

A COMMISSIONER OF INCOME TAX, MADRAS
v.
EXPRESS NEWSPAPER LTD.

JANUARY 11, 1994

B [J.S. VERMA, YOGESHWAR DAYAL AND
B.P. JEEVAN REDDY, JJ.]

C *Income-tax Act, 1961 : Sections 245-A(b) and 245- C(1)—Settlement Commission—Settlement of Cases—Losses returned found to be false and fabricated and hence not accepted—Assessment made of a huge amount—Assessee filing application for settlement and offering part of the losses towards taxable income—Held: Application neither disclosed any undisclosed income nor the manner of deriving the same—Hence not maintainable—Settlement Commission—Jurisdiction on—Scope of proceedings before it—Not only income disclosed but the entire case for the relevant assessment year.*

D *Sections 245-D(1-A) & 245-C—Settlement of cases—Application submitted at the stage when concealment of income established on the basis of voluminous material collected, inquiries and investigation—Not to be proceeded with—Expression "has been established in relation to the case"—Meaning and object of—Relevant materials to decide whether to proceeds with the case or not—Include even the materials collected after the filing of application.*

E *Chapter XIX-A—Settlement of cases—Provisions in the chapter to be construed consistent with the overall scheme and object of the Act.*

F *Interpretation of Statutes : Harmonious construction—Construing of provisions of a statute—To be consistent with the overall scheme and object of the Statute.*

G *Words and phrases : "case"—"has been established in relation to the case"—Meaning of—In the context of the provisions in Chapter XIX-A of the Income-tax Act, 1961:*

H *In the revised return for the assessment year 1985-86 the respondent-assessee showed certain losses which were found to be false and fabricated and so the Assessing Officer rejected the claim and assessed*

and income at a huge amount. The assessee's appeal was dismissed by the Commissioner of Income-tax (Appeals). While the said appeal was pending, the assessee approached the Settlement Commission for settlement of the cases relating to the assessment year 1985-86 as also for the subsequent three assessment years in respect of which assessments were pending. For these years, the assessee offered for tax a part of the amount claimed by him as losses.

Before the Settlement Commission, Revenue raised objections against entertaining the said application on the ground that it had in possession documents and materials to show that the assessee had fraudulently claimed losses under various heads for the assessment years 1985-86, 1986-87 and 1987-88 and for the assessment year 1988-89; that notice under section 143(2) of the Act was sent to the assessee and it did not respond. However, after hearing both the parties, the Settlement Commission allowed the application of the assessee. Aggrieved by this, Revenue preferred the present appeals.

Allowing the appeals and setting aside the order of the Settlement Commission, this Court

HELD : 1.1. "Case" for the purpose of Chapter XIX-A of the Income tax Act, 1961 means a proceeding relating to one or more assessment years. It takes in a proceeding for assessment or re-assessment. Similarly, it may be a proceeding pending at the stage of assessment or in appeal or revision. [73-E]

1.2. Once an application is allowed to be proceeded with by the Commission, the proceedings pending before any authority under the Act relating to that assessment year has to be transferred to the Commission and the entire case for that assessment year will be dealt with by the Commission itself. The words "at any stage of a case relating to him" only make it clear that the pendency of proceedings relating to that assessment year, whether before the Assessing Officer or before the Appellate or Revisional Authority, is no bar to the filing of an application under Section 245-C so long as the application complies with the requirements of the said Section. [74-E-F]

2.1. By the Finance Act, 1979 the second proviso to Section 245-D(1) was deleted. The main limb of sub-section (1) and the first proviso, how-

A ever, remained untouched. In place of the second proviso, sub-section (1A)-
was introduced. The effect of this Amendment was that the Commissioner's
objection ceased to be final and conclusive. The proviso to sub-section (1A)
empowered the Commission to examine whether the objection of the Com-
missioner was correct or not. After hearing the Commissioner, if the Com-
mission was satisfied that the objection of the Commissioner was not
B correct, it could proceed with the application. [77-B-C]

2.2. Sub-section (1A) has to be read in harmony with the main limb
of sub-section (1) of Section 245-D. The said sub-section says that the
Commission shall decide whether to allow the application to be proceeded
C with before it or to reject it (a) on the basis of the material contained in
the report of the Commission and (b) having regard to the nature and
circumstances of the case or the complexity of the investigation involved
therein. These are words of general import. For ascertaining their meaning
and purport, one has to turn to the purposes underlying the enactment as
D a whole. It is neither possible nor advisable to seek to lay down exhaus-
tively the several situations in which the Commission would decide to allow
the application to be proceeded with or in which the application has to be
rejected. The decision has to be taken by the Commission having regard
to all the facts and circumstances before it, in the light of the object,
purpose and scheme of the enactment. It is precisely because such wide
E discretion is given to the Commission that the Act requires that it should
be manned by men of integrity and outstanding ability, having special
knowledge of direct taxes and business accounts. [77-D-H]

2.3. Chapter XIX-A is a part of the Income Tax Act and must be
F construed consistent with the over-all scheme and object. The Chapter is
meant for those assesseees who want to disclose income not disclosed till
then *together with* the manner in which the said income is derived. The idea
underlying the words in the main limb of sub-section (1A) of Section 245-D
of Chapter XIX-A viz. "has been established or is likely to be established by
any Income-tax authority in relation to the case" is self-evident. The dis-
closure under Section 245-C must be of an income not disclosed before the
G Assessing Officer. If the assessing officer (or the Income Tax Authority)
has already discovered it and has either gathered the material to establish
the particulars of such income or fraud fully or is at a stage of investiga-
tion/inquiries where the material gathered by him is likely to establish the
H particulars of such income or fraud, the assessee cannot be allowed to

defeat or forestall the entire exercise of the Income Tax authorities just by approaching the Commission. In such a case, it cannot be said that he is acting voluntarily or in good faith. He should not be allowed to take advantage of the comparatively easy course of settlement. He must be allowed to face the normal channels of assessment/appeal etc. Section 245-C is meant for those assesseees who seek to disclose income not disclosed before the officer including "the manner in which such income has been derived". If the department already knows and has gathered particulars of such income and the manner in which it has been derived, there is no 'disclosure' by the assessee. The words in question are not words of limitation nor are they meant to help unscrupulous assesseees. [79-F-H, 79-B-E]

3.1. The respondent-assessee did not disclose in its application under Section 245-C, any income which was not disclosed before the assessing officer. This was a case where the respondent was claiming certain losses, which it sought to set off against its other income. If the respondent's case was true, it would not have been liable to pay any tax for the reason that entire income from property (and other income, if any) would have been swamped by the said losses. Indeed, the loss had to be carried forward to the next year. The case of the Revenue, however, was that all the alleged transactions (from which loss is said to have resulted) were bogus and fictitious ones, fabricated only for the purposes of evading the tax lawfully due on its income. In its application to the Commissioner, the respondent did not disclose any income not disclosed by it before the assessing officer not did it disclose the manner in which such income was derived. The assessee merely offered a part of the amount (claimed by it as losses) towards taxable income. Thus, the application, not being in compliance with the first and foremost requirement of Section 245-C(1), was not maintainable thereunder. It ought to have been rejected *in limine*. The Commission had no jurisdiction to entertain the said application. [80-G-H, 81-A-B]

3.2. The Settlement Commission was also not right in holding that while deciding whether to allow the application to be proceeded with under Section 245-D(1), they will not look into the material collected after the date of filing of the application under Section 245-C. It has not been found by the Commission that the Income Tax authorities were aware of the filing of the application; even if they were aware, the mere filing of the application did not mean that they should stop their investigation and enquiries in their tracks. They were, in fact, entitled to rely upon the evidence and

A material collected by them till the date of submission of the report to the Commission. The decision of the Commission is thus vitiated by misdirection in law. It took cognizance of a matter which it could not have. Also, there has been a misapprehension as to true legal position on the part of the Commission. [81-E-G]

B CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2841-44 of 1993.

From the Judgment and Order dated 31.5.1990 of the Income-tax Settlement Commission, Madras in Settlement Application No. 21/V/26/89-IT.

C Dr. V. Gaurishankar, V.K. Verma, Ranbir Chandra, D.S. Mehra and Ms. A. Subhashini for the Appellants.

D Ms. Bina Gupta, Ms. Monika Mohil, Mrs. Madhvi Khera and Ms. Priya Gupta for the Respondent.

The Judgment of the Court was delivered by

E B.P. JEEVAN REDDY, J. 1. These appeals are preferred by the Revenue against the order of the Settlement Commission in the case of the respondent-Express Newspapers Limited, Madras relating to the assessment years 1985-86, 1986-87 and 1987-88. It raises certain important questions with respect to the jurisdiction of the Settlement Commission under Chapter XIX-A of the income Tax Act, 1961. We have heard Dr. Gowri Shankar for the appellant and Ms. Bina Gupta for the respondent. We may mention here that when called upon to argue, after the conclusion of submissions by Dr. Gowri Shankar, Ms. Bina Gupta asked us to adjourn the matter to enable her to engage a senior counsel. We refused to do so since it was the first case in the list that day and the request was made after the commencement of the arguments. We then heard her fully.

G 2. RELEVANT FACTS OF THE CASE :

The respondent-assessee filed its return for the assessment year 1985-86 on July 22, 1985. A revised return was filed on February 26, 1988. It disclosed a loss of Rs. 32,80,700. The Assessing Officer, however, assessed the income at Rs. 1,27,95,570 by his order dated March 30, 1988.

H The Assessing Officer held that the transactions of sale and purchase of

potatoes, iron scrap and shares, from which the assessee claimed to have suffered huge losses were not true but were bogus transactions fabricated for the purpose of evading the legitimate tax due on its income. The assessee preferred an appeal before the C.I.T. (Appeals), who dismissed the same by his order dated March 31, 1989. During the pendency of the said appeal, the assessee approached the Commission on December 16, 1988 with respect to four assessment years namely, 1985-86, 1986-87, 1987-88 and 1988-89. On that date, the assessments relating to the three later years were pending before the Assessing Officer. The Application to the Commission made by the assessee is in Form No. 34-B. In column 10, the assessee stated that the case involved substantial issues and amount, that the transactions of the assessee were large and diverse and that the case calls for judicial approach and appreciation of the facts. It requested the Commission to determine the tax payable for the aforesaid four assessment years, to confer immunity upon it from the levy of penalty and prosecution, and waiver of interest chargeable under the provision of the Act. Through this application, the respondent-assessee offered for tax "an additional total income of Rs. 1,32,27,969 and over and above the income offered for assessment in the returns for the assessment years 1985-86 to 1988-89 on which the tax payable works out to Rs. 14,35,720". The respondent further complained that the department "has conducted a hostile and unfair investigation, has concluded assessment and has raised large demands based on disallowances and additions without providing an opportunity whatsoever". The respondent requested to Commission to grant "an adinterim order restraining the assessing officer from going ahead with further proceedings in regard to the assessment years sought to be settled hereby so that the application is not rendered *otiose* by any action of the department during the interrogation". In short, the respondent did not disclose any income not disclosed before the assessing officer but merely offered a small part of the losses claimed by it for the said assessment years to tax. According to the respondent, it was doing so to buy peace from the department. A copy of the application filed by the assessee was sent to the Commissioner. The Commissioner submitted his report on July 6, 1989. In this report, the Commissioner stated the following facts and objections:

3. The respondent-assessee owns substantial house properties in Bombay, Madras and New Delhi. The gross rental income derived therefrom is about rupees two crores. Apart from the above, the assessee "reportedly had a merchandise division stated to be run from Calcutta".

A The activities of this division were reported to be in the purchase and sale of potatoes, metal scrap and shares. The assessments for the various years are pending with the Assessing Officer. Some of the past completed assessments have been reopened under Section 147 of the Act. The details of the income/loss disclosed by the assessee for the four assessment years are stated in the Annexure to the report. "Enquiries regarding the claims made by the Company for losses on transactions in these years had commenced before the date of filing of the application by the company with the Settlement Commission and these enquiries had reached a final stage even before the petition was filed by the assessee".

C 4. The Commissioner then set out the comprehensive and elaborate enquiries made by the department into the claims made by the assessee-company relating to its alleged dealings in potatoes, scrap and shares from which it claimed to have suffered substantial losses. He referred to the statements of parties, through whom the said transactions were said to have been put through, denying any such transactions. He pointed out with reference to the Books of the assessee and other relevant persons that the several alleged payments were not real and that the several transactions disclosed by the assessee were mere make-believe and that all those entries were fabricated. Some of the parties who made statements adverse to the assessee's interest, were also cross-examined by the assessee. We do not think it necessary to refer to or set out the particulars of the investigation and enquiries made or the material gathered, referred to in the Report. It sets out the material separately with respect to alleged dealings in potatoes, scrap and shares. It would suffice to set out the concluding paragraphs of the said Report. They read:

F "The discussion above would therefore conclusively establish the fact that the Department has in its possession documents and materials to lead to the view that the assessee had fraudulently claimed losses on various accounts for the assessment years 1985-86, 1986-87 and 1987-88. The Department has acted on these, had conducted its own enquiries and had disallowed the claims and treated them as part of the assessee's income. For the assessment year 1985-86, complaint under Section 276C, 277, 278 and 278B of the Income-tax Act has been filed before the Additional Chief Metropolitan Magistrate, Eg-

more. Therefore, for the assessment years 1985-86, 1986-87 and 1987-88 the petition filed by the company before the Settlement Commission is not a correct statement of fact. As far as the assessment year 1988-89 is concerned, the assessee company filed its return of income on 11.7.1988 accompanied by a copy of the profit and loss account and Balance Sheet as at 31.3.1988. Notices issued under Section 143(2) of the Act in October, 1988 and March, 1989 did not *elicit* any response from the company.

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For reasons stated above, it is claimed that the Department had in its possession adequate information prior to 16.12.1988 to warrant a conclusion that the assessee had concealed details of its true income and furnished inaccurate particulars thereof. In such circumstances, under Section 245D of the Act, objection is taken by the Department to the Company's petition being entertained by the Commission,—more particularly for assessment years 1985-86, 1986-87 and 1987-88".

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5. The Commission heard the parties and allowed the application of the assessee to be proceeded with under Chapter XIX-A. The two member of the Commission, Sri C.S. Jain and Sri D.C. Shukla wrote two separate concurring orders. The main opinion is by Sri Jain. His reasoning, as condensed by us, runs thus:

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At this stage the burden lies upon the Commissioner to point out the material and the result of enquiries and investigation to show that concealment has been established or that enquiries have reached the stage where it can be said that concealment of income is likely to be established. The material referred to in the report of the Commission, as on the date of filing of the application, does not establish with certainty that the concealment has been established or is likely to be established. Many of the enquiries referred to in the report were made after the filing of the application under Section 245-C; they cannot be taken into consideration for the purpose of taking a decision under Section 245-D. The enquiries made do not

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A establish a complete chain of concealment or fraud on the part of the assessee. (He concluded)-"We, therefore, hold that it's a case where it cannot be said beyond dispute that concealment of income has been established or is likely to be established. Section 245D(1) of the Income-tax Act describes situations in which the application can be allowed to be proceeded with, where the objection of the Commissioner is not upheld. The Settlement Commission has to consider the material contained in the report of the Commissioner, the nature and circumstances of the case or complexity of investigation involved therein. In the instant case, we have considered the materials contained in the Commissioner's report. The nature and circumstances of the case are such that the case be allowed to be proceeded with. The main question involved in the case is whether the losses claimed in merchandise division for various years are genuine. Without widespread enquiries and investigations, this task cannot be fulfilled. It may involve lots of enquiries, proceedings and possibly prolonged litigation. The facts in relation to the merchandise division have been discussed in detail in earlier paragraphs of this order. The facts and circumstances of the case also involve the complexity of the investigation. We, therefore, allow the application to be proceeded with, for assessment years 1985-86 to 1988-89".

F 6. The other member, Sri Shukla also proceeded on the footing that the material gathered by the department after the date of filing of the statement is not relevant and cannot be looked into for the purpose of taking a decision under Section 245-D(1). He too held that on the date of the filing of the application "conclusive material is lacking on the basis of which the objection of the Commissioner can be sustained".

G 7. RELEVANT PROVISIONS OF LAW AND THEIR MEANING:

H Chapter XIX-A providing for settlement of cases was introduced in the Income Tax Act, 1961 pursuant to the recommendations of the Direct Tax Inquiry Committee headed by Justice Wanchoo. It is necessary to notice a few provisions relevant herein. Section 245-A defines certain

expressions occurring in the chapter. Clause (b) defines the expression "case" in the following words: A

"(b) "case" means any proceeding under this Act for the assessment or reassessment of any person in respect of any year or years, or by way of appeal or revision in connection with such assessment or reassessment, which may be pending before an income-tax authority on the date on which an application under sub-section (1) of section 245C is made: B

Provided that where any appeal or application for revision has been preferred after the expiry of the period specified for the filing of such appeal or application for revision under this Act and which has not been admitted, such appeal or revision shall not be deemed to be a proceeding pending within the meaning of this clause." C D

8. "Case" for the purpose of this Chapter thus means a proceeding relating to one or more assessment years. It takes in a proceeding for assessment or re-assessment. Similarly, it may be a proceeding pending at the stage of assessment or in appeal or revision. E

9. Section 245-B provides for constitution of the Income Tax Settlement Commission. Sub-section (3) provides specifically that the Chairman, Vice-Chairman and other members of the Settlement Commission shall be appointed by the Central Government "from amongst persons of integrity and outstanding ability, having special knowledge of, and, experience in, problems relating to direct taxes and business accounts". F

10. Section 245-C provides for filing of an application by an assessee for settlement of his case. Sub-section (1) says that an assessee may "at any stage of a case relating to him" make an application in the prescribed form and manner, "containing a full and true disclosure of *his income which has not been disclosed before the Assessing Officer*, the manner in which such income has been derived, the additional amount of income-tax payable on such income and such other particulars as may be prescribed" to settle his case. There are certain other requirements which he must fulfil before making such an application but which it is not necessary to notice here. G H

- A 11. For a proper delineation of the jurisdiction of the Commission, it is necessary to bear in mind the language of sub-section (1) of Section 245-C. It provides that at any stage of a case relating to him, an assessee may make an application to the Commission disclosing fully and truly income *which has not been disclosed before the Assessing Officer*. He must also disclose how the said income has been derived by him besides certain
- B other particulars. This means that an assessee cannot approach the Commission for settlement of his case with respect to income already disclosed before the Assessing Officer. An application under Section 245-C is maintainable only if it discloses income which has not been disclosed before the Assessing Officer. The disclosure contemplated by Section
- C 245-C is thus in the nature of voluntary disclosure of concealed income. Unless the income so disclosed exceeds Rs. 50,000, the application under Section 245-C is not maintainable. It is equally evident that once an application made under Section 245-C is admitted for consideration (after giving notice to and considering the report of the Commissioner of Income
- D Tax as provided by Section 245-D) the Commission shall have to withdraw the case relating to that assessment year (or years, as the case may be) from the assessing/appellate/revising authority and deal with the case, as a whole, by itself. In other words, the proceedings before the Commission are not confined to the income disclosed before it alone. Once his application is allowed to be proceeded with by the Commission, the proceedings
- E pending before any authority under the Act relating to that assessment year has to be transferred to Commission and the entire case for that assessment year will be dealt with by the Commission itself. The words "at any stage of a case relating to him" only make it clear that the pendency of proceedings relating to that assessment year, whether before the Assessing Officer or before the Appellate or Revisional Authority, is no bar to the filing of
- F an application under Section 245-C so long as the application complies with the requirements of Section 245-C.

12. Section 245-D prescribes the procedure to be followed by the Commission on receipt of an application under Section 245-C. Sub-section
- G (1) is relevant for our purpose. As originally enacted, the sub-section read as follows:

- H "(1) On receipt of an application under section 245-C, the Settlement Commission shall call for a report from the Commissioner and on the basis of the materials contained

in such report and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, the Settlement Commission may, by order, allow the application to be proceeded with or reject the application:

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Provided that an application shall not be rejected under this sub-section unless an opportunity has been given to the applicant of being heard :

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Provided further that an application shall not be proceeded with under this sub-section if the Commissioner objects to the application being proceeded with on the ground that concealment of particulars of income on the part of the applicant or perpetration of fraud by him for evading any tax or other sum chargeable or imposable under the Indian Income-tax Act, 1922 (XI of 1922) or under this Act has been established or is likely to be established by any income-tax authority in relation to the case".

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13. By Finance Act, 1979 the second proviso was omitted and sub-section 1-A was inserted, with effect from April 1, 1979. Sub-section 1-A read as follows:

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"(1A) Notwithstanding anything contained in sub-section (1), an application shall not be proceeded with under that sub-section, if the Commissioner objects to the application being proceeded with on the ground that concealment of particulars of income on the part of the applicant or perpetration of fraud by him for evading any tax or other sum chargeable or imposable under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act, has been established or is likely to be established by any income-tax authority, in relation to the case:

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Provided that where the Settlement Commission is not satisfied with the correctness of the objection raised by the Commissioner, the Settlement Commission may, after giving the Commissioner an opportunity of being heard,

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A by order, allow the application to be proceeded with under sub-section (1) and send a copy of its order to the Commissioner".

B 14. It is this sub-section read with sub-section (1) which is relevant for the purposes of this case. We may, however, mention that sub-section (1A) has since been deleted and a proviso introduced in sub-section (1) as the second proviso, which reads as follows:

C "[Provided further that the Commissioner shall furnish the report within a period of one hundred and twenty days of the receipt of communication from the Settlement Commission in case of all applications made under section 245-C on or after the date on which the Finance (No. 2) Act, 1991, receives the assent of the President and if the Commissioner fails to furnish the report within the said period, the Settlement Commission may make the order without such report.]".

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15. It is not necessary to notice the effect of the above legislative change brought about in 1991.

E 16. As originally enacted the main limb of sub-section (1) provided that on receipt of an application under Section 245-C, the Commission shall call for a report from the Commissioner with respect to the application. The decision whether to "allow the application to be proceeded with or reject the application" had to be taken (a) on the basis of the material contained in the Commissioner's report and (b) having regard to the nature and circumstances of the case or the complexity of the investigation involved therein. The first proviso said that no such application shall be rejected unless an opportunity of hearing is afforded to the application. The second proviso to sub-section (1), however, provided that Commission shall not proceed with the application filed under Section 245-C, if the Commissioner objected to the application being proceeded with on the ground that "concealment of particulars of income on the part of the applicant or perpetration of fraud by him for evading any tax or other sum chargeable or imposable under the Indian-tax Act, 1922 (XI of 1922) or under this Act has been established or is likely to be established by any income-tax authority in relation to the case". If the Commissioner objected

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on the ground aforesaid, the Commissioner could not proceed with the application under Section 245-C. (It is not necessary to decide for the purpose of this case whether the mere objection of the Commissioner sufficed and whether the Commission had no power to examine the correctness of the said objection.) By the Finance Act, 1979 the second proviso was deleted. The main limb of sub-section (1) and the first proviso, however, remained untouched. In place of the second proviso, sub-section (1A) was introduced. The effect of this Amendment was that the Commissioner's objection ceased to be final and conclusive. The proviso the sub-section (1A) empowered the Commissioner to examine whether the objection of the Commissioner was correct or not. After hearing the Commissioner, if the Commission was satisfied that the objection of the Commissioner was not correct, it could proceed with the application.

17. Sub-section (1A) has to be read in harmony with the main limb of sub-section (1). The said sub-section says that the Commission shall decide whether to allow the application to be proceeded with before it or to reject it (a) on the basis of the material contained in the report of the Commissioner and (b) having regard to the nature and circumstances of the case *or* the complexity of the investigation involved therein. What do these words mean? They are words of general import. What did the Parliament mean thereby? For ascertaining their meaning and purport, one has to turn to the purposes underlying the enactment as a whole. It is neither possible nor advisable to seek to lay down exhaustively the several situations in which the Commission would decide to allow the application to be proceeded with or in which the application has to be rejected. A case may be a complex one; it may involve prolonged or cumbersome investigation. Another situation may be where having regard to the nature of the case and other circumstances, the Commission may feel in the interest of the Revenue and in the interest of justice that it is better to give a quietus to the case once for all instead of allowing it to be fought through the usual channels. The decision has to be taken by the Commission having regard to all the facts and circumstances before it, in the light of the object, purpose and scheme of the enactment. It is precisely because such wide discretion is given to the Commission that the Act requires that it should be manned by men of integrity and outstanding ability, having special knowledge of direct taxes and business accounts.

- A 18. The next set of words that present some difficulty are the words "has been established or is likely to be established by any income tax authority in relation to the case" occurring in sub-section (1A) (as well as in the second proviso to sub-section (1) as originally enacted). For a proper appreciation of the meaning of these words, it is necessary to remind
- B ourselves that an application under Section 245-C can be made only in respect of an income not disclosed by the assessee before the assessing officer. If so, what did the Parliament mean when it said that Commission shall not allow the application to be proceeded with if the Commissioner objects on the ground that "concealment of particulars of income on the
- C part of the application or perpetration of fraud by him for evading any tax or other sum chargeable or imposable under the Indian Income Tax, 1922 or under this Act, has been established or likely to be established by any Income Tax authority, in relation to the case"? To appreciate the meaning of the said words, it is necessary to keep in mind the following facts: even
- D though the assessee has not disclosed a particular income before the assessing officer, the latter is free to and is empowered to unearth it by making or causing such investigation and enquiries as he thinks appropriate. He may gather and receive information for that purpose. We may take two illustrative cases: *One*, where the assessing officer has discovered some income, which was not disclosed by the assessee, and has
- E added it to the assessee's income. The latter challenges the same and the proceedings are pending either before the assessing officer or before an appellate or revisional authority. *Second*, a case where the Income Tax authorities are gathering information/material, which is likely to establish that the assessee has concealed the particulars of a particular income. If,
- F in the first case, the assessee applies to the Commission under Section 245-C, the Commissioner can object on the ground that concealment of particulars of income has been established. Similarly, if the assessee in the second case applies to the commission, the commissioner can equally
- G object on the ground that the investigation/enquiries made by them already- or the information received or gathered by them already-is likely to establish the concealment of particulars of income and, therefore, the Commission should not allow the application to be proceeded with. On the same lines, there may be cases where the Income Tax authorities have
- H either established or are likely to establish that the assessee has perpetrated a fraud for evading the tax or other sum chargeable or imposable

under the 1922 Act or the present Act. It is the correctness of these objections that the Commission is supposed to look into by the proviso to sub-section (1A). Its further course of action depends upon its satisfaction one way or the other. A

19. The idea underlying the said words (in the main limb of sub-section (1A)) is self-evident. The disclosure under Section 245-C must be of an income not disclosed before the assessing officer. If the assessing officer (or the Income Tax authority) has already discovered it and has either gathered the material to establish the particulars of such income or fraud fully or is at a stage of investigation/enquiries where the material gathered by him is likely to establish the particulars of such income or fraud, the assessee cannot be allowed to defeat or forestall, as the case may be, the entire exercise of the Income Tax authorities just by approaching the Commission. In such a case, it cannot be said that he is acting voluntarily or in good faith. He should not be allowed to take advantage of the comparatively easy course of settlement. He must be allowed to face the normal channels of assessment/appeal etc. Section 245-C is meant for those assesseees who seek to disclose income not disclosed before the officer including "the manner in which such income has been derived". If the department already knows and has gathered particulars of such income and the manner in which it has been derived, there is no 'disclosure' by the assessee. Let it be remembered that the words in question (in Section 245-D(1A)) are not words of limitation nor are they meant to help unscrupulous assesseees. Chapter XIX is a part of the Income Tax Act and must be construed consistent with the over-all scheme and object. The Chapter is meant for those assesseees who want to disclose income not disclosed till then *together with* the manner in which the said income is derived. It is not meant for those who come after the event, i.e., after the discovery of the particulars of income and its source or discovery of particulars of fraud perpetrated by the assessee, as the case may be nor even to those who come to the Commission to forestall the investigation/enquiries which have reached a stage where the department is in possession of material which though not sufficient to establish such concealment or fraud, is such that it is likely to establish it—may be some more material is required to establish it fully. The Commission has to keep all this in mind while deciding whether to allow the application to be proceeded B
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A before it or to reject it.

20. This discussion also shows that the Commission cannot say that any material collected by the Commissioner after the date of filing of the application under Section 245-G is not relevant for the purposes of Section 245-D(1). The filing of an application by the assessee is an unilateral act. The department may not be aware of the same. The proper line- ordinarily speaking—is to be drawn with reference to the date of submission of the report by the Commissioner. This does not, however, prevent the Commission from looking into material collected by Income Tax Authorities even subsequent to the submitting of the report by the Commissioner, if it thinks such a course is called for in the interests of justice.

21. Sub-section (4) of Section 245-D provides for passing of final orders by the Commission. It is not necessary to refer to the other provisions in the Chapter except to mention 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 order of the Commission are final, subject of course to constitutional remedies.

22. MERITS OF THE CASE:

F If we look at the facts of the case in the light of the legal position adumbrated hereinabove, it would be clear that the application filed by the respondent before the Commission was not maintainable and could not have been allowed to be proceeded with. Firstly, the respondent did not disclose, in its application under Section 245-C, any income which was not disclosed before the assessing officer. This was a case where the respondent was claiming certain losses, which he sought to set off against its other income. If the respondent's case was true, it would not have been liable to pay any tax for the reason that entire income from property (and other income, if any) would have been swamped by the said losses. Indeed, the loss had to be carried forward to the next year. The case of the Revenue, H however, was that all the alleged transactions (from which loss is said to

have resulted) were bogus and fictitious ones, fabricated only for the purposes of evading the tax lawfully due on its income. In his application to the Commissioner, the respondent did not disclose any income not disclosed by him before the assessing officer nor did he disclose in his application the manner in which such income was derived. The assessee merely offered a part of the amount (claimed by him as losses) towards taxable income. Thus, his application, not being in compliance with the first and foremost requirement of Section 245-C(1), was not maintainable thereunder. It ought to have been rejected *in limine*. The Commission had no jurisdiction to entertain the said application. Secondly, this is a case where the Income Tax authorities had made extensive investigation and enquiries wherein they had collected voluminous material, which, according to them, established the particulars of concealment of income on the part of the respondent-assessee. It was so held by the assessing officer—with whom the first appellate authority agreed, no doubt, subsequent to the filing of the application under Section 245-C but before the passing of the impugned order.

23. The Commission was also not right in holding that while deciding whether to allow the application to be proceeded with before it under Section 245-D(1), they will not look into the material collected after the date of filing of the application under Section 245-C. It has not been found by the Commission that the Income Tax authorities were aware of the filing of the application on December 16, 1988. Even if they were aware, the mere filing of the application did not mean that they should fold their hands and stop their investigation and enquiries in their tracks. They were, in fact, entitled to rely upon the evidence and material collected by them till the date of submission of the report to the Commission. The decision of the Commission is thus vitiated by misdirection in law. It took cognizance of a matter which it could not have. The impugned order is equally vitiated by a misapprehension as to true legal position on the part of the Commission.

24. The appeals are allowed accordingly. The order of the Settlement Commission under appeal is set aside. The assessments relating to all the four assessment years shall now proceed according to law. Having regard to the facts of the case, we direct that it shall be open to the respondent to file an appeal before the Tribunal against the order dated March 31, 1989 within one month from today. If so filed, it shall be treated as filed

A within time and shall be dealt with as such. We make it clear that this order order is confined to the jurisdiction of the Commission and the validity of its order taking seisin of the case. We have not expressed nor did we intend to express any opinion on the merits of the same. It is for the appropriate authorities to go into the same in accordance with law.

B The respondent shall pay the costs of the appellant in this appeal which we assess at Rs. 10,000.

G.N.

Appeals allowed.