



2026:DHC:3410-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on: 12th February, 2026
Pronounced on: 24th April, 2026*

+ W.P.(C) 4126/2016

ADITYA SHARMA

.....Petitioner

Through: Mr. R. K. Handoo, Advocate.

versus

COMMISSIONER OF INCOME-TAX (CENTRAL) -II

.....Respondent

Through: Mr. Vipul Agrawal SSC with Ms.
Sakshi Shairwal, Mr. Akshat Singh,
JSCs and Mr. Gaoraang Ranjan, Adv.

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE VINOD KUMAR

J U D G M E N T

REPORTABLE

Per DINESH MEHTA, J.

1. By way of present writ petition preferred under Article 226/227 of the Constitution of India, the petitioner has challenged the rejection of the Application no. DL/DC/52/2014-15/41-IT (*hereinafter referred to as 'the Application'*) which was filed before Income Tax Settlement Commission Principal Bench, New Delhi (*hereinafter referred to as 'the Settlement Commission'*).

2. Succinctly stated, the facts pertinent to the challenge laid by the petitioner are that:

i. On 05.12.2014, the petitioner (Aditya Sharma) filed an application for



settlement which was rejected by the Settlement Commission vide order dated 18.12.2014, giving the petitioner a liberty to file it afresh and a fresh application thus came to be filed on 26.12.2014.

- ii. Apart from the petitioner, four more applicants against whom demand was raised pursuant to search proceedings, namely AMQ Agro-India Pvt. Ltd., Mrs. Nasreen Moin Qureshi, Mr. Mohammad Shahnawaz, Mr. Moin Akhtar Qureshi filed four separate applications.
- iii. By way of common order dated 07.01.2015, passed under Section 245D(1) of the Income Tax Act, 1961 (*hereinafter referred to as 'Act of 1961'*), the Settlement Commission concluded that the applications for settlement, *prima-facie* fulfilled the conditions prescribed under Section 245C(1) of the Act of 1961 and allowed the applications to be proceeded with further. Concluding part of the order reads thus:

"8. It is seen that at the time of filing the Settlement Applications the assessment proceedings in the above five cases for the relevant years were pending either u/s 153A or 143(3) before the DCIT, CC 19, New Delhi. The other legal requirements with regard to the payment of taxes in excess of Rs.50 lacs in the cases of Sh. Moin Akhtar Qureshi, M/s. AMQ Agro India Pvt. Ltd., Sh. Mohd. Shahnawaz and Sh. Aditya Sharma being 'specified person' and Rs.10 lacs in the case of Smt. Nasreen Moin Qureshi who has filed her application in the status of 'related person' on the admitted undisclosed incomes, payment of filing fee and furnishing of intimations to the AO in Form No.34BA as prescribed u/s 245C(4) were complied with.

9. After perusing the facts on record and the submissions made by the Ld. ARs and since the applicants have prima facie fulfilled the conditions prescribed u/s 245C(1) of the Income Tax Act, the above five Settlement Applications are allowed to be proceeded with further."

- iv. During the above proceedings, a notice was issued by the Settlement Commission to the PCIT, (Central) – II, New Delhi (*hereinafter referred to as 'the Commissioner'*) to file his report under Section



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245D(2B) of the Act of 1961, *inter alia*, submitting that the petitioner has not made full and true disclosure.

- v. On receipt of the report dated 10.02.2015, the Settlement Commission issued a notice dated 12.02.2015 to the petitioner for hearing as envisaged under Section 245D(2C) requiring the petitioner to appear on 19.02.2015.
- vi. On 24.02.2015, the Settlement Commission passed an order and decided to proceed with the application of the petitioner along with two other assesses namely, M/s AMQ Agro India Pvt. Ltd. and Mohammad Shahnawaz while specifically recording a finding that the petitioner's application was valid and that he had made full and true disclosure. The operative part of the order dated 24.02.2015 is reproduced hereinfra:

“8. In conclusion, the applications of Sh. Moin Akhtar Qureshi and Mrs. Nasreen Moin Qureshi are declared invalid and are not allowed to be proceeded any further. The applications of M/s. AMQ' Agro India Pvt. Ltd., Mohd. Shahnawaz and Sh. Aditya Sharma are declared not invalid and are allowed to be further proceeded with.”

- vii. Though not of much relevance but as an incidental fact, it may be borne in mind that Mr. Moin Akhtar Qureshi whose application was found to be invalid preferred a writ petition before this Court (Writ Petition No. 4900/2015) which was allowed by this Court vide order dated 18.05.2015 and the Settlement Commission was directed to take a decision afresh at the stage of 245D (2C) of the Act of 1961 in respect to his application.
- viii. During the *de novo* exercise, the Principal



Commissioner/Commissioner filed yet another report under Section 245D(3) of the Act of 1961 read with Rule 9 of the Income Tax Settlement Commission (Procedure) Rules, 1997 (*hereinafter referred to as 'the Rules of 1997'*) dated 01.07.2015 to which the petitioner responded by way of reply dated 01.02.2016 under Rule 9A of the Rules of 1997.

- ix. Be that as it may, the petitioner's settlement application which was held to be valid and allowed to be proceeded with vide order dated 24.02.2015 was heard by the Settlement Commission and ultimately rejected vide order dated 03.03.2016.
3. The petitioner has pleaded that though the application was shown to be rejected by an order pronounced by the Settlement Commission on 16.02.2016, but the reasoned order signed on 03.03.2016, was sent to the petitioner on 08.03.2016.
4. Mr. R.K. Handoo, learned counsel for the petitioner, argued that once an application has been held valid and allowed to be proceeded with by a conscious order dated 24.02.2015, the Settlement Commission could not rejected the application as has been done by the order dated 03.03.2016.
5. He navigated the Court through the entire Chapter XIX-A of the Act of 1961 and explained the scheme in the writ petition as under:

“ a) Under s. 245D(1) of the Act it has been prescribed that the Ld. ITSC is mandated to issue notice to the applicant within seven days of receipt of application requiring him to explain as to why the application be allowed to be proceeded with and on hearing the applicant, the Ld. ITSC has to, within fourteen days from the date of application, either reject the application or



allow the application to be proceeded with. It is further provided that in the event the Ld. ITSC not passing an order within the period of 14 days, the application is deemed to be allowed to be proceeded with.

b) In the event of the Ld. ITSC, at the stage of s. 245D(1) of the Act, passing an order allowing the application to be proceeded with, comes the next stage under s. 245D(2B) of the Act.

c) At the stage of s. 245D(2B) of the Act, the Ld. ITSC is mandated to call for a report from the Principal Commissioner/Commissioner within 30 days from the date of the application and the Principal Commissioner/Commissioner is further mandated to furnish a report within a period of 30 days from the date of this communication from the Ld. ITSC.

d) Thereafter, u/s 245D(2C) of the Act, the Ld. ITSC on the basis of the report, if received from the Principal Commissioner /Commissioner, within a period of 15 days from the receipt of the report has the option to declare the application as invalid.

e) Thereafter, the settlement application before the Ld. ITSC proceeds to the stage of 245D(3) of the Act wherein the Ld. ITSC can call for records from the Principal Commissioner/Commissioner and after examination of such records, if the Ld. ITSC forms an opinion that any further inquiry/investigation in the matter is necessary, the Ld. ITSC can direct the Principal Commissioner/Commissioner to make further inquiry and investigation and furnish a report on the matters covered by the application and any other matter relating to the case and the Principal Commissioner/Commissioner is mandated to furnish the report within a period of 90 days from the date of receipt of communication from the Ld. ITSC.



f) After Section 245D(2C) of the Act, the Ld. ITSC can pass an order with respect to the application only u/s 245D(4) of the Act wherein the Act mandates that the Ld. ITSC may, in accordance with the provisions of the Act, pass such an order as it deems fit on the matters covered by the application and any other matters relating to the case not covered by the application, but referred to in the report of the Principal Commissioner/Commissioner.

g) Section 245D(6) of the Act mandates that 'every order' that is passed by the Ld. ITSC has to mandatorily provide for the 'terms of settlement including any demand by way of tax, penalty or interest and the manner in which any sum demanded under the settlement shall be paid and all other matters to make the settlement effective. Thus sub-section (6) of Section 245D of the Act prescribes the modalities to be adopted to give effect to an order of settlement passed under Section 245D(4) of the Act.'"

6. Having interpreted the scheme in his way, learned counsel for the petitioner, argued that once application for settlement of the petitioner had crossed the stage of sub-section 2(C) of Section 245D of the Act of 1961, the Settlement Commission was required to pass an order of settlement containing terms of settlement only.

7. He, therefore, argued that the Settlement Commission has not only erred in law in rejecting petitioner's settlement application but has also failed to exercise the jurisdiction vested in it.

8. He argued that the impugned order dated 03.03.2016 passed by the Settlement Commission suffers from non-application of mind inasmuch as while doing so, the Settlement Commission has placed reliance upon its previous order dated 24.02.2015 passed *qua* the applications of Mr. Moin



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Akhtar Qureshi, Mrs. Nasreen Moin Qureshi whereas such order had already been set aside by the High Court vide its order dated 18.05.2015.

9. He further argued that the Settlement Commission could not have relied upon an order or findings recorded in an order which stood set aside, as the same did not exist in the eye of law.

10. He argued that since the Settlement Commission has recorded a finding *qua* the petitioner's application vide its order dated 24.02.2015 that the disclosure made by the petitioner (Aditya Sharma) is true and valid therefore, the impugned order dated 03.03.2016 taking a contrary view is nothing but a change of opinion on the very same factual matrix.

11. Without prejudice to above, he argued that the Commissioner, in his report dated 01.07.2015 under Section 245D(3) of the Act of 1961 read with Rule 9 of the Rules of 1997, had not given any further material or evidence against the petitioner to prove that the petitioner's application lacked full and true disclosure of his income.

12. Learned counsel for the petitioner invited Court's attention towards page no. 42 & 43 of the order dated 24.02.2015 to contend that the Settlement Commission had already dealt with the objections which were again reiterated in the report dated 01.07.2015 and therefore, he argued that on the very same reason, the Settlement Commission could not have rejected the petitioner's application. Elaborating his argument, he argued in other words that the Commissioner had raised the very same objection in his subsequent report under Section 245D (3) of the Act dated 01.07.2015 without placing any other record or material evidence to the contrary.

13. His contention was that even if it is presumed that the Settlement Commission could have still rejected the application, having once found the



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application to be valid and worth consideration, then, unless any fresh material or evidence is brought on record, a decision contrary to what had been taken on 24.02.2015 could not have been taken by the Settlement Commission.

14. Learned counsel for the petitioner relied upon the following judgments to substantiate his arguments:

- i. **Tarun Goyal vs. Income Tax, 2009(4) MPLJ 690**
- ii. **Commissioner of Income Tax (Central) vs. Income Tax Settlement Commission (Manu/MH/0752/2013)**
- iii. **CIT v Om Prakash Mittal, (2005) 2 SCC 751**

15. He further argued that the Revenue's plea that the accounts are intricate and commonly interlinked at least in petitioner's case is baseless inasmuch as the petitioner was simply an employee and he neither maintained any books of accounts nor was he required to maintain the same.

16. He argued that the income which the petitioner had offered for settlement related to the commission and cash incentives which he had received from the firm.

17. He argued that the petitioner's case was required to be considered separately from that of four other applicants, as they were in one way or the other, related to the business of M/s AMQ Agro India Pvt. Ltd., being the relatives or partners in those firms.

18. He reiterated that the petitioner has no nexus with Mr. Moin Akhtar Qureshi and Mrs. Nasreen Akhtar Qureshi and he, being an employee of the firm, cannot be treated to be a part of the firm and Qureshi Group.

19. Mr. Vipul Agarwal, learned Senior Standing Counsel, contended that the Settlement Commission on 16.02.2016 had passed an oral order, which was followed by the detailed and reasoned order dated 03.03.2016. And



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therefore, it cannot be alleged that the order dated 03.03.2016 is vitiated. He added that while giving the oral order on 16.02.2016, the Settlement Commission had made it clear that a detailed written order shall follow.

20. He, therefore, argued that the order dated 16.02.2016 has to be read in conjunction with the written order dated 03.03.2016 and the correctness and validity thereof is to be examined from the reasons contained in the order dated 03.03.2016.

21. He argued that the Settlement Commission had rejected the application of the co-applicants of the petitioner namely Mr. Moin Akhtar Qureshi and Mrs. Nasreen Moin Qureshi on 24.02.2015 and thereafter, realized or discovered that the petitioner's application was inextricably linked with the applications of said Mr. Moin Akhtar Qureshi and Mrs. Nasreen Moin Qureshi and therefore, chose to reject the same as well.

22. He argued that the petitioner has been linked with the business of M/s AMQ Agro India Pvt. Ltd. and was a close aide of Mr. Moin Akhtar Qureshi and therefore, his application alone could not have been considered.

23. He relied upon judgments of this Court rendered in the case of **Rohit Kumar Gupta & Anr. v. Principal Commissioner of Income Tax Central-II & Anr., 2019:DHC:4012-DB** and the case of **Commissioner Income Tax v. Income Tax Settlement Commission** reported in **(2014) 360 ITR 407, Delhi**, particularly para no. 13 of said judgment to contend that at the stage of order under Section 245D(1), it is only the preliminary observation and while passing an order under Section 245D(4), it is open for the Settlement Commission to consider the issue of full and true disclosure on the part of the applicant and such issue is still open for discussion and debate.



24. He argued that the Settlement Commission while passing the order dated 03.03.2016 very categorically stated that the Petitioner has been unable to file copies of documents seized from Mohd. Shahnawaz rendering the SOF not complete on facts. The Petitioner also did not file the re-cast accounts on the basis of which he claimed that the SOF had been filed. The Settlement Commission has also noted that the Petitioner admitted that there were certain assumptions in his written submissions but there was no reference to these 'assumptions' in the SOF.

25. He also argued that whether the disclosure made by the petitioner was full and true disclosure is a finding of fact recorded by the Settlement Commission and this Court in its writ jurisdiction under Article 226/227 of the Constitution should not and cannot disturb such finding and pray that the petition be dismissed.

26. Heard and perused the record.

27. The first and foremost argument zealously advanced by learned counsel was that since the petitioner's application was found to be valid by a well considered and detailed order dated 24.02.2015, the Settlement Commission could not have rejected the same by taking a detour from the previous decision, it had taken.

28. In order to deal with such contention and other arguments, it will not be out of place to reproduce relevant provisions and Chapter XIX-A of the Act.

"245D. (1) On receipt of an application under section 245C, the Settlement Commission shall, within seven days from the date of receipt of the application, issue a notice to the applicant requiring him to explain as to why the application made by him be allowed to be proceeded with, and on hearing the applicant, the Settlement Commission shall, within a period of fourteen days from the date of the



application, by an order in writing, reject the application or allow the application to be proceeded with:

Provided that where no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with.

(1A) [Omitted by the Finance (No. 2) Act, 1991, w.e.f. 27-9-1991.]

(2) A copy of every order under sub-section (1) shall be sent to the applicant and to the [Principal Commissioner or] Commissioner.

(2A) Where an application was made under section 245C before the 1st day of June, 2007, but an order under the provisions of sub-section (1) of this section, as they stood immediately before their amendment by the Finance Act, 2007, has not been made before the 1st day of June, 2007, such application shall be deemed to have been allowed to be proceeded with if the additional tax on the income disclosed in such application and the interest thereon is paid on or before the 31st day of July, 2007.

Explanation. — In respect of the applications referred to in this sub-section, the 31st day of July, 2007 shall be deemed to be the date of the order of rejection or allowing the application to be proceeded with under sub-section (1).

(2B) The Settlement Commission shall,-

(i) in respect of an application which is allowed to be proceeded with under sub-section (1), within thirty days from the date on which the application was made; or

(ii) in respect of an application referred to in sub-section (2A) which is deemed to have been allowed to be proceeded with under that sub-section, on or before the 7th day of August, 2007,

call for a report from the [Principal Commissioner or] Commissioner, and the [Principal Commissioner or] Commissioner shall furnish the report within a period of thirty days of the receipt of communication from the Settlement Commission.

(2C) Where a report of the [Principal Commissioner or] Commissioner called for under sub-section (2B) has been furnished within the period specified therein, the Settlement Commission may, on the basis of the report and within a period of fifteen days of the receipt of the report, by an order in writing, declare the application in question as invalid, and shall send the copy of such order to the applicant and the [Principal Commissioner or] Commissioner:

Provided that an application shall not be declared invalid unless an opportunity has been given to the applicant of being heard:



Provided further that where the [Principal Commissioner or] Commissioner has not furnished the report within the aforesaid period, the Settlement Commission shall proceed further in the matter without the report of the [Principal Commissioner or] Commissioner.

(2D) Where an application was made under sub-section (1) of section 245C before the 1st day of June, 2007 and an order under the provisions of sub-section (1) of this section, as they stood immediately before their amendment by the Finance Act, 2007, allowing the application to have been proceeded with, has been passed before the 1st day of June, 2007, but an order under the provisions of sub-section (4), as they stood immediately before their amendment by the Finance Act, 2007, was not passed before the 1st day of June, 2007, such application shall not be allowed to be further proceeded with unless the additional tax on the income disclosed in such application and the interest thereon, is, notwithstanding any extension of time already granted by the Settlement Commission, paid on or before the 31st day of July, 2007.

(3) The Settlement Commission, in respect of-

(i) an application which has not been declared invalid under sub-section (2C); or

(ii) an application referred to in sub-section (2D) which has been allowed to be further proceeded with under that sub-section, may call for the records from the [Principal Commissioner or] Commissioner and after examination of such records, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the [Principal Commissioner or] Commissioner to make or cause to be made such further enquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case, and the [Principal Commissioner or] Commissioner shall furnish the report within a period of ninety days of the receipt of communication from the Settlement Commission:

Provided that where the [Principal Commissioner or] Commissioner does not furnish the report within the aforesaid period, the Settlement Commission may proceed to pass an order under sub-section (4) without such report."

29. An analysis of the above provision shows that Section 245D of the Act of 1961 lays down procedure for dealing with an application for settlement filed under Section 245C of the Act. And the same postulates that the Settlement Commission shall within a period of 14 days from the date of



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the application reject or allow the application to be proceeded with. However, if the facts of the present case are considered in light of such provision, it transpires that an order under Section 245D had been passed to the effect that the application is in order. And said order passed on 07.01.2015 was followed by another order dated 24.02.2015, under Section 245D (2C), on receiving the report of the Principal Commissioner/Commissioner (given under Section 245D(2B)), and a finding came to be recorded that petitioner's application was not invalid.

30. But the issue which has cropped up for an consideration is, whether having passed an order under Section 245D (2C) of the Act, the Settlement Commission had the power to reject the applications in the manner as has been done?

31. A perusal of the impugned order dated 03.03.2016 reveals that the Settlement Commission had rejected the petitioner's application alongwith applications of two other applicants (M/s AMQ Agro India Private Limited and Mohammad Shahnawaz), essentially on the ground that it found itself unable to record a satisfaction that the applicant had made full and true disclosure of his income in the settlement application which was filed on 05.12.2014.

32. So far as the issue of rejection of the application is concerned, sub-section (4) read with sub-Section (4A) of Section 245D suggests that the Settlement Commission 'may 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'.

33. This expression, on a first reading, may suggest that the petitioner's contention is correct. Because as per sub-section (4), Settlement



Commission is required to pass an order on the matters covered by the application. But the use of expression ‘may’ in subsection (4) and the expression, “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....., coupled with the use of expression “as it thinks fit”, gives a discretion or power with the Settlement Commission to pass order on the matters covered by the application or not to pass such order.

34. The use of expression “may” and “as it thinks fit”, which are indicative of discretion, according to us, demolishes the argument, so vociferously raised by learned counsel for the petitioner, Mr. R.K. Handoo.

35. We have also gone through the judgment in the case of **Tarun Goyal v. Income Tax Settlement Commission**, reported in 2009 SCC OnLine MP 542. The said judgment, to the extent it holds that a rejection of a settlement application is impermissible at the Section 245D(4), stands impliedly overruled by the judgment of Hon’ble the Supreme Court in the case of **Ajmera Housing Corporation v. Commissioner of Income Tax** (2010) 8 SCC 739. In **Ajmera Housing Corporation (supra)** the Supreme Court has unequivocally held that even when the Settlement Commission has decided to proceed with an application, it is not denuded of its power to examine whether the applicant has made a full and true disclosure of his undisclosed income, and that the reports of the Commissioner and other documents at different stages of consideration are most germane to the determination of such question.

36. So far as the judgment of Hon’ble the Supreme Court in the case of **CIT v. Om Prakash Mittal (supra)**, reported in (2005) 2 SCC 751 is concerned, the facts of the case **Om Prakash Mittal (supra)**, are materially



different from the facts of the present case. In that case, the Settlement Commission had already passed a final order under Section 245D(4) accepting the application of the assessee and recording a settlement, whereas no order of drawing the terms of settlement has been passed in the present case.

37. According to us, what Section 245D(1) & 245D (2C) provides is that on receipt of the report, the Settlement Commission shall declare that the application in question is invalid or valid as the case may be. Declaring an application to be valid or not to be invalid, (as has been done in the instant case), *per viam* order dated 24.02.2015 is only a prima-facie consideration of the application on the basis of the material so far filed.

38. Furthermore, the limited window of 15 days to pass order under subsection (2C) of Section 245D lends a support to our reasoning in the sense that as against order under Section 245D (2C) or 245D, when it comes to passing the final order as per subsection (4) and (4A) of Section 245D, the time period allowed is '18 months' from the end of the month in which the application was made. Had the intention of the legislature was to require the Settlement Commission to compulsorily pass an order of settlement, once the application has been held valid or to be proceeded with, (as contended by the petitioner), then, certainly a larger period would have been prescribed under subsection 2C of Section 245D than 15 days for thread bare scrutiny of the contents of applications. And simultaneously there would have been a lesser period than 18 months in clause 4A of Section 245D. Because, then passing of the order of settlement, would have been nothing more than a mechanical exercise or formal mathematical calculation.



39. According to us, the stipulation of larger period for passing an order of settlement as given in sub-section 4A vis-à-vis period of 15 days for considering the validity or invalidity of an application as encapsulated under subsection 2C has some rationale behind it. That apart, sub-section (6) of Section 245D which we wish to reproduce hereunder also has a significant bearing on the question.

“(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.

(6A) Where any tax payable in pursuance of an order under sub-section (4) is not paid by the assessee within thirty-five days of the receipt of a copy of the order by him, then, whether or not the Settlement Commission has extended the time for payment of such tax or has allowed payment thereof by instalments, the assessee shall be liable to pay simple interest at one and one-fourth per cent for every month or part of a month on the amount remaining unpaid from the date of expiry of the period of thirty-five days aforesaid.

[(6B) The Settlement Commission may, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (4)-

(a) at any time within a period of six months from the end of the month in which the order was passed; or

(b) at any time within the period of six months from the end of the month in which an application for rectification has been made by the Principal Commissioner or the Commissioner or the applicant, as the case may be:

Provided that no application for rectification shall be made by the Principal Commissioner or the Commissioner or the applicant after the expiry of six months from the end of the month in which an order under sub-section (4) is passed by the Settlement Commission:

Provided further that an amendment which has the effect of modifying the liability of the applicant shall not be made under this sub-section unless the Settlement Commission has given notice to the applicant and the Principal Commissioner or Commissioner of its intention to do so



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and has allowed the applicant and the Principal Commissioner or Commissioner an opportunity of being heard.] ”

40. True it is, that above provision talks of settlement to be void, if it is subsequently found by the Settlement Commission to have been obtained by fraud or misrepresentation of the facts.

41. We see no reason to totally ignore or hold that sub-section 6 of Section 245D shall not apply, if the Settlement Commission, before passing the order of settlement comes to a conclusion that there has been a fraud or misrepresentation of facts or failure on the part of the applicant to make true and complete disclosure.

42. Simply because subsection (6) gives an impression that the same can be invoked after the order of settlement is passed. It cannot be said that even after the application having been found valid, if the Settlement Commission learns or realises that the applicant had failed to make complete and true disclosure or there has been a fraud or misrepresentation of facts, it cannot reject the application.

43. If the interpretation, which we have taken in preceding para, is not taken, a situation may arise when having realized the fact that there is an absence of true and complete disclosure, while considering the matter in detail, the settlement commission shall have to observe an empty formality of passing an order of settlement and then invoke sub-section 6 of Section 245D to declare the settlement to be void for the reasons given in sub-section (6) of Section 245D.

44. In our opinion, misrepresentation is a wide term which includes within its sweep the recital of untrue facts so also incomplete disclosure.



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45. At the first stage, while passing an order under Section 245D (2C), on *prima-facie* appraisal of the application and contents of the report, the Settlement Commission may find it to be a complete and true disclosure but after inquiry into the facts or consequent to the report sent by the Principal Commissioner as envisaged under sub-section (2B) of Section 245D, the Settlement Commission may have to change its opinion. Therefore, the contention that once an order under Section 245D (2C) has been passed, which in the instant case came to be passed on 24.02.2015, the Settlement Commission has to pass an order of settlement or laying down the terms of settlement is untenable in the eye of law.

46. The judgment in the case of **Commissioner Income Tax v. Income Tax Settlement Commission (supra)**, particularly paragraph 15 cited by learned counsel for the respondents reinforces the position that the legal jurisdiction of the Settlement Commission is a continuous and unbroken jurisdiction from the date of the Section 245C application till the passing of the final order under Section 245D(4). However, the question in the present case is not one of jurisdiction; it is one of the quality and cogency of the reasons given for rejecting the petitioner's individual application. Jurisdiction and the proper exercise of jurisdiction are distinct matters.

47. Adverting to another judgment relied upon by learned counsel for the Respondent in the case of **Rohit Kumar Gupta (supra)**, this Court had found that the argument that an order under Section 245D(4) can only be one 'on the matters covered by the application' and must, by virtue of Section 245D(6), necessarily provide for the 'terms of settlement', so as to preclude the Settlement Commission from passing a rejecting order at that



stage, does not represent a correct understanding of the ambit of the expression 'such orders as it thinks fit' employed in Section 245D(4).

48. The Court further held in para No. 45 of the judgment that Section 245D(4) is a substantive provision from which the powers of the Settlement Commission to pass such orders as it thinks fit derive, and that the expression 'such orders as it thinks fit' is wide enough to include an order rejecting a settlement application for failure of the applicant to make a full and true disclosure of his income and the manner in which the undisclosed income was derived.

49. Following the dictum of the Supreme Court in **Ajmera Housing Corporation (supra)**, this Court in **Rohit Kumar Gupta (supra)** observed that even when the Settlement Commission has decided to proceed with the application, it is not denuded of its power to examine, at any stage up to and including the passing of the final order under Section 245D(4), whether the assessee has made a full and true disclosure of his undisclosed income, and that the reports of the Commissioner and other documents coming on record at different stages — both before and after the Commission has decided to proceed with the application are most germane to the determination of that question.

50. In light of the law as discussed above, let us take up the facts in respect of the Petitioner. If we look at the order impugned dated 03.03.2016, we find that the reasons given thereunder are relatable to other applicants namely M/s AMQ Agro India Pvt. Ltd. and Mohammed Shahnawaz and there is not even an iota of reasoning so far as the case of the petitioner (Aditya Sharma) is concerned.



51. While rejecting the case of the petitioner, the Settlement Commission has observed thus:

“Since admittedly, the case of three applicants before us are inextricably linked with those of Moin Akhtar Qureshi and Naseem Moin Qureshi, we are not in a position to quantify the incomes recorded in the seized documents for the three applicants individually.”

52. The only part in concluding order, where the name of the petitioner finds mentioned is, in the following sentence ‘the individual applicants, Mohammed Shahnawaz and Aditya Sharma are only purchase agent/employee of the group’.

53. It will not be out of place to reproduce the so-called reasoning given by the Settlement Commission for rejecting the petitioner's application.

“7. We have carefully considered the facts, evidences and arguments placed before us both by the Department and the applicants. We have also considered Rule 9 report of the Principal CIT and replies given by the applicants as per Rule 9A report as well as written submissions filed by both sides. We have noted that the original five applicants had filed Settlement Applications on the basis of a consolidated Statement of Facts. In the SOF while referring to books/registers and documents seized from Mohd. Shahnawaz (D-11 Annexures 1 to 45), it is stated at para 4(ii) page 27 that these annexures record the transactions in a consolidated manner and it is not possible to identify the entity to whom the transactions relate. It is undisputed that the two main persons of the group are Moin Akhtar Qureshi and his wife Nasreen Moin Qureshi. At para 4(i) page 26 of SOF it is



stated that Moin Akhtar Qureshi is a director and controls the company AMQPL with 85% shares held by him along with his wife. **The individual applicants Mohd. Shahnawaz and Sh. Aditya Sharma are only purchase agent/employee of the group. The** cases of the two main persons are not before us. Since admittedly the cases of 3 **applicants before us are inextricably linked with those of Moin Akhtar Qureshi and Nasreen Moin Qureshi, we are not in a position to quantify the incomes recorded in seized documents for the 3 applicants individually.**

8. We have also noted that the applicants failed to enclose copies of documents (even on sample basis) seized from Mohd. Shahnawaz rendering the SOF not complete on facts. The applicants claim to have recasted the accounts on the basis of such papers. However, the re-casted accounts also were not filed with the Settlement Applications once again making the SOF incomplete. When inquired during proceedings u/s.245D(4), the learned AR admitted that while recasting the accounts and working out profits from such accounts various "assumptions" were made by the applicants (described at pages 88 and 89 of Written Submissions dated 16.2.2016, and are filed for the first time before us on 16.2.2016), but there is no reference of such assumptions' in the SOF. In fact the working of cash given to Mohd Shahnawaz as per recasted accounts and bifurcation between Moin Akhtar Qureshi and AMQPL was not stated at all in SOF but stated before us only during present proceedings.

9. We further note that in the SOF at page 27, it is stated that certain purchases debited in the books of AMQPL and the proprietary concern of Moin Akhtar Qureshi were made from certain parties but bills were obtained from others. However, the



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SOF and accompanying details nowhere specify details of such bogus bills partywise, valuewise or quantitywise.

10. Based on these considerations and other material discussed above, we are unable to record our satisfaction during the present proceedings that applicants have made a full and true disclosure of their incomes in the Settlement Applications filed on 05.12.2014. The three applications are therefore rejected.

11. The decision to the above effect was pronounced in the Court on 16.02.2016.”

54. According to us, the Settlement Commission has primarily erred rather misdirected itself by holding that admittedly the cases of three applicants, Mohammed Shahnawaz, AMQ Agro India Private Limited and Aditya Sharma are inextricably linked with those of Moin Akhtar Qureshi and Nasreen Moin Qureshi. As the facts have been unfurled, even as per the respondents, the petitioner-Aditya Sharma was an employee of the company namely AMQ Agro India Private Limited and he had received some commission income or incentive from the said company. The petitioner had made a disclosure about the commission income, which he had received from said company. There is nothing on record to show that the petitioner was in any manner related with other four applicants or was a director or a person interested in the company where the search proceedings had commenced. Simply because the petitioner's place was also searched, it cannot be said that he was directly linked with the business and affairs of the company.

55. The conclusion drawn and the reason given under the impugned order for rejecting the petitioner's application is that the petitioner had not made a



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full and true disclosure of his income in his application dated 05.12.2014 and the underlying reason for recording such finding is that according to the Settlement Commission, the cases of the remaining three applicants were inextricably linked with those of Moin Akhtar Qureshi and Nasreen Moin Qureshi, for which they were not in a position to quantify the incomes recorded in seized documents.

56. We are of the considered view that purported failure or inability to quantify the income(s) recorded in seized documents of three applicants cannot be a reason to hold that the applicant had not made a full and true disclosure of his income in his application. It is relevant to note that all the five applicants, including Moin Akhtar Qureshi and his wife Nasreen Moin Qureshi though simultaneously, but had filed separate applications bifurcating their respective income relatable to the seized documents during the search. When a combined application or separate applications have been filed at one point of time and each of the individual had given the income relatable to him, then, the Settlement Commission should not have observed that it was difficult to ascertain the income relatable to such applicant or assessee based on the seized documents.

57. In any case, if the Settlement Commission was of the view that a particular component of income was relatable to the petitioner or to any other petitioner, such income could well be either added or reduced from the amount of settlement, if calculated in the case of two other applicants and otherwise, the Settlement Commission could have rejected the applications of the remaining two applicants namely AMQ Agro-India Pvt. Ltd. and Mohammad Shahnawaz and an income in their hands would have been assessed by the Assessing Officer in accordance with law.



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58. As an ancillary but important fact, we may record that only Aditya Sharma (petitioner before us), has filed present writ petition challenging the order dated 03.03.2016, whereby his application has been rejected and two other applicants namely AMQ Agro-India Pvt. Ltd. and Mohammad Shahnawaz have not challenged said order.

59. For what we have observed hereinabove, we are of the view that the Settlement Commission has erred in making the petitioner sink with the two other applicants (M/s AMQ Agro-India Pvt. Ltd. and Mohammad Shahnawaz), without giving any cogent reasons or recording a finding that how is his case inextricably linked with two applicants namely Moin Akhtar Qureshi and Nasreen Moin Qureshi, whose applications had been rejected much earlier, even at the stage of order under Section 245D (2C) of the Act of 1961.

60. If the order impugned is seen carefully, the reason for rejection of petitioner's application is, that petitioner's case is inextricably linked with the case of Moin Akhtar and Nasreen Moin Qureshi and not that the petitioner has failed to make true and complete disclosure. The factum of the application being linked with other application by itself does not mean that the petitioner has not made true and complete disclosure.

61. If that be so, the Settlement Commission ought to have recorded a clear finding to that effect, at the outset, rather than allowing the application to proceed and rejecting it on the same ground.

62. The impugned order dated 03.03.2016 *qua* the petitioner (Aditya Sharma), is therefore quashed and set aside. The Settlement Commission is directed to consider the petitioner's application afresh, in accordance with law.



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63. As an abundant caution, we would to clarify that we have simply set aside the order, on finding the reasons given by the Settlement Commission to be unsustainable. We have not recorded any finding about the income or the components of seized material or record which is relatable to the petitioner.

64. Any observation made by us in this regard are only incidental and the Settlement Commission shall not be influenced by the observation, when the petitioner's application for settlement is decided and the amount of settlement (if any) is determined.

65. The petition stands allowed accordingly.

DINESH MEHTA
(JUDGE)

VINOD KUMAR
(JUDGE)

APRIL 24, 2026/nk