

(2011) 08 AHC CK 0083

In the Allahabad High Court

Case No : IT Appeal No's. 25 To 29 and 30 To 38 of 2011

CIT

APPELLANT

Vs

Smt. Diksha Singh

RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Constitution of India, 1950 — Article 265
Income Tax Act, 1961 — Section 132, 153, 153A, 153C, 245
Penal Code, 1860 (IPC) — Section 193, 196, 228

Citation : (2012) 247 CTR 215

Hon'ble Judges : Satish Chandra, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Devi Prasad Singh, J.—I have been privileged to read the judgment prepared by brother Justice Dr. Satish Chandra. I agree with the final verdict in the present appeal but respectfully, I express my separate opinion.

We have heard Shri D.D. Chopra, learned counsel for the appellants.

2. After filing return in response to the notice issued u/s 153A and 153C of the income tax Act (in short the Act) for the assessment years 2000-01 to 2006-07, the assessee moved an application before the Settlement Commission on 31-5-2007 in pursuance to the power conferred by section 245C of the Act. The Settlement Commission while allowing the application and settling the dispute for the assessment year in question u/s 245D(4) by order dated 31-5-2008 with regard to undisclosed income of the assessee, made observation that the CIT/AO may take such action as appropriate in respect of the matter not placed before the Commission by the assessee in terms of provision contained in section 245F(4) of the income tax Act, 1961. The Tribunal relying upon a recent Division Bench judgment of this Court reported in Smt. Neeru Agarwal Vs. Union of India (UOI), held that the dispute adjudicated by the settlement commission shall be conclusive and final in terms of provision contained in section 245-I of the Act,

hence Assessing Officer had committed substantial illegality by reopening the issue on the alleged ground that certain facts is not disclosed.

3. Section 245C of the Act empowers the assessee to move an application at any stage of a case relating to him that full and true disclosure of income, which has not been disclosed before the Assessing Officer subject to rider contained in section 245C of the Act. The Settlement Commission may allow or reject the application, but in any case in view of provision contained in section 245C of the Act, the application moved under sub-section (1) of the said section, cannot be allowed to be withdrawn by the applicant.

4. The application so moved u/s 245C of the Act should be processed by the Settlement Commission in view of procedure prescribed in section 245D of the Act within the specified period provided therein. The provision contained in section 245D provides that the Settlement Commission shall give opportunity to the applicant and to the Settlement Commission, which includes personal hearing or hearing through representative and then pass such order as it thinks fit on the matters covered by the application, which includes any other matter relating to case not covered by the application but referred to in the report of Commissioner, income tax. Thus, it shall be obligatory on the part of the Commissioner, income tax while submitting its report to bring entire material facts before the Settlement Commission to avoid any multiplicity of litigation or concealment of facts by the assessee. This section further provides 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. In the event of non-payment of tax, the settlement shall be void and assessee shall be liable to pay simple interest for every month or part of the month on the amount remaining unpaid from the date of expiry of 35 days. In case the settlement becomes void as provided under sub-section (6) of section 245D of the Act, then the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the income tax authority concerned, may, notwithstanding anything contained in any other provision contained in the Act, completes such proceedings at any time before the expiry of two years from the end of financial year in which the settlement became void. It shall be appropriate to re-produce 245D of the Act, which is as under:--

Section 245D. (1) On receipt of an application u/s 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 Commissioner:

(2A) Where an application was made u/s 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 91.

(2B) The Settlement Commission shall-

(i) in respect of an application which is allowed to be proceeded 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 Commissioner, and the 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 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 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 Commissioner has not furnished the report within the aforesaid period, the Settlement Commission shall proceed further in the matter without the report of the 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 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 Commissioner to report on the matters covered by the application and any other matter relating to the case, and the Commissioner shall furnish the report within a period of ninety days of the receipt of communication from the Settlement Commission:

Provided that where the 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.

(4) After examination of the records and the report of the Commissioner, if any, received under--

- (i) sub-section (2B) or sub-section (3) or
- (ii) the provisions of sub-section (1) as they stood immediately before their amendment by the Finance Act, 2007,

and after giving an opportunity to the applicant and to the Commissioner to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the 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 and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner.

(4A) The Settlement Commission shall pass an order under sub-section (4)--

- (i) in respect of an application referred to in sub-section (2A) or sub-section (2D), on or before the 31st day of March, 2008;
- (ii) in respect of an application made on or after the 1st day of June, 2007 (but before the 1st day of June, 2010) within twelve months from the end of the month in which the application was made;)

(iii) in respect of an application made on or after the 1st day of June, 2010, within eighteen months from the end of the month in which the application was made)

(5) Subject to the provisions of section 245BA, the materials brought on record before the Settlement Commission shall be considered by the Members of the concerned Bench before passing any order under sub-section (4) and, in relation to the passing of such order, the provisions of section 245BD shall apply)

(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 by the Settlement Commissioner 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 at one and one-fourth per cent for every month or part of a month on the amount remainomg unpaid from the date of expiry of the period of thirty-five days aforesaid.

(6B) The Settlement Commissioner may, at any time within a period of six months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (4):

Provided 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 Commissioner of its intention to do so and has allowed the applicant and the Commissioner an opportunity of being heard.

(7) Where a settlement becomes void as provided under sub-section (6), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the income tax authority concerned, may, notwithstanding anything contained in any other provisions of this Act, completes such proceedings at any time before the expiry of two years from the end of the financial year in which the settlement became void.

(8) For the removal of doubts, it is hereby declared that nothing contained in section 153 shall apply to any order passed under sub-section (4) or to any order of assessment, reassessment or recomputation required to be made by the Assessing Officer in pursuance of any directions contained in such order passed by the Settlement Commission and nothing contained in the provision to sub-

section (1) of section 186 shall apply to the cancellation of the registration of a firm required to be made in pursuance of any such directions as aforesaid.

5. Settlement Commission has also been conferred power to reopen the complete proceedings on receipt of application to cope certain situation u/s 245E of the Act.

6. Sub-section (1) of section 245F provides that in addition to the powers conferred on the Settlement Commission under this Chapter, it shall have all the powers which are vested in an income tax authority under the Act. It further provides that where an application made u/s 245C has been allowed to be proceeded with u/s 245D, the Settlement Commissioner shall, until an order is passed under sub-section (4) of section 245D, have, subject to the provisions of sub-section (3) of that section, exclusive jurisdiction to exercise the powers and perform the functions of an income tax authority under this Act in relation to that case and shall have power to regulate own procedure subject to statutory provision contained therein. Sub-section (2) of section 245F is re-produced as under:-

Where an application made u/s 245C has been allowed to be proceeded with u/s 245D, the Settlement Commissioner shall, until an order is passed under sub-section (4) of section 245D, have, subject to the provisions of sub-section (3) of that section, exclusive jurisdiction to exercise the powers and perform the functions of an income tax authority under this Act in relation to that case:

Provided that where an application has been made u/s 245C on or after 1st day of June, 2007, the Settlement Commission shall have such exclusive jurisdiction from the date on which the application was made:

Provided further that where-

(i) an application made on or after the 1st day of June, 2007, is rejected under sub-section (1) of section 245D; or

(ii) an application is not allowed to be proceeded with under sub-section (2A) of section 245D or as the case may be, is declared invalid under sub-section (2C) of that section; or

(iii) an application is not allowed to be further proceeded with under sub-section (2D) of section 245D,

The Settlement Commission, in respect of such application shall have such exclusive jurisdiction up to the date on which the application is rejected, or, not allowed to be proceeded with, or declared invalid, or, not allowed to be further proceeded with, as the case may be.

Sub-section (4) of section 245F empowers the authorities under the Act, to discharge their statutory obligation, not contrary to finding, observation and direction of the Settlement Commissioner. However, overall reading of section 245F, read with sections 245D and 245-I makes it clear that the matter

adjudicated with regard to particular financial year shall not be reopened by any other authority under the Act except by the Settlement Commissioner himself under the provision contained in Chapter XIX-A of the Act.

7. The Settlement Commission has got ample power u/s 245H to grant immunity from prosecution and penalty in case the assessee cooperated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived.

8. u/s 245-I of the Act, it has been provided that every order of Settlement Commission passed under sub-section (4) of section 245D shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceedings under this Act.

9. Section 245L of the Act further provides that the proceedings before the Settlement Commission shall be deemed to be a judicial proceedings. The provision contained in sections 245-I and 245L are reproduced as under:--

Section 245-I : - Every order of settlement passed under sub-section (4) of section 245D shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceedings under this Act or under any other law for the time being in force.

Section 245L : - Any proceedings under this Chapter before the Settlement Commission shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

10. Now it is trite in law that a thing should be done in the manner provided by the Act or statute or not at all vide AIR 1936 253 (Privy Council); Deep Chand Vs. The State of Rajasthan, , Patna Improvement Trust Vs. Smt. Lakshmi Devi and Others, ; State of Uttar Pradesh Vs. Singhara Singh and Others, ; The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, , Chandra Kishore Jha Vs. Mahavir Prasad and Others, ; Delhi Administration Vs. Gurdip Singh Uban and Others, ; Dhanajay Reddy v. State of Karnataka, AIR 2001 SC 1512, Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, ; Prabha Shankar Dubey v. State of M.P., AIR 2004 SC 486 , Ram Phal Kundu Vs. Kamal Sharma, ; Nika Ram Vs. State of Himachal Pradesh, ; Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, ; Chettian Veetil Ammad and Another Vs. Taluk Land Board and Others, ; State of Bihar and Another Vs. J.A.C. Saldanha and Others, , A.K. Roy and Another Vs. State of Punjab and Others, ; State of Mizoram Vs. Biakchhawna, ; J.N. Ganatra Vs. Morvi Municipality, Morvi, ; Babu Verghese and Others Vs. Bar Council of Kerala and Others, ; Chandra Kishore Jha v. Mahavir Prasad (1998) 8 SCC 266 and Mansa Ram Yadav v. State of U.P. (2009) 27 LCD 1232. Accordingly, it shall be incumbent on the Settlement Commission to decide its

obligation in terms of provisions contained in the statute (supra) and not otherwise. Any deviation from the statutory provision or exceeding of jurisdiction shall be nullity in law and being beneficial provision, the benefit shall go to the assessee.

11. Article 265 of the Constitution of India provides that no tax shall be levied or collected except by the authority of law. In view of constitutional mandate once the matter falls within the jurisdiction of Settlement Commission, then with regard to such matter only Settlement Commission will have got jurisdiction to impose tax and not the assessing authority.

12. Any compulsory exaction of money by the Government amounts to imposition of tax which is not permissible except by or under the authority of a statutory provision vide CCE v. Kisan Sahkari Chinni Mills AIR 2001 SC 3379 , p. 3380, Hindustan Times and Others Vs. State of U.P. and Another, , Shree Digvijay Cement Co. Ltd. and Another Vs. Union of India (UOI) and Another, .

13. It is also settled law that the taxing statute should be construed strictly vide State of West Bengal v. Kesoram Industries Ltd. (2004) 1 SCC 201. Ordinarily, Causus Omisus should not be supplied by judicial interpretative process.

14. In Mahim Patram Private Ltd. Vs. Union of India (UOI) and Others, , the Honble Supreme Court has reiterated the earlier settled proposition of law reported in COMMISSIONER OF INCOME TAX Vs. KASTURI and SONS LTD., , that in fiscal legislation a transaction cannot be taxed on any doctrine of "the substance of the matter" as distinguished from its legal signification, for a subject is not liable to tax on supposed "spirit of the law" by inference or by analogy" vide A.V. Fernandez Vs. The State of Kerala, , Commissioner of Income Tax, Gujarat Vs. Keshavlal Lallubhai Patel, , The Joint Commercial Tax Officer, Harbour Division, II-Madras Vs. The Young Men's Indian Association (Regd.), Madras and Others, , Gujarat State Financial Corporation Vs. Natson Manufacturing Co. Pvt. Ltd. and Others, , Mathuram Agrawal Vs. State of Madhya Pradesh, and Commissioner of Central Excise, Pondicherry Vs. ACER India Ltd., .

15. Thus, in tax matters the true nature of legal obligation arises out of genuine transaction and nothing else is the substance or inferential. It is not the function of the Court to give to the words a strained and unnatural meaning to cover loopholes through which the evasive taxpayer may find escape or to tax transaction which had the Legislature though of them, would have been covered by appropriate words.

16. The case is not covered within the four corner of the provision of the taxing statute. No tax may be imposed by inference or by analogy or by trying to provoke into the intention of the legislation or by what was the substance of the matter. The court must look squarely as the words of the statute on interpreting them. It must interpret a taxing statute in the light of what is clearly expressed. It cannot employ anything which is not expressed so as to supply any assumed deficiency.

17. Accordingly, in the absence of any right conferred by the Act, mere observation of the Settlement Commission will not empower the assessing or appellate authority to re-assess on any ground, whatsoever, for the same financial year with regard to which the Settlement Commission had exercised jurisdiction and given a finding.

18. There is one other aspect of the matter. A plain reading of section 245D read with section 245F of the Act provides that once a matter falls within the domain of Settlement Commission, no authority of the income tax Department will have got jurisdiction to assess tax for the same financial year and finding of the Settlement Commission shall be conclusive and final u/s 245-I of the Act. Legislature to their wisdom had conferred power on the Settlement Commission to reopen the proceedings in certain circumstances and to deal with the situation in the event of commission of fraud. Once power has been conferred on the Settlement Commission itself to deal with contingency, then such power cannot be delegated directly or indirectly to any authority of the income tax Department.

19. u/s 245L of the Act, the proceedings before the Settlement Commission is judicial proceeding. The jurisdiction conferred to exercise judicial or quasi-judicial power of a statute cannot be delegated except if specifically permitted, is the settled proposition of law vide *Pradyat Kumar Bose Vs. The Hon'ble The Chief Justice of Calcutta High Court*, , *Bombay Municipal Corporation Vs. Dhondu Narayan Chowdhary*, , *Sahni Silk Mills (P) Ltd. and Another Vs. Employees' State Insurance Corporation*, and *Skypak Couriers Ltd. Vs. Tata Chemicals Ltd.*, .

20. Even the discretionary administrative power entrusted by the statute to a particular authority, cannot be further delegated except as otherwise provided in the statute. The principle against sub-delegation is reasoned from the maxim *delegatus non potest delegate* means a discretion conferred by statute is *prima facie* intended to be exercised by the authority on which the statute has conferred it and by no other authority, and this intention may be negated only by any contrary indications found in the language, scope or object of the statute vide *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, , *State of Rajasthan and Another Vs. Shri Hari Ram Nathwani and Others*, and *State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others*, .

21. In other words, when the Act prescribes a particular body or officer to exercise a power, it must be exercised by that body or officer and none else unless the Act by express words or necessary implication permits delegation, in which event, it may also be exercised by the delegate if delegation is made in accordance with the terms of the Act but not otherwise vide *Marathwada University Vs. Seshrao Balwant Rao Chavan*, , *Tarlochan Dev Sharma Vs. State of Punjab and Others*, .

22. It has also been settled by Honble Supreme Court that the order of delegate, when delegation is made as authorised by the statute, is to be treated for all

intents and purposes as an order of the principal and cannot be revised or reviewed by the principal unless such a power is specifically conferred vide State of Orissa and Others Vs. Commissioner of Land Records and Statement, Cuttack and Others, , OCL India Ltd. Vs. State of Orissa and Others, and Ishwar Singh Vs. State of Rajasthan and Others, .

23. In view of settled proposition of law, the Settlement Commission could not have made observation delegating its power to assessing authority to re-open the case in certain circumstances for the same financial year when he himself has been conferred wide power to deal with situation under the statutory provisions (supra).

24. The Tribunal has rightly decided the appeal on the sound principle of law relying upon the case of Neeru Agarwal (supra). No substantial question of law is involved, which may call for framing of issue since the question involved is no more res integra. The appeal being devoid of merit is hereby dismissed in limine.

Dr. Satish Chandra, J.

25. All the fourteen appeals have been filed by the Revenue u/s 260A of the income tax Act, 1961 against the common judgment and order dated 17-3-2011 passed by the income tax Appellate Tribunal, Lucknow in ITA No. 44/LKW/2011 for the assessment years 2000-01 to 2006-07.

26. Brief facts of the case are that a search and seizure operation u/s 132 of the income tax Act was carried out at the premises of the assesseees on 15-12-2005. Notices were issued under sections 153A and 153C respectively. In response to the notices, the assesseees have filed returns of income for the respective assessment years. Thereafter, the assesseees moved an application before the Settlement Commission on 31-5-2007 for settlement of the cases. The Settlement Commission has passed an order u/s 245D(4) on 31-5-2008 whereby the undisclosed income of the assesseees was settled at Rs. 43 lakhs for the assessment years under consideration. While passing the order, the Settlement Commission observed in para 7 as follows,

The CIT/AO may take such action as appropriate in respect of the matter not placed before the Commission by the applicant, as per provision of section 245F(4) of the income tax Act, 1961.

27. Thereafter, the AO has issued notice and finally estimated the income at Rs. 75,84,900, in addition to the agricultural income of Rs. 1,75,000 and made the additions accordingly, but the same were deleted by the CIT(A) by holding that the AO after the order of the Settlement Commission, has no occasion to make the assessment again. The order of the CIT(A) was confirmed by the Tribunal. Yet not being satisfied, the revenue is before this court.

28. With this backdrop, Sri D.D. Chopra, learned counsel for appellant justified the order passed by the AO He submits that the undisclosed income was settled by the Settlement Commission in the case of Diskha Singh and her husband late

Sri Paramjit Singh at Rs. 43 lakhs, which is being taken as income for the assessment year 2000-01 on substantive basis and other years for protective basis. As there was no clear direction in the order of the Settlement Commission, the AO has rightly ignored the order passed by the Settlement Commission. Additions to the income were made after issuing of show cause notice dated 15-5-2008. However, he admitted that the addition was made by the AO on estimate basis. He submits that ITAT has wrongly dismissed all the 14 appeals filed by the revenue involving the same issue as mentioned above by confirming the order of the CIT(A). Lastly, he made a request that the impugned order passed by the Tribunal may kindly be set aside.

29. None appeared on behalf of the opposite party.

30. We have heard the learned counsel for appellant and gone through the material available on record. From the record, it appears that the search operation was carried on by the department and certain documents were seized by it. The department was in possession of the entire material including the investment made by the assessee, therefore, it cannot be said that the assessee had played any fraud or mis-represented the fact. The department was very much a party before the Settlement Commission. Moreover the order of the Settlement Commission has been allowed to become final. The Settlement Commission, by operative portion has settled the income of the assessee and provided immunity with the rider that the order would be void if it was found subsequently that the same was obtained by fraud or misrepresentation of facts. It is not the case of the department that the order was obtained by fraud or misrepresentation of fact. The Assessing Officer, therefore, has no jurisdiction to issue the impugned notice for making further enquiry in the matter in view of sections 245D(6) and 245-1 of the income tax Act. There cannot possibly be piecemeal determination of the income of an assessee for relevant period, one by the Settlement Commission and another by the Assessing Officer, otherwise the very purpose of filing application before the Settlement Commission would be frustrated. There is no statutory provision which may empower the Settlement Commission to restore back the matter in respect of certain items to the Assessing Officer and also finally settle income of the assessee. In the case of Kuldeep Industrial Corporation etc. Vs. Income Tax Officer and others, , the honble Apex Court observed that the income tax Officer can continue the proceedings till the date of submission of report by Commissioner and the Commissioner can refer in his report to material collected after date of application. As soon as the application is filed before the Settlement Commission, the AO ceased its jurisdiction.

31. Section 245 of the income tax Act provides that the order of Settlement Commission is to be conclusive. The said section runs as under,

245-I. Order of Settlement to be conclusive - Every order of settlement passed under sub-section (4) of section 245D shall be conclusive as to the matter stated therein and no matter covered by such order shall, save as otherwise provided in

this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force.

32. The object of the aforesaid provision relating to the orders of Settlement Commission is speedy disposal and not reduction in statutory liability however, when the department has material to prove that the settlement was obtained by fraud or misrepresentation of fact, it can move the Settlement Commission for appropriate action but in the instant case this is not the case of the department that order from the Settlement Commission was obtained by fraud or misrepresentation.

33. This court in the case of Smt. Neeru Agarwal Vs. Union of India (UOI), has taken a similar view by observing that the Settlement Commission is required to decide the dispute by passing such order as it thinks fit, on the matters covered by the application and any matter relating to the case not covered by the application but referred to in the report of the Commissioner under sub-section (1) or sub-section (3).

34. Thus, after passing the order by the Settlement Commissioner, no power vests on the AO or any other authority to issue the notice in respect of the period and income covered by the order of the Settlement Commission. There is only one expectation i.e. fraud or misrepresentation of fact and for that purpose the remedy lies only before the Settlement Commission. Thus, we are of the view that the order of the Settlement Commission is conclusive, no power vests in the Assessing Officer to issue notice in respect of the period and income covered by the order of the Settlement Commission.

35. In view of above, we find no merit in the appeals filed by the department. No substantial question of law emerging from the impugned order. Thus the order passed by the Tribunal is hereby sustained along with the reasons mentioned therein.

36. The appeals are hereby dismissed in limine.