SETTLEMENT OF TAX CASES

LEARNING OUTCOMES

After studying this chapter, you would be able to:

- appreciate the meaning of “case” and “applicant”, for making an application before the Settlement Commission;
- comprehend the constitution of Settlement Commission and its jurisdiction and powers;
- appreciate the procedures of Settlement Commission on receipt of application for settlement of a case;
- appreciate the powers of the Settlement Commission to order provisional attachment to protect revenue, to reopen completed proceedings, to grant immunity from prosecution and penalty;
- comprehend when the proceedings before Settlement Commission shall abate;
- appreciate the bar on subsequent application for settlement by the applicant and any related person.
19.1 INTRODUCTION

The Wanchoo Committee felt that in the administration of fiscal laws, where the primary objective is to raise revenue, there has to be room for compromise and settlement. A rigid attitude would not only inhibit a one-time tax evader or an unintending defaulter from making a clean breast of his affairs but would also unnecessarily strain the investigational resources of the Department in cases of doubtful benefit to revenue, while needlessly proliferating litigation and holding up collections. Even in the United Kingdom, the ‘confession’ method has been in vogue since 1923. In the U.S. Law also, there is a provision for compromise with the tax payer as to his tax liabilities. A provision of this type facilitating settlement in individual cases will have this advantage over general disclosure schemes. Hence, the Committee recommended the setting up of a high level settlement machinery. Accordingly, Chapter XIX-A incorporating the recommendations of the Wanchoo Committee was enacted by Taxation Laws (Amendment) Act, 1975 with effect from April 1, 1976. The provisions relating to Settlement Commission are discussed below.

1. The Central Government has constituted a Settlement Commission. It shall consist of a Chairman and as many Vice-Chairmen and other members as the Central Government thinks fit. Where a member of the Central Board of Direct Taxes is appointed as the chairman or a member of the commission, he ceases to be a member of the Board.

2. The Chairman, Vice-Chairman and other members of the Settlement Commission are to 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.

3. The Commission functions within the Department of Revenue and Banking of the Central Government.

19.2 DEFINITION OF ‘CASE’ [SECTION 245A(B)]

For the purpose of settlement of cases, the term ‘case’ has been defined to mean any proceeding for assessment under the Income-tax Act 1961, of any person in respect of any assessment year or years which may be pending before an Assessing Officer on the date on which an application under section 245C(1) is made.

The deemed date of commencement of these proceedings are shown in the following table -

<table>
<thead>
<tr>
<th>Proceeding</th>
<th>Deemed date of commencement of proceeding</th>
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<tbody>
<tr>
<td>Proceeding for assessment or re-assessment or re-computation under section 147</td>
<td>Date on which notice under section 148 was issued. Where a notice under section 148 is issued for any assessment year, a proceeding under</td>
</tr>
</tbody>
</table>
section 147 shall be deemed to have commenced on the date of issue of such notice and the assessee can approach the Settlement Commission for other assessment years as well, even if notice under section 148 for such other assessment years has not been issued but could have been issued on that date.

However, a return of income for such other assessment years should have been furnished under section 139 or in response to notice under section 142.

Proceeding for making fresh assessment in pursuance of an order under section 254 or 263 or 264, setting aside or cancelling an assessment.

Date on which order under section 254 or 263 or 264 setting aside or cancelling an assessment was passed.

Note - In the case of a person whose income is being assessed or reassessed as a result of search or as a result of requisition of books of account or other documents or any assets, the proceedings for assessment or reassessment shall be deemed to have commenced on the date of issue of notice initiating such proceedings and concluded on the date on which the assessment is made.

Any other proceeding for assessment, other than those referred to in the table and note above, shall be deemed to have

commenced from –

the date on which the return of income for that assessment year is furnished under section 139 or in response to a notice served under section 142

and

concluded on -

<table>
<thead>
<tr>
<th>In a case where assessment is made</th>
<th>In a case where no assessment is made</th>
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<tr>
<td>the date on which the assessment is made</td>
<td>on the expiry of time specified for making assessment under section 153(1)</td>
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</table>

19.3 APPLICATION FOR SETTLEMENT OF CASES [SECTION 245C]

(1) Application by assessee [Section 245C(1)]: 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.
(2) **Information to be disclosed [Section 245C(1)]:** He should also disclose the following to the Settlement Commission for settlement of his case—

(i) the manner in which such income has been derived,
(ii) the additional amount of income-tax payable on such income and
(iii) other particulars as may be prescribed.

(3) **Pre-conditions for filing of application:** As per section 245C, an application can be filed before the Settlement Commission, only if the additional amount of income-tax payable on the income disclosed in the application exceeds the specified limit.

(a) **Specified limit in search cases:** Section 245A provides that the proceedings for assessment or reassessment resulting from search/requisition would fall within the definition of a “case” which can be admitted by the Settlement Commission. Consequently, section 245C provides that the additional amount of income-tax payable on income disclosed in the application should exceed ₹ 50 lakh, for an application to be made before the Settlement Commission in such cases.

Therefore, if proceedings have been initiated against the applicant (hereinafter referred to as specified person) under section 153A or under section 153C as a result of search or a requisition of books of account, an application can be made before the Settlement Commission if the additional amount of income-tax payable on the income disclosed in the application exceeds ₹ 50 lakh.

(b) **Specified limit in other cases:** An application can also be made, where the applicant is related to the specified person, and in whose case also proceedings have been initiated as a result of search, provided the additional income-tax payable on the income disclosed in the application exceeds ₹ 10 lakh.

Therefore, the limit of ₹ 50 lakh would be applicable to the tax payer who is the subject matter of search and the limit of ₹ 10 lakh would be applicable to entities related to such a tax payer, who are also the subject matter of search.

(4) **Tax and interest to be paid before making application:** Such tax and interest thereon, which would have been payable had such income been disclosed in the return of income before the Assessing Officer on the date of application, should be paid on or before the date of making the application. Further, proof of such payment should be attached with the application.

(5) **Applicant, in relation to the Specified Person:** The applicant, in relation to the specified person, means –
<table>
<thead>
<tr>
<th>Specified person</th>
<th>Related entity</th>
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</thead>
<tbody>
<tr>
<td>(i) Individual</td>
<td>(1) Relative of the individual</td>
</tr>
<tr>
<td></td>
<td>(2) Where the individual or his relative has a substantial interest in a business or profession carried on by any other person, the person who carries on such business or profession.</td>
</tr>
<tr>
<td>(ii) HUF</td>
<td>(1) Member of HUF or relative of such member</td>
</tr>
<tr>
<td></td>
<td>(2) Where the HUF or its member or relative of such member has a substantial interest in a business or profession carried on by any other person, the person who carries on such business or profession.</td>
</tr>
<tr>
<td>(iii) Company</td>
<td>(1) Director of the company or any relative of such director</td>
</tr>
<tr>
<td></td>
<td>(2) Any person who has substantial interest in the business or profession of the company. In addition, the following are also considered as related entity -</td>
</tr>
<tr>
<td></td>
<td>• If such person is an individual, any relative of such individual.</td>
</tr>
<tr>
<td></td>
<td>• If such person is a company, any director of such company or any relative of such director.</td>
</tr>
<tr>
<td></td>
<td>• If such person is a firm, any partner of such firm, or any relative of such partner.</td>
</tr>
<tr>
<td></td>
<td>• If such person is an AOP or HUF, any member of the AOP or HUF, or any relative of such member.</td>
</tr>
<tr>
<td></td>
<td>(3) A company, whose director has a substantial interest in the business or profession of this company;</td>
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<td></td>
<td>Any director of such company;</td>
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<td></td>
<td>Any relative of such director.</td>
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<td></td>
<td>(4) A firm, whose partner has a substantial interest in the business or profession of the company;</td>
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<td>Any partner of such firm;</td>
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<td>Any relative of such partner.</td>
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<td>(5) An AOP, whose member has a substantial interest in the business or profession of the company;</td>
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<td>Any member of such AOP;</td>
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<td></td>
<td>Any relative of such member.</td>
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<td>(6) A HUF, whose member has a substantial interest in the business or profession of the company;</td>
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<td>Any member of such HUF;</td>
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<tr>
<td><strong>19.6</strong></td>
<td><strong>DIRECT TAX LAWS</strong></td>
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<td><strong>(7)</strong></td>
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<tr>
<td>(iv)</td>
<td>Firm</td>
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<tr>
<td>(1)</td>
<td>Partner of the firm or any relative of such partner</td>
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<tr>
<td>(2)</td>
<td>Any person who has substantial interest in the business or profession of the firm. In addition, the following are also considered as related entity -</td>
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<tr>
<td>(3)</td>
<td>A company, whose director has a substantial interest in the business or profession of the firm;</td>
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<td></td>
<td>Any director of such company;</td>
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<td></td>
<td>Any relative of such director.</td>
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<tr>
<td>(4)</td>
<td>A firm, whose partner has a substantial interest in the business or profession of this firm;</td>
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<td></td>
<td>Any partner of such firm;</td>
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<td></td>
<td>Any relative of such partner.</td>
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<tr>
<td>(5)</td>
<td>An AOP, whose member has a substantial interest in the business or profession of the firm;</td>
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<td></td>
<td>Any member of such AOP;</td>
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<tr>
<td></td>
<td>Any relative of such member.</td>
</tr>
<tr>
<td>(6)</td>
<td>A HUF, whose member has a substantial interest in the business or profession of the firm;</td>
</tr>
<tr>
<td></td>
<td>Any member of such HUF;</td>
</tr>
<tr>
<td></td>
<td>Any relative of such member.</td>
</tr>
<tr>
<td>(7)</td>
<td>Where the firm or its partner or relative or such partner has a substantial interest in a business or profession carried on by any other person, the person who carries on such business or profession.</td>
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</tbody>
</table>
### Cases where a person shall be deemed to have a substantial interest in a business or profession:

<table>
<thead>
<tr>
<th>Case</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>Where the business or profession is carried on by a company</td>
</tr>
</tbody>
</table>
(7) **Manner of calculation of additional amount of income-tax:** The additional amount of income-tax has to be calculated in the following manner as provided in sub-section (1B) read with sub-section (1C), in a case where the income disclosed in the application relates to only one previous year–

| (i) | If the applicant has not furnished a return in respect of the total income of that year. | Tax should be calculated on the income disclosed in the application as if such income is the total income. Such tax represents the additional amount of income-tax. |
| (ii) | If the applicant has furnished a return in respect of the total income of that year. | The tax should be calculated on the aggregate of total income returned and the income disclosed in the application i.e. as if the aggregate represents the total income. The additional amount of income-tax is the amount calculated on such aggregate as reduced by the amount of tax calculated on the total income returned for that year. |

Where the income disclosed in the application relates to more than one previous year, then the above procedure is to be adopted in respect of each previous year and the aggregate of tax payable is to be calculated [Sub-section (1D)].

(8) **Prescribed fees [Section 245C(2)]:** Every settlement application made under sub-section (1) should be accompanied by the prescribed fees of ₹ 500.

(9) **Withdrawal not permissible [Section 245C(3)]:** The settlement application made under sub-section (1) cannot be withdrawn by the applicant [Sub-section (3)].

(10) **Intimation to Assessing Officer [Section 245C(4)]:** The assessee should also intimate to the Assessing Officer in the prescribed manner that he has made an application to the Settlement Commission. Such intimation should be made on the same date when he makes an application to the Settlement Commission.
him be allowed to be proceeded with, within 7 days from the date of receipt of application.

(ii) After hearing the applicant, the Settlement Commission shall pass an order either rejecting or allowing the application to be proceeded with within 14 days from the date of application.

(iii) Application not disposed off within 14 days shall be treated as admitted.

(2) Copy of every order under section 245D(1) has to be sent to the applicant and to the Principal Commissioner or Commissioner [Sub-section (2)].

(3) Time limit for furnishing report by Principal Commissioner or Commissioner and passing order by the Settlement Commission [Section 245D(2B) & (2C)]

(i) The Settlement Commission shall call for a report from the Principal Commissioner or Commissioner within 30 days from the date of application.

(ii) The Principal Commissioner or Commissioner is required to furnish the report within 30 days from the receipt of communication from the Settlement Commission.

(iii) The Settlement Commission can also pass an order declaring the application as invalid on the basis of the report of the Principal Commissioner or Commissioner.

(iv) Such order should be passed in writing within 15 days of the receipt of report after giving the applicant an opportunity of being heard.

(v) A copy of the order should be sent to the applicant and the Principal Commissioner or Commissioner.

(vi) However, in a case where the Principal Commissioner or Commissioner has not furnished the report within the prescribed time, the Settlement Commission shall proceed further in the matter without the report of the Principal Commissioner or Commissioner.

(4) Proceedings after admission [Section 245D(3)]

(i) The Settlement Commission may call for records from the Principal Commissioner or Commissioner in respect of an application which has not been declared invalid under sub-section (2C) or an application which has been allowed to be further proceeded with under sub-section (2D).

(ii) After examination of such records, the Settlement Commission may require the Principal Commissioner or Commissioner to make further enquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case.

(iii) The Principal Commissioner or Commissioner shall furnish the report within a period of 90 days of the receipt of communication from the Settlement Commission.
(iv) If the Principal Commissioner or Commissioner fails to furnish the report within the said period of 90 days, the Settlement Commission may proceed to pass an order under sub-section (4) without such report.

(5) **Final order of settlement [Section 245D(4) and (4A)]**

(i) The Settlement Commission may pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application but referred to in the report of the Principal Commissioner or Commissioner.

(ii) Such order should be passed by the Settlement Commission after –

1. examining the records and report of the Principal Commissioner or Commissioner, if any, received at the time of admission or on investigation or enquiry conducted as per the instructions of the Settlement Commission;

2. giving an opportunity of being heard to the applicant and the Principal Commissioner or Commissioner;

3. examining such further evidence as may be placed before it or obtained by it.

(iii) The time limit for passing such order is –

| (1)   | In respect of an application made on or after 1.6.2010 | Within 18 months from the end of the month in which the application was made. |
| (2)   | In respect of an application made between 1.6.2007 and 31.5.2010. | Within 12 months from the end of the month in which the application was made. |

(6) **Order of Settlement Commission to express views of majority [Section 245D(5)]:**

Before passing any order and subject to the provisions dealing with the jurisdiction of Settlement Commission, the various materials brought on record before the Settlement Commission must be considered by the members of the concerned Bench and in cases where there is any difference of opinion among the members, the opinion of the majority shall prevail and the order of the Settlement Commission must also be expressed in terms of the views of the majority.

(7) **Order to provide for terms of Settlement [Section 245D(6)]:** All the orders passed by the Settlement Commission under section 245D(4) must provide for the terms of the settlement including any demand by way of tax, penalty, the manner in which any amount due as a result of the settlement should be paid and all other matters which are essential to make the settlement of the case effective.

(8) **Order to be void if obtained by fraud or misrepresentation [Section 245D(6)/(7)]:** The order should also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that the settlement order was obtained by fraud or any...
misrepresentation of facts by the applicant. In cases where the settlement becomes void, the proceeding, in respect of which the settlement order was passed, must 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 complete the proceedings for assessment or re-assessment of income or the levy of penalty, fine, etc., at any time before the completion of two years from the end of the financial year in which the settlement becomes void.

(9) **Interest leviable if tax not paid within prescribed time [Section 245D(6A)]:** Where the tax payable in pursuance of an order passed by the Settlement Commission is not paid by the assessee within 35 days of receipt of a copy of final order, the assessee shall be liable to pay simple interest @ 1¼% for every month or part of a month on the outstanding amount from the date of expiry of 35 days. Such liability will arise even in cases where the Commission extended the time allowed for such payment or permitted payment by installment.

(10) **Time limit for amendment of Settlement Order [Section 245D(6B)]:** The Settlement Commission may amend any order passed by it under section 245D(4) to rectify any mistake apparent from the record.

The Settlement Commission may, with a view to rectifying any mistake apparent from the record, amend any order passed by it under section 245D(4), at any time within a period of six months from the end of month in which -

(a) the order was passed; or

(b) an application for rectification has been made by the Principal Commissioner or Commissioner or the applicant, as the case may be.

However, no application for rectification can be made by the Principal Commissioner or the Commissioner or the applicant after the expiry of 6 months from the end of the month in which an order under section 245D(4) is passed by the Settlement Commission.

(11) **Time limit under section 153 not applicable in respect of Settlement Order [Section 245D(8)]:** The time limit for completion of assessments and re-assessments contained in section 153 shall have no application to any order passed by the Settlement Commission or to any order of assessment or re-assessment or recomputation required to be made by the Assessing Officer in pursuance of any directions contained in an order passed by the Settlement Commission.

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**19.5 POWER OF SETTLEMENT COMMISSION TO ORDER PROVISIONAL ATTACHMENT TO PROTECT REVENUE [SECTION 245DD]**

(1) Under section 245DD, the Settlement Commission is empowered to provisionally attach the property belonging to the applicant for protecting the interest of the revenue. The manner in
which such provisional attachment is to be effected is provided in the Second Schedule. Such provisional attachment is valid for a period of 6 months, after which it ceases to have effect.

(2) The Settlement Commission may, for reasons to be recorded in writing, extend the aforesaid period by such further period or period as it thinks fit.

19.6 RE-OPENING OF COMPLETED PROCEEDINGS [SECTION 245E]

The Settlement Commission shall not have any power to reopen the proceedings in respect of an application made on or after 1.6.2007.

19.7 JURISDICTION AND POWERS OF THE SETTLEMENT COMMISSION [SECTION 245BA]

The jurisdiction, powers and authority of the Settlement Commission may be exercised by benches thereof.

(1) **Constitution of Benches:** A bench shall be presided over by the Chairman or a Vice-chairman and shall consist of two other members.

The bench for which the Chairman is the presiding officer shall be the principal bench and the other benches shall be known as additional benches.

The Chairman may authorise the Vice-chairman or other Member appointed to one bench to discharge also the functions of the Vice-chairman or other member of another bench.

The Vice-chairman has been empowered to act as chairman and discharge his functions under certain circumstances as vacancy, death, resignation etc.

(2) **Constitution of Special Bench:** Where the presiding officer or other member of a bench is unable to discharge his functions owing to absence, illness or any other cause or where a vacancy occurs in the office of the presiding officer or a member the remaining two persons may function as the bench and if the presiding officer is not one of the members, the senior member will be the presiding officer. However, if it is felt that the case is such that it should be heard by a bench of three members the chairman has powers to transfer the case to such a bench. The chairman for the disposal of a particular case, constitute a Special Bench consisting of more than three members.

(3) **Benches to sit at notified places:** The places at which the Principal Bench and the Additional Benches shall ordinarily sit shall be notified by the Central Government. The Central Government has specified that New Delhi is the place where the Principal Bench and Bombay, Calcutta and Madras as the places where Additional Benches of the Settlement Commission shall ordinarily sit.
(4) **Transfer of cases:** On the application of the assessee or the Principal Commissioner or Commissioner and after notice to them and hearing, the chairman may transfer any case pending before one bench, for disposal, to another bench.

(5) **Decision based on opinion of majority members:** If the members of a bench differ in opinion on any point the point shall be decided according to the opinion of the majority. If they are equally divided they shall state the point on which they differ and make a reference to the chairman who shall either hear the point himself or refer the point to one or more of the other members and such point shall be decided according to the opinion of the majority of the members who have heard the case including those who first heard it.

(6) **Exclusive Jurisdiction of Settlement Commission:** The Settlement Commission has been vested with all the powers which are vested in an Income-tax authority under the Income-tax Act, 1961.

Accordingly, in cases where an application made by the assessee under section 245C has been allowed by the Settlement Commission to be proceeded with under section 245D, the Settlement Commission is empowered to exercise exclusively the jurisdiction and powers and perform the functions allotted to an Income-tax authority under the Income-tax Act until an order for settlement of the case is passed.

Such exclusive jurisdiction would begin with the date of filing of application with the Settlement Commission.

The exclusive jurisdiction of the Settlement Commission would end on –

(a) the date of passing an order under section 245D(4); or
(b) the date of passing the order rejecting the application under section 245D(1); or
(c) the date on which the application is not allowed to be proceeded with under section 245D(2A); or
(d) the date on which the application is declared invalid under section 245D(2C); or

(7) **Certain provisions of Income-tax Act, 1961 to apply in the absence of contrary directions by the Settlement Commission:** However, in the absence of any express direction to the contrary by the Settlement Commission, the operation of any other provision of the Income-tax Act, 1961 requiring the applicant to pay the tax on the basis of self-assessment shall continue to be applicable in relation to matters which are before the Settlement Commission for consideration. Further, in the absence of any express directions by the Settlement Commission to the contrary, the provisions of sections 245A to 245L would not affect the operation of any other provision of the Income-tax Act, 1961 insofar as those provisions relate to any matters other than those covered by the case before the Settlement Commission.
(8) **Settlement Commission to regulate its own procedure**: The Commission shall subject to the provisions of this Chapter have power to regulate its own procedure and the procedure of benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions including the places at which the Board shall hold their sittings.

(9) **Inspection of reports**: According to section 245G, no person is entitled to inspect or obtain copies of any reports made by any Income-tax authority to the Settlement Commission in relation to the case, but, the Settlement Commission may, in its discretion, furnish copies thereof to any person or receipt of an application made to it in this behalf and on payment of the prescribed fee. However, in order to enable any person whose case is under consideration to rebut any evidence which has been brought on record against him in any such report, the Settlement Commission shall, on receipt of an application in this behalf and on payment of the prescribed fee, furnish to the applicant, a certified copy of any such report or particular thereof which may be relevant for the purpose.

19.8 **POWER TO GRANT IMMUNITY FROM PROSECUTION AND PENALTY [SECTION 245H]**

(1) **Recording of reasons in order granting immunity**: 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 conduct of the proceedings before it and has made a true disclosure of his income, and the manner in which such income has been derived, grant to such person immunity from prosecution for any offence under the Income-tax Act, 1961 or under the Wealth-tax Act, 1957. However, the Settlement Commission, while granting immunity to any person from prosecution shall record the reasons in writing in the order passed by it.

Such an immunity may also be granted in the matter of imposition of any penalty under the Income-tax Act, 1961 in respect of the case which is covered by the settlement.

(2) **Grant of partial immunity**: The Commission can grant partial immunity from imposition of penalty to the applicant.

(3) **Immunity to be subject to conditions**: The power of the Settlement Commission to grant immunity from prosecution and the imposition is, however, subject to such conditions as the Commission may think fit to impose in the circumstances of the case.

(4) **No immunity if prosecution proceedings have been initiated before receipt of application**: No such immunity shall be granted by the Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application for settlement.

(5) **Restriction on power to grant immunity**: Under section 245H, the Settlement Commission may grant immunity from prosecution for any offence under the Indian Penal
Code, Income-tax Act, 1961 and any other Central Act. This power has now been restricted in respect of application made under section 245C on or after 1.6.2007. In respect of such cases, the Settlement Commission shall not grant immunity from prosecution for any offence under the Indian Penal Code or under any Central Act other than the Income-tax Act, 1961 and Wealth-tax Act, 1957. However, in respect of applications pending as on 1.6.2007, the Settlement Commission has the power to grant immunity from prosecution for any offence under the Indian Penal Code and other Central Acts also.

(6) **Withdrawal of immunity:**

(a) An immunity granted under this section shall stand withdrawn if such person fails to pay any sum specified in the order of settlement within the time specified in the order or within such further time as may be allowed by the Commission or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.

(b) An immunity granted by the Settlement Commission to any person may, at any time, be withdrawn by it in cases where it is satisfied that the person concerned had, in the course of the settlement proceedings concerned may be tried for the offence with respect to which the immunity was granted or for any other offence in respect of which he has been found guilty in connection with the settlement.

(c) After the withdrawal of the immunity from prosecution, the person concerned may also become liable to the imposition of the penalty under the Income-tax Act, 1961 to which he would otherwise have been liable in the absence of the immunity given to him under section 245H.

### 19.9 ABATEMENT OF PROCEEDING BEFORE THE SETTLEMENT COMMISSION [SECTIONS 245HA & 245HAA]

(1) **Specified date of abatement in different cases:** In the following cases, the proceedings before the Settlement Commission shall abate on the specified date as given below –

<table>
<thead>
<tr>
<th>Case</th>
<th>Specified date</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) where an application made to the Settlement Commission on or after 1.6.2007 has been rejected under section 245D(1).</td>
<td>The date on which the application was rejected.</td>
</tr>
<tr>
<td>(ii) where an application has been declared invalid under section 245D(2C).</td>
<td>The last day of the month in which the application was declared invalid.</td>
</tr>
<tr>
<td>(iii) Where an order under section 245D(4) has</td>
<td>The day on which the order under</td>
</tr>
</tbody>
</table>
(2) **Cases to revert to jurisdictional Assessing Officer**: On abatement of proceedings, the case would revert back to the Assessing Officer having jurisdiction or any other income-tax authority before whom the proceedings were pending at the time of making the application. Such income-tax authority shall dispose of the case in accordance with the provisions of the Act.

(3) **Assessing Officer entitled to use the material, information and results of enquiry**: For completing the proceedings, the Assessing Officer or other Income-tax authority shall be entitled to use the material and information produced by the assessee before the Settlement Commission as if such material and information had been produced before the Assessing Officer or other income-tax authority. Similarly, the Assessing Officer or other Income-tax authority shall be entitled to use the results of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it, as if such inquiry or evidence had been held or recorded by him in the course of the proceedings before him.

(4) **Exclusion of time period**: The period from the date on which the application was made before the Commission up to the date on which proceedings get abated shall be excluded from the time limit for completion of proceedings by the Assessing Officer and for payment of interest under section 243, 244 or 244A.

(5) **Credit for tax and interest paid [Section 245HAA]**: In case of abatement of settlement proceedings, the Assessing Officer is required to give credit for the tax and interest paid on or before the date of making the application or during the pendency of the case before the Settlement Commission.

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**19.10 ORDER OF SETTLEMENT COMMISSION TO BE CONCLUSIVE [SECTION 245-I]**

Section 245-I provides that every order of the Settlement Commission passed under section 245D(4) shall be conclusive in respect of the matters contained therein. Consequently, no matter covered by the Settlement Order shall be liable to be reopened in any proceeding under the Income-tax Act or under any other law for the time being in force. The only exception is the reopening of the case by the Settlement Commission itself under section 245D(7) where the settlement becomes void.
However, the Supreme Court has held in *CIT vs. B.N. Bhattacharjee* (1979) 118 ITR 461 that Article 136 of the Constitution was wide enough to bring within the Supreme Court’s jurisdiction orders passed by the Settlement Commission.

## 19.11 RECOVERY OF SETTLED AMOUNT [SECTION 245J]

According to section 245J, any amount specified in an order of settlement passed by the Settlement Commission under section 245D(4), may be recovered and any penalty for default in making the payment may be imposed and recovered from the person concerned in accordance with the provisions of the Income-tax Act, 1961. The power for making the recovery if any, as may be specified by the Settlement Commission in the order passed by it. The right of recovery may be exercised by the Assessing Officer having jurisdiction over the person who has made the application for settlement under section 245C.

## 19.12 BAR ON SUBSEQUENT APPLICATION FOR SETTLEMENT [SECTION 245K]

(1) In the event of occurrence of any of the following, the person concerned or any person related to such person shall not be entitled to apply for settlement in relation to any other matter –

(i) the order of settlement passed under section 245D(4) provides for imposition of penalty for concealment of income; or

(ii) after the passing of order under section 245D(4) in relation to a case, the person is convicted of an offence under Chapter XXII in relation to that case; or

(2) The case of such person was sent back to the Assessing Officer by the Settlement Commission on or before 1.6.2002.

(3) Further, with effect from 1.6.2007, the option of going to the Settlement Commission would be available only once in the lifetime of a person. Therefore, where an application for settlement is made on or after 1.6.2007 and such application has been allowed to be proceeded with, then such person will not be subsequently entitled to make any application under section 245C.

**Note** – Any person related to the person who has already approached the Settlement Commission once, also cannot approach the Settlement Commission subsequently. The related person with respect to a person means -

<table>
<thead>
<tr>
<th>Person</th>
<th>Related person</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual</td>
<td>• any company in which such person holds more than 50% of the shares or voting</td>
</tr>
<tr>
<td></td>
<td>rights at any time; or</td>
</tr>
<tr>
<td></td>
<td>• any firm or AOP or BOI in which such person is entitled to</td>
</tr>
</tbody>
</table>

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more than 50% of the profits at any time; or

- any HUF in which such person is a karta

| Company | any individual who held more than 50% of the shares or voting rights in such company at any time before the date of application before the Settlement Commission by such person |
| Firm or AOP or BOI | any individual who was entitled to more than 50% of the profits in such firm, AOP or BOI, at any time before the date of application before the Settlement Commission by such person |
| HUF | The karta of that HUF |

The restriction of not approaching the Settlement Commission again was so far applicable only to the concerned person. Therefore, an individual who has approached the Settlement Commission once can subsequently approach again through an entity controlled by him. This defeats the purpose of restricting the opportunity of approaching the Settlement Commission only once for any person. Therefore, section 245K has been amended with effect from 1st June, 2015 to apply the restriction to the related persons as well.

19.13 PROCEEDINGS TO BE JUDICIAL PROCEEDINGS [SECTION 245L]

All the proceedings under the Income-tax Act, 1961 before the Settlement Commission shall be deemed to be judicial proceedings within the meaning of sections 193, 196 and 228 of the Indian Penal Code.
EXERCISE

Question 1

X & Co Ltd. had made an application to the Settlement Commission. The issue in the said application related to cash credits in the books of account. The Commission passed an order making addition to the income on the basis of difference in gross profit rate adopted, which was neither an issue in the application nor in the report of the Commissioner of Income-tax. Discuss the validity of the order of the Settlement Commission.

Answer

The issue under consideration is whether the Settlement Commission can pass an order making addition to the income on the basis of difference in gross profit rate adopted, which was neither an issue in the application nor in the report of the Commissioner of Income-tax.

Section 245D(4) provides that the Settlement Commission, after examination of records and the report of the Commissioner and after examining such further evidence as may be placed before it or obtained by it, may, in accordance with the provisions of the Act, pass such order as it thinks fit.

Further, section 245D(5) provides that the materials brought on record before the Settlement Commission shall be considered by the Members of the concerned Bench before passing any order under section 245D(4).

“Consideration” means independent examination of the evidence and material brought on record before the Settlement Commission by the members and application of mind thereto with a view to independently assess the materials and evidence, whether adduced by the applicant or by the Commissioner, and come to a conclusion by themselves.

This view has been upheld in case of Supreme Agro Foods P Ltd. v. Income-tax Settlement Commission (2013) 353 ITR 385 (P&H)

The Settlement Commission, therefore, has to consider the material brought on record before it and “consideration” means independent examination of the evidence and material on record.

In this case, since the material was available before the Settlement Commission and such material has been taken into consideration for returning a finding which is relevant for determining the undisclosed income of the applicant, the addition made on the basis of difference in gross profit rate adopted is justified.

Therefore, the order of the Settlement Commission is valid.

Question 2

On an application made by Mr. Pandey, an order was passed by the Settlement Commission on 03-01-2020 under Section 245D(6B). The said order had a mistake apparent on record. The Settlement Commission suo moto passed an amended order dated 30-07-2020 which resulted in modifying the liability of Mr. Pandey.
Mr. Pandey is of the view that order of the Settlement Commission is final and conclusive and it has no power to rectify the said mistake.

You are required to examine the following:

(i) Correctness of claim made by Mr. Pandey

(ii) Validity of the order amended by the Settlement Commission

Answer

(i) Under section 245F(1), the Settlement Commission has been conferred all the powers which are vested in an income-tax authority under the Act. Under section 154, an income-tax authority has the power to amend any order passed by it in order to rectify any mistake apparent from the record. Therefore, the Settlement Commission's power to amend an order to rectify any mistake apparent from the record is embedded in section 245F(1).

Further, in order to reflect the correct intention of the legislature, section 245D(6B) specifically provides that the Settlement Commission may, at any time within a period of six months from the end of the month in which the order was passed, amend any order passed by it under section 245D(4) to rectify any mistake apparent from the record. In this case, the rectification order was passed by the Settlement Commission within six months from the end of the month in which the order was passed (i.e. by 31.7.2020).

Therefore, Mr. Pandey's view is not correct.

(ii) In this case, the rectification has the effect of modifying the liability of Mr. Pandey. Therefore, as per the second proviso to section 245D(6B), the Settlement Commission, before passing the amended order, should have –

(1) given a notice to the applicant and the Principal Commissioner/Commissioner of its intention to make such an amendment; and

(2) allowed the applicant and the Principal Commissioner/Commissioner an opportunity of being heard.

If these conditions are fulfilled, the order amended by the Settlement Commission would be a valid order, since the amended order is passed by the Settlement Commission within the permitted time limit i.e., within six months from the end of the month in which the original order was passed.

However, if the Settlement Commission has not given notice of its intention to make such an amendment or has not allowed the applicant and the Principal Commissioner/Commissioner an opportunity of being heard, then, the amended order passed by it will not be valid.
Question 3

Seizures were made from Mr. Sunder pursuant to a search conducted in his premises. He filed an application for settlement by claiming to have received the amount by way of loans from several persons. The Settlement Commission accepted his statement and made an order. The CBI, however, conducted enquiry at the instance of the Revenue regarding the claimed amount of loans and opined that the alleged lenders had no means or financial capacity to advance such huge loans to Mr. Sunder and were mere name lenders only. The Commissioner filed an application under section 245D(6) praying for the order to be declared void and for withdrawal of benefit granted. Mr. Sunder, however, contended that the order of the Settlement Commission was final and any fresh analysis would amount to sitting in judgement over an earlier decision, for which the Settlement Commission was not empowered. Discuss the correctness of Mr. Sunder's contention.

Answer

The Apex Court, in CIT vs. Om Prakash Mittal (2005) 273 ITR 326, observed that a plain reading of section 245D(6) shows that every order passed under sub-section (4) has to provide for:-

(i) the terms of settlement; and

(ii) that the settlement would become void, if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.

The decision that the order has been obtained by fraud or misrepresentation is that of the Settlement Commission. However, there is no requirement that the action be initiated by the Settlement Commission, suo moto. The Revenue can move the Settlement Commission for decision on an issue if it has material to show that the order was obtained by fraud or misrepresentation of facts.

The Supreme Court observed that the foundation for settlement is an application which an assessee can file at any stage of a case relating to him in such form and manner as may be prescribed. The fundamental requirement of the application under section 245C is that there must be full and true disclosure of the income along with the manner in which it has been derived. If an order is obtained by fraud or misrepresentation of facts, it cannot be said that there is a full and true disclosure and therefore, the Legislature has prescribed the condition relating to declaration of the order void when it is obtained by fraud or misrepresentation of facts.

The Supreme Court held that merely because section 245-I provides that the order of settlement is conclusive, it does not take away the power of the Settlement Commission to decide whether the settlement order has been obtained by fraud or misrepresentation of facts. If the Commissioner is able to establish that the earlier decision was void because of misrepresentation of facts, then it is open for the Settlement Commission to decide the issue. It cannot be called by any stretch of imagination to be a review of the earlier judgment or the subsequent Bench sitting in appeal over the earlier Bench’s decision.

Mr. Sunder’s contention is, therefore, not correct.
Question 4

Does the Settlement Commission have the power to reduce or waive interest levied under sections 234A, 234B and 234C of the Income-tax Act? Discuss.

Answer

The matter concerning the power of the Settlement Commission to reduce or waive interest chargeable under section 234A, 234B or 234C has been settled by the Supreme Court in CIT v. Anjum M.H.Ghaswala (2001) 252 ITR 1.

According to the judgment, the provisions of section 245D(6) are only procedural in nature providing for fixing the term by which the amounts settled under sub-section (4) will have to be paid. It does not empower the Commission either to reduce or waive the interest. Any settlement made by the Commission must be in accordance with the provisions of the Act.

The Settlement Commission does not have the power to reduce or waive the interest levied under sections 234A, 234B and 234C. It does not authorize the waiver or deduction of tax. The levy of interest under sections 234A, 234B or 234C is mandatory in nature and therefore any settlement made must include the interest under these sections. However, as per provisions of section 245F, the Settlement Commission shall have all the powers which are vested in an income-tax authority. Therefore, Settlement Commission can grant relief from the aforesaid interest to the extent of the powers given vide the circulars issued by CBDT under section 119.

Question 5

(a) Does the Settlement Commission have jurisdiction to entertain an application made under section 245C(1) in respect of a case covered by Chapter XIV-B (Search and seizure case).

(b) Discuss the power of the Settlement commission to grant immunity from prosecution and penalty.

Answer

(a) Section 245A(b) defines the term `case’ to mean any proceeding for assessment under the Act of any person in respect of any assessment year or years which is pending before the Assessing Officer on the date on which an application is made to the Settlement Commission.

Search cases are eligible for settlement through the Settlement Commission. Explanation to section 245A(b), provides that in case of a person referred to in section 153A or section 153C, a proceeding for assessment or reassessment shall be deemed to have been commenced on the date of issue of notice initiating such proceeding for assessment under section 153A or section 153C and concluded on the date on which the assessment is made. During this period, application for settlement of the case could be filed by the assessee.

Further, section 245C provides that an application before the settlement commission in cases falling under section 153A and 153C can be made, where the additional amount of income-tax payable on income disclosed in the application exceeds ₹ 50 lakh, in respect of
the tax payer who is the subject matter of search and ₹ 10 lakh, in respect of entities related to such a tax payer, who are also the subject matter of search.

Moreover, such tax and interest thereon, which would have been payable had such income been disclosed in the return of income before the Assessing Officer on the date of application, should be paid on or before the date of making the application. Further, proof of such payment should be attached with the application.

(b) The power of Settlement Commission to grant immunity from prosecution and penalty is provided for in section 245H.

In respect of an application made on or after 1st June, 2007, the Settlement Commission’s power to grant immunity from prosecution is restricted to offences under the Income-tax Act, 1961. The Settlement Commission can also grant immunity from penalty imposed under the Income-tax Act, 1961. Such immunity from prosecution and penalty may be granted subject to conditions as it may think fit to impose.

However, the Settlement Commission may grant immunity only if the person who has made the application has co-operated with the Settlement Commission and made a full and true disclosure of his income and the manner in which it was derived. Further, the Settlement Commission while granting immunity to any person from prosecution shall record the reasons in writing in the order passed by it.

Also, the Settlement Commission cannot grant immunity if the prosecution proceeding for any such offence has been instituted before the date of receipt of application for settlement under section 245C.

Question 6

The business premises of Mr. Amit was subjected to a survey under section 133A of the Act. There were some incriminating materials found at the time of survey. The assessee apprehends reopening of assessments of the earlier years. He wants to know whether he can approach the Settlement Commission.

Explain briefly the basic conditions to be satisfied and the benefits that may accrue to Mr. Amit by approaching the Settlement Commission.

Answer

An assessee may, at any stage of a case relating to him, make an application in the prescribed form and manner to the Settlement Commission under section 245C. “Case” means any proceeding for assessment which may be pending before an Assessing Officer on the date on which such application is made. Thus, the basic condition for making an application before the Settlement Commission under section 245C is that there must be a proceeding for assessment pending before an Assessing Officer on the date on which the application is made.

A proceeding for assessment or reassessment or recomputation under section 147 shall be deemed to have commenced from the date on which a notice under section 148 is issued.
In this case, Mr. Amit cannot approach the Settlement Commission merely due to his apprehension that assessment of earlier years may be reopened, since there is no case pending before an Assessing Officer.

Therefore, he has to wait for the Assessing Officer to issue notice under section 148. Thereafter, he can make an application to the Settlement Commission under section 245C, since there would be a “case pending” before the Assessing Officer on that date.

Another basic condition to be satisfied for making an application is that the additional amount of income-tax payable on the income disclosed in the application should exceed \( \text{₹} 10 \) lakh, and such tax and interest thereon which would have been paid had the income disclosed in the application been declared in the return of income should be paid on or before the date of making the application and proof of such payment should be attached with the application.

If the Settlement Commission is satisfied that Mr. Amit has co-operated in the proceedings and made true and full disclosure of his income and the manner in which it has been derived, it may, subject to such conditions as it may think fit to impose, grant to Mr. Amit -

(i) immunity from prosecution for any offence under the Income-tax Act, 1961, where the proceedings for such prosecution have been instituted on or after the date of receipt of application under section 245C; and

(ii) immunity from imposition of penalty under the Income-tax Act, 1961, either wholly or in part, with respect to the case covered by the settlement.

This is the benefit that may accrue to Mr. Amit, if he approaches the Settlement Commission.

**Note:** Where a notice under section 148 is issued for any assessment year, a proceeding under section 147 shall be deemed to have commenced on the date of issue of such notice and the assessee can approach the Settlement Commission for other assessment years as well, even if notice under section 148 for such other assessment years has not been issued but could have been issued on date. However, a return of income for such other assessment years should have been furnished under section 139 or the response to notice under section 142.

**Question 7**

**Explain the powers of Settlement Commission to amend its order.**

**Answer**

As per the section 245D(6B), the Settlement Commission may amend any order passed by it under section 245D(4) to rectify a mistake apparent from the record, within six months from the end of the month in which order was passed.

In case where an application for rectification is made by the Principal Commissioner or the Commissioner or the applicant within 6 months from the end of the month in which order under section 245D(4) was passed, the Settlement Commission may amend the order within six months from the end of the month in which an application for rectification has been made by the Principal Commissioner or Commissioner or the applicant.
However, an amendment which has the effect of modifying the liability of the applicant shall not be made unless the Settlement Commission –

(1) has given notice to the applicant and the Principal Commissioner or Commissioner of its intention to do so; and

(2) has allowed the applicant and the Principal Commissioner or Commissioner an opportunity of being heard.

**Question 8**

*M/s. A Ltd. has received a notice under section 148 for the Assessment Year 2017-18 on 02-02-2019. They also anticipate similar notices for the Assessment Years 2015-16 and 2016-17 for which they have already furnished return of income. On examination of the books of account produced, you have noticed huge amounts of concealed income. As a consultant, what is your advice to A Ltd.?*

**Answer**

As per section 245C, an assessee may, at any stage of a case relating to him, make an application in the prescribed form and manner to the Settlement Commission.

“Case” means any proceeding for assessment which may be pending before an Assessing Officer on the date on which such application is made.

A proceeding for assessment or reassessment or recomputation under section 147 is deemed to have commenced from the date of issue of notice under section 148. Where a notice under section 148 is issued for any assessment year, a proceeding under section 147 shall be deemed to have commenced on the date of issue of such notice and the assessee can approach the Settlement Commission for other assessment years as well, even if notice under section 148 for such other assessment years have not been issued but could have been issued on that date. However, a return of income for such other assessment years should have been furnished under section 139 or in response to notice under section 142.

In the case on hand, M/s A Ltd. has received a notice under section 148 for the A.Y.2017-18 and also anticipates similar notices for the A.Y.2015-16 and A.Y.2016-17, for which return of income has been furnished. Thus, a proceeding for assessment is pending before an Assessing Officer i.e., the basic condition for approaching Settlement Commission is satisfied.

Moreover, since after examination of the books of account, huge amount of concealed income is also noticed, it is presumed that the second condition that the additional amount of income-tax payable on the income disclosed in the application should exceed ₹ 10 lakhs has also been satisfied.

Based on these facts, assuming that the necessary conditions are fulfilled, our advice as consultant to M/s A Ltd. would be to approach the Settlement Commission to have his case settled and apply for grant of immunity from penalty and prosecution.
Is an assessee receiving refund consequent to waiver of interest under sections 234A to 234C of the Income-tax Act, 1961 by the Settlement Commission, also entitled to interest on such refund under section 244A?

K. Lakshmansa and Co. v. Commissioner of Income-tax and Anr [2017] 399 ITR 657(SC)

Facts of the case: The assessee had approached the Settlement Commission for waiver of interest under sections 234A to 234C of the Income-tax Act, 1961. The Settlement Commission partially waived the interest but refused to grant interest on refund on the grounds that section 244A does not provide for payment of interest in such cases. Further, the Settlement Commission’s power to waive interest does not enable the Commission to provide for payment of interest under section 244A.

The High Court held that since waiver of interest was at the discretion of the Settlement Commission, no right flowed to the assessee to claim refund as a matter of right under law.

Issue: When refund is awarded by the Settlement Commission at its discretion under section 244A, is there a right to receive interest on the same?

Supreme Court's observations: The Supreme Court observed that the right to claim refund is automatic once the statutory provisions have been complied with. The statutory obligation to refund, being non-discretionary, carries with it the right to interest. Section 244A is clear and plain – it grants a substantive right of interest and is not procedural.

Under section 244A, it is enough if the refund becomes due under the Income-tax Act, 1961 in which case the assessee shall, subject to the provisions of that section, be entitled to receive simple interest. The expression “due” only means that a refund becomes due pursuant to an order under the Act which either reduces or waives tax or interest. It does not matter that the interest being waived is discretionary in nature; the moment that discretion is exercised and refund becomes due consequently, a concomitant right to claim interest springs into being in favour of the assessee.

The Supreme Court, thus, did not agree with the High Court opinion that when discretionary power has been exercised, no concomitant right to claim interest on refund arises in favour of the assessee.

Supreme Court’s Decision: Overruling the High Court Decision, the Supreme Court held that the assessee has a right to interest on refund under section 244A.