

सत्यमेव जयते

सत्यमेव जयते

- सत्यमेव जयते

सत्यमेव जयते

सत्यमेव जयते

- सत्यमेव जयते

सत्यमेव जयते

सत्यमेव जयते

सत्यमेव जयते

सत्यमेव जयते

सत्यमेव जयते

सत्यमेव जयते

सत्यमेव जयते

- सत्यमेव जयते

2. On 04.12.2009 search was conducted on premises of Career Point Group, respondent No. 2(hereinafter referred to as 'company'). The respondent Nos.3, 4 & 5 are the directors of the company. The incriminating material was seized during the search indicating that the company was claiming bogus expenses, not complying with the provision of TDS and siphoning-off the funds for purchase of immovable property. There was evidence with regard to bogus payments to facility member. Statement of Shri Om Maheshwari was recorded. Consequent to the search proceedings, the private respondents filed an application under Section 245C(1) of the Income Tax Act, 1961 (hereinafter 'the Act') before the Commission. Vide order dated 31.03.2013 the Commission finalized terms and conditions of settling cases of the company and the directors. Immunity was granted from the prosecution and penalty. The present writ petition is filed aggrieved only of immunity granted for prosecution and penalty.

3. Learned counsel for the petitioner submitted that the figures offered by the private respondents were not accepted by the Commission and were enhanced. Contention is that the private respondents failed to make full and true disclosure of the income and the Commission erred in granting immunity for prosecution and penalty.

4. As per contra, the private respondents had made true & full disclosures, cooperated during the settlement proceedings and the immunity was rightly granted.

5. The relevant portion of Section 245C(1) of the Act and 245H of the Act are quoted below:-

"245C(1). An assessee may, at any stage of a case relating to him, make an application in such form and in such manner as may be prescribed, and 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 the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided.

245H(1). The Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 245C has co-operated 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, grant to such person, subject to such conditions as it may think fit to impose for the reasons to be recorded in writing, immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1860) or under any other Central Act for the time being in force and also (either wholly or in part) from the imposition of any penalty under this Act, with respect

to the case covered by the
settlement.”

6. Chapter XIXA of the Act deals with settlement of cases by providing a forum of Commission. An assessee by making full and true disclosure of undisclosed income and the manner it was derived can settle the matter without going through the procedure of assessment or reassessment and appeals.

7. Under section 245C(1) of the Act by making an application in a prescribed form, the assessee at any stage of the case by making full and true disclosure of the income not disclosed to Assessing Officer (hereinafter 'AO') and also the manner of deriving the income now disclosed, may get the case settled before the Commission.

As per sub-section (2) the application should be accompanied by a prescribed fee.

Sub-section (3) provides an application made under sub-section (1) cannot be withdrawn.

Under sub-section (4) the assessee is obligated to intimate the AO in a prescribed manner of having filed an application before the Commission.

8. Section 245D prescribes procedure to be followed while dealing with an application made under Section 245C.

Under sub-section (1) within seven days of filing of application the Commission has to issue notice to the

applicant to show cause why application should be allowed to proceed and after granting an opportunity of hearing by passing an order, allow the application to proceed or reject it.

Proviso provides the deeming fiction that in case application is not decided within fourteen days from the date of receipt, it shall be deemed to have been allowed to proceed.

Sub-section (2) mandates the supply of order passed under section 245D(1) to the applicant and the Commissioner.

As per sub-section (2B), in cases where the application is allowed to be proceeded, the Commission within thirty days of receipt of application shall call the report from the Commissioner. The report is to be furnished within thirty days of receipt of communication from the Commission.

Under sub-section (2C) on the basis of the report received, the Commission may pass an order declaring the application to be invalid. The copy of order is to be supplied to the applicant and to the Commissioner.

Proviso to sub-section stipulates that the order shall not be passed without granting an opportunity to the applicant.

Under sub-section (3) the Commission may call the record in cases where the application has not been declared

invalid under sub-section (2C). Commission if after examination of record is of the opinion that further enquiry or investigation is necessary, the Commissioner may be directed to furnish the report after enquiry or investigation.

Under proviso to sub-section (3) on failure of the Commissioner to furnish report within the stipulated time the Commission can proceed to pass an order without report.

Under sub-section (4) the Commission in accordance with provisions of the Act can pass such order as it thinks fit, on the matters covered by the application or relating thereto even if not covered by the application but refer the application in report. The order is to be passed after examining the report of the Commissioner (if filed), evidence and providing an opportunity to the applicant and the Commissioner.

Sub-section (5) obligates the members of the Commission that before passing order under sub-section (4) the material brought on record shall be considered.

Sub-section (6) stipulates for providing the term of the settlement in an order passed under sub-section (4). The manner of payment of sum due and other matters to make the settlement effective is to be mentioned. The order has to provide that in case of settlement having been obtained on

the basis of fraud or misrepresentation of the facts, it shall be void.

9. Section 245H empowers the Commission to grant immunity from prosecution under the Act or Indian Penal Code or any other Central Code and from imposition of penalty under this Act. The immunity is granted by Commission on being satisfied that applicant cooperated during the proceedings, made full and true disclosure of income and manner in which the disclosed income was derived.

10. There are two requirements under Section 245C(1):-
(i) full and true disclosure of the income not disclosed to AO and (ii) the manner the income disclosed was derived. The failure of the applicant to comply with the twin condition renders the application invalid.

11. The Supreme Court in **Ajmera Housing Corporation and Another Vs. Commissioner of Income Tax** reported in **[(2010) 326 ITR 642]** held as under :-

“27. It is clear that disclosure of “full and true” particulars of undisclosed income and “the manner” in which such income had been derived are the prerequisites for a valid application under Section 245-C(1) of the Act. Additionally, the amount of income tax payable on such undisclosed income is to be computed and mentioned in the application. It needs little emphasis that Section 245-C(1) of the Act mandates “full and true” disclosure

of the particulars of undisclosed income and "the manner" in which such income was derived and, therefore, unless the Settlement Commission records its satisfaction on this aspect, it will not have the jurisdiction to pass any order on the matter covered by the application."

12. The picture emerges that the Commission has jurisdiction to conclude the proceedings on a valid application. The failure of the applicant to make full, true disclosure of the income not disclosed to AO and the manner such income was derived render application invalid and the Commission loses jurisdiction to entertain the application and to pass an order under Section 245D (4). The validity of application can be gone into at initial stage under Section 245D(1), then under Section 245D(2C) after receipt of report from Commissioner and also at time of passing order under Section 245D(4).

13. For the Commission to grant immunity under Section 245H there are three requirements:- (i) full and true disclosure of the income not disclosed to AO; (ii) the manner in which the income was derived and (iii) that the applicant cooperated in the proceedings before the Settlement Commission. The Commission on being satisfied that applicant cooperated during the proceedings coupled with the fulfillment of two conditions as required under Section

245C may grant immunity to the applicant from prosecution and penalty subject to the conditions it may deems fit.

14. The proceedings filed by the private respondents were admitted under Section 245D(1) on 22.09.2011 and by order dated 08.11.2011 the application was declared not to be invalid. The application culminated in order dated 31.03.2013 whereby the terms and conditions for settlement were determined. It would be relevant to mention that the portion of the order fixing the terms and conditions of the settlement has attained finality.

15. The acceptance of the application bring us to the obvious conclusion that the first two conditions of section 245H which are common to the pre-requisite of section 245C(1) have been complied with.

16. The contention of counsel for the petitioner that there was failure of the private respondents to make a full and true disclosure under Section 245C, deserves rejection. The revenue accepted the order of the Commission whereby the applications have been allowed and the challenge is limited to grant of immunity. Meaning thereby the satisfaction of Commission that two pre-conditions of Section 245C(1) were complied is not in dispute. The Commission has recorded a satisfaction that the applicant cooperated during the settlement proceedings and there is no challenge to this finding. In absence of challenge to fulfillment of three

conditions required under Section 245H, the argument that there was no true and full disclosure of income does not arise.

17. No case is made out for interference in the impugned order. The writ petition is dismissed.

(MANEESH SHARMA), J

(AVNEESH JHINGAN), J

Himanshu Soni/reserved

Reportable:- Yes