

Chapter 11 : Income Tax Settlement Commission

Chapter Index

Section details	Pg
Basic of Income Tax Settlement Commission	11.1
Sec 245L Proceeding to be Judicial	11.1
Sec 245I Order of Settlement to be conclusive	11.2
Sec 245HAA Credit for Tax Paid	11.2
Sec 245G Inspection of Reports	11.2
Sec 245J Recovery of Sum Due	11.2
Sec 245B Constitution of ITSC	11.3
Sec 245BD Decision by Benches	11.3
sec 245BA Benches of Settlement Commission	11.4
Settlement to be declared as void	11.4
Sec 245C Application for Settlement of Cases	11.4
Sec 245D Procedure on receipt of application	11.7
Specified Person who can make application on behalf of Assessee	11.11
Meaning of Case [Sec 245A(b)]	11.12
Other Powers of Settlement Commission	11.12
Sec 245HA Abatement of Proceeding	11.12
Sec 245F Power to regulate the procedure	11.14
Sec 245E Reopening of Completedc Proceeding	11.14
Sec 251 Power of the Commissioner (Appeal)	11.14
Sec 273AA Power of Commissioner to Grant Immunity from Penalty	11.15
Sec 278 AB Power of Commissioner to Grant Immunity from Prosecution	11.15
Sec 245K Bar on Subsequent Application for Settlement	11.16
Relevant Case Laws	11.17
Multiple Choice Questions	11.19
For Your Practise- Solved Questions	11.20
Know your Exams- Unsolved Questions	11.22

11. INCOME TAX SETTLEMENT COMMISSION



Basic of Settlement Commission (ITSC)

Income Tax Settlement Commission is premier Alternative Dispute Resolution (ADR) body in India. This method is also called as Self Confession Method



The settlement mechanism allows taxpayers to disclose additional Income before it over and above what has been already disclosed before the Income tax Department. The applicant has to pay full amount of tax + interest on the additional income disclosed before the Commission, before filing the application.



The Commission is required to pass the Settlement order within 18 months of filling of the application. It has wide power of granting immunity from Penalty and prosecution, which are major sources of litigation. The orders passed by the Commission are final and conclusive.



At present the benefit of the settlement mechanism can be availed by a taxpayer only once in life-time (Sec 245K)

Sec 245L Proceeding to be Judicial

Proceeding under this chapter shall be Judicial proceeding

11. INCOME TAX SETTLEMENT COMMISSION

Sec 245I Order of settlement to be conclusive

Order of ITSC is final & conclusive

Appeal possible ✗	Reopening of case ✗
Revision possible ✗	HC/SC ✓ [Jyotendrasingji vs S I Tripathi]
Rectification possible ✓	u/s 254

Under following exceptional circumstances only, writ petition to HC is possible:

- 1) when Principles of Natural Justice are violated;
- 2) when mandatory procedural requirements of law have not been complied with
- 3) where reasoning given in order of ITSC contradicts with conclusion drawn in such order

Sec. 245HAA Credit for tax paid

Where application to ITSC is rejected / other application is not allowed / declared invalid / not allowed for further processing / not passed within time. The case shall abate & matter shall be redirected to AO who shall allow credit of tax & interest paid at time of making application to ITSC.

Sec. 245G Inspection of Reports

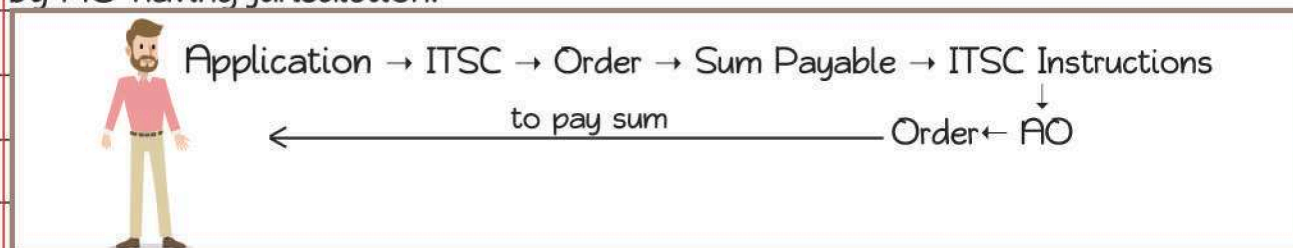
No person shall be entitled to

- Inspect or
- Obtain copy of any report made by ITSC

But ITSC may on its discretion furnish copies thereof to such person who has made application on payment of prescribed fees

Sec. 245J Recovery of sum due

Any sum specified in order of ITSC, may subject to conditions be recovered & any penalty for default in making payment may be imposed & recovered by AO having jurisdiction.



11. INCOME TAX SETTLEMENT COMMISSION

Reapplication, upon rejection of earlier application is allowed. But once decision is made no further application is allowed

Sec 245B Constitution of ITSC

Sec 245B(1) - The CG shall constitute a Commission to be called the ITSC for the settlement of cases under this Chapter.

Sec 245B(2) - The ITSC shall consist of a Chairman and as many Vice-Chairmen and other members as the CG thinks fit and shall function within the Department of the CG dealing with direct taxes.

Sec 245B(3) - The Chairman, Vice-Chairman and other members of the ITSC shall be appointed by the CG from amongst persons of integrity and outstanding ability, having special knowledge of, and, experience in, problems relating to direct taxes and business accounts.

Provided that, where a member of the Board is appointed as the Chairman, Vice-Chairman or as a member of the ITSC, he shall cease to be a member of the Board.

Sec.245BD Decision by benches

If the Members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the ITSC and such point or points shall be decided according to the opinion of the majority of the Members of the ITSC who have heard the case, including those who first heard it.

11. INCOME TAX SETTLEMENT COMMISSION

Sec.245BA Benches of Settlement Commission

- General: Normally a Bench shall be presided over by the Chairman or VC & shall consist of two other Members.
- Benches with Two Members: If a member is unable to discharge his functions owing to absence, illness or any other cause or in the event of the occurrence of any vacancy either in the office of any two persons may, with the approval of chairman or VC may function as the Bench. If presiding officer is unable to discharge the functions as above, the next senior member shall be presiding officer. But bench must have atleast 2 persons including presiding officer.
- Special Benches: The Chairman may, for the disposal of any particular case constitute a Special Bench consisting of more than three Members. Such Bench shall sit at a place to be fixed by the Chairman.

Settlement to be declared as void

The order of ITSC shall be void if it has been obtained by

- a) fraud
- b) Misrepresentation

Where the Settlement has been declared void then the proceeding shall abate to AO & such AO shall complete the proceeding within 2 years from end of FY in which it is declared as void.

Sec 245C Application for Settlement Of Cases

Sec 245C(1) - An assessee may at any stage of a case relating to him, make an application in the prescribed form to Settlement Commission containing full & true disclosure of his income which has not been disclosed before AO the manner in which such income has been derived the additional amount of Income-tax payable on such income and other prescribed particulars.

Provided that no such application shall be made unless—

- i) In case of 6/10 AYs immediately preceding the AY relevant to PY in which search is conducted and AY relevant to PY in which search is conducted,

11. INCOME TAX SETTLEMENT COMMISSION

the additional amount of income-tax payable on the income disclosed in the application exceeds ₹50,00,000;

ia) in a case where -

a) the applicant is related to the person referred to in clause (i) who has filed an application (referred to as "specified person"); and

b) the proceedings for assessment or re-assessment for 6/10 AYs immediately preceding the AY relevant to PY in which search is conducted and AY relevant to the PY in which search is conducted in case of applicant have been initiated u/s 153A, the additional amount of income-tax payable on the income disclosed in the application exceeds ₹10,00,000.

ii) In any other case, the additional amount of income tax payable on the income disclosed in the application exceeds ₹10,00,000; and

iii) such tax and the interest thereon, which would have been paid under the provisions of this Act had the income disclosed in the application been declared in the return of income before the AO on the date of application, has been paid on or before the date of making the application and the proof of such payment is attached with the application.

Explanation - For the purposes of clause (ia), the applicant, in relation to the specified person referred to in clause (ia), means,

Specified Person	Applicant
Individual	Relatives
Company	Director/ Relative
Firm	Partners/ Relative
AOP /BOI HUF	Members/ Relative
Individual	Co/ Firm/ AOP/ BOI/ HUF i.e. any person in whose business such individual / his relative has substantial interest.
Company	Any person in whose business substantial interest is held by (i) Specified Person being Co, Firm, AOP/BOI, HUF or (ii) Any director, partner, Member or their relative
Firm	
AOP /BOI HUF	
Company	An individual who has substantial interest in the business of the specified person or his relatives.
Firm	
AOP /BOI HUF	

11. INCOME TAX SETTLEMENT COMMISSION

Company Firm AOP /BOI HUF	(i) Any Co., Firm, AOP / BOI, HUF which has substantial interest in the business of the specified person. (ii) Its director, Partner, Member or (iii) their relatives
Company Firm AOP /BOI HUF	(i) Any Co., firm, AOP/ BOI, HUF whose director, partner, member has substantial interest in the business of the specified person or (ii) Any other director/partner/member; or (iii) Their relatives.

Conditions for making Application to Settlement Commission -

Following conditions should be satisfied for moving an application to ITSC -

- i) The case must be pending ONLY in assessment or reassessment proceedings u/s 143(3)/ 144 / 147/ 153A before AO. Settlement application is not maintainable if the case is pending before CIT/ CIT (A)/ ITAT/ Court.
- ii) The additional amount of income-tax on the income disclosed in the application should exceed ₹50,00,000 in case of search & seizure & should exceed ₹10,00,000 in case of related person, in case of search and seizure. In cases pending u/s 143(3) / 144/ 147, the additional amount of income tax should exceed ₹10,00,000.
- iii) such tax along with interest, if any, shall be paid on or before the date of making the application and proof of such payment shall be attached with the application.

Sec 245C(1B) - Calculation of additional amount of tax where application pertains to one year only

1. Where the Return of Income has not been furnished by the Assessee -
Tax on total income disclosed in the application to Settlement Commission
2. Where the Return of Income has not been furnished by the Assessee -
Tax on [Income disclosed in the application to Settlement Commission + Returned Income] minus [Tax on Returned Income]

11. INCOME TAX SETTLEMENT COMMISSION

Sec 245C(1D) - Where the income disclosed in the application relates to more than one PY, the additional amount of income-tax payable in respect of the incomes disclosed for various years shall be computed as above & the aggregate amounts so arrived shall be the additional amount of income-tax payable in respect of the income disclosed in the application.

Sec 245C(3) - An application made shall not be allowed to be withdrawn by the applicant.

Sec 245C(4) - As assessee shall, on the date on which he makes an application u/s 245C to ITSC, also intimate the AO in the prescribed manner of having made such application to ITSC.

Sec 245C(2) - The application to the Settlement Commission shall be in prescribed form and shall be accompanied by prescribed fees.

Sec 245D Procedure on Receipt Of Application

