



IN THE HIGH COURT OF DELHI

Date of Decision:- April 13, 2004

CWP No. 3359/2003

Sukhmani Associates (P) Ltd.....Petitioner

Through Mr.O.S.Bajpai, Advocate

Versus

Income tax Settlement Commission...Respondent

Through:Mr. R.C. Pandey with
Mr.Ajay Jha, Advocates

Coram:-

THE HON'BLE THE CHIEF JUSTICE
THE HON'BLE MR. JUSTICE BADAR DURREZ AHMED.

- i) Whether Reporters of local papers may be allowed to see the judgment.
- ii) To be referred to the reporter or not?
- iii) Whether the judgment should be reported in the Digest?

B.C.PATEL, C.J.

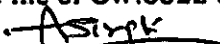
For orders see Civil Writ No.3322 of 2003.

Sd/-
CHIEF JUSTICE

Sd/-
BADAR DURREZ AHMED, J.

April 13, 2004
As

Detailed signed order placed
In the file of CW.3322 of 2003.


(Amrik Singh)
PS to HCJ



IN THE HIGH COURT OF DELHI

Date of Decision:- April 13, 2004

Civil Writ No. 3322 of 2003

Capital Cables (India) Pvt Ltd,..... Petitioner
Mr O.S. Bajpai, Mr Dharmesh Misra and
Mr C.S. Jain advocates

Versus

Income-tax Settlement Commission ... Respondents
Mr.R.C.Pandey with Mr.Ajay Jha, Advs.

CWP No. 3298/2003

M/S Airtech Pvt Ltd vs Commissioner of Income tax
Mr. O.S. Bajpai for the petitioner
Mr. R.C. Pandey with Mr.Ajay Jha for respndt.

WP(C) 3321/2003

M/S Capital Enterprises vs. Income-tax Settlement Com.
Mr.O.S.Bajpai for the petitioner
Mr.R.C.Pandey with Mr. Ajay Jha, Advs.

WP(C) 3323/2003

Sudrshan Dhingra vs. Income tax Settlement Com.
Mr.O.Bajpai for the petitioner
Mr.R.C.Pandey with Ms.Rashmi Chopra

WP(C) 3326/2003

Surjit Dhingra vs. Income tax Settlement Com.
Mr.O.S.Bajpai for the petitioner
Mr.R.C.Pandey with Mr.Ajay Jha, Advs.

WP(C) 3340/2003

Manranjan Dhingra vs. Income tax Settlement Com.
Mr.O.S.Bajpai for the petitioner
Mr.R.C.Pandey with Mr.Ajay Jha, Advs.

WP(C) 3343/2003

Karan Associates (P) Ltd vs. Income tax Settlement Com
Mr.O.S.Bajpai for the petitioner
Mr.R.C.Pandey with Mr.Ajay Jha, Advs.

WP(C) 3359/2003

Sukhmani Associates (P) Ltd vs. In-tax Settlement Com
Mr. O.S.Bajpai for the petitioner
Mr. R.C.Pandey with Mr.Ajay Jha, Advs.

WP(C) 3496/2003

Asso Gums Pvt Ltd vs. Income tax Settlement Com.

WP(C) 3858 /2003

Rajesh Goyal vs. Income tax Settlement Com.
Mr.C.S.Jain for the petitioner
Mr.R.C.Pandey with Mr.Ajay Jha, Adv.

WP(C) 3866/2003

H.N. Goyal vs. Income tax Settlement Com.
Mr.C.S.Jain for the petitioner
Mr.R.C.pandey with Mr.Subash Sharma, Adv.

WP(C) 3867/2003

Krishna Devi vs. Income tax Settlement Com.
Mr.C.S.Jain for the petitioner.
Mr.R.C.Pandey with Mr.Ajay Jha, Adv.

WP(C) 3902/2003

Mukesh Goyal vs. Income tax Settlement Com.
Mr.C.S.Jain for the petitioner
Mr.R.C.Pandey with Mr.Ajay Jha, Adv.

WP(C) 4686/2003

Kedar Nath Khaitan vs. Income tax Settlement Com.
Mr.C.S.Jain for the petitioner
Mr.R.C.Pandey with Mr.Ajay Jha, Adv.

WP(C) 4908 /2003

I.K. Sabharwal vs. Income tax Settlement Com.
Mr.Anil Sharma for the petitioner
Mr.R.C.Pandey with Mr.Ajay Jha, Adv.

WP(C) 5395/2003

Narayan Lal Saraf vs. Income tax Settlement Com.
Mr.C.S.Jain for the petitioner
Mr.R.C.Pandey with Mr.Ajay Jha, Adv.

WP(C) 5649/2003

Aravali Construction Co. vs. Income tax Settlement Com.
Mr.O.S.Bajpai for the petitioner
Mr.R.C.Pandey with Mr.Ajay Jha, Adv.

WP(C) 6207 /2003

Bhalla Mechl. Works vs. Income tax Settlement Com.
Mr.C.S.Jain for the petitioner
Mr.R.C.Pandey with Mr.Ajay Jha, Adv.

WP(C) 2323 /2004

Rattan Chand vs. Income tax Settlement Com.
Mr.C.S.Jain for the petitioner
Mr.R.C.Pandey with Mr.Ajay Jha, Adv.



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CORAM

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE BADAR DURREZ AHMED

- I) Whether Reporters of local papers may be allowed To see the judgment.
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B.C.PATEL, CJ

1. All these petitions filed by different petitioners raise common questions and therefore, are decided by a common judgment.
2. The contention raised by the petitioners is that an order made by the Settlement Commission u/s 245D of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') is conclusive under Section 245I of the Act and it cannot be reopened in any proceedings under the Act, or any other law for the time being in force.
3. In all these cases, the applicants in the year 1994(in January or February) moved an application individually under Section 245-C of the Act. In all these cases, the Settlement Commission made an order under Section



by the Settlement Commission, as the same is not relevant for deciding the present controversy. After making an order under Section 245-D(1) of the Act, the Settlement Commission, after examination of all the material placed on record and after giving an opportunity to the applicants as contemplated, in exercise of the power under subsection (4) of Section 245-D of the Act, made an order on or about 13.5.98. The terms of settlement are placed on record (in CWP No. 3322/2003 at page 73- It is a part of the order under Section 245-D(4) at page 53). One of the terms of settlement i.e. No. 23, refers to waiver of interest under Section 234A, 234B and 234C. Other terms of settlement being not relevant for deciding this petition, are not referred to.

4. It appears that thereafter the Commissioner of Income-tax moved an application for rectifying a mistake apparent from the record before the Settlement Commission, inter alia, stating that the Commission has the power to grant immunity only from prosecution and penalty and it is not within the ambit of its power to make any order whereby statutory interest, as provided under section 234-A, 234-

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the income of the assessee on the basis of the record available before it, the Commission has to levy the mandatory chargeable tax on such income arrived at by it and wherever interest is due and liable under Section 234A 234B and 234C, it has to include the same in the settlement. A request was made to the Settlement Commission to recall sub-para (e) of para 23 of the terms of settlement order dated 13.5.98 and to issue direction to include statutory interest due under mandatory provisions of the Act and to pass further orders. These applications were filed under Section 245-F read with Section 154 of the Act. Show cause notice was issued on 17.3.2003 and the reply was filed on 28.3.2003. According to the counsel appearing for the parties, on the same date, the Settlement Commission made an order. However, from the record it transpires that in the case of Capital Cables (CWP No.3322/2003), the application was heard on 24.3.2003 and the order was made on 26.3.2003 while in the case of other assesses the matter was heard on 28.3.2003 and the order was also made on the same date. Copies of orders are at Annexure P1 and P2 in CWP 3322/2003.



5. These petitions are filed against the order made by the Settlement Commission rectifying, modify or reviewing its earlier order and directing that interest either under section 234-A, 234-B or 234-C is required to be levied as in view of the Supreme Court judgment in CIT v. Anjum M.H. Ghaswala and ors., 252 ITR 1, the Settlement Commission has no inherent power of waiver of mandatory interest.
6. It was pointed out to the Settlement Commission that there is specific bar under Section 245-I of the Act that the order made under sub-section (4) of Section 245D of the Act shall be conclusive as to matters stated therein and no matter covered by such order shall be re-opened in any proceedings under the Act or any other law for the time being in force. It was also pointed out that the Supreme Court in the case of *Anjum MH Ghaswala* (supra) has specifically pointed out that the Settlement Commission has no power to reopen any proceedings under the Act, as its orders in view of Section 245-I are conclusive. However, the Settlement Commission in view of the decision directed the Assessing Officer to charge interest.



- 7. Being aggrieved by the aforesaid decision of the Settlement Commission, the petitioners have contended before us that after the orders made on 13.5.1998, the Settlement Commission has no power to recall the earlier order made by it. It was further submitted that the said order was passed after considering the provisions of law and various decisions of the Supreme Court. It was further contended that if in some subsequent decision the Court has held that the Settlement Commission has no power to waive or reduce the interest, the finality of the order made by it in 1998 cannot be disturbed after a period of about four years.
8. As against that, it was submitted by the learned counsel for the revenue that the powers can be exercised under the Act for rectification by the Settlement Commission and the Settlement Commission was within its power to rectify the order under Section 154 of the Act.
9. ~~Chapter~~ Chapter XIX-A refers to settlement of cases. Section 245A provides the definitions. Section 245B makes a provision for constitution of a Settlement Commission. Section 245BA indicates jurisdiction and power of the



under certain circumstances. Section 245BC provides power to transfer cases. Section 245BD provides for a decision by a majority.

10. Section 245C indicates the manner in which an application has to be made for settlement. Section 245D refers to proceedings after receipt of the application. Section 245DD provides for power of Settlement Commission for provisional attachment to protect the revenue. Section 245E provides for power of the Settlement Commission to reopen completed proceedings. Section 245-G provides for inspection. Section 245H provides for power of the Settlement Commission to grant immunity from prosecution and penalty. Section 245-I mandates that the order of the Settlement Commission shall be conclusive. Recovery of sum due is provided under Section 245-J of the Act. Subsequent application ~~for~~ settlement in cases are barred as per Section 245-K and Section 245-L indicates that proceedings before the Settlement Commission are judicial proceedings.
11. Thus, reading all these Sections, it is very clear that a separate chapter is provided for the Settlement



complete code for settlement. Sub-clause(d) of Section 245-A refers to Income-tax Authority, i.e. an Income-tax Authority specified in Section 116 of the Act. The Settlement Commission is defined in sub-clause (f) of Section 245-A of the Act. Section 116 of Chapter XIII refers to Income-tax Authority. It refers to all authorities right from Income-tax inspector to Central Board of Direct Taxes. However, the Settlement Commission is not included in Section 116 of the Act. Section 117 refers to appointment of Income-tax authorities. Section 118 indicates the control of Income-tax authorities with the Board. Section 245B empowers the Central Government to constitute a commission.

12. Section 245C of the Act specifically mandates the Settlement Commission to have a case settled and dispose it of in the manner provided 'hereinafter' meaning thereby that the case has to be disposed of in the manner prescribed in this chapter only.

13. Under sub-section (6) of Section 245D of the Act, terms of settlement include any demand by way of tax, penalty or interest, the manner in which any sum due under



states that the settlement shall be void if it is obtained by fraud or misrepresentation of facts. On failure to pay tax payable in pursuance of an order under sub-section (4) within 45 days of receipt of copy of order or where the Commission has extended the time limit for payment of such tax or has allowed instalments for payment thereof, the assessee shall be liable to pay simple interest @ 15% p.a. on the amount remaining unpaid from the date of expiry of the period.

14. In case the settlement becomes void under the said sub-section(6), the matter shall be deemed to have been revived from the stage from which the application was allowed and the income-tax authority concerned, may, notwithstanding anything contained in any provisions of the 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. It is in view of this when fraud or misrepresentation of facts are found, then in that case only the assessing officer shall have to proceed and will have to complete the assessment within the period as indicated therein. Section 245-E also authorizes the Settlement Commission

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completed under the Act by any income-tax authority prior to making an application under section 245-C of the Act. However, the same is required to be opened in concurrence of the assessee in passing the order thereon as it thinks fit. Section 245-I is specifically incorporated in the Chapter to make the order of settlement under sub-section (4) of Section 245D of the Act to be conclusive in regard to the matters stated therein. It further states that no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force.

15. In view of the provisions contained in sub-section (6) of Section 245D, 245E and 245-I, it was submitted that the Settlement Commission after passing the settlement order becomes *functus officio*, as it has no power to reopen the same in any proceedings under the Act, namely proceeding under Section 154 of the Act. Section 245I specifically provides that it can be reopened only in the manner indicated in this Chapter. According to the counsel for the petitioners, the settlement can be reopened only under sub-section (6) of Section 245D of



16. However, it was contended on behalf of the revenue that under Section 245F(1) the Settlement Commission has all the powers which are vested in the income-tax authorities. The Settlement Commission will become an income-tax authority and will be in a position to exercise the power under Section 154 for rectification. Section 245F refers to power and proceedings of the Settlement Commission for making an order of settlement as per Section 245D of the Act.

17. A careful perusal of sub section (2) of Section 245F would indicate that until an order is passed under sub-section (4) of Section 245D subject to the provision of sub-section (3) of Section 245D, the settlement commission will have exclusive jurisdiction to exercise the power and perform the function of an income-tax authority under the Act in relation to the cases. This makes it clear, that the powers which are vested in an income-tax authority under the Act are required to be exercised over the matter which is pending before a Settlement Commission and it is the Settlement Commission which will have exclusive jurisdiction to exercise the powers and perform the function of an



section (4) of Section 245D of the Act. After the order is made under sub-section (4) of Section 245D of the Act, the Commission will have no jurisdiction to exercise the power and perform the function of an income-tax authority.

18. On behalf of the revenue, it was submitted that exactly in a similar situation an order was made under Section 154 of the Act withdrawing the reduction or waiver of interest granted by a Settlement Commission under section 234A, 234B and 234C of the Act while passing an order under Section 245D(4) of the Act. The assessee moved the High Court under Article 226 of the Constitution of India (*Sanjaybhai.R. Patel v. Assessing Officer*, 135 TAXMAN 210). The Court held that it was a mistake apparent from the record and the said mistake was rightly rectified by the Settlement Commission while resorting to Section 154 of the Act. A Division Bench in the case of *Sanjaybhai R. Patel's case (supra)* accepted the contention of the revenue that the Settlement Commission was justified in taking the view that the order passed under section ~~245D~~ 245D(4) of the Act granting reduction or waiver of interest under Section 234A, 234B and 235C of the Act



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suffers from a mistake apparent from the record. In para 37 of the judgment, the Court observed as under:

"However, even assuming that the Commission could exercise the power under Section 147, the said power has to be exercised in accordance with the provisions contained in Section 147 to 150. Here in the present case, even without going into this aspect as to whether the Settlement Commission has got the power under Section 154 of the Act to rectify its own order and if we proceed on that assumption that the Commission could exercise the power under Section 154 the said power has to be exercised in accordance with the provisions contained in Section 154 of the Act."

19. On behalf of the assessee, it was submitted that the Court has not examined whether power under Section 154 could be exercised or not and without examining the same has proceeded on the assumption that the Settlement Commission had such powers.
20. It is in view of this, in our opinion, this judgment is of no assistance to the revenue as the Court has not come to the conclusion that the Settlement Commission has the power under Section 154(2) of the Act to rectify the mistake.
21. The Supreme Court in the CIT v. Hindustan Bulk Carriers, 259 ITR 449 pointed out that there is no power.



22. A Constitution Bench in the case of *CIT v. Anjum MH Ghaswala* (supra) has, no doubt, held that the Settlement Commission in exercise of its powers under Section 245D(4) of the Act does not have the power to reduce or waive interest statutorily payable under Section 243A, 243B or 243C. The Court pointed out that there is no specific empowerment of waiver or reduction of tax and the settlement will have to be in conformity with the Act and not contrary to or in conflict with it.
23. The Supreme Court in *Anjum Ghaswala* (supra) pointed out the mode adopted by the Commission by equating itself with the Board for the purpose of exercising the power under Section 119(2) of the Act. The Board falls within the ambit of income-tax authority. The Court also examined the question whether the Commission could be construed as Board for the purpose of Section 119 or in the alternative by virtue of Section 245 F(1) read with Section 245A(d) read with Section 116 can the Commission exercise the power as the Board under Section 119 of the Act. The Court pointed out that power under Section 119 is vested in the Board and the context

in which the power is vested in the Commission under



power under Section 119 could be exercised by the Commission for granting such relief and the Commission cannot be equated with the Board for exercise of power under Section 119 of the Act. The Supreme Court also pointed out that "its order (Settlement Commission's) under Section 245-I are conclusive which cannot be reopened in any proceedings under the act or any other law for the time being in force". It is in view of this, the Settlement Commission which has become *functus officio* after passing an order, cannot reopen the case.

24. The question when an authority becomes *functus officio* and what follows thereafter has been the subject matter of several decisions of the Supreme Court. In this context, the powers to be exercised by the Collector under the provisions contained in the Stamp Act came to be examined by the Apex Court in the case of Government of Uttar Pradesh and others v. Raja Mohammad Amir Ahmad Khan reported as AIR 1961 S.C.787. In para 6, the Court pointed out that the scheme shows that where a person is simply seeking the opinion of the Collector as to the proper duty in regard to an instrument, he approaches



effectuating the document or using it for the purpose of evidence, he has to make up the duty and under Section 32, the Collector will then make an endorsement and the instrument will be treated as if it was duly stamped from the very beginning. But if he does not want to proceed further than seeking the determination of the duty payable then no consequence will follow and an executed document is in the same position as in instrument which is unexecuted and unstamped and after the determination of the duty the Collector becomes, functus officio. It is not open for the Collector thereafter to impound the instrument under Section 33 and to initiate consequential proceedings. The case of Collector Ahmednagar v. Rambhau Tukaram reported as AIR 1930 Bom. 392 was also placed before the Court. In that case a certificate of sale had been signed but the certificate was not duly stamped which was pointed out when it was sent to the Sub Registrar for registration. The Sub Registrar informed the Judge about it and the Judge got back the certificate from the purchaser and thinking that he had power to impound the document and to impose a penalty asked for the opinion of the High Court and it was held



25. In the instant case, like wise the Settlement Commission when approached has rendered decision after considering various aspects of the matter and the provisions of law. Thereafter in view of the specific language of Section 245-I, it was not open for the commission to rectify the order as it became *functus officio*.
26. In view of the Apex Court decision in the case of Anjum M.H. Ghaswala and others (supra) that order the made by the Settlement Commission under Section 245I of the Act is conclusive and final. Therefore, the same cannot be re-opened in any proceedings under the Act or any other law. Section 154 could not have been invoked as Settlement Commission ceases to be an authority under the Act after the order is made and can exercise such power only if authorised under the Act and under that Chapter only.
27. It is clear that except in the manner provided in the Chapter, the case cannot be reopened for any purpose unless there is fraud or misrepresentation. After the order is made under sub-Section (4) of Section 245D it becomes final and conclusive and the same can be modified only in



Reading the provisions of Section 245F (1) and (2), Section 245H and 245D(6) it is clear that the order which has become conclusive as to the matters stated therein, cannot be disturbed except as provided in this Chapter and it is not open to reopen the proceedings under the provisions contained in the Act. The Supreme Court has specifically pointed out that the orders cannot be reopened in any proceedings under the Act or any other law for the time being in force. It is not possible to accept the contention raised by the revenue that the Settlement Commission has all the rights and powers given to the income-tax authority under the Act. The learned counsel for the revenue submitted that Section 245F empowers the Settlement Commission to rectify its order with the aid of Section 154 of the Act. We have indicated earlier that for making an order under sub-Section (4) of Section 245D, the Settlement Commission shall have exclusive jurisdiction to exercise power and perform the functions as an income-tax authority under the Act.

28. It is also required to be noted that the legislature has specifically provided Section 245D(6) and 245H to modify the order made by it on the ground that the order



non-compliance of the order of settlement under sub-Section (4) of Section 245D of the Act, or to withdraw an immunity granted under specific provision under Section 245H of the Act. Reading these provisions together it is not possible to accept the contention raised by the revenue that the Commission is empowered to rectify the order under Section 154 of the Act.

29. Whenever there is a debatable point of fact which needs to be investigated or whenever there is an arguable question of law on which a final opinion is capable of being formed either way, a finding of fact or law recorded one way or the other, even if found to be erroneous either by a probe into the facts or on account of law having been settled subsequently would not be available for change by exercising jurisdiction for rectification of mistake under Section 154. Even a mistake of law must be a glaring one.
30. In the case of Commissioner of Income Tax v. Express Newspapers Ltd. reported as (1994) 206 ITR 443, the effect of the order under Section 245D(4) is indicated. It was held:-



that the Commission is empowered to direct the waiver of penalty as well as interest and to direct that the tax payable shall be paid in prescribed instalments. It is further empowered to direct that the assessee whose case has been decided by it shall not be proceeded with or prosecuted under the Income Tax Act or under the Indian Penal Code or under any other Central Act for the time being in force with respect to the case covered by the settlement. The orders of the Commission are final, subject of course to constitutional remedies."

31. The Apex Court also pointed out that Chapter XIX-A is a part of the Income Tax Act and must be construed consistent with the overall scheme and object. The decision has to be taken by the Settlement Commission having regard to all the facts and circumstances before it, in the light of the object, purpose and scheme of the enactment. The Settlement Commission has to 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 etc. When sub-section (6) of Section 245D refers to terms of settlement, it should be construed in a grammatical sense to mean



the terms of agreement, arrangement or undersigning.

32. Settlement Commission was approached by the assessee and in accordance with law, the order was made by the Settlement Commission and the terms of settlement provided mode of payment etc. The Revenue accepted the same and did not challenge the correctness of the order made by the Settlement Commission. Thus between the assessee and the Assessing Officer or the Commissioner of Income Tax when the decision was rendered by the Settlement Commission, the matter was settled and came to be disposed of finally and it could be reopened in the manner provided in that Chapter itself or can be reviewed as provided in the Chapter. Having not challenged the said decision and having accepted the same, because of some decision in some other case, is it open for the Revenue to approach the Settlement Commission, inter alia, requesting



33. If the order was bad, it was open for the Revenue to challenge the same in the High Court. One may not discuss the scope of res judicata and the extent of its application to the tax proceedings. As pointed out by the Apex Court in Express Newspapers Ltd.'s and Anjuman Gaswala's cases (Supra), the order of the Settlement Commission being final, subject of course to constitutional remedies, and having not challenged, in the opinion of this Court it would not be open for the Revenue to make an application under Section 154 of the Act. Despite the error of law, for a pretty long period of about four years, the decision was accepted. Having not challenged, the decision and considering that the same is not prejudicial to the Revenue, grievance cannot be allowed to raised in the manner in which it is raised. It was open for the Revenue to challenge the legality of the order made by the Commission. Where a party had not appealed or had not challenged the order of the Settlement



Commission, it would not be open to modify the order under the shelter of rectification.

34. What is important is that the Settlement Commission was competent to pass an order and the Revenue as well as the assessee both accepted the correctness of the decision and they refrained from challenging the order made by the Settlement Commission and after reasonable period having expired one would be precluded from touching the order as it has become final and conclusive. As pointed out by the Apex Court in Express Newspapers Ltd.'s case, (Supra), such an order could be challenged before the constitutional forum only. The decision rendered by a competent forum having jurisdiction to decide the disputes, its efficacy would not be impaired unless the same is challenged and the order is annulled, modified, reversed etc.

35. When the Act provides that the order shall be final and conclusive, the final judgment or the final decision of the Settlement Commission



does not lose its force and as such because in a different case subsequently a view is taken indicating that the views expressed are wrong. A final decision, however, wrong is still final and its binding force does not depend upon its correctness.

36. There must be an end of litigation. The Settlement Commission is provided under the Income Tax Act for the said purpose. Where the terms are settled, and after having accepted the same merely because in some other decision it is pointed out as to what the law is, it is not open to move an application under Section 154 of the Act. When the order made by the Settlement Commission is made final and conclusive and cannot be reopened under any provisions of this Act or under any other law, save as otherwise provided in Chapter XIX-A, the same is not subject to Section 154 of the Act.

37. In view of what is stated hereinabove, the order



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Commission in each petition by exercising powers under Section 154 of the Act is quashed and set aside. No costs.

Sd/-
Chief Justice

Sd/-
Badar, Durrez Ahmed, J

April 13, 2004
As