

**(1992) 02 SC CK 0072**

**In the Supreme Court Of India**

**Case No :** Settlement Applications No's. 1/A/272/88-IT and 1/A/280/89-IT

**ASHWANI KUMAR AGGARWAL, IN RE.**

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**Date of Decision :** 07-02-1992

**Acts Referred:**

**Citation :** (1992) 195 ITR 861

**Hon'ble Judges :** L M Sharma, K Ramaswamy, N Venkatachala

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### **Judgement**

Vide application dated December 18, 1991, the applicant stated that, during the course of hearing of the case by the Principal Bench of Delhi, on November 27 and 28, 1991 the applicant had requested for waiver of interest u/s 234A, 234B and 234C of the income tax Act, 1961, for the assessment year 1989-90, under the special and all pervasive power of the Settlement Commission. To this, the Commission had remarked that it did not have powers to waive interest u/s 234A, 234B and 234C of the Act. By the petition dated December 18, 1991, referred to above, the applicant requested that he may be allowed another opportunity of being heard on the point whether the Commission, on the facts and circumstances of the case, has the powers to waive the above-referred interest. According to the petitioner, since the subject was of very wide import and far-reaching consequence, he had no objection if the hearing on the above subject was fixed before the Special Bench at Bombay.

A Special Bench of the Settlement Commission was constituted, vide Notification No. 1/43 Tech/90/SC, dated October 22, 1991, read with Notification No. 1/45/Tech/90/SC, dated December 3, 1991, to examine legal issues arising from the amendments made to Chapter XIXA of the income tax Act, 1961, and corresponding provisions of the Wealth-tax Act, 1957, by the Finance act (No. 2) 1991. Vide Notification dated December 20, 1991, the Chairman, Settlement Commission, directed that, in order to determine the scope of the statutory of the income tax Settlement Commission regarding reduction and waiver of interest under sections 234A, 234B and 234C of the income tax Act, 1961, and to minimise litigations arising therefrom, this issue shall be heard by the Special Bench as constituted above in the case of the applicant as well. Our order below is the result of deliberations before the Special Bench at Bombay in the course of

which, inter alia, the issue formulated in the case of the applicant was considered. For the applicant, Shri Niraj Jain, FCA, argued the case while the Department was represented by Shri Jetley and Shri S. K. Jha, (Dr.), principal Bench, Delhi.

Opening the case for the applicant, Shri Niraj Jain contended that, from the assessment year 1989-90 onwards the Settlement Commission had the power to waive or reduce chargeable interest u/s 234A, 224B and 234C even if these powers were not vested in any income tax authority up to but excluding the Central Board of Direct Taxes. As far as the Central Board of Direct Taxes is concerned, u/s 119(2)(a) its powers were as under :

" The Board may, if it considers it necessary or expedient so to do, for the purpose of proper and efficient management of the work of assessment and collection of revenue, issue from time to time [whether by way of relaxation of any of the provisions of sections 139, 143, 144, 147, 148, 154, 155, sub-section (1A) of section 201, section 210, 211, 234A 234B, 234C, 271 and 273 or otherwise] general or special orders in respect of any class of income or class of cases, setting forth directions or instructions (not being prejudicial to the assesses) as to the guidelines, principles or procedures to be followed by other income tax authorities in the work relating to assessment or collection or revenue to the initiation of proceeding for imposition of penalties and any such order may, if the Board so of the opinion that it is necessary in public interest so to do, be published and circulated in the prescribed manner for general information."

Shri Jain pointed out that, after the case is admitted by the Commission it has, in view of section 245F(1), all the powers which are vested in an income tax authority under the act and these powers it enjoys until an order is passed under sub-section (4) of section 245D. Since, u/s 116A, the Central Board of Direct Taxes is an income tax authority and, u/s 119(2)(a), it has, inter alia, the power to issue instructions for relaxation of the provisions of section 234A, 234B and 234C, the Settlement Commission can also do so. Shri Jain emphasized that, under Chapter XIXA, the Settlement Commission is charged with settlement of cases which come before it and, in settling these case, it can no doubt :

(i) "... pass such order as it thinks fit on the matters covered by the application....." [section 245D(4)] and

(ii) Every order passed u/s 245D(4) shall provide for the terms of settlement including tax, penalty or interest.... [section 245D(6)].

but, in doing so, it has to take into account the fact that the settlement should be effective. Thus, a basic requirement is to settle cases and determine the tax, penalty and interest payable by the applicant. His argument was that if the interest chargeable u/s 234A, 234B and 234C was mandatory and could not be waived, the word "interest" brought into section 245D(6) by the Finance Act, 1987, with effect from June, 1, 1987, would not has been retained after the

amendment of the act by the Direct Tax Laws (Amendment) Act, 1987, with effect from April 1, 1989 (sic). He then pointed out to "Notes on Clause of Finance Bill, 1990" available at [1990] 182 ITR 313. In the Memorandum Explaining the Provisions of the Finance Bill (page 344), it has been stated that in terms of section 119(2)(a), the Government proposed to give the Board the powers to relax the rigours of section 234A and 234B (later, with effect from April 1, 1991, section 234C as well). Clearly, therefore, the intention of the Government was that, in the case of hardship, some authority should have the powers to reduce or waive the interest chargeable for furnishing the late return, interest chargeable for defaults in payment of advance tax and interest chargeable for determent of advance tax. This power was given to the Central Board of Direct Taxes, declared as an income tax authority u/s 116 and was, therefore, exercisable by the Settlement Commission which, in view of section 245F, had all the powers of an income tax authority for settlement of a case.

According to Shri Jain, though section 119 empowered the Central Board of Direct Taxes to issue "instructions to subordinate authorities", the Settlement Commission could even issue such instructions to itself to reduce or waive interest under sections 234A, 234B and 234C. He further argued that, since, u/s 245F(7), the Settlement Commission could regulate its own procedure in all matters arising out of the exercise of its powers or discharge of its functions, it had the powers of the Central Board of Direct Taxes, an income tax authority, for issuing general instructions for waiver of interest chargeable u/s 234A, 234B and 234C to all subordinate authorities.

Shri Jain then contended that while, in terms of section 119(2)(a), the instruction could be with regard to "class of incomes" or "class of cases", a single case could also be considered to be a class by itself. For this proposition, he relied on *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, in which the court had held that a Commission of Inquiry may be set up for a single individual "if, on account of some special circumstances or reasons applicable to him and applicable to others, that single individual may be treated as a class by himself" (at page 547). Shri Jain, therefore, concluded that even an individual could become a "class of cases" and was, therefore, covered by section 119(2)(a). Shri Jain then pointed out that, if the Central Board of Direct Taxes had powers u/s 119(2)(a) to waive interest chargeable u/s 234A in respect of "a class of cases" who could not file their returns in time on account of the required return forms being unavailable and the Settlement Commission could not merely because it did not have any general powers to issue instructions, an applicant belonging to such a class of case who had come to the Commission for justice tempered with mercy would be denied the concession available to him if he did not do so...

Similarly, if u/s 234B, the Central Board of Direct Taxes could waive or reduce interest chargeable for default in payment of advance tax in respect of a "class of cases" in which the money seized by the Department in the course of search and

seizure operations u/s 132 was lying with the Department (for which reason the assessee concerned were not in a position to pay the advance tax due from them) and this power was not available to the Settlement Commission, it would also lead to justice being denied by the Commission to such class of cases. This surely could not be the intention of the Legislature, the Settlement Commission having been set up to mitigate the hardship caused to a certain class of assesses, namely, those who wanted to come clean should not be any worse off than a run-of-the-mill class of cases which approached the Department.

Opening the cases for the Department, Shri Jetley said that what the Commission had to consider was whether, within the four corners of the law as it stood, it had the powers of the Central Board of Direct Taxes for waiving or reducing interest in individual cases brought it for settlement. According to him, the powers of the Central Board of Direct Taxes u/s 119 were administrative powers it could exercise by issuing instructions to subordinate authorities and that too only with regard to any "class of incomes" or "class of cases". These guidelines or instructions could, however, not be issued to appellate authorities. Powers of the Settlement Commission are, on the other hand, quasi-judicial and it is for this reason that it had no power to issue instructions to subordinate authorities. Notwithstanding section 245F(7) which was merely to regulate the Commission's procedure, the power given to the Commission cannot possibly include administrative powers. He then emphasized that the Settlement Commission was required to settle the case before it and the powers exercisable by it can only be with regard to that case and not the generality of cases falling under a particular class of incomes or class of case. Shri Jetley then referred to *State of Orissa v. Members, Sales Tax Tribunal* [1971] 28 STC 652 and the observations of the court at page 656 according to which, after the passing of the amendment to the Sales Tax Act, the exercise of the implied powers by the Tribunal to stay demands was no longer available. Thus, where the implied powers had been withdrawn by the Legislature, these were no longer exercisable. According to Shri Jetley powers u/s 234A, 234B and 234C were specifically exercisable by the Board and could not, therefore, be exercised by the Commission. According to him, any rule of inherent power being available to the Tribunal (Commission) was not applicable here.

Shri S. K. Jha, D. R., emphasized that, in Chapter XIXA which dealt with settlement of case, the reference again and again was to the settlement of "an application" or "the case" (sections 245C and 245D). Again u/s 245F(2), the Settlement Commission had been vested with the exclusive jurisdiction to exercise the powers and perform the functions of an income tax authority in relation to "the case" which had been admitted u/s 245D. Section 245F(7) lays down that the Settlement Commission can regulate its own procedure but this can only be with regard to "matters arising out of the exercise of its powers or discharge on its functions". Its powers and functions, emphasized Shri Jha, were to settle "the case" before it. As against this, section 119(2)(a) which referred to the powers of the Central Board of Direct Taxes were exercisable in respect of

"class of cases" and "class of incomes" and these could be in the form of instructions to subordinate authorities. In this connection. Shri Jha referred to the decisions of the court cited at K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, and Khoday Industries P. Ltd. Vs. Commissioner of Income Tax, . The courts had held that, marginal notes can indicate the purpose for which a particular piece of legislation had been made. According to him, the marginal note for section 119 was "instructions to subordinate authorities" and, therefore, this section was not available for any income tax authority issuing instructions to itself. He then cited Commissioner of Wealth Tax, Punjab, J and K, Chandigarh, Patiala Vs. Yuvraj Amrinder Singh and Others, , for the proposition that objectives and purpose must be looked into to interpret the section. The object of section 119 was to issue orders, instructions and directions to other income tax authorities as may be deemed fit for the proper administration of the act and that too with regard to the generality of cases/assesses coming within the parameters of this section and the required powers had been given to the Central Board of Direct Taxes under with all other income tax authorities functioned. As against this, the object of the Settlement Commission being to settle the case before it, the concept of proper and efficient management of the work of assessment and collection of revenue with view to "proper administration of the Act" would be alien to such an object.

In rejoinder, Shri Niraj Jain once again referred to the powers of the Board u/s 119(2)(a) in terms of which, in voluntary disclosure cases, it had directed that, in respect of a class of case who voluntarily disclosed their full income in returns filed between November 15, 1985 to March 31, 1986, no notices for penalties livable u/s 271(1)(c) should be issued. According to him, a class of persons coming before the Settlement Commission should be denied the benefit of these instructions even though the Commission was not bound by any general instructions issued by the Central Board. Shri Jain was of the view that, since section 245F(7) takes care of the procedural aspect, this covered even those cases or applications which were not before the Commission and, therefore, the words "an application" or "the case" were not important.

We must first observe that referring to the decisions of courts out of context would prove or establish nothing at all. For example, reference to Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, , for the proposition that a single individual case can be a class by itself has to be read in the context in which this observation was made. On page 547, Justice S. R. Das observed as under :

"That a law may be constitutional even though it relates to a single individual if, on account of some special circumstance or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself". Quite clearly, the words "a class by himself" does not mean the same thing as a "class of cases" of incomes" used in section 119(2)(a). Moreover, in the Supreme Court case, the court was being asked to consider whether a Commission of

Enquiry set up in the case of the appellant in that case, namely, Ram Krishna Dalmia, could be considered to be unconstitutional even though it related to a single individual. The answer of the court was in the negative on account of the special circumstances or reasons applicable to him alone as a result of which he could be treated as a class by himself. It is to be noted that, as against this, section 119(2) talks of instructions, etc., being issued to subordinate authorities in any "class of cases" or "class of incomes" which in effect means that single individual is executed even if he is a class by himself. Again, reference to a Karnataka High Courts decision in the case of Khoday Industries P. Ltd. Vs. Commissioner of Income Tax, for arguing that the marginal note indicates the purpose for which a section has been incorporated in the act begs the issue before the court. The courts observation was that the heading of the section generally gives a clue to the understanding of the section though it cannot control the plain language of the section. In that case, the heading of section 80J of the income tax Act, 1961, expressly used the term "newly established" before the term "industrial undertaking" in respect of which detailed provisions were made for special deduction for a specified period. The court observed that, even if the terms "newly established" did not occur in the body of section 80J, it must be read wherever the "term industrial undertaking occurs in that section because, if such construction is not placed on the section, then an undertaking having enjoyed the special deduction by mere change of hands, can continue to claim the special deduction virtually for all time to come, which is not the object and purpose of section 80J ". Thus, the emphasis in this case was on the headnote or heading giving a clue where the body of the section was vague and, therefore, to be interpreted. In the present case, this is not so as section 1198 is headed "instructions to subordinate authorities" and lays down in clear terms the circumstances under which and the purpose for which such instructions can be issued by the Central Board of Direct Taxes. The general principle is that such instructions and directions are to be issued to other income tax authorities and are for the proper administration of the Act. It is in pursuance of this general principle that powers have been given to the Central Board of Direct Taxes to issue instructions so as to bring down the rigor of the various that these could be in respect of any "class of incomes" or "class of cases". Thus, there is no ambiguity whatsoever in understanding this section and, therefore, a reference to the heading is not even necessary.

Chapter XIXA is for settlement of such cases as fall within the scope of the scope of the provisions of this Chapter. Once the application crosses the threshold of "admission" - that is, his case is allowed to be proceeded with by the Commissioner u/s 245D(1) - till an order u/s 245D(4) is passed (subject to the provisions of section 245D(3)) the commission has "exclusive jurisdiction to exercise the powers and perform the functions of an income tax authority under this act in relation to the case". Thus, the Settlement Commission enjoys not only all the powers of the income tax authority by exclusive powers in this regard -the only qualification being that these have to be exercised with regard to the

case before it. Section 245F(7) gives the Settlement Commission powers to regulate its own procedure, etc., but there is the qualifying clause that these powers are "subject to the provisions of this Chapter". It would thus appear that the Settlement Commission has the authority to regulate its own procedure of Bench of the Commission in all matters arising of the exercise of its powers or discharge of its functions but this has to be subject to the provisions of Chapter XIXA. This Chapter, in clear terms, provides for settlement of "a case" or "the case" in respect of "an application" which has been allowed to be proceeded with. Thus, the intention of the Legislature, as we understand it, was to vest the Settlement Commission with powers to first dispose of the applications submitted by an assessee and, after the application was admitted, to settle the case before it for which purpose, up to the time the order u/s 245D(4) was passed, the commission had all the powers of an income tax authority. The being the position, it is difficult to appreciate the arguments submitted on behalf of the applicant that section 245F(7) read with section 119(2) (a) gave to the Settlement Commission the powers to issue orders, instructions or directions in respect of any "class of incomes" or "class of cases" whether to itself or to other income tax authorities. We do appreciate the arguments of learned counsel that, if the Settlement Commission does not on its own enjoy the powers given to the Central Board of Direct Taxes in terms of section 119, it may lead to some persons who have chosen to come to the Commission with a view to come clean not being able to avail of the benefits available to some other persons who may not choose to come to the Commission by prefer to be deal with by the income tax authorities mentioned in section 116. However, in our opinion, where, in respect if any "class of incomes" or "class of case" u/s 119, the Central Board of Direct Taxes issues instructions to the income tax authorities subordinate to it and the case of an applicant who has come to the Settlement Commission falls in the above classes, he would will be entitled to claim before the Commission the benefit of such instructions, etc. This flows from the fact that the instructions, etc., given by the Board u/s 119(2)(a) to other income tax authorities arm them with the powers to relax the provisions of section 234A, 234B and 234C in any "class of cases" or class of incomes". In view of section 245F, these powers (vested in an income tax authority) are available to the Settlement Commission too in relation to the case before it. Thus, as long as an applicant who has come to the Settlement Commission falls within the ambit of "class of incomes" or "class of cases" in respect of whom the Central Board of Direct Taxes has issued orders, instructions or directions by exercising its authority u/s 119(2)(a), he will not be denied the benefit of such instructions, etc., and will therefore, not be worse off than other persons who may not choose to come to the Commission. This perhaps also explains why, in section 245D(6), even after the deletion of the powers of other income tax authorities with effect from April 1, 1989, to waive or reduce interest chargeable under sections 234A, 234B and 234C, the word "interest" has still been retained.

Additionally, the settlements u/s 245D(4) made after April 1, 1989, may also

cover assessment years prior to 1989-90. Hence, the word "interest" occurring in section 245D(6) has to be retained, even if it is taken that the income tax authorities do not have the power to waive or reduce interest chargeable u/s 234A, 234B and 234C for and from assessment year 1989-90. Thus, the retention of the word "interest" in section 245D(6) by itself cannot lead to any inference, one way or another, in regard to the power to waive or reduce interest for and from the assessment year 1989-90.

The above is the position of law as it currently stand. It is not for us to recommend that the Legislature should have given to the Settlement Commission the same administrative powers for issue of instructions to subordinate authorities for the proper administration of the income tax act as are available to the Central Board of Direct Taxes. Suffice it to say that, presently, for reasons mentioned above, there is no scope for the Commission to exercise its statutory powers to reduce or waive interest chargeable u/s 234A, 234B and 234C for the assessment year 1989-90 and onwards except in those case which fall within the "class of cases" or "class of incomes" covered under the instructions, directions, etc., issued by the Central Board of Direct Taxes.

Having regard to the aforesaid discussion, the Principal Bench of the Settlement Commission at Delhi may pass an appropriate order to dispose of the request of the applicant, Shri Ashwani Kumar Agrawal, for waiver of interest u/s 234A, 234B and 234C of the act in respect of his application No. 1/A/208/89-IT for the assessment year 1989-90.