

11. INCOME TAX SETTLEMENT COMMISSION

report, by an order in writing, declare the application in question as invalid, & shall send the copy of such order to the applicant & the Commissioner.

Provided that an application shall not be declared invalid unless an opportunity has been given to the applicant of being heard:

Provided further that where the Commissioner has not furnished the report within the aforesaid period, the ITSC shall proceed further in the matter without the report of the Commissioner.

Sec 245D(3) - The ITSC, in respect of an application which has not been declared invalid under sub-sec (2C) may call for the records from the Commissioner & after examination of such records, if ITSC 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 & furnish a report on the matters covered by application & any other matter relating to the case, and the Commissioner shall furnish the report within a period of 90 days of the receipt of communication from ITSC.

Provided that where the Commissioner does not furnish the report within the aforesaid period, ITSC may proceed to pass an order under sub-sec (4) without such report.

Sec 245D(4) - Order of Settlement

ITSC shall after examining the records & reports of the Commissioner, after giving opportunity to the applicant & to the Commissioner to be heard & taking into account any further evidence as may be brought to its notice, pass an order of settlement. The order shall relate to the matters covered by application and also the matters referred in the report of Commissioner.

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Sec 245D(4A) - Time Limit for passing of order

ITSC shall pass an order of Settlement u/s 245D(4), within 18 months from the end of the month in which application was made.

Sec 245D(6) - Content of Order of ITSC

The order of Settlement Commission shall provide for:

- > terms of settlement including tax, penalty or interest.
- > the manner in which the sums due under the Settlement will be paid.
- other matters to make the Settlement effective.
- > that the settlement shall be void if it is found by ITSC that it has been obtained by fraud or misrepresentation of facts.

The Order of Settlement passed u/s 245D(4) shall provide for -

- i) Income settled and tax thereon.
- ii) Interest u/s 234A/B/C. As per **Supreme Court in Anjum M. H. Ghaswala**, ITSC cannot waive/ reduce the interest u/s 234A/B/C. It can waive/ reduce to the extent Chief CIT / DG can do.
- iii) Immunity from penalty and prosecution
- iv) Levy of penalty and filing of case of prosecution
- v) Manner in which tax due on settlement shall be paid
- vi) Other matters to make settlement effective
- vii) That the order of settlement shall be declared void if it is found that the settlement was obtained by fraud or misrepresentation of facts.

Sec 245D(7) - If the settlement becomes void as said above, the income tax proceedings in respect of matters covered by settlement shall be deemed to have been revived from the date of the application for settlement. Notwithstanding anything contained in Income-tax Act the Income-tax authority can complete such proceedings at any time before expiry of 2 years from the end of the FY in which settlement became void.

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Sec 245D(6B) - Rectification of mistake apparent from record

ITSC may, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (4)

at any time within a period of 6 months from the end of the month in which the order was passed; or

at any time within the period of 6 months from the end of the month in which an application for rectification has been made by the Principal Commissioner or the Commissioner or the applicant, as the case may be.

Provided that no application for rectification shall be made by the Principal Commissioner or the Commissioner or the applicant after the expiry of 6m from the end of the month in which an order under sub-sec (4) is passed by ITSC.

Provided further that an amendment which has the effect of modifying the liability of the applicant shall not be made under this sub-section unless ITSC has given notice to the applicant and the Principal Commissioner or Commissioner of its intention to do so and has allowed the applicant and the Principal Commissioner / Commissioner an opportunity of being heard.

Specified Person who can make application on behalf of Assessee

Specified Person

1. If specified person is
 - a. Individual
 - b. Company/firm/AOP/HUF
2. If Specified person has Business or Profession

Applicant Can be

- a. Any relative of the specified person
- b. Director of company, partner of firm, member of HUF/AOP/any other relative
 - Any Individual having substantial interest/his relative.

Substantial Interest PSR > 20% or 20% of VR

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Meaning of Case [Section 245A (b)]

> Failure to deduct TDS does come within purview of sec 245C (1). So the settlement has no Jurisdiction.

Ineligible cases at ITSC

Pendency of

- a) Appellate proceeding [CIT(A),ITAT,HC,SC] b) Rectification u/s 154
c) Revision u/s 263/264. d) Intimation u/s 143[1]/200A/206CB

Other Powers of Settlement Commission

Sec 245DD

1. Where, during pendency of any proceeding before it, ITSC is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, it may, by order, attach provisionally any property belonging to the applicant in the manner provided in IInd Schedule
2. Every provisional attachment made by ITSC shall cease to have effect after expiry of period of 6m from date of order made.
3. ITSC may, for reasons to be recorded in writing, extend aforesaid period by such further period/(s) as fit.

Sec 245H

If assessee has :
1) Cooperated with ITSC
&
2) Has made true & fair disclosure of income
ITSC after recording reason can grant immunity from prosecution & penalty from IT Act & Wealth Tax Act.

No relief from prosecution & penalty under any other Act
eg. CPC

Immunity is withdrawn if
1) condition not satisfied
2) false info submitted
3) failed to pay the sum

Sec 220(2)

If the amount specified in any notice of demand u/s156 is not paid within the period limited, the assessee shall be liable to pay simple interest @ 1% for every month or part of a month comprised in the period commencing from the day immediately following end of period mentioned in sub-sec(1) & ending with day on which amount is paid.

Where as a result of an order u/s 154 / 155 / 250 / 254 / 260 / 262 / 264 or an order of ITSC u/s 245D, the amount on which interest was payable under this sec had been reduced, the interest shall be reduced accordingly & excess interest paid, if any, refunded

Sec 245HA Abatement of Proceeding

Sec 245HA(1) - Where—

- i) an application made u/s 245C on or after the 1st day of June, 2007 has been rejected u/s 245D(1); or
- ii) an application made u/s 245C has not been allowed to be proceeded with u/s 245D(2A) or further proceeded with u/s 245D(2D); or
- iii) an application made u/s 245C has been declared as invalid u/s 245D(2C); or in respect of any application made u/s 245C, an order u/s 245D(4) has been passed not providing for the terms of settlement; or
- iiia) in respect of any other application made u/s 245C, an order u/s 245D(4) has

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not been passed within the time or period specified u/s 245D(4A), the proceedings before the ITSC shall abate on the specified date.

Explanation - For the purposes of this sub-section, "specified date" means—

- a) in respect of an application referred to in clause (i), the day on which the application was rejected;
- b) in respect of an application referred to in clause (ii), the 31st day of July, 2007;
- c) in respect of an application referred to in clause (iii), the last day of the month in which the application was declared invalid;
- ca) in respect of an application referred to clause (iiia), the day on which the order u/s 245D(4) was passed not providing for the terms of settlement;
- d) in respect of an application referred to in clause (iv), on the date on which the time or period specified in section 245D(4A) expires.

Sec 245HA(2) - Where a proceeding before the ITSC abates, the AO, or, as the case may be, any other income-tax authority before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance with the provisions of this Act as if no application u/s 245C had been made.

Sec 245HA(3) - For the purposes of sub-section (2), the AO, or, as the case may be, other income-tax authority, shall be entitled to use all the material and other information produced by the assessee before the ITSC or the results of the inquiry held or evidence recorded by the ITSC in the course of the proceedings before it, as if such material, information, inquiry and evidence had been produced before the AO or other income-tax authority or held or recorded by him in the course of the proceedings before him.

Sec 245HA(4) - For the purposes of the time-limit u/s 149, 153, 153B, 154, 155, 158BE and 231 and for the purposes of payment of interest u/s 243 or 244 or,

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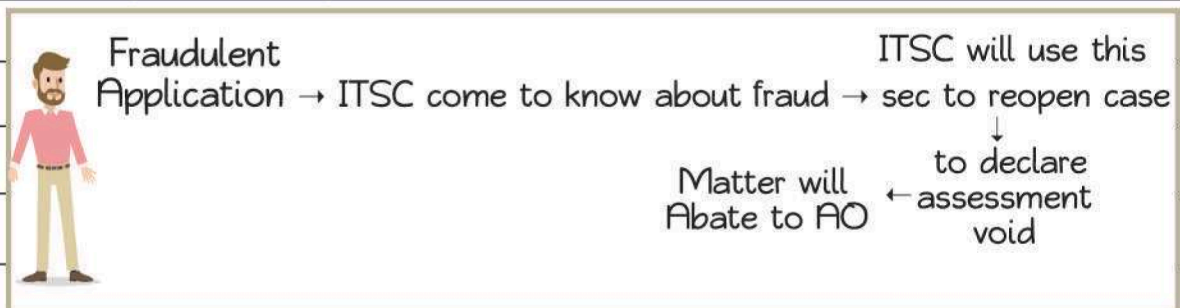
as the case may be, section 244A, for making the assessment or reassessment under sub-section (2), the period commencing on and from the date of the application to the ITSC u/s 245C and ending with "specified date" referred to in sub-section (1) shall be excluded; and where the assessee is a firm, for the purposes of the time-limit for cancellation of registration of the firm u/s 186(1), the period aforesaid shall, likewise, be excluded.

Sec 245F Power to regulate the procedure

ITSC shall have power to regulate its own procedure to discharge its own function

Sec 245E Reopening of Completed Proceeding

If ITSC is of the opinion that for proper disposal of case it is necessary to reopen any proceeding it can reopen the case or pass order to reopen



Sec 251 Power of The Commissioner (Appeal)

In disposing of an appeal, the CIT (A) shall have the following powers: in an appeal against the order of assessment in respect of which the proceeding before ITSC abates u/s 245HA, he may, after taking into consideration all the material and other information produced by the assessee before, / results of the inquiry held / evidence recorded by, ITSC, in the course of the proceeding before it and such other material as may be brought on his record, confirm, reduce, enhance / annul the assessment.

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Sec 273AA Power of Commissioner to Grant Immunity from Penalty

Sec 273AA(1) - A person may make an application to the Commissioner for granting immunity from penalty, if-

- a) he has made an application for settlement u/s 245C and the proceedings for settlement have abated u/s 245HA; and
- b) the penalty proceedings have been initiated under this Act

Sec 273AA(2) - The application to the Commissioner u/s 273AA(1) shall not be made after the imposition of penalty after abatement

Sec 273AA(3) - The Commissioner may, subject to such conditions as he may think fit to impose, grant to the person immunity from the imposition of any penalty under this Act, if he is satisfied that the person has, after the abatement, co-operated with the income-tax authority in proceedings before him and has made a full and true disclosure of his income and the manner in which such income has been derived.

Sec 278AB Power of Commissioner to Grant Immunity from Prosecution

Sec 278AB(1) - A person may make an application to the Commissioner for granting immunity from prosecution, if he has made an application for settlement u/s 245C & proceedings for settlement have abated u/s 245HA.

Sec 278AB(2) - The application to the Commissioner u/s 278AB(1) shall not be made after institution of the prosecution proceedings after abatement.

Sec 278AB(3) - The Commissioner may, subject to such conditions as he may think fit to impose, grant to the person immunity from prosecution for any offence under this Act, if he is satisfied that the person has, after the

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abatement, co-operated with the income- tax authority in the proceedings before him and has made a full and true disclosure of his income and the manner in which such income has been derived.

Sec 245K Bar on Subsequent Application for Settlement

Where a person has made an application u/s 245C & if such application has been allowed to be proceeded with u/s 245D(1), he or any person related to such person (herein referred to as related person) shall not be entitled to make an application u/s 245C.

Explanation - For the purposes of this section, "related person" with respect to a person means,

- i) where such person is an individual, any company in which such person holds more than 50% of the shares or voting rights at any time, or any firm or association of persons or body of individuals in which such person is entitled to more than 50% of the profits at any time, or any HUF in which such person is a karta;
- ii) where such person is a company, any individual who held more than 50% of the shares or voting rights in such company at any time before the date of application before ITSC by such person;
- iii) where such person is a firm or association of persons or body of individuals, any individual who was entitled to more than 50% of the profits in such firm, association of persons or body of individuals, at any time before the date of application before ITSC by such person;
- iv) where such person is a HUF, the karta of that HUF