

11. INCOME TAX SETTLEMENT COMMISSION

Relevant Case laws

Anjum M.H Ghaswala (2001)(Supreme Court)

Sec 245D does not empower ITSC to waive or reduce the statutory interest payable u/s 234A, 234B or 234C. Interest u/s 234A, 234B & 234C are mandatory interest and ITSC cannot waive or reduce such interests. ITSC has the same power as conferred by the Income-tax Act on Income-tax Authorities. Therefore, ITSC can waive/reduce the interest u/s 234A/B/C to the extent it can be waived by Chief Commissioner/Director General (Investigation) as permitted by the Board's circular.

K Lakshmansa & Co. (2017)(Supreme Court)

Is an assessee receiving refund consequent to waiver of interest u/s 234A to 234C of the Income-tax Act, 1961 by ITSC, also entitled to interest on such refund u/s 244A?

The assessee had approached ITSC for waiver of interest u/s 234A to 234C of the Income-tax Act, 1961. The said interest has already been paid by the assessee. The ITSC waived the interest but refused to grant interest on refund on the ground that section 244A does not provide for payment of interest in such cases. Further, ITSC's power to waive interest does not enable the Commission to provide for payment of interest u/s 244A.

When refund is awarded by ITSC u/s 244A, is there a right to receive interest on the same?

The Supreme Court observed that the right to claim refund is automatic once the statutory provisions have been complied with. The statutory obligation to refund, being non-discretionary, carries with it the right to interest. Sec 244A is clear and plain - it grants a substantive right of interest. U/s 244A, it is enough if the refund becomes due under the Income-tax Act, 1961 in which case the assessee shall, subject to the provisions of that section, be entitled to receive simple interest. It does not matter that

11. INCOME TAX SETTLEMENT COMMISSION

the interest being waived is discretionary in nature; the moment that discretion is exercised and refund becomes due consequently, a right to claim interest springs into being in favour of the assessee.

The Supreme Court held that the assessee has a right to interest on refund u/s 244A.

Supreme Agro Foods P Ltd v ITSC (2013)

Question: Meaning of record and consideration by SC? Whether SC can enquire new facts?

Held: materials brought on record before ITSC be considered by the Members of the concerned Bench before passing any order. "Consideration" means independent examination of the evidence and material brought on record before the ITSC by the members & application of mind thereto with a view to independently assess the materials and evidence, whether adduced by the applicant or by the Commissioner, and come to a conclusion by themselves. The ITSC, therefore, has to consider material brought on record before it & "consideration" means independent examination of the evidence & material on record.

CIT vs. Om Prakash Mittal (2005)

Question: The Revenue can move the ITSC for decision on an issue if it has material to show that order was obtained by fraud/misrepresentation of facts?

Held: observed that a plain reading of sec 245D(6) shows that every order passed u/s (4) has to provide for:-

(i) the terms of settlement; and

(ii) that the settlement would become void, if it is subsequently found by ITSC that it has been obtained by fraud or misrepresentation of facts.

The decision that the order has been obtained by fraud or misrepresentation is that of SC. However, there is no requirement that the action be initiated by ITSC, suo moto. The Revenue can move ITSC for decision on an issue if it

11. INCOME TAX SETTLEMENT COMMISSION

has material to show that order was obtained by fraud / misrepresentation of facts.

Multiple Choice Questions

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| <p>1) Matter covered by ITSC
a) shall not be reopened
b) shall be reopened only by ITSC
c) can be reopened by any ITA
d) can be reopened only by ITAT</p> | <p>6) Time limit for passing an order of ITSC is within ____m in which application was made
a) 6 b) 12 c) 18 d) 24</p> |
| <p>2) The settlement commission is not vested with all the power in an ITA
a) true b) false</p> | <p>7) ITSC u/s 245H can grant immunity from prosecution or prosecution or penalty under which of the laws
a) Income tax/Wealth tax
b) Companies Act
c) Indian Penal Code d) All</p> |
| <p>3) Tax payable In pursuance of order passed by ITSC has to be paid before expiry of ____ from final order to avoid interest
a) 25D b) 30D c) 35D d) 40D</p> | <p>8) Fees for making an application under ITSC is Rs
a) 100 b) 500 c) 200 d) 1000</p> |
| <p>4) ITSC with view to rectifying any mistake apparent from records may amend any order passed by it within period of __m from the end of month in which order was passed
a) 3m b) 9m c) 6m d) 18m</p> | <p>9) After receipt of application from applicant, ITSC will issue a notice within 7 days for
a) admission of application
b) submission of return for which application is made
c) to explain the reason why application made be allowed to be proceeded with
d) all of the above</p> |
| <p>5) _____ is the place where the principal bench of settlement commission sits
a) Bombay b) Kolkata
c) New Delhi d) Chennai</p> | |

Answers :

1) b	2) b	3) c	4) c	5) c	6) c	7) a	8) b	9) c
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11. INCOME TAX SETTLEMENT COMMISSION

For Your Practice - Solved Questions

- P1 Seizures were made from Mr. Murari pursuant to a search conducted in his premises. He filed an application for settlement by claiming to have received the amount by way of loans from several persons. The ITSC accepted his statement and made an order. The CBI, however, conducted enquiry at the instance of the Revenue regarding the claimed amount of loans and opined that the alleged lenders had no means or financial capacity to advance such huge loans to Mr. Murari and were mere name lenders only. The Commissioner filed an application u/s 245D(6) praying for the order to be declared void and for withdrawal of benefit granted. Mr. Murari, however, contended that the order of the ITSC was final and any fresh analysis would amount to sitting in judgment over an earlier decision, for which the ITSC was not empowered. Discuss the correctness of Mr. Murari's contention. [MAY 2012], [MAY 2017]

Solution

Section 245D(6) states that every order passed u/s 245D(4) by ITSC has to provide for-

- i) the terms of settlement; and
- ii) that the settlement would become void, if it is subsequently found by the ITSC that it has been obtained by fraud / misrepresentation of facts.

The foundation for settlement is an application which an assessee can file at any stage of a case relating to him in such form and manner as may be prescribed. The fundamental requirement of the application u/s 245C is that there must be full and true disclosure of the income along with the manner in which it has been derived.

Merely because it has been provided u/s 245-I that the order of settlement is conclusive, it does not take away the power of the ITSC to decide whether the settlement order has been obtained by fraud or misrepresentation of facts.

In this case, CBI found that the loans given to Mr. Murari were bogus.

11. INCOME TAX SETTLEMENT COMMISSION

If the Commissioner is able to establish that the earlier decision of ITSC was wrong because of misrepresentation of facts, then, it is open for the ITSC to declare the settlement to be void. It cannot be called by any stretch of imagination to be a review of the earlier judgment of ITSC. Therefore, if ITSC finds that settlement was obtained by fraud or misrepresentation of facts, then it is empowered to declare the settlement as void. The contention of Mr. Murari is, therefore, incorrect.

11. INCOME TAX SETTLEMENT COMMISSION

Know Your Exams - Unsolved Questions

- P1 X & Co Ltd. had made an application to the SC. The issue in the said application related to cash credits in the books of account. The Commission passed an order making addition to the income on the basis of difference in gross profit rate adopted, which was neither an issue in the application nor in the report of the Commissioner of Income -tax. Discuss the validity of the order of the Settlement Commission.[M 14]
- P2 On an application made by Mr. Pandey, an order was passed by SC on 03-01-2020 u/s 245D (6B). The said order had a mistake apparent on record. The Settlement Commission suo-moto passed an amended order dated 30-07-2020 which resulted in modifying the liability of Mr. Pandey. Mr. Pandey is of the view that order of SC is final & conclusive and it has no power to rectify the said mistake.
You are required to examine the following:
(i) Correctness of claim made by Mr. Pandey
(ii) Validity of the order amended by the Settlement Commission. [M 12]
- P3 (a) Does SC have jurisdiction to entertain an application made u/s 245C(1) in respect of a case covered by Chapter XIV -B (Search & seizure case).
(b) Discuss the power of SC to grant immunity from prosecution and penalty. [[RTP] /Nov 2000]
- P4 Does the Settlement Commission have the power to reduce or waive interest levied under sections 234A, 234B and 234C of the Income -tax Act? Discuss.[RTP]/May02]

11. INCOME TAX SETTLEMENT COMMISSION

P5 Seizures were made from Mr. Sunder pursuant to a search conducted in his premises. He filed an application for settlement by claiming to have received the amount by way of loans from several persons. The ITSC accepted his statement and made an order. The CBI, however, conducted enquiry at the instance of the Revenue regarding the claimed amount of loans and opined that the alleged lenders had no means or financial capacity to advance such huge loans to Mr. Sunder & were mere name lenders only. The Commissioner filed an application u/s 245D(6) praying for the order to be declared void and for withdrawal of benefit granted. Mr. Sunder, however, contended that the order of SC was final & any fresh analysis would amount to sitting in judgement over an earlier decision, for which ITSC was not empowered. Discuss correctness of Mr. Sunder's contention.[M 11]

P6 The business premises of Mr. Amit was subjected to a survey u/s 133A of the Act. There were some incriminating materials found at the time of survey. The assessee apprehends reopening of assessments of the earlier years. He wants to know whether he can approach ITSC. Explain briefly the basic conditions to be satisfied and the benefits that may accrue to Mr. Amit by approaching the Settlement Commission.[M 15]

P7 An assessee's case is pending before the Income Tax Appellate Tribunal for AY 2016-17. Since the appeal is pending, the assessee wishes to file an application to the SC for disclosing Additional Income, the income tax on which is Rs.15 lakhs. Is it possible to make such application? Will your answer be different if the Tribunal sets aside the case and restores the matter to CIT (Appeals)? [M 05]