

Income Tax Search and Seizure & Income Tax Settlement Commission (ITSC)- Detection of any undisclosed income subsequent to the final order of ITSC

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Introduction:-

Chapter XIX - A of Income Tax Act, 1961 provides for settlement of cases. Income Tax Settlement Commission was set up in the year 1976 on the recommendation of Direct Tax Enquiry Committee headed by former Chief Justice of India, Shri K. N. Wanchoo. Chapter XIX – A of Income Tax Act, 1961 comprises of Section 245A to 245M.

Section 245C of the Act empowers the assessee to move an application at any stage of a case relating to him and thereby to make a full and true disclosure of income, which has not been disclosed before the Assessing Officer subject to rider contained in section 245C of the Act. The Settlement Commission may allow or reject the application, but in any case in view of provision contained in section 245C of the Act, the application moved under sub-section (1) of the said section, cannot be allowed to be withdrawn by the applicant.

The application so moved under section 245C of the Act should be processed by the Settlement Commission in view of procedure

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prescribed in section 245D of the Act within the specified period provided therein. The provision contained in section 245D provides that the Settlement Commission shall give opportunity to the applicant and to the Settlement Commission, which includes personal hearing or hearing through representative and then pass such order as it thinks fit on the matters covered by the application, which includes any other matter relating to case not covered by the application but referred to in the report of Commissioner, Income-tax. Thus, it shall be obligatory on the part of the Commissioner, Income-tax while submitting its report to bring entire material facts before the Settlement Commission to avoid any multiplicity of litigation or concealment of facts by the assessee. Further by virtue of Section 245D(6) ,the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts. By virtue of Section 245D(7), in case the settlement becomes void as provided under sub-section (6) of section 245D of the Act, then the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the income-tax authority concerned, may, notwithstanding anything contained in any other provision contained in the Act, completes such proceedings at any time before the expiry of two years from the end of financial year in which the settlement became void. For the sake of brevity, it is important to reproduce Section 245D(4), 245D(6) and 245D(7) of the act, which are as under:-

Section 245D(4):

"245D(4) After examination of the records and the report of the ¹²[Principal Commissioner or] Commissioner, if any, received under—

(i) sub-section (2B) or sub-section (3), or

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(ii) the provisions of sub-section (1) as they stood immediately before their amendment by the Finance Act, 2007,

and after giving an opportunity to the applicant and to the Principal Commissioner or 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 Principal Commissioner or Commissioner."

Section 245D(6):

*"245D(6) Every order passed under sub-section (4) shall provide for the terms of settlement including any demand by way of tax, penalty or interest, the manner in which any sum due under the settlement shall be paid and all other matters to make the settlement effective and **shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.**"*

Section 245D(7):

"245D(7) Where a settlement becomes void as provided under sub-section (6), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the income-tax authority concerned, may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the end of the financial year in which the settlement became void."

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Furthermore, Sub-section (1) of section 245F provides that in addition to the powers conferred on the Settlement Commission under this Chapter, it shall have all the powers which are vested in an income-tax authority under the Act. It further provides that where an application made under section 245C has been allowed to be proceeded with under section 245D, the Settlement Commissioner shall, until an order is passed under sub-section (4) of section 245D, have, subject to the provisions of sub-section (3) of that section, exclusive jurisdiction to exercise the powers and perform the functions of an income-tax authority under this Act in relation to that case and shall have power to regulate own procedure subject to statutory provision contained therein. Sub-section (2) of section 245F is re-produced as under:-

"Where an application made under section 245C has been allowed to be proceeded with under section 245D, the Settlement Commissioner shall, until an order is passed under sub-section (4) of section 245D, have, subject to the provisions of sub-section (3) of that section, exclusive jurisdiction to exercise the powers and perform the functions of an income-tax authority under this Act in relation to that case:

Provided that where an application has been made under section 245C on or after 1st day of June, 2007, the Settlement Commission shall have such exclusive jurisdiction from the date on which the application was made:

Provided further that where—

- (i) an application made on or after the 1st day of June, 2007, is rejected under sub-section (1) of section 245D; or*
- (ii) an application is not allowed to be proceeded with under sub-section (2A) of section 245D or as the case may be, is declared invalid under sub-section (2C) of that section; or*

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(iii) *an application is not allowed to be further proceeded with under sub-section (2D) of section 245D.*

The Settlement Commission, in respect of such application shall have such exclusive jurisdiction up to the date on which the application is rejected, or, not allowed to be proceeded with, or declared invalid, or, not allowed to be further proceeded with, as the case may be."

Sub-section (4) of section 245F empowers the authorities under the Act, to discharge their statutory obligation, not contrary to finding, observation and direction of the Settlement Commissioner. Section 245F(4) is reproduced herein under:-

"245F(4) For the removal of doubt, it is hereby declared that, in the absence of any express direction by the Settlement Commission to the contrary, nothing in this Chapter shall affect the operation of the provisions of this Act in so far as they relate to any matters other than those before the Settlement Commission."

However, under section 245-I of the Act, it has been provided that every order of Settlement Commission passed under sub-section (4) of section 245D shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceedings under this Act or under any law for the time being in force. The provision contained in sections 245-I are reproduced as under:—

"Section 245-I - Every order of settlement passed under sub-section (4) of section 245D shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise

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provided in this Chapter, be reopened in any proceedings under this Act or under any other law for the time being in force.”

A harmonious reading of above provisions provides that once a matter falls within the domain of Settlement Commission, no authority of the Income-tax Department will have got jurisdiction to assess tax for the same financial year and finding of the Settlement Commission shall be conclusive and final under section 245-I of the Act. Legislature to their wisdom had conferred power on the Settlement Commission by Virtue of Section 245D(6) to reopen the proceedings in certain circumstances and to deal with the situation in the event of commission of fraud.

Issue:-

Now the question arises, that in cases where the Settlement proceedings have attained finality by order u/s 245D(4) of the act and thereafter any new findings comes in the knowledge of the Assessing Officer pertaining to the A.Y.'s covered in the settlement application than whether he can reopen the proceedings u/s 147 or 153C of the act.

Let us understand this issue with the help of an illustration. Let's suppose Mr. X pursuant to a search and seizure action on him, approached the Settlement Commission for A.Y.'s 2009-10 to 2015-16 for prompt settlement of Income. The cases were settled by the Settlement Commission u/s 245D(4) of the act vide order dated, let's say 29-12-2018. Mr. X paid the taxes and the order of the ITSC was given effect by the Assessing Officer.

Subsequently, there was a search action on Mr. Y on 10-08-2019 wherein certain incriminating documents pertaining to Mr. X was found for A.Y. 2015-16 which were not disclosed by Mr. X before the Settlement Commission. Now the question arises, as to

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whether the Assessing Officer can issue notice u/s 153C of the act to Mr. X for A.Y. 2015-16 more particularity owing to the fact the incriminating document found after the ITSC order was not disclosed by Mr. X before the ITSC and therefore the application filed by him was not true and fair.

This issue is very germane as it is seen in practice that normally an assessee takes up only those issues before the ITSC which have cropped up during the course of search instead of making a total clean slate of his past inglorious tax evasions. The issues which did not surfaced during the course of search and post search findings which otherwise are existing, are somehow left out intentionally or otherwise by the applicants under the mistaken belief that since the department is unaware of such irregularities, such undetected issues will not crop before the ITSC. But in practice it is seen that such undisclosed issues before the ITSC surfaces later. To plug such habitual tax offenders, the legislature consciously put in place Section 245D(6) which empowers the ITSC to make the order passed u/s 245D(4) void if it is found that the order was obtained by fraud or misrepresentation of facts. Sub-section (1) of section 245C requires that the application must contain a full and true disclosure of income, not disclosed before the Assessing officer. This is one of the important conditions for a valid application for settlement under Chapter XIXA of the Act. The entire excise can turn out to be futile later on if it discovered that the application lack the fulfillment of the prime condition of "Full and True Disclosure".

Having said so, now coming to the moot question than on detection of any undisclosed income subsequent to the final order of ITSC, whether the Assessing Officer can invoke provisions of Section 147 or 153C of the act.

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Analysis:-

On a harmonious reading of the provisions of the statute as reproduced above, it would show that the Scheme of Settlement of cases does not postulate the existence of two orders, each of a different income tax authority, determining the total income of an assessee for the same assessment year. If multiple proceedings are accepted viz. Settlement Order and subsequent reassessment orders, not only will the finality of the order of settlement be disturbed, but it will also result in different orders relating to the same assessment year and relating to the same assessee being allowed to stand. Such multiples orders are likely to create chaos and confusion in the tax administration. In my considered opinion, the order of the ITSC can be reopened only in cases of fraud and misrepresentation and in no other case.

In this regard, reference can be drawn on the judgment of a Division Bench of the Bombay High Court in **Major Metals Ltd. v. Union of India [2012] 207 Taxman 185/ 19 taxmann.com 176**, wherein it was observed as follows: -

".....Parliament intended that the entire assessment is before the Settlement Commission. The Commission completes the process of assessment - as the decision in Brij Lal holds - as part of the settlement of the case. Until the Settlement Commission is seized of the proceedings, there is no parallel assessment contemplated in law. Comprehensiveness, finality and conclusiveness are the three attributes of the function assigned to the Commission. That object is achieved when the entire assessment is completed, as part of the jurisdiction to settle a case. To dilute this position would defeat the object which Parliament intended to achieve. Once an assessee moves the Settlement Commission, the statute expressly mandates that the application cannot be withdrawn. Unless the Commission in a given case decides to reject the application, it is entitled to resolve the case by settlement. An assessee who moves the Settlement Commission cannot be allowed to be anything other than fair and

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candid. Nor can he assert an unqualified right that the Settlement Commission should either accept what he discloses or leave him to another round of assessment before the Assessing Officer."

Therefore the upshot of the above discussion is that once an order has been made by the Settlement Commission under section 245D(4) of the Act, the same is conclusive and final in respect of the assessment for the assessment year in relation to which such order was passed and the Assessing Officer has no jurisdiction under section 147 of the Act to reopen an assessment made under section 245D(4) of the Act. That, however, does not mean that the Revenue is without remedy if at a subsequent stage it is noticed that the assessee had suppressed its actual income before the Settlement Commission. In view of the provisions of sub-section (6) of section 245D of the Act, an order made by the Settlement Commission under section 245D(4) of the Act shall provide for the terms of settlement, which should inter alia also provides that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation. Section 245D(7) of the Act provides that where the settlement becomes void, as provided in sub-section (6) of section 245D, the proceedings in respect of the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission. The remedy, therefore, is not under section 147/153C of the Act, but under section 245D(6) read with section 245D(7) of the Act.

The issue can also be viewed from another angle. Barring the exception of the provisions relating to appeal and revision, the Act does not contemplate or provide for disturbing the finality of an order or proceeding passed or completed by an income-tax authority, by any order or proceeding passed or initiated by a

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different income-tax authority. An assessment order passed by an Assessing Officer can be rectified or amended under Section 154 or Section 155 or reopened under Section 148 only by him, and by no other income-tax authority. Similarly, an assessment by way of settlement of a case, which is made by the ITSC, can be reopened only by the ITSC and that too only in certain circumstances. Applying this general principle that runs through the Act, an assessment by way of a settlement order passed by the ITSC cannot be reopened by a different authority, viz., the Assessing Officer. The fact that the ITSC has not been designated as an "income-tax authority" under Section 116 of the Act makes the position ' *a fortiori*'. Section 147 of the Act does not employ language that permits him to do so, nor are the powers and orders of the ITSC made subject to the provisions of Section 147. Section 147 does not appear to fit into the general scheme of Chapter XIX-A, which has been held to be a self contained code by the Supreme Court in ***Brij Lal v . CIT [2010] 328 ITR 477***

Therefore, after overall careful reading of section 245D,245F and 245-I, in my considered opinion, the scheme of settlement under Chapter XIX-A of the act makes it clear that the matter adjudicated with regard to particular financial year shall not be reopen by any other authority under the Act except by the Settlement Commissioner itself under the provision contained in Chapter XIX-A of the Act. The legislature consciously put in place Section 245D(6) which empowers the ITSC to make the order passed u/s 245D(4) void if it is found that the order was obtained by fraud or misrepresentation of facts. Thus, in cases where the the Settlement Commission had passed an order under section 245D(4) of the Act in respect of the assessment year in relation to which the assessment is sought to be reopened, the Assessing Officer has no jurisdiction to invoke the provisions of section 147 or 153C of the Act and reopen an assessment, which has become conclusive. Such concluded assessment can only be reopened in

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case of fraud or misrepresentation of facts, as contemplated under sub-section (6) of section 245D of the Act.

The above view gathers strength from the following judicial decisions wherein it was held that the order of the Settlement Commission under section 245D(4) of the Act attaches a finality with it in respect of the assessment for the assessment year in relation to which such order was passed and the Assessing Officer has no jurisdiction under section 147 of the Act to reopen an assessment made under section 245D(4) of the Act. That, however, does not mean that the Revenue is without remedy if at a subsequent stage it is noticed that the assessee had suppressed its actual income before the Settlement Commission. The remedy in such cases shall lie not under section 147/153C of the Act, but under section 245D(6) read with section 245D(7) of the Act.

- In case of ***Komalkant Faikirchand Sharma V DCIT [2019] 108 taxmann.com 50 (Gujarat)***, the Hon'ble Gujarat High Court recently held that once an order has been passed under section 245D by Settlement Commission, assessment for year stands concluded and Assessing Officer thereafter has no jurisdiction to reopen assessment. It was further held that it will open for the Revenue to move the Settlement Commission for seeking relief of declaration that the previous order under section 245D(4) of the Act is void.

Brief Facts of the case were as under:-

- The assessee was an individual engaged in the business of real estate, transportation and ship-breaking. The assessee filed his return of income. The return of income was accepted without any scrutiny. A search took place at the premises of the assessee. Thereafter, the assessee filed an application under

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section 245C before the Settlement Commission. The application of the assessee was admitted and the Settlement Commission passed an order under section 245D(4).

- Subsequently, the Assessing Officer received an information from Investigation wing that a search was carried out at the office premises of one SCS wherein MS Excel Sheet 'PA' in the excel file 'ac.1.xls' was found and seized from the computer in that office in form of computer backup which showed that SCS was engaged in providing accommodation entries on account of bogus sales. On basis of same, a reopening notice was issued against the assessee under section 148 on grounds that the assessee was also one of the beneficiaries of accommodation entries given by SCS.
- In instant appeal, the assessee contended that there was no independent application of mind on the part of the Assessing Officer while recording the reasons for reopening and that merely placing reliance on the materials provided by the investigation wing for recording the reasons was impermissible. The Assessing Officer must record an independent finding as to how income had escaped assessment on a proper application of mind. It was submitted that in view of the provisions of section 245-I, the order of the Settlement Commission was conclusive and there could not be two assessments of the assessee for the same assessment year. Therefore, the reopening of assessment, in a case where the Settlement Commission had passed an order under section 245D(4), was without authority of law.

The Hon'ble Court Held as under:-

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- *In this case, the validity of the reopening of assessment by the Assessing Officer under section 147 has been called in question, principally, on two grounds. Firstly, in this case, after the search was conducted and proceedings were initiated against the petitioner, the petitioner had approached the Settlement Commission, which had passed an order under*

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section 245D(4), which has become final and conclusive and, therefore, the Assessing Officer has no jurisdiction to reopen the assessment. Secondly, on merits, on the reasons recorded, the Assessing Officer could not have formed the belief that income chargeable to tax has escaped assessment. [Para 6]

- *Once an order has been made by the Settlement Commission under section 245D(4), the same is conclusive and final in respect of the assessment for the assessment year in relation to which such order was passed and the Assessing Officer has no jurisdiction under section 147 to reopen an assessment made under section 245D(4). That, however, does not mean that the revenue is without remedy if at a subsequent stage it is noticed that the assessee had suppressed its actual income before the Settlement Commission. In view of the provisions of section 245D(6), an order made by the Settlement Commission under section 245D(4) shall provide for the terms of settlement, which should inter alia provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation. Section 245D(7) provides that where the settlement becomes void, as provided in section 245D(6), the proceedings in respect of the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission. The remedy, therefore, is not under section 147, but under section 245D(6) read with section 245D(7). [Para 7.10]*

- *In the facts of the present case, since the Settlement Commission has passed an order under section 245D(4) in respect of the assessment year in relation to which the assessment is sought to be reopened, the Assessing Officer has no jurisdiction to invoke the provisions of section 147 and reopen an assessment, which has become conclusive. Such concluded assessment can only be reopened in case of fraud or misrepresentation of facts, as contemplated under sub-section (6) of section 245D. The assumption of jurisdiction on the part of the Assessing Officer under section 147 by issuing the*

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impugned notice under section 148 is, therefore, invalid and without authority of law. [Para 7.11]

- *Coming to the second question, namely, whether on the reasons recorded, the Assessing Officer could have formed the belief that income chargeable to tax has escaped assessment, it would be necessary to briefly refer to the reasons recorded by the Assessing Officer. A perusal of the reasons recorded reveals that the Assessing Officer has recorded that a search had been carried out at the office premises of SCS wherein MS Excel Sheet PA in the excel file "ac.1.xls" was found and seized from the computer ('R' computer) in that office in form of computer backup. As per the evidence found during the course of search in the case of SCS, and the appraisal report, it is seen that PB had facilitated entries for Ahmedabad based beneficiaries. Along with search in the 'B' group, PB and some of the main beneficiaries, who had availed accommodation entries through him, were also searched/surveyed. As per the evidences seized in the search of SCS, PB had made cash payment of Rs. 70 crores to SCS. These cash payments were made to arrange bogus LTCG/loss entries in the scrip of GSL and PIL. In the appraisal report, the DDIT has discussed in detail the modus operandi of SCS for arranging bogus LTCG. [Para 8]*

- *In the reasons recorded, the Assessing Officer has then referred to the contents of appraisal report wherein, it has been stated that bogus LTCG entries were made to the beneficiaries to whom shares were allotted through private placement of convertible shares recorded as 'PHY' in the PA sheet. 'PHY' refers to the transactions where shares of SGSL GPL have been acquired by the beneficiary clients in physical certificate form. Thus, in this case, shares are not purchased through exchange. A perusal of the entries recorded shows that the assessee has received payout of certain amount for 3,62,000 shares in assessment year 2011-12, which is not genuine sale consideration, but mere accommodation entries. [Para 8.1]*

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- *Thus, from the reasons recorded, it emerges that the material, which formed the basis for the formation of belief that income chargeable to tax has escaped assessment is the evidence found during the course of search in the case of SCS and the appraisal report. The search had been conducted in the case of 'B' Group and 'PB'. Search had also been conducted in case of the main beneficiaries of accommodation entries, one being SCS [SCS]. The material on record shows that PB had paid certain amount in cash to SCS. Such cash payment was made to arrange LTCG/loss entries in the scrip of GPL and PIL. The modus operandi is discussed in detail in the appraisal report. The material on record shows that bogus LTCG entries were made to the beneficiaries to whom shares were allotted through private placement of convertible shares recorded as 'PHY' in the PA. 'PHY' refers to the transactions where shares of SGSL (GSL) have been acquired by the beneficiary clients in physical certificate form. In this case, the shares are not purchased through exchange. A perusal of the entries recorded shows that the assessee has received payout of certain amount in assessment year 2011-12. On the basis of the evidence found during the course of search and the appraisal report, the Assessing Officer has formed the belief that the an amount was received by the petitioner towards consideration for sale of 3,62,000 shares in the assessment year 2011-12 is not genuine sale consideration, but accommodation entries. So, the case is that the petitioner did not receive any share sale consideration, but it was in the nature of mere accommodation entries. To put it briefly, the Assessing Officer, in the reasons recorded, has referred to the evidence on record and the appraisal report and has recorded that the same show that the LTCG shown by the petitioner was in the nature of accommodation entries and that in fact, there was no genuine sale consideration. [Para 8.2]*

- *In this case, the Assessing Officer has filed a detailed affidavit and has also placed on record the appraisal report on the basis of which he has formed the opinion that income chargeable to tax has escaped assessment in the case of the assessee. It has been emphatically argued on behalf of the petitioner that the*

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reasons have to be considered on a standalone basis and that the Assessing Officer has to make out a case on the basis of reasons recorded and not on the basis of the affidavit. [Para 8.3]

- *Thus, it is open for the Assessing Officer to explain or elaborate or clarify the reasons recorded by him, but he cannot introduce new grounds or new reasons or new materials, which were not found in the recorded reasons, either expressly or by implication. Moreover, the reasons recorded do not have to be very elaborate, but should reflect application of mind on the part of the Assessing Officer to the evidence available and should show that on the reasons recorded, he could have formed the belief that income chargeable to tax has escaped assessment. [Para 8.4]*

- *Therefore, while the reasons recorded should reflect the basis for forming the opinion that income chargeable to tax has escaped assessment on the material relied upon, such reasons can be elaborated in the affidavit-in-reply. In the present case, along with the affidavit-in-reply, the respondent has placed on record the appraisal report, which finds reference in the reasons recorded. The appraisal report is detailed and elaborate and gives a clear picture of the modus operandi by which accommodation entries were provided to convert unaccounted money into white money, however, the reasons recorded are not so elaborate and rightly so, inasmuch as the reasons have to satisfy that there was sufficient material for the Assessing Officer to form the belief that income chargeable to tax has escaped assessment. Evidently, the reasons would not set out the entire modus operandi as recorded in the appraisal report, but would briefly set out the gist of the facts and material which led the Assessing Officer to form the requisite belief that income chargeable to tax has escaped assessment. However, the reasons as they stand should be sufficient to show that on the reasons recorded the Assessing Officer could have formed the belief that income chargeable to tax has escaped assessment. Once that requirement is fulfilled, the Assessing Officer can certainly clarify and explain the*

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reasons recorded by him in the affidavit-in-reply and place the material relied upon by him for the purpose of forming the belief that income chargeable to tax has escaped assessment. [Para 8.5]

- *A perusal of the appraisal report, on which reliance has been placed by the Assessing Officer, reveals that there was sufficient material for the Assessing Officer to form the belief that income chargeable to tax has escaped assessment. The material also refers to the petitioner so as to establish a link between the relied upon materials and the petitioner. Considering the nature of material available with the revenue, it is not possible to state that on the reasons recorded, the Assessing Officer could not have formed the belief that income chargeable to tax has escaped assessment. [Para 8.7]*
- *Thus, though on the reasons recorded for reopening the assessment, the Assessing Officer could have formed the belief that income chargeable to tax has escaped assessment, in this case, as discussed earlier, since there is an order of the Settlement Commission under section 245D(4) in relation to the assessment year in respect of which the assessment is sought to be reopened, the Assessing Officer has no jurisdiction to reopen the assessment. The impugned notice under section 148, therefore, cannot be sustained. [Para 9]*
- *For the foregoing reasons, the petition succeeds and is, accordingly, allowed. The impugned notice issued by the respondent under section 148 is hereby quashed and set aside. [Para 10]*

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- The Hon'ble Allahabad High Court in ***CIT v. Smt. Diksha Singh [2011] 201 Taxman 378*** held that since the legislature in their wisdom had conferred powers on the ITSC to reopen the proceedings in certain circumstances and to deal with the situation in the event of commission of fraud or misrepresentation and has thus left it to the ITSC to deal with such contingencies, it cannot be

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postulated that the Assessing Officer or any other income tax authority will have jurisdiction to assess the tax for the same financial year despite the finality and conclusiveness of the order of settlement. It was further held that there cannot be piecemeal determination of the income of an assessee for the relevant period, one by the ITSC and another by the assessing authority, and to hold otherwise would be to frustrate the very purpose of filing an application before the ITSC for settlement.

- In case of ***Omaxe Ltd. V DCIT [2014] 46 taxmann.com 14 (Delhi)*** , the Hon'ble Delhi High Court placing reliance on its earlier judgement in case of ***Omaxe Ltd. V ACIT [2012] 25 taxmann.com 190 (Delhi)*** held that once Settlement Commission has completed proceedings, its order is considered conclusive as per section 245-I and reopening any proceeding in respect of matters covered in said order would be barred. However, it was held that the revenue can seek remedy under Section 245D (6).

Brief Facts of the case were as under:-

- The assessee-company was engaged in real estate business. Pursuant to search proceedings carried out at assessee's premises, a notice under section 153A was issued.
- In response to said notice, the assessee filed its return for relevant year declaring certain taxable income. Subsequently the assessee approached the Settlement Commission to settle pending assessment.
- The Commissioner passed its order under section 245D(4), finally determining the assessee's liability for assessment year in question.
- Later on, consequent to search in the premises of one 'M' in June, 2009, a satisfaction note was recorded by the Assessing

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Officer for initiating proceedings under section 153C against the assessee.

- The assessee filed instant petition objecting to assessment/reassessment of income contending that the assessment had already been concluded by the order of the Settlement Commission.

The Hon'ble Court held as under:-

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- *The finality which attaches itself to Settlement Commission's order is in respect of the matters referred to it. The revenue's contention appears to be that the non-disclosure of materials which have a bearing on assessment year 2006-07, discovered or seized in search proceedings concerning 'M', were not the subject matter of the Commission's deliberations and consequently the subject matter of its order. Attractive though this aspect appears to be, the ruling in Omaxe Ltd. v. Asstt. CIT [2012] 209 Taxman 443/25 taxmann.com 190 (Delhi) precludes exercise of authority by the revenue.*
- *Whilst from the revenue's perspective, every non-disclosure or a fresh discovery of facts which might have a bearing on the assessee's returns, prima facie, stands excluded from what is referred to a Settlement Commission, the fallacy in that argument is the Commission has a full weight and the jurisdiction of all the authorities under the Income-tax Act when it is seized of a matter.*
- *Concededly in this case, the subject matter before the Commission was the submission of the assessee to its jurisdiction with respect to assessment year 2006-07. Of course, the revenue contends that the recovery of material in a third party's premises were not a subject matter of the settlement proceedings, which got concluded on 17-3-2008. However, equally its case can proceed only on the assumption*

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that the assessee was guilty of non-disclosure or suppression of material facts which ought to have been primarily revealed to the Settlement Commission when the application was moved under section 245D in the first place.

- *The fallacy in the revenue's argument is that it overlooks the remedy available for the revenue, i.e., to approach the Settlement Commission under section 245D(6) contending that its previous order of 17-3-2008 ought to be reopened because the non-disclosure amounted to a fraud or misrepresentation.*
- *It is evident from the various rulings of the Supreme Court that orders of Settlement Commission are final and conclusive as to matters stated therein. The 'matters' necessarily could comprehend disputed questions, items or heads of income, disallowance, etc. or variants of it, but always with reference to a particular assessment year. In this case, the Settlement Commission was seized of assessment year 2006-07. Whilst exercising its authority over the application, the Commission concededly exercised the vast plenitude of its power or jurisdiction.*
- *The assessee had made a disclosure in its application as it was duty bound to. What is in controversy today is that the subsequent event of search and seizure operation conducted in the premises of 'M' in the contention of the revenue have thrown light on material that had been suppressed from the commission. If such is the case, it would be only logical that the commission itself should be approached for a declaration that its order of 17-3-2008 is a nullity. Allowing any other authority, even by way of a notice under section 153C, would be to permit multiple jurisdictions which can result in chaos. [Para 16]*
- *Finally, one cannot accept the argument of the revenue that the definition of 'case' over which the Settlement Commission has exclusive jurisdiction excludes proceedings for reassessment, under section 245A(i). This is because any reassessment proceedings that are sought to be excluded from*

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the purview of 'case' must be in respect of a section 148 notice sent while the proceedings before the Settlement Commission are ongoing. Once the Settlement Commission has completed proceedings, its order is considered conclusive as regards matters 'stated therein' per section 245-I and reopening any proceeding in respect of matters covered in the order would be barred. [Para 17]

- *For the above reasons, it is held that the impugned notice issued to the petitioner under section 153C cannot be sustained; the said notice and all further proceedings are hereby quashed. It is open to the respondent/Revenue to move the Settlement Commission for appropriate relief of declaration that its previous order under section 245D(6) is void, setting out the relevant facts and circumstances. In the event the Revenue approaches the Commission with an application for such relief, it shall be decided on its merits in accordance with law. [Para 18]*

- *The writ petition is allowed, but in the above terms. [Para 19]*

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Further reliance can also be placed on a recent judgement dated 11-04-2019 of the Hon'ble Delhi ITAT in case of **M/S Radico Khaitan Ltd. V DCIT in ITA No. 4355/DEL/2015.**

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ABOUT CA. MOHIT GUPTA

Mr. Mohit Gupta is a Fellow Member of the Institute of Chartered Accountants of India, a commerce graduate from prestigious Ramjas College, Delhi University and an alumni of St. Xavier's School, New Delhi. He is practicing as a Chartered Accountant for more than 15 years and managing the Direct Tax Advisory and Litigation practice of M/s. Dhanesh Gupta & Co., Chartered Accountants, New Delhi a renowned Chartered Accountancy firm in the core domain of direct taxation established in 1978.

His forte is handling Income Tax Search and Seizure matters, matters before the Income Tax Settlement Commission and other direct tax litigation matters. As on today, he has wide experience of handling Income Tax Search and Seizure Cases, representing matters before the Income Tax Settlement Commission, ITAT and other appellate tribunals. He has been contributing articles in various professional magazines/journals and addressing various seminars on topics relating to Income Tax Search and Seizure, Income Tax Settlement Commission and other allied tax matters. He has to his credit plethora of well researched articles out of which many have appeared in leading journals. In Addition to the above, Mr. Mohit Gupta is a Special Auditor of the Income Tax Department and has carried out numerous Special Audits across the country on being appointed by the Income Tax Department which have plugged tax evasions, tax base erosion and other tax manipulative practices and in turn facilitated the Income Tax Department to collect huge tax revenues. Mr. Mohit Gupta has also been appointed as Special Auditor under other tax statutes and by other Investigation Agencies of the Government of India. Mr. Mohit Gupta, authored the periodical Newsletter on Income Tax Search and Seizure. The said newsletter contained well researched write ups / articles and judicial developments on the matters of Direct Taxation. The newsletter was circulated both electronically and otherwise.

Recently, in the year 2016, Mr. Mohit Gupta have authored two comprehensive books on the Income Declaration Scheme'2016, titled as "Law Relating to Income Declaration Scheme'2016". His books provided at one place the entire gamut of the Law relating the Income Declaration Scheme '2016 and set to rest all the queries that arose before, during and after the course of making the declaration under the Income Declaration Scheme'2016. The books received an extremely overwhelming response from the readers including the proposed tax payers, tax administration, tax professionals, corporate houses and academicians. The said books were released by erstwhile Hon'ble Union Finance Minister, Shri. Arun Jaitley, Shri. Arjun Ram Meghwal, Minister of State for Finance and the Chairman of Central Board of Direct Taxes and many other dignitaries. He is about to release two comprehensive books on Income Tax Search and Seizure in few months time depending upon the normalization of the COVID situation. The release of the books have been kept on hold due to current COVID position. The first book is an in depth commentary on the Law relating to Income Tax Search and Seizure , while the second book is relating to addressal of controversial issues arising during search and seizure action, assessment and settlement commission thereupon as the case may be.

Due to his continuous desire to always rise on the learning curve, he always have a quest and quench to read more, learn more and perform even more.

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