

Provisions for Settlement of case
By CA. Chetan A Karia

&

CA. Reepal Tralshawala

1. Introduction

1.1 Chapter XIX - A of Income Tax Act, 1961 provides for settlement of cases. Income Tax Settlement Commission (referred to as ITSC hereafter) 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.

1.2 The Income Tax Settlement Commission has certain unique features, such as:

- (a) An institution, though within the Tax Department, but independent of the same to settle tax liability to give quietus to a dispute.
- (b) The ITSC is empowered to grant immunity from prosecution for any offence and also to grant immunity from imposition of any penalty under the Act.
- (c) The proceedings before the ITSC are confidential.
- (d) The orders of the ITSC are final and not appealable. The orders are only subject to judicial review in terms of Articles 136 and 226 of the Constitution.

1.3 The process of settlement is set rolling by the assessee making an application for settlement, which must have a true & full disclosure of income concealed from the Department and the manner in which such income is earned. This admission of assessee helps the department in:

- (a) avoiding long drawn investigation and litigation to prove that income was earned and concealed by the assessee,

- (b) Immediate recovery of taxes as the assessee is liable to pay tax along with interest on admitted income before filing the application for settlement, and
- (c) Plugging loopholes due to in depth knowledge gained about manner of earning of income concealed.

1.4 The assessee gains by way of immunity from penalty and prosecution. Also, putting a quietus to disputed matters helps in avoiding long drawn and ruinous litigation.

1.5 Provisions of Chapter XIX A have undergone amendment from time to time. The present note explains law as applicable to applications filed on or after 01.10.2014.

2. Application for settlement – S. 245C

2.1 Section 245C deals with application for settlement and the provisions of section 245C can be briefly summarized as follows:

- i) Application can be filed for a case,
- ii) Application must contain full and true disclosure of income not disclosed before the Assessing Officer,
- iii) Manner of earning such income has to be disclosed,
- iv) Additional tax payable on income declared should exceed the prescribed limit,
- v) Additional tax and interest payable on income declared has been paid before filing of application,
- vi) Intimation is given to the Assessing Officer about application filed for settlement.

2.2 Section 245K provides for certain disqualifications to filing of application for settlement.

3. Case – meaning thereof

3.1 Sub-section (1) of section 245C provides that an assessee can prefer an application at any stage of a case relating to him. The term "case" is defined by clause (b) to section 245A. Clause (b) was substituted by Finance Act, 2007 w. e. f. 01.06.2007 and the term

had undergone major change as compared to earlier provisions. Even post amendment in the year 2007, the definition has undergone two major changes widening the meaning of the term case, once in the year 2010 and second time in the year 2014.

3.2 Case is defined as "*any proceeding for assessment ... in respect of any assessment year or years which may be pending before an assessing officer on the date on which an application ... is made.*" The words used are assessment year or years and therefore case can mean more than one assessment year. Therefore, a single application can be filed for any number of years as long as each of those assessment years satisfies condition of being a case.

3.3 In respect of application filed on or after 01.06.2007, only assessment proceedings pending before Assessing Officer is case.

3.4 Explanation to clause (b) of S. 245A specifically provide for dates on which specified proceedings are deemed to commence and date on which they are deemed to conclude, to decide whether proceedings are pending before the Assessing Officer.

3.5 After the amendment in the year 2014, proceedings are case when the same are pending before the Assessing Officer, whether by issue of notice u/s. 143(2), 148, 153A or 153C or on set aside by appellate authorities or by CIT by order u/s. 263 or 264. The amendment widens the scope of a case to all assessment years for which assessment proceedings are pending before the Assessing Officer; whether assessment, reassessment or on set aside by higher authorities.

3.6 Only assessment proceedings are case within meaning of S. 245A and failure to comply with provisions relating to TDS does not come within purview of 245C(1). (See *Shaw Wallace & Co Ltd v. Settlement Commission (2003) 263 ITR 285 (Cal)*)

When assessment completed

3.7 In *Yashovardhan Birla 289 CTR 482 (Bom)* it has been held that assessment is completed when assessment order is served on

the assessee. However, a contrary view has been adopted in *Shalibhadra Dev* 74 Taxmann.com 152 (Guj).

Black money Act – whether a case

3.8 In *Arun Mammen* 241 Taxman 135 (Mad) it has been held that where a notice u/s. 148 was issued, even issue relating to foreign bank account can be dealt with in an application for settlement.

4. Full and true disclosure of income not disclosed before the Assessing officer

4.1 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 and one of the most litigated issues under Chapter XIXA of the Act.

4.2 In *Raja Ram Industries v. Settlement Commission (1995)* 81 Taxman 506 (ITSC-Del) it has that it is the obligation of the assessee making an application u/s.245C to make a full and true disclosure of the income, notwithstanding that the department has not detected the said income. The argument that an applicant was not required to disclose that part of his income which had not been detected by revenue, is wholly unacceptable and is to be rejected.

Confidentiality of Statement of Facts

4.3 Till very recently, the Statement of facts was treated as confidential till the time the application was allowed to be further proceeded with by order u/s. 245D(2C). Recently, in January 2014, Rule 44CA of Income Tax Rules has been amended to provide that if application is admitted by order u/s. 245D(1), then the application and statement of facts shall be forwarded to department for its report u/s. 245D(2B).

Income does not include withdrawal of claim for set off of losses/deduction of expenses

4.4 The term "income" has not been specifically defined for the purpose of Chapter XIXA. The Hon'ble Supreme Court in *CIT v. Express Newspapers Ltd 203 ITR 443 (SC)* has held that offer of income for this purpose would not include withdrawal of claim for losses or expenses. As such, to constitute a valid offer of income in application for settlement, income offered must be income as earned, and not the extended meaning thereof u/s 147 which includes withdrawing of claim for losses, expenses and deductions. Similar view taken has been taken in *CIT v. ITSC [2008] 170 Taxman 172 (Mad)*.

Offer of income need not be new source of income

4.5 Though income not disclosed to the Assessing Officer has to be offered, it is not necessary it should be a new source of income. (See *DIT (International Taxation) v. ITSC (2014) 365 ITR 108 (Bom)*).

Condition of full and true disclosure prescribed twice – section 245C and 245H

4.6 The need to make full and true disclosure in an application for settlement cannot be over emphasized. Though an assessee has to make full and disclosure even in return of income as required by section 139, the said condition in Chapter XIX A is prescribed twice. Section 245C prescribes conditions for a valid application and one of the main conditions is full and true disclosure of income. The same condition is again prescribed in S. 245H. S. 245H prescribes immunities that may granted by the ITSC and the conditions on satisfaction of which the said immunities may be granted. One of the prescribed conditions in section 245H is that applicant has made full and true disclosure of income.

What does full and true disclosure mean

4.7 What constitutes full and true disclosure can be determined on facts of each case. One can say that requirement of section 245C(1) are fulfilled if:

- i) All material facts are disclosed, and
- ii) Computation of income offered on the basis of such primary material facts is bonafide, fair and reasonable.

4.8 The above proposition has been laid down by the Hon'ble Bombay High Court in case of PCIT v. ITSC (2017) 292 CTR 363 (Lodha's ca. In the said case it has been held that merely because some further amount has been added at stage of order u/s. 245D(4), it cannot be said that full and true disclosure was not made at the stage of application if primary facts were disclosed in the petition and revision of income was on account of certain claims not been accepted.

Whether offer of income can be revised

4.9 Having said that applicant has to make full and true disclosure, question arises whether assessee can revise offer of income originally made in the application.

4.10 In Ajmera Housing Corporation v. CIT 326 ITR 642 (SC), it is held:

"A "full and true" disclosure of income, which had not been previously disclosed by the assessee, being a precondition for a valid application under section 245C(1) of the Act, the scheme of Chapter XIXA does not contemplate revision of the income so disclosed in the application against item No.11 of the Form. Moreover, if an assessee is permitted to revise his disclosure, in essence, he would be making a fresh application. In this regard, section 245C(3) of the Act which prohibits the withdrawal of an application once made under subsection (1) of the said section is instructive inasmuch as it manifests that an assessee cannot be permitted to resile from his stand at any stage during the proceedings. Therefore, by revising the application, the applicant would be achieving something indirectly what he cannot otherwise

achieve directly and in the process rendering the provision of subsection (3) of section 245C of the Act otiose and meaningless. In our opinion, the scheme of the said Chapter is clear and admits of no ambiguity.”

4.11 However, not every revision of income has been frowned upon by Hon’ble Courts. The condition of true and full disclosure of income does not in any manner suggest that no further income can be added by the Settlement Commission at the stage of final hearing u/s.245D(4). In this context, the hon’ble Bombay High Court has laid down certain important principles in *DIT (International Taxation) v. ITSC (2014) 365 ITR 108 (Bom)*. Following the judgment of the Hon’ble Bombay High Court, the Hon’ble Kerala High Court in *CIT v. ITSC 369 ITR 606 (Ker)* held that the additional income offered by the applicant at later stage was only to put quietus to the litigation and in a spirit of settlement. All the relevant material was already before the Settlement Commission in respect of the additional income offered and that the Department participated in verification proceeding u/s.245D(3) and no timely objection was raised. It was thus held that there was no violation of procedure by the Settlement Commission.

4.12 In *CIT v. ITSC (2015) 375 ITR 483 (Bom)* & also in *CIT v. Smt. Leonie M. Almeida (2015) 374 ITR 304 (Bom)* it has been held that where the applicant disputes the claim, but offers the additional income in the interest of putting an end to litigation and in a spirit of settlement, due to insufficiency of material to substantiate their contentions, the same cannot be faulted. The consent by the applicant to forgo such amounts, at the suggestion of the Settlement Commission, cannot have the effect of rendering the original disclosure dubious for the purposes of settlement. It is only in those cases where an assessee resiles from his original declaration of undisclosed income, by suo moto effecting revisions

thereto, that he renders his application invalid for the purposes of settlement.

4.13 Therefore, not every revision of quantum of income means that original offer of income was not full and true disclosure. It will have to be determined on facts of each case whether revision of quantum of income leads to conclusion that original offer of income was not full and true.

5. Manner in which income derived

5.1 The application should also disclose manner in which income disclosed is derived. The modus operandi of earning income has to be disclosed. Disclosure of manner of earning income offered is as important as the condition of making full and true disclosure. (See *Vishnubhai Mafatlal Patel v. ACIT [2013] 31 Taxmann.com 99 (Gujarat)*).

6. Additional tax payable should exceed Rs. 10,00,000/-

6.1 The additional tax payable on additional income offered must exceed Rs. 10,00,000/-. If the case is in pursuance of notice u/s. 153A or 153C, the additional tax payable has to exceed Rs. 50,00,000/-. If however, despite being a case in pursuance of notice u/s. 153A or 153C, if the case is connected to a case for which application has been filed, and such connection is as prescribed under the Act, then the additional tax payable has to exceed Rs. 10,00,000/-. The mode of computation of additional tax is provided by sub-section (1A) to (1D) of section 245C.

6.2 If the application is for more than one assessment year, then additional tax shall be determined as prescribed for each of the assessment year and the aggregate thereof shall be treated as additional tax payable as per the application.

6.3 Issue arises that whether the application must contain some disclosure of additional income for each year forming part of the case. The said issue was considered by Special Bench of Hon'ble

Settlement Commission in *Airtech P. Ltd. (1999) 209 ITR (AT) 21 (ITSC-Del)(SB)* and it was held that there is no requirement that the application u/s.245C must contain some disclosure of additional income for each and every assessment year comprised in it. The additional tax liability is for the application as a whole. Thus, several years comprised in an application should together aggregate the minimum additional tax liability prescribed. It is not necessary that there should be additional tax liability for each of the years comprised in the application. The only requirement is that the additional tax liability should be overall to the extent of minimum amount prescribed. The said judgment was reconsidered by a larger Bench of ITSC and it has upheld the earlier special Bench judgment (*Neptune Developers & Constructions (P) Ltd (2017) ITSC Mum (SB)*).

6.4 With reference to the computation of additional tax, the issue also arose as to whether the additional income disclosed in Settlement application is to be netted out with losses, if any, as per return of income so as to compute the additional tax liability on the net total income after adjusting losses. In this context, there are two decision of the High Courts, which are contrary to each other.

6.5 The Hon'ble Bombay High Court in *Gobind Builders & Developers v. ITSC (2009) 309 ITR 167 (Bom)* held that the computation of additional tax would have to be done after allowing set off of the unabsorbed depreciation against the income disclosed in the application for settlement. In other words, while computing income on which tax is payable u/s.245C, carried forward losses are to be set off. The said judgment was differed by the Hon'ble Gujarat High Court in *Unipon (India) Ltd. v. ITSC, order dated 09-16/04/2014* and a different view has been upheld.

7. Payment of additional tax and interest thereon

7.1 Proviso to s. 245C(1) provides that tax along with interest has to be paid along with application itself and proof of payment has to

be attached. Interest has to be computed as if such income has been disclosed in return of income and date of filing application for settlement is date of filing return for the purpose of calculation of interest.

7.2 The Hon'ble Bombay High Court in *Gobind Builders & Developers v. ITSC (2009) 309 ITR 167 (Bom)* has held that condition of payment of additional tax and interest is mandatory and the application does not satisfy the prescribed conditions if admitted tax and interest is not paid before filing the application.

8. Intimation to the Assessing Officer

8.1 Sub-section 4 of section 245C requires that the assessee has to give intimation of having filed the settlement application to the Assessing Officer on the date of filing settlement application itself.

11.2 The purpose of said condition is to give effect to amendment of S. 245F. Before amendment in the year 2007, exclusive jurisdiction vested in the ITSC from the date of admission of application by order u/s. 245D(1). Under the amended provisions, exclusive jurisdiction vests in the ITSC from the date of filing settlement application. By the said intimation, the assessing officer is informed that exclusive jurisdiction over the case now vests in the ITSC.

9. Disqualification for filing an application

9.1 Section 245K provides for disqualifications from making an application for settlement. The disqualifications prior to amendment made by the Finance Act, 2015, w.e.f. 1.6.2015 apply only to persons who have earlier made an application and do not apply to persons who are filing application for the first time. However, after the amendment made by the Finance Act, 2015, w.e.f. 1.6.2015, any person related to such person also shall not be entitled to apply settlement application, even if it is first time for such related person.

9.2 Clause (i) provides that where the order u/s 245D(4), passed in the case of the said assessee in an earlier application, provided for levy of penalty for concealment of income, the said assessee (now w.e.f. 1.6.2015 would also include related person to such assessee) can never make an application for any case.

9.3 Clause (ii) provides that if after passing of an order u/s 245D(4), the assessee has been prosecuted under chapter XXII of Income Tax Act for any offence in relation to the said case, the said assessee (now w.e.f. 1.6.2015 would also include related person to such assessee) cannot apply for settlement for any other matter.

9.4 Clause (iii) provides that where in case of an assessee, the case has been sent back in accordance with provisions of section 245HA before 01.06.2002, the assessee (now w.e.f. 1.6.2015 would also include related person to such assessee) cannot thereafter make an application.

9.5 In respect of application made on or after 01.06.2007, if application is allowed to be proceeded with u/s. 245D(1), assessee (now w.e.f. 1.6.2015 would also include related person to such assessee) shall not be entitled to make an application ever again.

9.6 If an assessee had earlier made an application prior to 01.06.2007, disqualification from filing second application applies only if any of the 3 conditions are satisfied. Where the earlier application was filed after 01.06.2007, once the said application is admitted by order u/s. 245D(1), assessee (now w.e.f. 1.6.2015 would also include related person to such assessee) cannot file second application.

Related Person

9.7 As per the Explanation to section 245K of the Act, the related person with respect to a person (assessee) means-

Cl. no.	Person / Assessee	Related Person
(i)	Individual	a) any company in which such

		<p>person (i.e. the individual assessee) holds more than 50% of shares or voting rights at any time;</p> <p>or</p> <p>b) any firm or AOP or BOI in which such person (i.e. the individual assessee) is entitled to more than 50% of the profits at any time; or</p> <p>c) HUF in which such person (i.e. individual assessee) is Karta.</p>
(ii)	Company	a) any individual who held more than 50% of shares or voting rights in such company at any time before the date of settlement application by the company.
(iii)	Firm, AOP or BOI	a) any individual who was entitled to more than 50% of profits in such firm, AOP or BOI at any time before the date of settlement application by such firm, AOP or BOI.
(iv)	HUF	Karta of such HUF

9.8 Thus, all the aforesaid related persons in connection with such assessee are disqualified w.e.f. 01.06.2015 once any of the conditions as stipulated in section 245K of the Act is applicable to such assessee thereby restricting all such related person from filing settlement application.

10. Other issues relating to application

10.1 Fees of Rs. 500/- are payable as settlement fees and the paid challan has to be enclosed with the application as proof of payment. Fees payable are per application irrespective of number of assessment years for which application is preferred.

10.2 Sub-section (3) of section 245C provides that an application cannot be allowed to be withdrawn by the assessee.

11. Admission of application

11.1 Under the old scheme prior to 01.06.2007, S. 245D(1) provided that an application for settlement may be admitted having regard to complexities of investigation involved or nature and circumstances of the case. It created lot of litigation as to which applications are fit for admission and led to uncertainty as to whether a case would be admitted or not.

11.2 The scheme for admission of a case has been completely altered w.e.f. 01.06.2007 and admission of an application would now be in two stages.

11.3 Section 245D(1) is substituted and it provides that a notice be issued by the ITSC to the applicant within 7 days of filing of application, to explain as to why his application be allowed to be proceeded with. Within 14 days of filing an application, ITSC has to decide whether to admit the application or to reject the same. If no order is passed within 14 days, application shall be deemed to be admitted. No conditions or criteria have been prescribed for deciding whether an application is fit for settlement. Therefore, only conditions prescribed in S. 245C(1) are relevant for deciding whether to allow an application to be proceeded with. At the first stage, no report or communication from department is required for ITSC to decide whether or not to allow an application to be proceeded with.

11.4 In the second stage of admission of an application for settlement, S. 245D(2B) provides that if application is allowed to be proceeded with in first stage, a report has to be called from the Commissioner of Income Tax (referred to as CIT hereafter) within 30 days of filing of application and CIT has to furnish report within 30 days of receipt of communication. If report u/s. 245D(2B) is received within time, than on the basis of report, the ITSC may

declare the application as invalid in accordance with S. 245D(2C). Such an order has to be on the basis of the report and within 15 days of receipt of the report. Opportunity of being heard is to be allowed to applicant if application is to be declared as invalid. If report is not received within specified time, ITSC has to proceed without the report. Again no condition or criteria have been prescribed to decide whether application is invalid, therefore only if condition prescribed by S.245C(1) not satisfied, that an application can be declared as invalid.

11.5 Orders of the Hon'ble ITSC u/s. 245D(1) and 245D(2C) have been challenged in a few recent cases. The judgments deal with the issue of nature of enquiry and finding required to be recorded by the ITSC in such orders. At each of the above two stages, the ITSC has to examine whether the conditions of a valid application are satisfied, but at both the interim stages, the finding of ITSC is tentative in that at a subsequent stage on the basis of evidence available, it may arrive at a finding that conditions of a valid application are not satisfied.

12. Powers of Settlement Commission

12.1 S. 245F(1) of the Act provides that in addition to provisions of Chapter XIXA, the ITSC has all the powers of an Income Tax Authority.

12.2 Sub section (2) thereof gives exclusive jurisdiction to ITSC over the case from the date of filing of an application till order is passed u/s. 245D(4). The Assessing Officer cannot pass assessment order once an application is filed and intimation of filing application has been served.

12.3 Further, sub-section (3) of section 245F provides that in absence of express direction to the contrary by the ITSC, the provisions of this section shall not effect the operation of provisions requiring an assessee to pay self-assessment tax.

12.4 Sub-section (4) of section 245F provides that nothing contained in this section shall effect the operation of any provisions of the Act in relation to matters not before the commission.

15.5 From the date of filing application till the date of final order u/s. 245D(4), exclusive jurisdiction vests in the ITSC relating to the case. Therefore, during pendency of application it is ITSC which has to decide about release of jewellery seized as held in *AMS Jewelers 139 taxman 34 (Del)*.

12.6 The jurisdiction of the Settlement Commission is confined only to the matters covered by the application before it and cannot proceed to give its decision on the matters or issues, which were not before the Commission (see *CIT v. Paharpur Cooling Towers P. Ltd. (1996) 219 ITR 618 (SC)*)

12.7 Recently it has been held by Hon'ble Delhi High Court in *Asgon Global Pvt. Ltd. & Ors. V. ITSC, W.P. (C) 2927/2013, order dated 06.01.2016* that ITSC has no power to direct Special Audit u/s.142(2A).

12.8 Sub-section (3) of Section 245D provides that the ITSC may direct the Commissioner of Income-tax to make further enquiry or investigation and furnish a report if it is of the opinion that further enquiry or investigation is called for.

12.9 During the pendency of proceedings before it, the Commission may direct provisional attachment of the property belonging to the applicant in accordance with the second Schedule, if it is of the opinion that it is necessary to protect the interest of the revenue. Such order would be valid for a period of six months, though the Commission may extend the period.

13. Settlement – order u/s. 245D(4) r. w. s. 245D(6)

13.1 Sub-section (4) of section 245D provides that after considering the application, reports of the Commissioner of Income-tax and such other materials, the Settlement Commission, may, in accordance with the provisions of the Act, pass such orders as it

thinks fit. The provisions grant the widest powers to the Commission to pass an order as it deems fit and the only restriction on the powers is that the order has to be in accordance with the provisions of the Act.

13.2 In *CIT v. Godwin Steels P Ltd 353 ITR 353 (Del)* the Hon'ble Delhi High Court has laid down detailed guidelines on the nature of proceedings u/s. 245D(4) and meaning and import of the word "considered" used in sub-section (5) of section 245D.

Terms of Settlement – Section 245D(6)

13.3 Sub-section (6) of section 245D provides that every order u/s 245D(4) shall provide for: -

- i. terms of Settlement;
- ii. demand by way of tax, interest or penalty;
- iii. the manner in which sum due shall be paid;
- iv. all other matters to make settlement effective;
- v. that the settlement shall be void, if it is subsequently found by the Commission to have been obtained by fraud or misrepresentation.

13.4 Sub-section 6 ensures that all the aspects of the case are decided and nothing remains pending, as section 245I provides that order u/s. 245D(4) is final in respect of matters stated therein.

13.5 Clause (iiia) has been inserted in sub-section (1) of section 245HA by Finance Act, 2015 w. e. f. 01.06.2015 to provide that if order u/s. 245D(4) does not provide for terms of settlement, the proceedings shall abate.

Payment of sum due

13.6 The Order u/s 245D(4) also provides for manner of payment and the Commission has power to grant instalments for payment of sum due.

Immunity withdrawn if taxes not paid as prescribed

13.7 Sub-section (1A) of section 245H provides that where sum due is not paid as prescribed by order u/s 245D(4) or within such

further time as may be allowed by the Commission, the immunity granted from penalty and prosecution shall stand withdrawn.

13.8 Sub-section (6A) of section 245D provides for charge of mandatory interest at the rate of 15% per annum on amount remaining unpaid for the period commencing from the end of 35 days from the date of receipt of order and ending with the date of payment. Interest is payable irrespective of time granted by the Commission.

13.9 Section 245J provides that subject to order u/s 245D(4), the sum due by such order may be recovered by the Assessing Officer having jurisdiction over the applicant and penalty for default may be imposed in accordance with the provisions of Chapter- XVII. The jurisdiction to recover amount due as per Order u/s 245D(4) is vested with the Assessing Officer having jurisdiction over the case, though he is bound by the terms of payment prescribed by the Commission.

14. Time limit prescribed u/s. 245D - sacrosanct

14.1 Time limits have been prescribed u/s. 245D for various orders being order of admission u/s. 245D(1), order allowing application to proceed further u/s. 245D(2C) and order of final settlement u/s. 245D(4). In context of order u/s. 245D(4), it has been held by Hon'ble Karnataka High Court in case of RNS Infrastructure Ltd (2017) 292 CTR 507 that time limit is sacrosanct and order passed u/s. 245D(4) subsequent to prescribed date is invalid. The judgment of Hon'ble Bombay High Court in case of Star was distinguished on the ground that the same related to applications filed before 01.06.2007 and law is different in the present case.

15. Immunities from penalty and prosecution- Section 245H

15.1 Sub-section (1) of section 245H provides that the Settlement Commission may grant immunity from prosecution for any offence under Income Tax, 1961. It may also grant immunity, either wholly

or in part, from imposition of any penalty under the Act. The immunity can only be in respect of case covered by the Settlement Commission. Also, the Commission may impose any conditions subject to which immunity is granted.

15.2 Immunity may be granted by the Commission, if following conditions are satisfied: -

- i. the applicant has co-operated with the Commission in proceedings before it; and
- ii. the applicant has made full and true disclosure of his income.

Restrictions on powers to grant immunity

15.3 The Commission does not have jurisdiction to grant immunity from prosecution in a case where prosecution proceedings have been instituted before the date of filing of application u/s 245C.

Withdrawal of immunity

15.4 Immunities granted by order u/s 245D(4) may be withdrawn in two circumstances. One being non-compliance with order u/s 245D(4) and second being order is obtained by fraud or misrepresentation of facts.

15.5 Sub-section (1A) of section 245H provides that the immunity shall be withdrawn if amount due as per order u/s 245D(4) is not paid within specified time or such further time as may granted by the Commission or if the applicant fails to comply with other conditions subject to which immunity is granted.

15.6 Sub-section (2) of section 245H provides that the Settlement Commission may withdraw the immunity granted if it is satisfied that the applicant had during settlement proceedings concealed particulars material to settlement or has given false evidence.

16. Order to be conclusive- Section 245I

16.1 Section 245I provides that every order passed u/s 245D(4) shall be conclusive as to matters stated therein. Further, no matter covered by such order can be reopened in any proceedings under the Act or any law for time being in force except as otherwise

provided under Chapter XIX-A. The order u/s 245D(4) is final and no appeal or revision is provided under the Act.

16.2 In many instances the orders have been challenged by either the assessee or the department before Hon'ble High Court by way of writ under Article 226. Though such a writ is maintainable, it is not an appeal or review by Hon'ble High Court of order of the Hon'ble Settlement Commission. It has been held that decision cannot be challenged but the decision making process can be examined by the Hon'ble High Court.

16.3 Once orders have been passed u/s. 245D(4), the department cannot take any action in respect of assessment years covered by settlement application. Even action to reopen assessment u/s. 147 cannot be taken by the department, whether or not the issue on basis of which notice is issued is dealt with in order u/s. 245D(4). If at all, the department can approach the ITSC with the information it has, seeking appropriate action u/s. 245H(2). (See *Om Prakash Mittal 273 ITR 326 (SC)*, *Omaxe Ltd 209 Taxman 443 (Del)*, *CIT v. Diksha Singh 350 ITR 157 (All)* and *Chandragiri Construction Co 334 ITR 211 (Mad)*).

Rectification of mistake apparent from record

16.4 In context of charging interest u/s. 234B, the hon'ble Supreme Court held in case of *Brijlal, 328 ITR 477* that the ITSC cannot after passing order u/s. 245D(4) pass rectification order u/s. 154 to charge interest u/s. 234B. After the said judgment, to put the issue beyond doubt, sub-section 6B has been inserted in section 245D to provide that ITSC can rectify any order within a period of 6 months of the month in which order u/s. 245D(4) has been passed.

17. 245HA – Abatement of proceedings

17.1 Proceedings before the ITSC shall abate and proceedings shall revive before respective IT authority as if no application was made, if:

- i) Application is rejected u/s. 245D(1),

- ii) Application is declared invalid u/s. 245D(2C),
- iii) Order u/s 245D(4) is not passed within 18 months of the end of month in which application is filed,
- iv) Order passed u/s. 245D(4) does not provide terms of settlement.

17.2 If the proceedings abate, the IT authority shall be entitled to use all material produced by applicant as well as any information gathered by ITSC.

17.3 For determination of time limit for making assessment as well as for computing time for payment of interest on refund, the period from date of application to date of abatement shall be excluded.

245HAA – credit for taxes paid

17.4 Once proceedings abate as above, AO has to give credit for taxes paid in proceedings before the ITSC.