aside the order. It would be useful to extract the relevant observations in the judgment:

"In the instant case, if we look at the facts in the light of the legal canvass, in our opinion, the Commission at the very inception ought to have addressed itself on the question as to whether the application was in compliance with the first and foremost requirement of Section 245-C(1). The Commission ought to have noticed that in the application made under Section 245-C(1) disclosure was to the extent of Rs. 1.94 crores. The report of the Commissioner as envisaged under Section 245-D(1) was called for and submitted and thereafter just before the order could be passed under Section 245-D(1) the assessee respondent No. 2 declared additional income of Rs. 11.41 crores. At this stage itself, it was obligatory on the part of the Settlement Commission to apply his mind to the issue as to whether full and true disclosure of the income and the manner in which it was derived, has been made or not. We find no material in the order dated 17.11.1994 in this behalf. Had the Settlement Commission applied its mind to the said facts and had addressed itself on this aspect of the matter regarding subsequent disclosure of Rs. 11.41 crores and had it dealt with the question of maintainability of application under Section 245C(1), then it would not have been open for this Court to sit in appeal over the finding recorded by the Settlement Commission in this behalf.

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On the fact of the record, we find fault with decision taken by the Settlement Commission to allow the application to be proceeded with without determining the basic facts on which further jurisdiction of the Tribunal depended. We, therefore, find that the said order of the Settlement Commission suffers from non-application of mind of the facts available on record."

Dealing with the grievance of the Commissioner that he was not apprised of the revised settlement application filed by the assessee on 19th September, 1994, i.e. after the hearing on the question of whether or not the assessee's application is to be proceeded with in terms of Section 245D(1) of the Act had concluded, disclosing additional income of Rs. 11.41 crores, the High Court observed that order dated 17th November, 1994 was bad, illegal and ab-initio void being in breach of principles of natural justice. Accordingly, the High Court held that all subsequent proceedings and orders passed therein would be of no consequence and they had to be set aside because the subsequent order under Section 245D(4) of the Act could survive only subject to the validity of the order required to be passed under Section 245D(1) of the Act. Even on the merits of the quantification of the total undisclosed income of the assessee, the High Court held that the final order was clearly perverse and could not stand the scrutiny of law. Finally declaring order dated 17th November, 1994 as ab-initio void and quashing order dated 29th January, 1999, the High Court remitted the proceedings back to the Settlement Commission, keeping all the questions open, with a direction to decide the application afresh in accordance with law.

9. Aggrieved by the decision of the High Court, the assessee challenged the same before this Court. By order dated 11th July, 2006, this Court set aside the order of the High Court solely on the ground that the second report submitted by the Commissioner on 20th October, 1997, estimating the undisclosed income at Rs. 42.5 crores, which approximately coincided with the figures arrived at by the Settlement Commission, and accepted by the assessee, had not been taken into consideration by the High Court, which fact was also conceded by learned counsel appearing for the revenue. The special leave petition was disposed of in the following terms:

> "Without expressing any opinion on the merits of the dispute, the findings recorded on the first report or the effect of not recording a finding on the second report, we set aside the impugned order and remit the case back to the High Court for a fresh decision, leaving the parties to raise all points including the point raised before us on behalf of the assessee that the High Court should not have entertained the revenue's writ petitions in exercise of its discretionary jurisdiction under Article 226 of the Constitution of India, and the stand taken by the revenue that the application filed by the assessee for settlement before the Settlement Commission was not entertainable as the assessee had not made, inter alia, true and complete disclosure of its undisclosed income, as provided under the law. All contentions of the parties are left open to be agitated before the High Court."
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> (Emphasis supplied by us)

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10. Pursuant to and in furtherance of the order passed by this Court, the matter was heard afresh by the High Court. By the impugned judgment and order, the High Court has again set aside Settlement Commission's order dated 29th January, 1999 and has remitted the matter back to it for fresh adjudication, observing thus:

"In view of the facts and the legal position noted above, even though we find that the respondents had not made full and true disclosure of their income while making applications under Section 245C, it would not be proper to set aside the proceeding. However, at the same time, the Commission appears to have misdirected itself on several important aspects while passing the final order. The Settlement Commission had not supplied the annexure dated 19.9.1994 declaring additional income of Rs.11.41crore and thus, due opportunity was not given to the Revenue to place (sic) its stand properly. Huge amount of unexplained expenses, unexplained loans and unexplained surplus, total of which is more than Rs.14 crore, was not taken into consideration while passing the final order. Thirdly, the Settlement Commission has imposed token penalty of Rs.50 lakh while in its own assessment leviable penalty would be 562.87 (sic Rs.562.87). In fact the amounts, which were not taken into consideration while assessing the total undisclosed income, are also taken into consideration, the amount of leviable penalty may be much more. Taking into consideration the multiple disclosures and the fact that the respondents had failed to make true and full disclosure initially as well as at the time of second disclosure, we do not find any justifiable reasons to reduce or waive the amount of penalty so drastically. Taking into consideration all these circumstances, in our considered opinion, it will be in the interest of justice to set aside the final order passed by the Settlement Commission and to remand the matter back to the Settlement Commission for hearing parties afresh and to pass orders as per law. Facts and circumstances noted in respect of writ petition no. 2191 of

> 1999 are also relevant for the remaining writ petitions and, therefore, it will be necessary that the final orders passed in all these proceedings should be set aside."
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> (Emphasis added)

Thus, the remand of the case by the High Court to the Settlement Commission was confined only to the question of determination of total income, penalty etc. and the Settlement Commission was not required to go into the question of maintainability of application under Section 245C(1) of the Act.

11. Still being dissatisfied, all the applicants before the Settlement Commission are before us in these appeals.

12. We have heard Dr. A.M. Singhvi, learned senior counsel appearing for the assessee and Shri H.P. Raval, learned Additional Solicitor General, on behalf of the Commissioner.

13. Dr. Singhvi strenuously urged that the impugned order is clearly fallacious as the High Court has again failed to consider the two reports submitted by the Commissioner on 30th August, 1995 and 20th October, 1997 in their proper perspective, despite specific direction by this Court vide order dated 11th July, 2006. Refuting the stand of the Commissioner that undisclosed income determined in her report was

Rs.187.20 crores and not Rs.42.58 crores, learned counsel referred us to several documents, forming part of the revised confidential annexure, in particular to the last page of Commissioner's report dated 30th August, 1995 wherein, according to the learned counsel, while referring to Annexure-VII of the revised annexure, the Commissioner has determined undisclosed income at Rs.42.58 crores. It was thus, asserted that the High Court has gone wrong in equating "unaccounted income" with "unaccounted receipts" and payments of Rs.187.20 crores. On the basis of the very same annexure, learned counsel also attempted to demonstrate that the revised annexure, disclosing undeclared income of Rs.11.41 crores was, in fact, in the knowledge of the Commissioner before she had submitted her report, whereafter the Settlement Commission had decided to proceed with the assessee's application. It was pleaded that the finding of the High Court that the Commissioner had not been supplied with the annexure filed on 19th September, 1994 declaring additional income of Rs.11.41 crores and thus, due opportunity was not given to the revenue to put forth its stand properly, was erroneous and, therefore, the impugned order deserves to be set aside on this ground alone.

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14. Next, it was urged by learned senior counsel for the assessee that the High Court erred in entertaining the writ petition filed by the Commissioner under Article 226 of the Constitution against the order passed by the Settlement Commission because: (i) in terms of Section 245D(1) of the Act, the order made by the Settlement Commission under sub-section (4) of the said Section is conclusive as to the matters stated therein and no matter covered by such order can be reopened in any proceedings under the Act or under any other law for the time being in force and (ii) in the absence of any illegality in the procedure followed by the Settlement Commission, the power of judicial review could not be exercised by the High Court to interfere with the findings of fact recorded by the Settlement Commission. To buttress his proposition that judicial review is concerned only with the decision making process and not with the final decision, learned counsel referred us to the decisions of this Court in Jyotendrasinhji Vs. S.I. Tripathi & Ors.1, M/s R.B. Shreeram Durga Prasad & Fatehchand Nursing Das Vs. Settlement Commission (IT & WT) & Anr.2 and Shriyans Prasad Jain Vs. Income Tax Officer & Ors.3.

1 1993 Supp (3) SCC 389

2 (1989) 1 SCC 628

3 1993 Supp (4) SCC 727

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15. It was also argued by the learned counsel that since by operation of Section 245D(1) of the Act read with Rule 6 of the 1987 Rules, annexure, statements and other documents accompanying such annexure were not to be supplied to the Commissioner before the Settlement Commission had decided to proceed with assessee's application, no prejudice was caused to the Commissioner by the filing of revised annexure by the assessee on 19th September, 1994.

16. Shri Raval, on the other hand, supporting the impugned judgment, submitted that the scheme of Chapter XIX-A does not envisage revision of the application filed by the assessee under Section 245C(1) of the Act and, therefore, the Settlement Commission committed serious procedural irregularity in permitting the assessee to file revised annexure, declaring higher undisclosed income. Additionally, the learned counsel argued that acceptance of such annexure, after the conclusion of hearing on 12th September, 1994, behind the back of the departmental representative and after the Settlement Commission had reserved its order under Section 245D(1), was improper and clearly in breach of principles of natural justice and, therefore, the order passed by the Settlement Commission on 17th November, 1994, deciding to proceed with the application deserves to be set aside.

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17. Learned counsel contended that revision of undisclosed income from Rs.1.94 crores to Rs.11.41 crores, as projected in the revised annexure and thereafter the two voluntary disclosures during the course of hearing and finally acceptance of Settlement Commission's order determining total income at Rs.42.58 crores without demur shows that the disclosure made by the assessee in their application under Section 245C of the Act was neither full nor true and, therefore, the Settlement Commission ought to have rejected the application for settlement. It was pleaded that the piecemeal disclosures, in particular the revision of the statement of facts vide assessee's letter dated 25th January, 1999, offering an ad hoc income of Rs.1 crore for the assessment year 1992-93 and Rs.6 crores for the assessment year 1993-94 to cover up "any discrepancies and/or any unforeseen contingencies" is not contemplated in the scheme of Chapter XIX-A and, therefore, the final order passed by the Settlement Commission on the basis of revised statement of facts and annexures is void ab initio. In support of the submission that a full and true disclosure of income in the application is a sine qua non for an application under Section 245C(1) of the Act, learned counsel placed reliance on the decisions of this Court in Sanghvi Reconditioners Private Limited

Vs. Union of India & Ors.4 and Commissioner of Income Tax, Jalpaiguri Vs. Om Prakash Mittal5.

18. Responding to the contention urged on behalf of the assessee regarding entertainment of writ petition by the High Court, learned counsel submitted that having conceded before the High Court that the assessee was not pressing the point of tenability of the writ petition, the assessee is estopped from raising the said issue before this Court.

19. Lastly, relying on the decision of this Court in Mrs. Margaret Lalita Samuel Vs. The Indo Commercial Bank Ltd.6, learned counsel for the Commissioner pleaded that since the High Court has merely remanded the case back to the Settlement Commission for fresh determination of income and penalty etc., this Court may not like to exercise its discretionary power under Article 136 of the Constitution.

20. Before embarking upon the rival contentions, it would be instructive to refer to the scheme of Chapter XIX-A of the Act. The Chapter was inserted in the Act by the Taxation Laws (Amendment) Act, 1975, pursuant to the recommendations of the Justice Wanchoo Committee Report. The recommendation, contained in Chapter 2 of the report

4 (2010) 2 SCC 733

5 (2005) 2 SCC 751

6 (1979) 2 SCC 396

under the caption "Black Money and Tax Evasion", was for setting up of a statutory settlement machinery, whereby a tax evader could make a clean breast of his past illegitimate affairs, discharge his tax liability as determined by the body so established and thus, buy quittance for himself and in the process accelerate recovery of taxes by the State, although less than what may have been recovered after protracted litigation and recovery proceedings. The said Chapter, with some amendments, envisages settlement of complex tax disputes and grant of immunity from criminal proceedings by a Settlement Commission constituted in this regard. The Chapter sets out in detail the mechanics of application, investigation, consideration, hearing and disposal of the application.

21. Proceedings under the said Chapter commence on the filing of an application by an assessee under Section 245C(1) of the Act, which reads as follows:-

"245-C. Application for settlement of cases.--(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

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case settled and any such application shall be disposed of in the manner hereinafter provided:
......"

A bare reading of the provision would reveal that besides such other particulars, as may be prescribed, in an application for settlement, the assessee is required to disclose: (i) a full and true disclosure of the income which has not been disclosed before the assessing officer; (ii) the manner in which such income has been derived and (iii) the additional amount of income tax payable on such income.

22. It is clear that disclosure of "full and true" particulars of undisclosed income and "the manner" in which such income had been derived are the pre-requisites for a valid application under Section 245C(1) of the Act. Additionally, the amount of income tax payable on such undisclosed income is to be computed and mentioned in the application. It needs little emphasis that Section 245C(1) of the Act mandates "full and true" disclosure of the particulars of undisclosed income and "the manner" in which such income was derived and, therefore, unless the Settlement Commission records its satisfaction on this aspect, it will not have the jurisdiction to pass any order on the matter covered by the application.

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23. Section 245D(1) lays down the procedure to be followed after the receipt of the application under Section 245C(1) of the Act. It reads thus:

"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:
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(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 authorised 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)."

24. Since Rules 6 and 8 of the 1987 Rules have some bearing on the issues involved, for the sake of ready reference, these are extracted below:

"6. Commissioner's report etc., under section 245D (1).-- On receipt of a settlement application, a copy of the said application (other than the Annexure and the statements and other documents accompanying such Annexure) shall be forwarded by the Commission to the Commissioner with the direction to furnish his report under sub-section (1) of section 245D within thirty days of the receipt of the said copy of the application by him or within such further period as the Commission may specify."

"8. Commissioner's further report.--Where an order is passed by the Commission under sub-section (1) of section 245D allowing the settlement application to be proceeded with, copy of the Annexure to the said application, together with a copy of each of the statements and other documents accompanying such annexure, shall be forwarded to the Commissioner along with a copy of the said order with the direction that the Commissioner shall furnish a further report within ninety days of the receipt of the said Annexure (including the statements and other documents accompanying it or within such further period as the Commission may specify."

25. It will also be useful to extract the relevant portions of Form (No.34B), prescribed for making an application under Section 245C(1) of the Act:

"[FORM NO. 34B]
[See rules 44C and 44CA]
Form of application for settlement of cases under section 245C(1) of the Income-tax Act, 1961

.....
.....

10.	Particulars of the issues to be settled, nature and circumstances of the case and complexities of the investigation involved [See Note 7]	
11.	Full and true disclosure of income which has not been disclosed before the Assessing Officer, the manner in which such income has been derived and the additional amount of income-tax payable on such income [See Notes 9 and 10]	

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Signed
(Applicant)

Notes:
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7. Full details of issues for which application for settlement is made, the nature and circumstances of the case and complexities of the investigation involved must be indicated against item 10. Where the application relates to more than one assessment year, these details should be furnished for each assessment year.

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9. The additional amount of income-tax payable on the income referred to in item 11 should be calculated in the manner laid down in sub-sections (1A) to (1D) of section 245C.

10. The details referred to in item 11 shall be given in the Annexure to this application."

[Emphasis supplied by us]

26. The procedure laid down in Section 245D of the Act, contemplates that on receipt of the application under Section 245C(1) of the Act, the Settlement Commission is required to forward a copy of the application filed in the prescribed form (No. 34B), containing full details of issues for which application for settlement is made, the nature and circumstances of the case and complexities of the investigation involved, save and except the annexures, referred to in item No. 11 of the form and to call for report from the Commissioner. The Commissioner is obliged to furnish such report within a period of 45 days from the date of communication by the Settlement Commission. Thereafter, the Settlement Commission, on the basis of

the material contained in the said report and having regard to the facts and circumstances of the case and/or complexity of the investigation involved therein may by an order, allow the application to be proceeded with or reject the application. After an order under Section 245D(1) is made, by the Settlement Commission, Rule 8 of the 1987 Rules mandates that a copy of the annexure to the application, together with a copy of each of the statements and other documents accompanying such annexure shall be forwarded to the Commissioner and further report shall be called from the Commissioner. The Settlement Commission can also direct the Commissioner to make further enquiry and investigations in the matter and furnish his report. Thereafter, after examining the record, Commissioner's report and such further evidence that may be laid before it or obtained by it, the Settlement Commission is required to pass an order as it thinks fit on the matter covered by the application and in every matter relating to the case not covered by the application and referred to in the report of the Commissioner under sub-section (1) or sub-section (3) of the said Section. It bears repetition that as per the scheme of the Chapter, in the first instance, the report of the Commissioner is based on the bare information furnished by the assessee against item No. 10 of the

prescribed form, and the material gathered by the revenue by way of its own investigation. It is evident from the language of Section 245C(1) of the Act that the report of the Commissioner is primarily on the nature of the case and the complexities of the investigation, as the annexure filed in support of the disclosure of undisclosed income against item No. 11 of the form and the manner in which such income had been derived are treated as confidential and are not supplied to the Commissioner. It is only after the Settlement Commission has decided to proceed with the application that a copy of the annexure to the said application and other statements and documents accompanying such annexure, containing the aforesaid information are required to be furnished to the Commissioner. In our opinion even when the Settlement Commission decides to proceed with the application, it will not be denuded of its power to examine as to whether in his application under Section 245C(1) of the Act, the assessee has made a full and true disclosure of his undisclosed income. We feel that the report(s) of the Commissioner and other documents coming on record at different stages of the consideration of the case, before or after the Settlement Commission has decided to proceed with the application would be most germane to determination

of the said question. It is plain from the language of sub-section (4) of Section 245D of the Act that the jurisdiction of the Settlement Commission to pass such orders as it may think fit is confined to the matters covered by the application and it can extend only to such matters which are referred to in the report of the Commissioner under sub-section (1) or sub-section (3) of the said Section. A "full and true" disclosure of income, which had not been previously disclosed by the assessee, being a pre-condition for a valid application under Section 245C(1) of the Act, the scheme of Chapter XIX-A does not contemplate revision of the income so disclosed in the application against item No. 11 of the form. Moreover, if an assessee is permitted to revise his disclosure, in essence, he would be making a fresh application in relation to the same case by withdrawing the earlier application. In this regard, Section 245C(3) of the Act which prohibits the withdrawal of an application once made under sub-section (1) of the said Section is instructive in as much as it manifests that an assessee cannot be permitted to resile from his stand at any stage during the proceedings. Therefore, by revising the application, the applicant would be achieving something indirectly what he cannot otherwise achieve directly and in the process rendering the provision

of sub-section (3) of Section 245C of the Act otiose and meaningless. In our opinion, the scheme of said Chapter is clear and admits no ambiguity.

27. It is trite law that a taxing statute is to be construed strictly. In a taxing Act one has to look merely at what is said in the relevant provision. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. There is no room for any intendment. There is no equity about a tax. (See: Cape Brandy Syndicate Vs. Inland Revenue Commissioners7 and Federation of A.P. Chambers of Commerce & Industry & Ors. Vs. State of A.P. & Ors.8). In interpreting a taxing statute, the Court must look squarely at the words of the statute and interpret them. Considerations of hardship, injustice and equity are entirely out of place in interpreting a taxing statute. (Also see: Commissioner of Sales Tax, Uttar Pradesh Vs. The Modi Sugar Mills Ltd.)9.

28. As afore-stated, in the scheme of Chapter XIX-A, there is no stipulation for revision of an application filed under Section 245C(1) of the Act and thus the natural corollary is that determination of

7 (1921) 1 KB 64

8 (2000) 6 SCC 550

9 1961 (2) SCR 189

income by the Settlement Commission has necessarily to be with reference to the income disclosed in the application filed under the said Section in the prescribed form.

29. Having noticed the scheme of Chapter XIX-A of the Act, we shall now advert to the facts at hand and evaluate the rival submissions.

30. Before addressing the other issues, at the outset, we record our disapproval with the view of the High Court that it would not be proper to set aside the proceedings before the Settlement Commission even though it was convinced that the assessee had not made full and true disclosure of their income while making application under Section 245C of the Act. As stated above, in its earlier order dated 28th July, 2000 while declaring order dated 17th November, 1994, as ab initio void and setting aside order dated 29th January, 1999, the High Court had remitted the case to the Settlement Commission to decide the entire matter afresh, including the question of maintainability of the application under Section 245C(1) of the Act. The said order of the High Court was put in issue before this Court and was set aside vide order dated 11th July, 2006 and the case was remanded back to the High Court for fresh consideration.

Nevertheless, all points raised by the parties, including the plea of the revenue that the application filed by the assessee before the Settlement Commission was not maintainable as the assessee had not made a full and true disclosure of their undisclosed income were kept open. The High Court addressed itself on the said issue and found that the assessee had not made a full and true disclosure of their income while making the application under Section 245C(1) of the Act, yet did not find it proper to set aside the proceedings on that ground. Having recorded the said adverse finding on the very basic requirement of a valid application under Section 245C(1) of the Act, the High Court's opinion that it would not be proper to set aside the proceedings is clearly erroneous. The High Court appears to have not appreciated the object and scope of the scheme of settlement under Chapter XIX-A of the Act. At this juncture, it would be appropriate to notice a few illuminating observations in W T Ramsay Ltd. Vs. Inland Revenue Commissioners10, which was considered to be a turning point in the interpretation of tax laws in England and was a significant departure from Inland Revenue Commissioners Vs. Duke of Westminster11 dictum, noted in the passage extracted below :-

10 (1981) 1 All ER 865

11 [1936] AC 1, [1935] All ER Rep 259

"Given that a document or transaction is genuine, the court cannot go behind it to some supposed underlying substance. This is the well-known principle of Inland Revenue Comrs v Duke of Westminster [1936] AC 1, [1935] All ER Rep 259, 19 Tax Cas 490. This is a cardinal principle but it must not be overstated or over-extended. While obliging the court to accept documents or transactions, found to be genuine, as such, it does not compel the court to look at a document or a transaction in blinkers, isolated from any context to which it properly belongs. If it can be seen that a document or transaction was intended to have effect as part of a nexus or series of transactions, or as an ingredient of a wider transaction intended as a whole, there is nothing in the doctrine to prevent it being so regarded; to do so is not to prefer form to substance, or substance to form. It is the task of the court to ascertain the legal nature of any transactions to which it is sought to attach a tax or a tax consequence and if that emerges from a series or combination of transactions, intended to operate as such, it is that series or combination which may be regarded."

31. We are convinced that, in the instant case, the disclosure of Rs.11.41 crores as additional undisclosed income in the revised annexure, filed on 19th September, 1994 alone was sufficient to establish that the application made by the assessee on 30th September, 1993 under Section 245C(1) of the Act could not be entertained as it did not contain a "true and full" disclosure of their undisclosed income and "the manner" in which such income had been derived. However, we say nothing more on this aspect of the matter as the Commissioner, for reasons best known to him, has chosen not to challenge this part of the impugned order.

32. We shall now deal with the principal argument of learned counsel for the assessee that the High Court had failed to consider, in their correct perspective the two reports submitted by the Commissioner on 30th August, 1995 and 20th October, 1997, in as much as, in the latter report the Commissioner had himself computed the undisclosed income at Rs. 42.52 crores, which was equivalent to the amount finally determined by the Settlement Commission. Therefore, according to the learned counsel, there was no justification for the remand of the case back to the Settlement Commission. At the first blush, the argument appears to be attractive but on a deeper scrutiny, it does not merit acceptance. In the impugned order, on a critical examination of the order passed by the Settlement Commission with reference to the said two reports, in particular the reconciliation report submitted by the Commissioner on 20th October, 1997, estimating the undisclosed income at Rs. 187.20 crores, the High Court had found that only that part of the report dated 20th October, 1997, which dealt with "on money" was highlighted before this Court, while other incomes, investments, receipts or payments were not covered in that part of the statement. The High Court also observed that the manner in which expenses had been shown, created

a serious doubt about the expenditure of Rs.734.02 lakhs. The High Court has also noted that the Settlement Commission had not properly dealt with the amount of Rs.911.51 lakhs on account of unexplained expenses, loans and surplus amount of Rs.488.98 lakhs, while assessing the total income and thus an amount of Rs.14.49 crores had been left out while determining the undisclosed income of the assessee. Besides, the High Court has also commented that having come to the conclusion that the penalty leviable worked out to be Rs. 562.87 lakhs, the Settlement Commission had no reason for levying a token penalty of Rs. 50 lakhs, which was not even 10% of the minimum leviable penalty. Ultimately the High Court observed that : (i) since the Settlement Commission had not supplied annexure filed on 19th September, 1994, declaring additional income of Rs.11.41 crores, due opportunity had not been given to the revenue to place its stand properly; (ii) huge amount of unexplained expenses, unexplained loans and unexplained surplus, total of which was more than Rs.14 crores, was not taken into consideration while passing the final order and (iii) the Settlement Commission had imposed token penalty of Rs.50 lakhs while on its own assessment leviable penalty would have been Rs.562.87 lakhs. Further, if the amount which had

not been taken into consideration while assessing the total undisclosed income was to be taken into account, the amount of leviable penalty would have been much more. In light of these facts, the High Court formed the opinion that it would be in the interest of justice to set aside the final order passed by the Settlement Commission and to remand the case back to it for fresh adjudication on assessee's application. Bearing in mind the afore-stated factual position, as emanating from the material on record, we find it difficult to persuade ourselves to agree with learned counsel for the assessee that there was no justification for order of remand by the High Court and that the order passed by the Settlement Commission should have been affirmed. We are satisfied that under the given scenario, the High Court was correct in making the order of remand and no good ground is made out for interference in exercise of our jurisdiction under Article 136 of the Constitution.

33. As regards the argument of learned counsel for the assessee that the scope of judicial review being limited, the High Court should not have interfered with the order of the Settlement Commission in exercise of its power under Article 226 of the Constitution, in our opinion, the argument is stated to be rejected. Having conceded before the High

Court that the assessee was not pressing the point of maintainability of the writ petition before the High Court, the assessee cannot be now permitted to resile from its earlier stand and raise the same issue before us. Even otherwise, as stated above, we have no hesitation in observing that the manner in which assessee's disclosures of additional income at different stages of proceedings were entertained by the Settlement Commission, rubbishing the objection of the Commissioner that the assessee had not made a full and true disclosure of their income in the application under Section 245C(1) of the Act, leaves much to be desired.

34. We may now evaluate the submission of learned counsel for the assessee that since the Commissioner was not entitled to receive a copy of the annexure to the application before the Settlement Commission had decided to proceed with the application, no prejudice was caused to the Commissioner because of the alleged non-supply of the revised annexure at a stage anterior to the making of order under Section 245D(1) of the Act. It is true that details of the "full and true" disclosure of income and "the manner" in which such income is derived is to be given in the form of an annexure to the application, which is treated as confidential and is not to be forwarded to

Commissioner for the purpose of his report under sub-section (1) of Section 245D of the Act and therefore, apparently there is substance in the contention. But when the argument is tested on the anvil of the scheme of Chapter XIX-A, the revision of the annexure by itself was prejudicial to the interest of the revenue. Apart from the fact, as explained above, revision of the annexure is tantamount to revision of the application, not contemplated in the scheme, withholding of the information regarding filing of revised annexure, disclosing undisclosed income of Rs.11.41 crores as against the income of Rs.1.94 crores, disclosed in the annexure forming part of the application, deprived the Commissioner of his right to object to the maintainability of assessee's application on the ground that the assessee had not made true and full disclosure of their income in the previous application, the foundational requirement of a valid application under Section 245C(1) of the Act. Accordingly, we have no hesitation in rejecting the argument.

35. For all the reasons aforesaid, we do not find any merit in these appeals, which are dismissed accordingly. The Commissioner will be entitled to costs, quantified at Rs.50,000/-.

.....J.
(D.K. JAIN)

.....J.
(H.L. DATTU)

NEW DELHI;
AUGUST 20, 2010.