Settlement of Tax Cases
CA Final Paper 7 Direct Tax Laws, Chapter 22
CA. Shekhar Sane
Learning Objectives

To learn methodologies to compromise or settle income tax matters by correctly representing a case having fitting into various terms and conditions of Settlement Commission

To learn legal ways by which an assessee can get an immunity from prosecution or immunity from imposition of penalty or both

To learn legal ways by which a tax evader can get an immunity from prosecution or immunity from imposition of penalty or both
Learning Objectives

- To communicate an “un-intending defaulter” a way which is likely reduce time-frame in a legal matter

- To try to seek justice up to a matter which can not be challenged under any law in force, neither it can get re-opened in any proceeding under Income Tax Act or under any other law for the time being in force

- Ultimately, if still an assessee based on various grounds, feel that, an injustice has caused, then he can challenge order of the Settlement Commission under Article 226 of the Constitution of India.
Important Sections

Section 245A,C,D
- Application and Procedure

Section 245BC,DD,F,H,HA,HAA
Powers and Abatement of Settlement Procedures
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<th>Particulars</th>
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<td>245A</td>
<td>Filing of Application</td>
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<td>245C</td>
<td>Maintainability of Application and Additional Income Tax</td>
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<td>Procedure on receipt of Application</td>
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<td>245BC, DD,F,H</td>
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<td>Abatement of Settlement Commission</td>
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Background Introduction:

Settlement Commission was constituted by Central Government based on the recommendations of the **Wanchoo Commission**.

Primary objective is to raise revenue, by compromising and settling cases, rather than having **an endless litigation**.
Section 245B, BA, BD

Background Introduction:

To provide an appropriate platform for **one time tax-evader or unintending defaulter** so as to have **cleaning his affairs** so as to achieve objectives such as:

(a) Reducing **investigational resources** of Tax Department, in cases of doubtful benefit to revenue

(b) To reduce substantial time leading thereto **holding up collections of Tax Department**.

Settlement Mechanism is available **only once in the life time of an assessee** – Sec 245K
Section 245B

Constitution:

Appointment by Central Government

Chairman

Vice Chairman

Members of Settlement Commission

Persons of Integrity and Outstanding Ability,

Having Special Knowledge

Experience in Problems relating to Direct Taxes and Business Accounts
Section 245BA

Constitution: Benches

Principal Bench is the one where Chairman is the Presiding Officer

Delhi Principal Bench

- Mumbai Bench
- Chennai Bench
- Kolkata Bench

Normal Quorum: Chairman/Vice Chairman and 2 members

Minimum Quorum: 2 members only
**Section 245BD**

- **Differ in Opinion if Members are not Equally divided**
  - Opinion of Majority members is decided

- **Differ in Opinion if Members are Equally divided**
  - Matter is referred to one or more members, Opinion is decided according to majority of members who have heard the case, including those who first heard it.
Section 245A

What constitute a Case:

A Case means **any proceeding under this Act** for the assessment of **any person** in respect of any assessment year or assessment years which may be **pending before an Assessing Officer** on the date on which an application under Sec 245C(1) is made.
Section 245A

What does not constitute a Case; and hence shall not be a “Proceeding”:

Proceeding for Assessment or Reassessment or Re-computation u/s 147

Fresh Assessment u/s 254 or u/s 263 or u/s 264, setting aside or cancelling an assessment
An assessee can file a settlement application at any time after the first day of the AY before, the completion for that AY.

Application can be filed in case of search u/s 132 or requisition u/s 132 A in the respective cases or connected cases, after issuance of notice for an assessment to be made u/s 153 A and before passing on of assessment order.

Barring aforesaid TWO categories of cases, in no other case Settlement Application can be filed.
Circumstances when an application before Settlement Commission cannot be filed:

When proceedings are re-opened by issue of notice u/s 148 either consequent to survey u/s 133 A or otherwise, settlement application can not be filed.

Again, when appeal or revision or rectification proceedings are pending, settlement commission cannot be approached.
Section 245C

Maintenance of an Application made u/s 245A

- There should be a valid proceeding pending as mentioned above.
- Proceedings are pending u/s 153A where the additional amount of income tax payable is exceeding Rs. 50 lacs; on account of the additional income before the Settlement Commission.
- In any other case Rs. 10 lacs.

An assessee in whose case proceeding is initiated u/s 153 A or 153 C and he is related to a person who has filed Settlement Application in respect of proceedings u/s 153 A or u/s 153 C in his case, can approach the Settlement Commission, provided the additional amount of income tax payable on the income disclosed in the application exceeds Rs. 10,00,000.
Section 245C

Requirements of an Application made u/s 245A

Additional amount of *income tax and interest* thereon shall be *paid* and proof of such payment is submitted.

Application is filed in **Form No.34B** together with annexure and other enclosures.

Assessee shall intimate the AO in Form No. 34BA about the Settlement Application made.

Application once submitted cannot be withdrawn.
**Section 245C**

Computation of additional amount of income tax Sec 245C(1B) & (1C)

A. If the application relates to only one Previous Year

i) In case the applicant has not furnished a return

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income disclosed in Settlement Application</td>
<td>A</td>
</tr>
<tr>
<td>Tax on A</td>
<td>X</td>
</tr>
</tbody>
</table>
Section 245C

Computation of additional amount of income tax Sec 245C(1B) & (1C)

A. If the application relates to only one Previous Year

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Additional Amount of Income Tax : Z
## Section 245C

### Computation of additional amount of income tax Sec 245C(1B) & (1C)

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Income Returned</td>
<td>A</td>
</tr>
<tr>
<td>Add : Income disclosed in settlement application</td>
<td>B</td>
</tr>
<tr>
<td>Aggregate Income (A + B)</td>
<td>C</td>
</tr>
<tr>
<td>Tax on C</td>
<td>X</td>
</tr>
<tr>
<td>Less : Tax on A</td>
<td>Y</td>
</tr>
<tr>
<td>Additional Amount of Income Tax (X – Y)</td>
<td>Z</td>
</tr>
</tbody>
</table>
Section 245C

Computation of additional amount of income tax Sec 245C(1B) & (1C)

A. If the application relates to more than one Previous Year

The Additional Amount of Income Tax payable shall be the aggregate of the additional amount of income tax payable as computed above in respect of each of the years covered by the settlement application.
Section 153A

Proceeding Pending:

In a Case where assessment proceeding is pending, the proceedings would cover *six assessment years immediately preceding the assessment year* relevant to the previous year in which search is conducted or requisition is made and also the year of search or requisition.

Consequently, for all the 7 years put together, the limit of Rs.50 lacs in aggregate should be fulfilled. Out of those 7 years eligible, assessee files settlement application covering lesser number of years then, for those years the additional tax in aggregate should be Rs.50 lacs or more.

In any other case, assessment proceedings may not be pending beyond 2 or 3 years in which case for all such years covered in a settlement application, the limit of Rs.10 lacs needs to be satisfied.
Proceeding Pending:

The requirements of Sec 245C will not be fulfilled unless the applicant offers positive income which has not been disclosed before the Assessing Officer. Therefore, the applicant has to ensure that there is offer of income in the application not disclosed before the Assessing Officer instead of merely offering losses CIT vs. Express Newspapers Ltd.(1994) 206 ITR 443 (SC).

It is not necessary that in respect of each year covered by the settlement application income should be offered and that there should be tax payable. It is enough if on overall basis there is positive income offered and if the additional amount of Income Tax payable exceeds the above mentioned limit – Airtech Pvt. Ltd.(1994) 209 ITR 21 (ITSC – FB)

A “true and full” disclosure of income is a pre-condition of for a valid settlement application u/s 245C(1). In the scheme of Chapter XIX- A there is no provision for revision of an application which would amount to making a fresh application in relation to the same case by withdrawing the earlier application – Ajmera Housing Corporation & another vs. CIT (2010) 326 ITR 642 (SC).
Section 245D

Procedure on receipt of an Application

Within **7 days** of receipt of the application, Settlement Commission shall issue a notice to the applicant to **SHOW CAUSE as to why the settlement application be allowed** to be proceeded with.

Within **14 days** of receipt of the application, Settlement Commission shall pass an order for Rejecting or Admitting the Settlement application, after giving an opportunity of hearing to the applicant.

Deeming Fiction: If no order is passed within 14 days, Settlement Application is **DEEMED** to be allowed.
Section 245D

Procedure on receipt of an Application

After the application is allowed, Settlement Commission shall call for a report from the CIT within 30 days from the date on which application was made. CIT shall furnish the same within 30 days of receipt of communication.

Within 15 days, of receipt of the report, Settlement Commission may, on the basis of CIT’s Report and after giving opportunity of hearing to the applicant, declare the application as invalid by an order in writing and shall send the order to the applicant and the CIT.

If no report is received, the Settlement Commission shall proceed further in the matter without the report of the CIT.
Enquiry of an Application

Settlement Commission may **call for the records** from the Commissioner for further enquiry or investigation.

Settlement Commissioner may **direct further enquiry or investigation** by Commissioner and to submit the report within 90 days.

If no report is received, the Settlement Commission shall proceed further and pass order. The Joint Director or Additional Director of the Settlement Commission, under guidance of Director of Income Tax, will also make enquiry and submit confidential report to the Settlement Commission.
Section 245 D(4)

Final Disposal of the Application:

Settlement Commission may pass order

- after examination of records
- by verifying report of Commissioner about validity of application
- and after examination of evidences

Such an order contains **matters covered by the application as well as** other matters relating to the **case not covered by the application** but referred to in the report of the Commissioner.
Powers of Settlement Commission:

To Transfer any case pending before one bench, for disposal to another bench on an application made by the assessee or the Chief Commissioner or Commissioner or on his own motion Sec.245 BC

May by Order attach provisionally any property belonging to the applicant, for a period of 6 months extendable from time to time as it thinks fit
Section 245 D(4)

Final Disposal of the Application:

Settlement Commission shall pass order **within 18 months from the end of the month** in which the settlement application is filed.

Order provides the Terms of the Settlement including any demand by way of Tax, Penalty and Interest and the manner in which such sums shall be paid.

The assessee shall within 35 days of the receipt of a copy of the order or within such extended time, **pay the tax payable** in pursuance of the final order u/s 245D(4).

Interest @ 1.25% p.m. or part of a month is chargeable for payment made after 35 days.
Powers of Settlement Commission:

 Shall have all the powers which are vested in an Income Tax Authority. Settlement Commission shall have exclusive jurisdiction to exercise the powers and perform the functions of an Income Tax Authority in relation to the case till a final order u/s 245 d (4) is passed.

 Has power to regulate its own procedure and the procedure of benches thereof in all matters.
Section 245H

Power of Settlement Commission to grant immunity from Prosecution and from Imposition of any penalty:

If applicant has **co-operated** with the Settlement Commission in the proceedings

Co-operation by applicant by disclosing his income in **full and true manner**

Disclosing **the manner** in which such income has been derived.
Section 245H

Power of Settlement Commission to grant immunity from Prosecution and from Imposition of any penalty:

No such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application by the Settlement Commission.

Where the settlement application is filed prior to lodging a compliant, Settlement Commission can proceed to settle the case and grant immunity from prosecution on its discretion. Once such immunity is granted, the prosecution proceedings do not survive and need to be quashed – Ashirwad Enterprises vs. State of Bihar (2004) 266 ITR 578 (SC).
Settlement Commission, while passing final order u/s 245D has no power to reduce or waive interest but can grant relief in accordance with the norms laid down in the circulars issued by CBDT u/s119 – CIT vs. Anjum M.H.Ghaswala (2001) 252 ITR 1 (SC); CIT vs. Santram Mangatram Jewellers (2003) 264 ITR 564 (SC).

The terminal point for the levy of interest u/s.234B would be up to the date of the order u/s 245D(1) and not up to order of Settlement u/s 245D(4) – Brij Lal vs. CIT (2010) 328 ITR 477 (SC).
Section 245H (1A) and (2)

Power of Settlement Commission to Withdraw Immunity:

Applicant **does not pay** the amount as per the Commission’s final order. OR

Applicant **fails to comply with the other conditions** subject to which immunity is granted OR

Applicant had **concealed any particulars material** to settlement or had given **false evidence**
Abatement of proceeding before Settlement Commission Sec 245HA & 245HAA:

Where an application is Rejected u/s 245D(1), Abatement of Proceedings before the Settlement Commission shall be on the date on which the application is Rejected.

Where an application is Invalid u/s 245D(2C), Abatement of Proceedings before the Settlement Commission shall be on the last day of the month in which the application is declared invalid.

Where an order u/s 245D(4) has not been passed with in 18 months, Abatement of Proceedings before the Settlement Commission shall be on the date when the time limit expires.
Powers of AO after Abatement of proceeding before Settlement Commission Sec 245HA & 245HAA:

AO shall dispose of the case as if no application u/s 245 C has been made.

AO shall be entitled to use all the material and other information produced by the assessee before the Settlement Commission or the results of enquiry held or evidence recorded by the Settlement Commission during the proceedings before it.

AO shall allow the credit for the tax and interest paid on or before the date of making the application or during the pendency of the case before the Settlement Commission u/s 245 HAA.
Section 245H

Impact of Abatement:

The Period **commencing on and from the date of the settlement application** and ending with the specified date on which the proceedings abate is excluded for the purpose of time limit u/s 149, 153, 153B, 154 and 155 and for the purpose of payment of interest u/s 243, 244 or 244A.

Commissioner has the power to grant immunity from penalty u/s 273AA and from prosecution u/s 278AB.
Section 245 I & L

Nature and Finality of Proceedings:

Every Order of Settlement **shall be conclusive as to the matters stated therein** and no matter covered by such order shall be challenged under any other law in force.

Matter Covered by the Settlement Commission's Order **shall not be reopened in any proceeding under the Income Tax Act** or under any other law for the time being in force.

Proceedings before the Settlement Commission shall be deemed to be **a judicial proceeding** within the meaning of the relevant provisions of the **Indian Penal Code u/s 245L**.
Challenging the order of the Settlement Commission:

The order can be challenged under Article 226 of the Constitution of India under following circumstances:

1. Principles of Natural Justice are Violated
2. Mandatory procedural requirements of law were not complied with
3. Where it is proved that the reasoning given in the Settlement Commissions order contradicts, with the conclusion drawn in such order
Question Time

Questions & Answers
### Question & Answer

<table>
<thead>
<tr>
<th>Q.1</th>
<th>Can assessee make an application for more than one occasion in a Settlement Commission?</th>
</tr>
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<tbody>
<tr>
<td>A.1</td>
<td>No. An assessee can make an application only once in a lifetime.</td>
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</table>

<table>
<thead>
<tr>
<th>Q.2</th>
<th>Are provisions of Settlement Commission forming part of Wealth Tax Act, 1957?</th>
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<tbody>
<tr>
<td>A.2</td>
<td>Yes. Provisions under the Wealth Tax Act, 1957 are more or less similar to Income Tax Act, 1957, except that, there is no requirement of any minimum amount of additional wealth tax payable.</td>
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<tr>
<th>Q.3</th>
<th>What is the type of proceeding of Settlement Commission?</th>
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<tbody>
<tr>
<td>A.3</td>
<td>Proceedings before the Settlement Commission shall be deemed to be a judicial proceeding within the meaning of relevant provisions of the Indian Penal Code, as mentioned u/s 245 L.</td>
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<tr>
<td>Q.4</td>
<td>Can Settlement Commission rectify any mistake apparent from the record?</td>
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<tr>
<td>A.4</td>
<td>Yes. Settlement Commission may rectify any mistake apparent from the record by amending any of its order within a period of 6 months from the date of the order, after applying principles of natural justice.</td>
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<tr>
<td>Q.5</td>
<td>What makes an order of Settlement Commission void?</td>
</tr>
<tr>
<td>A.5</td>
<td>If it is subsequently found by the Settlement Commission suo moto or on a petition by the department, establishing that the order has ben obtained by fraud or misrepresentation.</td>
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<tr>
<td>Q.6</td>
<td>What is one of the pre-conditions of a valid settlement application u/s 245 (1)?</td>
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<tr>
<td>A.6</td>
<td>A “true and full” disclosure of income is a pre-condition for a valid settlement application.</td>
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<tr>
<td>Q.7</td>
<td>Can an application be made for more than one previous year?</td>
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<tr>
<td>A.7</td>
<td>Yes, an application can be made for more than one previous year.</td>
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<tr>
<th>Q.8</th>
<th>Which commission recommended Settlement Commission?</th>
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<tbody>
<tr>
<td>A.8</td>
<td>Wanchoo Commission recommended Central Government to form a Settlement Commission.</td>
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<tr>
<th>Q.9</th>
<th>Who shall form a Settlement Commission?</th>
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<tbody>
<tr>
<td>A.9</td>
<td>Central Government shall form Settlement Commission.</td>
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<tr>
<th>Q.10</th>
<th>What is the prime requirement of Section 245?</th>
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<tbody>
<tr>
<td>A.10</td>
<td>Assessee has to offer a “positive income” which has not been disclosed before an Assessing Officer.</td>
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</table>
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 settlement Commission 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 finance capacity to advance such huge loans to Mr. Sunder and were mere name lenders only.

The Commissioner had 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 the settlement commission was final and any fresh analysis would amount to sitting in judgment over an earlier decision, for which the settlement commission was not empowered.

Discuss the correctness of Mr. Sunder’s contention. (May’11)
Answer – 1:

The contention of Mr. Sunder is not correct. As held in “CIT vs. Om Prakash Mittal (2005) 273 ITR 326 (SC)” – The order of the settlement commission declaring its earlier order as void based on the finding that such order was obtained by misrepresentation, cannot be called a review of the earlier judgment of the settlement commission.
Does the settlement commission have the power to reduce or waive interest levied u/d.234A, 234B and 234C of the Income Tax Act? Discuss.
Answer – 2:

Settlement Commission, while passing final order u/s.245D has **no power** to reduce or waive interest statutorily payable under sections 234A, 234B and 234C except to the extent of granting relief in accordance with the norms laid down in the Circulars issued by the CBDT u/s.119 – CIT vs. Anjum M.H. Ghaswala (2001) 252 ITR 1 (SC), CIT vs. Santram Mangatram Jewellers (2003) 264 ITR 564 (SC)

Provisions of Sec.234A, 234B and 234C are applicable to the proceedings of the Settlement Commission under chapter XIX-A. The terminal point for the levy of interest u/s.234B would be upto the date of the order u/s.245D(1) and not upto order of settlement u/s. 245D(4) – Brij Lal vs. CIT (2010) 328 ITR 477 (SC)
Lesson Summary

- Settlement commission is formed to provide an appropriate platform to raise revenue, by compromising and settling cases. Settlement mechanism is available only once in the lifetime of an assessee.
- Decision is taken by majority.
- An application to settlement commission may be filed in case of search or requisition, before an assessment order is received, assessee should offer ‘new’ income to tax which is not discussed with Assessing officer.
- An application cannot be made where case is reopened or an appeal/ revision or rectification proceedings are pending.
- Application has to be made after the tax and interest is paid. It cannot be withdrawn later.
Lesson Summary

- Settlement commission may reject the application and after rejection AO shall dispose of the case as if no application was made to settlement commission.
- In case of abatement, commissioner has the power to grant immunity from penalty and prosecution.
- Settlement commission shall pass its order within 18 months, assessee shall pay the balance tax within 35 days.
- Settlement commission has power to grant or withdraw immunity from prosecution and penalty, though it cannot waive interest u/s.234A, B and C
- Matters covered under settlement shall not be challenged or reopened. Order of settlement commission may be challenged under article 226 of the constitution of India.
Thank You