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In the High Court of Judicature for Rajasthan
Jaipur Bench

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1- Civil Writ Petition No.12911/2008
Commissioner of Income Tax Central Jaipur
Versus M/s Anil Hastkala (P) Ltd & Anr.
(And Cognate matters shown in Schedule A)

/Reportable/

And

2- Civil Writ Petition No.5036/2008
Prakash Chand Jalan ***Versus***
Commnr of Income Tax Central Jaipur & Anr.
(And Cognate matters shown in Schedule B)

Date of Order ::: 13/08/09

Hon'ble Mr. Justice Ajay Rastogi

Mr. JK Singhi)
Mr. Anuroop Singhi) for Revenue

Mr. N.M.Ranka, Sr. Adv. & Sarva Shri Anant Kasliwal)
Vaibhav Kasliwal, NK Jain, SK Tewari, &
Ms Anupma Parashar) for Assesseees
Sarva Shri Sanjay Jhanwar, GC Garg, Samit Bishnoi)
Gunjan Pathak, Naresh Gupta, & Ms Nivedia Sarda)
Mr. Vinod Sharma for Mr. Ashok Bansal) for assesseees

Since bunch of cross-petitions filed by Assesseees as well as by Revenue assailing orders of Settlement Commission in cases of different assesseees, involve self-same issue for consideration; hence at request, were finally heard together for its disposal by this common order at admission stage.

Primary question for consideration in a bunch of writ petitions preferred by Revenue and cross petitions by different assesseees is with regard to applications filed before settlement commission on or before 01/06/2007 and assailing orders of Settlement Commission,

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on the premise that if impugned order of Settlement commission U/s 245-D(4) of Income Tax Act, 1961 ("**Act**") is held to be legally unsustainable, in such an eventuality, whether matters are to be remitted back to settlement commission to examine afresh in accordance with law **or** to the assessing authority in view of proceedings initiated under Chapter-XIX-A on being held to be abated in terms of S.245-HA of the Act ?

Except on few aspects, as regards orders of settlement commission U/s 245-D(4) of the Act to be referred in later part, Assessee-writ petitioners & respondent-Revenue in cross petitions, both are joint on the issue that the procedure adopted by settlement commission while passing orders impugned is in violation of S.245-D(4) of the Act & without following the mandate of statute; however, Counsel for assessee have tried to convince that once orders of settlement commission are in violation of principle of natural justice as having been passed without due application of mind & appreciation of material on record, matters must be remitted back to settlement commission to decide afresh according to law.

However though supported the submissions but Counsel for revenue has also tried to convince that once orders of settlement commission are not legally sustainable as per amendment made under Finance Act, 2007 being enforced w.e.f. 01/06/07, proceedings stand abated in terms of S.245-HA - as a consequence whereof, matter is required to be remitted to the assessing authority or any other income tax authority before whom proceedings were pending while making application in terms of S.245-HA(2) of the Act.

To examine the controversy at hand, bare facts necessarily for adjudication, being common in bunch of all the petitions except as regards dates of making applications & assessment years, are being taken note out of ***CWP-5036/08 (Prakash C.Jalan Vs. Settlement & Ors) & so also from CWP-11515/08 (CIT Central Vs. Ravi Prakash Modi & Anr.)***.

**Re. CWP-5036/2008
(Prakash C.Jalan Vs. Settlement Commission)**

Assessee (Prakash Chand Jalan) filed application before Settlement Commission on 27/09/2001 for A.Yrs 1997-98 to 2000-01 U/s 245 (C) containing a full & true disclosure of his income having not been disclosed before the
<http://www.itatonline.org>

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Assessing officer. After fulfillment of statutory requirement under the Act upon receipt of application, Settlement Commission summoned a report from Commissioner (IT) as provided U/r 9 of Income Tax Settlement Commission (Procedure) Rules, 1997 ("**Rules, 1997**") - on the basis of material contained therein (supra), allowed the application to be proceeded with, which ordinarily is called to be "*motion hearing*"; and after application being admitted, examined the assessee and so also commissioner (IT) who are parties to the litigation; and after inquiry being made U/s 245-D(3), settlement commission was supposed to examine the records-report of Commissioner (IT) U/s 245-D(1) & the report, if any, received U/s 245-D(3) and after affording opportunity of hearing to parties (assessee & revenue) either in person or through representative authorised on their behalf.

Settlement commission was supposed to pass order U/s 245-D(4); and at this stage, amendment came into force w.e.f. 01/06/07 vide Finance Act, 2007, whereby sub-section 4A was inserted to S.245-D of the Act and obligation was casted upon settlement commission to pass order U/s 245-D(4) on or before 31/03/08,

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otherwise proceedings pending before it shall stand abated as provided U/s 245-HA(1); in that eventuality, it would be remitted to the assessing officer or income tax authority before whom proceedings at the time of making application was pending and for being disposed of in accordance with statute as if no application U/s 245-C having been made.

Due to a sword over the assesseees, who had already made full & true disclosure before settlement commission about their income having not been disclosed before assessing authority, the tax was also paid at the time of admission of their applications where settlement commission prima facie examined the records taking note of report U/r 9 of Rules, 1997 submitted by commissioner (IT); and if Settlement Commission failed to decide pending application & proceedings were since going to be abated by 31/03/2008, assesseees preferred CWP-2982/2008 wherein this Court issued a mandamus directing settlement commission to decide their applications on or before 31/03/2008 since they had a fear and rightly so, because of their applications having remained pendente & likely to abate by virtue of amendment vide Finance Act, 2007 which will

create complication for them.

However, after taking note of number of assessments pending & paucity of time, as observed in orders impugned that it is not practicable for the Commission to examine the records and investigate the cases for proper settlement, rather impracticable to afford adequate opportunity to respective parties as provided U/s 245-D(4) as it was directed by this Court to pass orders on or before 31/03/08; consequently, settlement commission invariably passed orders a day before or on 31/03/08 in all cases.

In instant bunch, applications were decided by 31/03/08. It would be pertinent to extract part of order being relevant for present purpose, which are almost verbatim in all the orders impugned either by assessees or by the revenue ad infra:-

3. In all the principal Bench of the Commission has till 26/03/2008 received more than 324 orders from various High courts in the month of March, 2008, directing the Principal Bench to complete the cases by 31/03/2008.

4. This would involve more than 1500 assessments. The Settlement commission deals only with the assessments which involve complexity of investigation

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and the application is intended to provide quietus to litigation. For example, in one group of cases where 23 applications are involved, the paper book, which has been filed before the Settlement commission runs into thirty thousand pages. It goes without saying that sufficient and proper opportunity is required to be given both to the applicant and the commissioner of income tax for arriving at a proper settlement.

5. At this juncture, it is not practicable for the Commission to examine the records and investigate the case for proper settlement. Even giving adequate opportunity to the applicant and the department, as laid down in section 245-D(4) of Income Tax Act, 1961 is not practicable. However, to comply with the directions of the Hon'ble High Court, we hereby pass an order U/s 245-D(4) of Income Tax Act, 1961 :

6. The undisclosed income is settled as under :

1.Parkash Chand Jalan	Rs.20,00,000/-
2.Rajendra Prasad Jalan	Rs.40,00,000/-
3.Nawal Kumar Jalan	Rs.30,00,000/-"

**Re. CWP-11515/2008
(CIT Central Vs. Ravi Prakash Modi)**

Facts are almost self same in writ petitions filed by the Revenue wherein the assesseees are respondents. In CWP-11515/08, it appears that some where in the year 2002, applications were

filed by assesseees and after pleadings were complete and when the case was not finally heard by settlement commission, they also approached this Court and got directions issued - in pursuance whereof, settlement commission decided their applications by common order dt.29/03/08, in which also, paras are almost self-same as in order dt.31/03/08 impugned in bunch of petitions of assesseees (quoted supra) but it is pertinent to extract relevant paras only to show that in para 5 of order impugned, settlement commission recorded at its own that it would be impracticable to examine the records & to afford adequate opportunity to the assesseees & the Revenue as provided under statute; but at the same time, the Commission still settled undisclosed income ad infra:

"3. In all the principal Bench of the Commission has till 26/03/2008 received more than 324 orders from various High courts in the month of March, 2008, directing the Principal Bench to complete the cases by 31/03/2008.

4. This would involve more than 1500 assessments. The Settlement commission deals only with the assessments which involve complexity of investigation and the application is intended to

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provide quietus to litigation. For example, in one group of cases where 23 applications are involved, the paper book, which has been filed before the Settlement commission runs into thirty thousand pages. It goes without saying that sufficient and proper opportunity is required to be given both to the applicant and the commissioner of income tax for arriving at a proper settlement.

5. At this juncture, it is not practicable for the Commission to examine the records and investigate the case for proper settlement. Even giving adequate opportunity to the applicant and the department, as laid down in section 245-D(4) of Income Tax Act, 1961 is not practicable. However, to comply with the directions of the Hon'ble High Court, we hereby pass an order U/s 245-D(4) of Income Tax Act, 1961 :

6. The undisclosed income is settled as under :

i) Badri Narain Modi	Rs.48,00,000/-
ii) Smt. Champa Modi	Rs.04,00,000/-
iii) Ravi Prakash Modi	Rs.11,00,000/-
iv) Renu Modi	Rs.07,00,000/-
v) Pawan Modi	Rs.09,00,000/-
vi) Nidu /gardens (P) Ltd	Rs.03,00,000/-
vii) Modi Exports House	Rs.04,00,000/-
viii) IndianAgate Industries	Rs.04,00,000/-
ix) Ganpati Gems & Arts	Rs.08,00,000/-"

It is also pertinent to state that in para 10, the assesseees were called upon to deposit amount of tax alongwith interest within 35 days from the date of receipt of intimation

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from the assessing officer in consonance with S.245-D(6A); and accordingly, the Revenue certainly issued notice U/s 156 of the Act to respective assessee and as informed to this Court, all the assessees who are either writ petitioners or respondents in writ petitions of the Revenue, have deposited amount of tax assessed by settlement commission under orders impugned and rightly so, since as required U/s 245-D(6A), if assessee fails to deposit amount of tax payable under orders of settlement commission U/s 245-D(4) within thirty five days of receipt of certified copy thereof, he is liable to pay simple interest @ 15% p.a.

Re. CWP-12911/2008
CIT Central Vs.
M/s Anil Hastkala (P) Ltd

In CWP-12911/08, after the order was passed U/s 245-D(4) on 29/03/08 (Ann.2), misc. application was filed by assessee (respondent) on 23/04/08 U/s 245-F(i) seeking certain rectification of mistakes in the order passed U/s 245-D(4) in regard to assessment made by settlement commission and year-wise break up of amount settled; and after copy of misc. application being served upon the revenue, it was allowed vide order dt.04/06/08, which was obviously after cut-off date (31/03/08), and

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after which according to the Revenue, settlement commission has since become functus officio, proceedings stood abated for all practical purposes.

Counsel for assessee submits that as required U/s 245-D(4) of the Act, settlement commission is under legal obligation to examine the records & report of Commissioner (IT), if any, submitted U/r 9 of Rules, 1997 & to afford opportunity of hearing to applicants (assessee) & Commissioner (IT) upon having appeared in person or through authorised representatives on their behalf, and after examination of further evidence having been placed before it - taking note whereof, settlement commission could have passed the order U/s 245-D(4) of the Act; but in instant bunch, aforesaid procedure has completely been given a go-bye by settlement commission as is clearly evident from para 5 of orders impugned which clearly discloses that settlement commission was not in a position to examine the records & so also afford adequate opportunity of hearing as required under law; inasmuch as it has shown having felt impracticable in view of so-called paucity of time which always remains and a common

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grievance for such authorities while using settled phrases that the time is not adequate; and without application of mind & appreciating evidence on record, still the amount of tax has been assessed in later para 6 of orders impugned. According to Counsel, very procedure adopted by settlement commission in passing orders impugned is a farce and not legally sustainable being violative of S.245-D(4) of the Act.

Counsel further submits that if statute casts obligation to hold any procedure, settlement commission was to comply with statutory requirement and no deviation there from was permitted under law and exercise of proceeding being judicial one, settlement commission was under legal obligation to assign reasons in support of amount of tax being assessed - in absence whereof, what has been assessed under orders impugned being not supported by material on record is not legally sustainable and deserves to be set aside.

As regards scheme of the Act and scope of judicial review U/Art.226 of the Constitution, Counsel has placed reliance upon decisions of Apex Court in **Jyotendra Singhji**

Vs. SL Tripathi & Others (1993 (201) ITR 611) & Commnr. Of Income Tax Vs. Om Prakash Mittal (2005 (273) ITR 326).

However, Counsel appearing for assesseees in writ petition filed by Revenue, have tried to support orders impugned and submit that once the assesseees have deposited the tax as assessed by settlement commission after notice being served by the Revenue, atleast the Revenue cannot file writ petitions after acceptance of tax assessed by settlement commission and are bound by principles of promissory estoppel in assailing findings recorded under orders impugned and cannot be permitted to approbate & reprobate at the same time.

Counsel for assessee further submits that hearing as provided U/s 245-D(4) of the Act is to be considered in context of statutory requirement in view of amendment under Finance Act, 2007 - as per which applications pending on or before 01/06/2007 have to be decided by settlement commission by 31/03/08 and this Hon'ble Court has directed settlement commission to decide applications by 31/03/08; and as observed in orders impugned, there being more than 1500

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applications pending were to be decided by 31/03/08; so if settlement commission taking note of prima facie material on record, made assessment that has to be considered in compliance of S.245-D(4) of the Act.

It has further been urged that atleast the Revenue has not been able to justify by placing any material on record by which this Court may infer that amount of tax assessed by settlement commission is not prima facie based on material on record - in absence whereof, merely because opportunity of hearing if being not afforded to the Revenue, that alone will not nullify the order of settlement commission under challenge herein.

It has also been urged that very nomenclature "settlement commission" is not a mechanism for adjudication of a dispute and there is always for settlement commission to examine the record and may assess amount of tax payable in the facts of each case and no detailed reasons are required to be recorded supporting it under orders impugned. In support, Counsel relied upon **CIT Mumbai Vs. Anjum M.H.Ghaswala (2002(1) SCC 633)**.

However, all the Counsel for Assesseees either appearing for writ petitioners or for

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respondents in petitions of the Revenue, jointly submit that certainly vested rights stood created in favour of assesseees for grant of protection of immunity from prosecution & penalty U/s 245-H due to non-disclosure of confidential record having been disclosed by the assessee before settlement commission and also because of non-availability of remedy of appeal against order impugned being it conclusive U/s 245-I of the Act; and if this Court comes to the conclusion that orders impugned of settlement commission are not legally sustainable because of non-compliance of S.245-D(4), the matter atleast be remitted back to the settlement commission to examine afresh in accordance with law after affording opportunity of hearing providing all kinds of protection available to them which settlement commission has also noticed in its orders impugned.

Counsel further submits that since settlement commission passed orders on their applications on or before 31/03/08, and S.245-HA(1)(iv) only takes note of such application on which settlement commission failed to pass order U/s 245-D(4) within time prescribed U/s 245-D(4A); as such proceedings in their cases

be remitted back only to settlement commission and not to the assessing authority by treating proceedings pendente before settlement commission on being abated U/S 245-HA(2) of the Act.

Counsel for Revenue (respondents in bunch of petitions) has made one & foremost contention that once orders passed by settlement commission is in violation of S.245-D(4), the same is a nullity in the eye of law as if no such order having been passed and in such situation, it would relate back to the date of passing of the order; and proceedings having remained pendente before settlement commission on 31/03/08, certainly stood abated U/s 245-HA of the Act; and settlement commission having become functus officio after 31/03/2008 and that being so, all matters are to be remitted back to the assessing officer in terms of S.245-HA(2) of the Act so as to be governed by Finance Act, 2007 on having become effective. Counsel relied upon **1989(1) SCC 628**.

Counsel further submits that once settlement commission has become functus officio, no jurisdiction can now be conferred upon it to decide applications and matter can

not be remitted conferring jurisdiction upon settlement commission to decide applications in view of S.245-HA of the Act. In support, Counsel relied upon decisions in **RSRTC Vs. B.Mukand Bairwa (2009(4) SCC 299)**, **Chiranjilal Vs. Jasjit Singh (1993(2) SCC 507)** & **AR Antulay Vs. RS Nayak (1988(2) SCC 602.**

Counsel for Revenue further submits that if statute is unambiguous leaving no room of doubt for interpretation, it has to be read as a whole and it cannot be further supplemented by judicial interpretation and if there is equity, it is the law which would prevail and the equity has no role to play. In support, Counsel relied upon **Raghunath Bareja Vs. Punjab National Bank (2007(2) SCC 230).**

I have considered rival contentions of Counsel for parties and with their valuable assistance, examined material on record. Before advertng to examine the issue raised herein for consideration, this Court considers it appropriate to take note of Scheme introduced under Chapter XIX-A of the Act relating to settlement of cases. It appears to have been inserted by the Taxation Laws (Amendment) Act, 1975 w.e.f. April 1, 1976. A somewhat similar provision was contained in sub-sections (1A)

to (1D) of S.34 of Indian Income Tax Act, 1922 introduced in year 1954. However, provisions of Chapter XIX-A are qualitatively different and more elaborate than provisions of the 1922 Act. Proceedings commenced under Chapter XIX-A are judicial as envisaged in S.245-L within the meaning of Ss.193 & 228 and for purposes of S.196 of Indian Penal Code.

Chapter XIX-A is a complete Code in itself as regards settlement of cases for having provided a complete mechanism other than procedure provided under the IT Act. Legislature conferred all powers upon Settlement Commission being vested in IT authority under the Act as provided U/s 245-F and what is being decided by settlement commission is conclusive providing no remedy of revision/review or appeal to the assessee or revenue, envisaged in S.245-I of the Act.

Settlement commission is constituted U/s 245-B and its jurisdiction & powers are governed by S.245-BA. Proceedings under Chapter XIX-A commences upon application being made by assessee who can file at any stage of case pending relating to him in the manner as prescribed containing full & true disclosure of income which has not been disclosed before

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assessing authority, the manner in which income has been derived, additional amount of income tax payable thereon and all other particulars, before the settlement commission so as to have the case settled U/s 245-C of the Act.

After application U/s 245-C being filed by assessee, S.245-D provides procedure to be followed. Sub-sections (1), (2A), (2B), (3) & (4) to S.245-D being relevant for purposes read ad infra:

"245-D. Procedure on receipt of an application under section 245C. (applicable prior to Finance Act, 2007 w.e.f. 01/06/07)-

(1) On receipt of an application under section 245C, the settlement commission shall call for a report from the Commissioner and on the basis of materials contained in such report and having regard to the nature and circumstances of the case or the complexity of investigation involved therein, the settlement commission, shall where it is possible, by order, reject the application or allow the application to be proceeded with within a period of one year from the end of the month in which such application was made under section 245-C;

Provided that an application shall not be rejected under this sub-section unless an opportunity has been given to

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the applicant of being heard:

Provided further that the Commissioner shall furnish the report within a period of forty five days of the receipt of communication from the Settlement Commission in case of all applications made under section 245C on or after the 1st day of July, 1995 and if the Commissioner fails to furnish the report within the said period, the settlement commission may make the order without such report."

(2A) Subject to the provisions of sub-section (2B) the assessee shall, within thirty five days of the receipt of a copy of the order under sub-section (1) allowing the application to be proceeded with, pay the additional amount of income tax payable on the income disclosed in the application and shall furnish proof of such payment of the settlement commission.

(2B) if the Settlement commission is satisfied, on an application made in this behalf by the assessee, that he is unable for good and sufficient reasons to pay the additional amount of income tax referred to in-sub-section (2A) within the time specified in that sub-section, it may extend the time for payment of the amount which remains unpaid or allow payment of by instalments if the assessee furnishes adequate security for the payment thereof. -

(2C) Where the additional amount of

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income tax is not paid within the time specified under sub-section(2A), then, whether or not the Settlement Commission has extended the time for payment of the amount which remains unpaid or has allowed payment thereof by instalments under sub-section (2B), the assessee shall be liable to pay simple interest at fifteen per cent per annum on the amount remaining unpaid from the date of expiry of the period of thirty five days referred to in sub-section (2A).

(2D) Where the additional amount of income tax referred to in sub-section (2A) is not paid by the assessee within the time specified under that sub-section or extended under sub-section (2B), as the case may be, the settlement commission may direct that the amount of income tax remaining unpaid, together with any interest payable thereon under sub-section (2C), be recovered and any penalty for default in making payment of such additional amount may be imposed and recovered, in accordance with the provisions of Chapter XVII, by the assessing officer having jurisdiction over the assessee.

(3) Where an application is allowed to be proceeded with under sub-section (1), the settlement commission may call for the relevant records from the Commissioner and after examination of such records, if the settlement

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commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the commissioner to make or cause to be made such further enquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case."

(4) After examination of the records and the report of the Commissioner, if any, received under sub-section (3), 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 under sub-section (1) or sub-section (3).

(4A) In every application allowed to be proceeded with under sub-section (1), the settlement Commission shall, where it is possible, pass an order under sub-section (4) within a period of four years from the end of the financial year in which such application was allowed to be proceeded with."

Sub-section (4A) to S.245-D duly amended vide Finance Act, 2007 reads ad infra:

"(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, within twelve months from the end of the month in which the application was made."

From the provisions quoted supra, it clearly emerges that after examination of the records and Rule-9 report of Commissioner (IT) under sub-section (1) & report of Commissioner (IT), if any, received under sub-section (3), and after giving opportunity to the applicant & Commissioner (IT) to be heard either in person or through a representative authorised in this behalf and after examining such further evidence as placed before it or obtained by it, settlement commission may, in accordance with the 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 application but referred to in the report of Commissioner (IT) under sub-section (1) or (3).

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to reopen the completed proceedings in appropriate cases while S.245-F confers all powers of an income-tax authority upon commission.

S.245-H empowers settlement Commission to grant immunity from prosecution & penalty with or without conditions, in cases where it is satisfied that the assessee has made a full disclosure of his income & its sources. At the same time, S.245-HA has been inserted by Finance Act, 2007 w.e.f. 01/06/07 being relevant reads ad infra:

"245-HA. Abatement of proceedings

before settlement commission -(1) Where

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

(ii) an application made under section 245-C has not been allowed to be proceeded with under sub-section (2A) or further proceeded with under sub-section (2D) of section 245-D; or

(iii) an application made under section 245C has been declared as invalid under sub-section (2C) of section 245-D; or

(iv) **in respect of any other application under section 245C, an order under sub-section (4) of Section 245D has not been passed within the time or**

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**period specified under sub-section
(4A) of section 245-D,**

the proceedings before the settlement commission shall abate on the specified date.

Explanation. - For the purposes of this sub-section, "specified date" means -

(a) in respect of an application referred to in clause (i), the day on which the application was rejected;

(b) in respect of an application referred to in clause (ii), the 31st day of July, 2007;

(c) in respect of an application referred to in clause (iii), the last day of the month in which the application was declared invalid;

(d) in respect of an application referred to in clause (iv), on the date on which the time or period specified in sub-section (4A) of section 245D expires.

(2) Where a proceeding before the settlement commission abates, the assessing officer, or, as the case may be, any other income tax authority before whom the proceeding at the time of making application was pending, shall dispose of the case in accordance with the provisions of this Act as if no application under section 245C had been made.

(3) For the purposes of sub-section (2), the Assessing officer, or, as the case may be, other income tax

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authority, shall be entitled to use all the material and other information produced by the assessee before the settlement commission or the results of the inquiry held or evidence recorded by the Settlement commission in the course of the proceedings before it, as if such material, information, inquiry and evidence had been produced before the assessing officer or other income tax authority or held or recorded by him in the course of the proceedings before him."

Every order passed by Settlement Commission U/s 245-D(4) is final & conclusive in terms of S.245-I of the Act and no matter covered by such order shall save as otherwise provided in Chapter XIX-A be re-opened in any proceedings under the Act or under any other law for the time being in force. As already observed, proceedings before settlement commission are deemed to be judicial proceedings within the meaning of Ss.193 & 228 and for purposes of S.196, IPC as provided U/s 245-L of the Act.

However, by amendment made while inserting S.245-D(4A) vide Finance Act, 2007 making effective w.e.f. 01/06/07, such applicants having filed on or after 01/06/07 have not been provided with protection as provided U/s 245-E to reopen completed

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proceedings or 245-H relating to grant of immunity from prosecution & penalty and so also confidentiality of their record which they have disclosed before settlement commission in their application U/s 245-C of the Act. On the contrary, after Finance Act, 2007, in cases where proceedings stood abated U/s 245-HA(1) because of pending applications having not been decided by settlement commission on or before 31/03/08 all such pending applications being abated were to be reverted back U/s 245-HA(2) to the assessing officer or to any other income tax authority for being decided afresh in accordance with regular proceedings under the Act as if no such application U/s 245-C had been made; and whatever record has been disclosed by assessee before settlement commission in application U/s 245-C(supra), it was pre-condition while submitting application for the assessee to come with true & full disclosure of his income having not been disclosed before assessing authority and all such records which the assessee disclosed before settlement commission in terms of S.245-HA(3) of the Act can be used as material information by assessing officer in course of proceedings

before him.

Thus, it clearly emerges from Chapter XIX-A that object of legislature in introducing S.245-C is to avoid protracted proceedings before the authority or in courts by resorting to settlement of cases. In this process, the assessee cannot expect reduction of amount statutorily payable under the Act. Foundation for settlement is the application which the assessee files at any stage of a case relating to him in such form and manner as prescribed, Statutory mandate is that application shall contain true & full disclosure of income having not been disclosed by him earlier before assessing officer, and the manner in which income has been derived. Thus, fundamental requirement of application U/s 245-C is the true & full disclosure of income alongwith manner in which income has been derived.

However, by later amendment made for substitution vide Finance Act, 2007, procedure has been changed and after receipt of application U/s 245-C, procedure like impugned here where report as earlier required from Commissioner (IT) is not required, and after hearing applicant assessee, settlement

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commission under statutory period of fourteen days by an order in writing either to reject or allow application to be proceeded, with a further rider that if no order is passed within statutory period, it shall be deemed to have been allowed to be proceeded with.

However, present matters since having arise for consideration on application being filed on or before 01/06/07, their cases were to be considered for taking report of commissioner (IT) U/r 9 of Rules, 1997 and after being prima facie satisfied, settlement commission took decision to allow application to be proceeded with and only thereafter proceedings had further commenced as provided U/Ss 245-D (3) & (4) of the Act.

As already observed, S.245-D)4) casts an obligations upon settlement commission to examine the records, report of Commissioner (IT) if any, and afford opportunity of hearing to the assessee & Commissioner (IT) either in person or through representative duly authorised in this behalf, and after examining such further evidence as having been placed before it or obtained by Commission, may in accordance with the IT Act, pass such order as it thinks fit.

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In instant bunch, from a bare perusal of paras 5 & 6 quoted supra, it clearly manifest that observations made therein speak volumes about procedure having been adopted by settlement commission in deciding applications under orders impugned as the Commission specifically observed that it is impracticable to examine the records & investigate the cases for proper settlement and even opportunity of hearing as contemplated U/s 245-D (4) is also not practicable; but since this Court directed Commission to pass order before 31/03/08, in para 6, at its own assessed the undisclosed income of applicants for being taxed, as is almost self same verbatim in all the orders impugned.

Question arises for consideration as to whether in the facts of instant cases, there can be considered to be true compliance of statutory mandate U/s 245-D(4) of the Act. There cannot be two opinions about it and irresistible conclusion is that settlement commission has failed to afford a reasonable opportunity of hearing nor examined the records as per statutory requirement of law and has passed orders impugned without due application of mind; in such circumstances,

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orders impugned in no manner are legally sustainable and are in violation of S.245-D(4) of the Act.

That apart, it was common contention on behalf of assesseees and the Revenue that if orders are not sustainable being in violation of S.245-D(4), as per Counsel for assesseees, it must be remitted back to settlement commission while according to Counsel for Revenue, since settlement commission has become functus officio after 31/03/08, matter deserves to be remitted back to the assessing authority as contemplated U/s 245HA(2) who will make assessment of respective assesseees in accordance with law as if no such application has been submitted by respective assesseees before settlement commission.

It is to be noted that instant matters pertain to applications being filed before settlement commission on or before 01/06/2007 and all such applications being finally decided by commission by 31/03/08, what has been pointed out by Counsel for respective parties is that settlement commission has failed to comply with mandate provided U/s 245-D(4) of the Act and if having failed to comply with statutory requirement - legal

obligation whereof is cast upon it, as a result of violation whereof, orders impugned cannot be said to be in consonance with requirement of law.

At the same time, in fact instant cases do not fall in any of clauses of S.245-HA(1); while Counsel for Revenue has tried to convince this Court that these are covered by sub-section (1)(iv) of S.245-HA. However, suffice it to say that only such cases are covered where application made U/s 245-C remained pending and no order U/s 245-D(4) was passed within the time or period specified U/s 245-D(4A). In instant cases, applications have been finally decided by settlement commission by 31/03/08, therefore, in the considered opinion of this Court, S.245-HA(1)(iv) has no application and on having recorded the finding ***ibid***, orders of settlement commission impugned herein are not in consonance with mandate U/s 245-D(4) of the Act.

Even interpretation of statute would not depend upon contingency. It is trite law which the Court would ordinary take recourse to golden rule of liberal interpretation. Object of the Act would be relevant factor for interpretation only when language is not clear

and when two meanings are possible and not in a case like present one, where plain language lead to only one conclusion that as per provisions of S.245-HA(1)(iv), application U/s 245-C once remained undecided for adjudication and remain pending in such cases, proceedings can be considered to be abated.

It is also not the case of respondents that settlement commission constituted U/s 245-B(2) stands wound up, if ultimate fact remains that settlement commission is allowed or continued to exist and entertain fresh application being filed on or after 01/06/07, clearly suggests that it certainly got greater number of cases having been filed much before 01/06/07; and applications remained pending on 31/03/08, Division Bench of Delhi High Court in **Vatika Farms (P) Ltd Vs. Union of India & Others (2008(98) ITR 302)** vide interim order dt.28/03/08 issued appropriate direction holding that such applications for settlement filed by respective assessee U/s 245-C would not abate on 31/03/08 and further directed to dispose of pending applications expeditiously as possible. It has been informed to this Court that against aforesaid interim order passed by Delhi High Court, SLP was filed by

the Revenue but has been dismissed.

However, it has been informed that apart from Delhi cases (supra), there are other large numbers of cases wherein orders alike impugned herein are under challenge before this Court at the instance of assesseees whose applications have remained pending and could not have been decided by 31/03/08. This Court is not examining in regard to such applicants whose applications remained pending but in the cases where applications U/s 245-C stood decided by settlement commission in terms of S.245-D(4) of the Act by 31/03/08, orders impugned have become conclusive, against no further remedy of appeal or revision is provided and which is always subject to judicial review by this Court U/Art.226 of the Constitution and if this Court finds any infirmity in decision making process, if committed by statutory authority; under limited scope of judicial review, the only recourse available is to remit back to the statutory authority which has decided the matters afresh in accordance with law.

Submission made by Counsel for Revenue that settlement commission has become functus officio, and jurisdiction cannot be conferred

after cut off date 31/03/08 and its order impugned being non-est on quashing thereof, proceedings in respective applications stand abated U/s 245-HA(1)(iv) of the Act, in the opinion of this Court is without merit for the reason that it only covers such cases where applications filed U/s 245-C remained pending on 31/03/08 and has not been decided U/s 245-D (4) but if the same has been finally decided, and if this Court is convinced with infirmity in the orders impugned, certainly it will be remitted back to the authority which has passed the orders impugned and sub-section (iv) of S.245-HA(1) has no application in the facts of instant cases - as a consequence whereof, proceedings would not stand abated while remitting matter back to the settlement commission.

As regards submission made on behalf of the Revenue that statutory authority having become functus officio or no power being vested, is wholly without merit. Settlement commission holds the authority under the Act and power is vested and only by amendment vide Finance Act, 2007 by putting rider of 31/03/08, the legislature only intended that if applications remained pending, it stands

abated but it will not render settlement commission functus officio to examine matter afresh after orders having been passed remitting back to settlement commission.

Judgments on which the Revenue has placed reliance in the facts of instant cases has no application rendering any assistance.

Submission made by Counsel for the assesseees (respondents in writ petitions filed by Revenue) while supporting orders of settlement commission impugned that looking to availability of time as directed by this Court in earlier petition, if settlement commission has passed orders impugned taking note of requirement U/s 245-D(4) of the Act, unless prejudice is shown by the revenue, orders impugned are not ordinarily required to be reviewed, has also no merit for the reason that if statute cast obligation upon the authority to act in accordance therewith, its non-compliance constitutes prejudice to the parties and it is not for this Court to probe into as to what nature of prejudice has been caused. That apart, if requirement U/s 245-D (4) of the Act is to examine the records and to afford opportunity of hearing and to consider further report, if any obtained by

settlement commission and then pass orders, it pre-supposes that settlement commission is required to apply its mind and consider in accordance with law. Word, "consider" itself, implied to apply its mind after due opportunity of hearing being afforded to parties to the litigation, which in instant cases, as observed supra, is completely missing; which, itself, shows that prejudice has been caused to the parties.

It is true that if there is no such provision of the like manner in which compliance of principles of natural justice has to be made. It would be open for the Court to examine in the facts of each case as to whether reasonable opportunity of hearing has been afforded to parties and compliance of principles of natural justice has been made. However as observed (supra), if a statute requires a particular procedure to be followed for compliance of principles of natural justice, if having not been adhered to, action of such authority is certainly in violation of statutory requirement and so also of Art.14 of the Constitution.

Submission made on behalf of Assesseees that the Revenue has issued notices in

compliance of orders impugned - in pursuance whereof, they have deposited tax as assessed; thereby once demand has been raised U/s 156 of the Act which has been complied with by them, writ petitions filed by Revenue are barred by principles of promissory estoppel and the Revenue cannot approbate & reprobate in same breathe, is also without substance for the reason that once order has been passed by settlement commission U/s 245-D(4) of the Act, the assessee has to deposit the tax assessed within 35 days of receipt of certified copy of the order U/s 245-D(6A) failing which he would be liable to pay interest @ 15% per annum.

It is not the decision of the Revenue; on the contrary, orders of settlement commission was put to execution by Revenue in terms of S.245-D(6A) but that in no manner preclude the Revenue which is a party to the dispute, if aggrieved from assailing the same in remedial proceeding available under law, principles of promissory estoppel or of "approbate & reprobate" have no application in the facts of instant case.

Further submission made by Counsel for assessees (respondents) that settlement is not an adjudication but is a settlement of dispute

as is evident from its very nomenclature under Chapter XIX-A, is also devoid of merit for the reason that proceedings undertaken by settlement commission under Chapter XIX-A are deemed to be judicial proceedings as provided U/s 245-L of the Act and a mechanism has been provided under Chapter XIX-A in general and under sub-section (4) of S.245-D in particular and settlement commission has to pass an order after due compliance thereof which is a sort of adjudication of dispute having been raised by assessee while submitting their application for settlement U/s 245-C of the Act and if settlement commission having failed to comply with mandate of law, such orders impugned passed in violation of S.245-D(4) cannot be said to be legally sustainable.

In **CWP-12665/08 (CIT Central Vs. Sushil Kr. Purohit)**, apart from merits being almost self-same in cognate matters, additional point has been raised by Counsel for assessee (respondent) that settlement commission Kolkatta has passed order impugned herein, this Court has no territorial jurisdiction.

Per contra, Counsel for Revenue submits that the assessee is being assessed by

Commissioner of Income Tax Jaipur and being resident of Kolkata, application was filed before Settlement Commission Bench at Kolkatta which has examined and passed order impugned, that itself, does not exclude jurisdiction of this Court.

In the opinion of this Court, as is evident from the petition, the assessee was assessed in Rajasthan and in exercise of jurisdiction by Bench at Kolkatta, as provided U/s 245-BA of the Act that in no manner excludes territorial jurisdiction of this Court.

As already informed, all the assesseees have deposited amount of tax in terms of orders impugned, a joint request was made that such deposited tax amount be refunded back to respective assesseees, in case matter is remitted back to the settlement commission. However, since settlement commission would examine the matters afresh after affording opportunity of hearing to the parties, this Court considers it appropriate that what has been deposited by respective assesseees under orders impugned would be subject to final outcome of their applications U/s 245-C under orders being passed Us 245-D(4) of the Act and

as a consequence whereof, if there would be any refund ordered, assessee would certainly be entitled for interest @ 15% per annum.

Consequently, all these writ petitions stated in Schedule A & B appended to this order succeed & are hereby allowed; and the orders dt.31/03/08 and 29/03/08 passed by settlement commission being in instant bunch of petitions are hereby quashed and set aside. However, matters are remitted back to the respective settlement commission benches to decide applications of assessees filed U/s 245-C after affording opportunity of hearing to the parties and after due compliance of S.245-D(4) of the Act may pass fresh orders in accordance with law without being influenced by observations, made supra, expeditiously keeping in view the fact of matters pendente for sufficient long time. Parties are directed to appear before concerned Settlement commission on 14/09/09. No costs.

(Ajay Rastogi), J.

Schedule A**Writ petitions filed by Commissioner
of Income Tax Central, Jaipur**

<u>S.No.</u>	<u>Civil Writ Petition No.</u>	<u>Against/Name of Assesseees</u>
1-	12911/2008	CIT Vs M/s Anil Hastkala (P) Ltd & Anr.
2-	9893/2008	CIT Vs Raj Kumar Sharma & Anr.
3-	10979/2008	CIT Vs M/s Geetanjali International & Anr.
4-	10980/2008	CIT Vs M/s Shree Krishna Builders & Anr.
5-	10981/2008	CIT Vs M/s Shree Ganpati Builders & Anr.
6-	10982/2008	CIT Vs M/s NK Gupta & Anr.
7-	10983/2008	CIT Vs M/s Mangalam Township & Anr.
8-	10984/2008	CIT Vs M/s Shree Ganpati Builder & Anr.
9-	10985/2008	CIT Vs M/s Goyal Brothers & Anr.
10-	10986/2008	CIT Vs M/s Shree Trivendi Builders & Anr.
11-	10987/2008	CIT Vs Smt. Chandra Kanta Agrawal & Anr.
12-	10988/2008	CIT Vs M/s Trivedi Buildings & Anr.
13-	10989/2008	CIT Vs M/s Shree Ganpati Developers & Anr.
14-	10990/2008	CIT Vs M/s Megha Colonisers (P) Ltd & Anr.
15-	10991/2008	CIT Vs M/s Mangalam Construction & Anr.
16-	10992/2008	CIT Vs M/s Shri Agrawal Bros & Anr.
17-	10993/2008	CIT Vs M/s Shri Triveni Builders & Anr.
18-	10994/2008	CIT Vs M/s Shri Trivendi Builders & Anr.
19-	10995/2008	CIT Vs M/s Mangalam Townships Ltd & Anr.
20-	10996/2008	CIT Vs M/s Mangalam Townships Ltd & Anr .
21-	11018/2008	CIT Vs M/s Goyal Bros & Anr.
22-	11069/2008	CIT Vs Naresh Kumar Sharma & Anr .
23-	11070/2008	CIT Vs Ajay Agrawal & Anr .
24-	11071/2008	CIT Vs Ram Babu Agrawal & Anr .
25-	11072/2008	CIT Vs M/s Delhi Loha Udyog & Anr .
26-	11073/2008	CIT Vs M/s Carpet Expo & Anr .
27-	11074/2008	CIT Vs Prakash Chand Dhadda & Anr .
28-	11075/2008	CIT Vs Smt. Promila Dhadda & Anr .
29-	11076/2008	CIT Vs Girdhari Lal Agrawal & Anr .
30-	11077/2008	CIT Vs Govind Prakash Agrawal & Anr .
31-	11078/2008	CIT Vs M/s Antiquariat & Anr .
32-	11079/2008	CIT Vs Bharat Kumar Garg & Anr .
33-	11080/2008	CIT Vs M/s Carpet Mahal & Anr .
34-	11081/2008	CIT Vs Om Prakash Goyal & Anr .
35-	11082/2008	CIT Vs Mahendra Choudhary & Anr .
36-	11083/2008	CIT Vs Ram Gopal & Anr .
37-	11084/2008	CIT Vs M/s RS Metals (P) Ltd & Anr .
38-	11085/2008	CIT Vs Anoop Chand Gangwal & Anr .
39-	11086/2008	CIT Vs Anand Garg & Anr .

40- 11087/2008	CIT	Vs	M/s Shiv Kant & Bothers & Anr .
41- 11088/2008	CIT	Vs	Rakhi Gangwal & Anr
42- 11089/2008	CIT	Vs	M/s Ispat Trader & Anr
43- 11090/2008	CIT	Vs	Lokendra Pal Garg & Anr
44- 11091/2008	CIT	Vs	Pankaj Agrawal & Anr
45- 11092/2008	CIT	Vs	Smt. Phool Devi Agrawal & Anr
46- 11093/2008	CIT	Vs	Prakash Chand Dhadha & Anr
47- 11094/2008	CIT	Vs	Parshvnath Share Broking (P) Ltd & Anr
48- 11095/2008	CIT	Vs	M/s Swaraj Builders & Anr
49- 11167/2008	CIT	Vs	Heera Chand Choudhary & Anr
50- 11168/2008	CIT	Vs	M/s Ratan Conductors & Anr
51- 11169/2008	CIT	Vs	Smt. Tara Gupta & Anr
52- 11170/2008	CIT	Vs	Mahendra Kr. Agrawal & Anr
53- 11171/2008	CIT	Vs	M/s EMGEE Cables & Anr
54- 11172/2008	CIT	Vs	Ajay Gupta & Anr
55- 11173/2008	CIT	Vs	M/s Megha Colonisers (P) Ltd & Anr
56- 11174/2008	CIT	Vs	M/s Shri Krishna Builders & Anr
57- 11175/2008	CIT	Vs	Shripal Choudhary & Anr
58- 11176/2008	CIT	Vs	Prashant Raghav & Anr
59- 11177/2008	CIT	Vs	Dau Lal Purohit & Anr
60- 11178/2008	CIT	Vs	Dilip Shah & Anr
61- 11179/2008	CIT	Vs	Jai Mala Agrawal & Anr
62- 11180/2008	CIT	Vs	Mahipal Choudhary & Anr
63- 11182/2008	CIT	Vs	Sanjay Gupta & Anr
64- 11183/2008	CIT	Vs	M/s Shanti Lal & Anr
65- 11184/2008	CIT	Vs	JK Jewellers & Anr
66- 11185/2008	CIT	Vs	Jugal Kishore Garg & Anr
67- 11186/2008	CIT	Vs	M/s JM Exports & Anr
68- 11509/2008	CIT	Vs	M/s The Gem Palace & Anr
69- 11510/2008	CIT	Vs	M/s Mittal Gems & Anr
70- 11511/2008	CIT	Vs	Sanjeev Mittal & Anr
71- 11512/2008	CIT	Vs	Subhash Chand Gandhi & Anr
72- 11513/2008	CIT	Vs	Modi Garden (P) Ltd & Anr
73- 11514/2008	CIT	Vs	Anand Shankar Mittal & Anr
74- 11515/2008	CIT	Vs	Ravi Prakash Modi & Anr
75- 11516/2008	CIT	Vs	Smt Champa Modi & Anr
76- 11517/2008	CIT	Vs	Badri Narayan & Anr
77- 11518/2008	CIT	Vs	M/s Brij Gems Banwalo & Anr
78- 11519/2008	CIT	Vs	India Agate & Anr
79- 11520/2008	CIT	Vs	M/s Ganpati Gems & Arts & Anr
80- 11521/2008	CIT	Vs	Pradeep Mittal & Anr
81- 11522/2008	CIT	Vs	Nagednra Singh & Anr
82- 11523/2008	CIT	Vs	M/s TheAssociates & Anr
83- 11524/2008	CIT	Vs	Shanti Swaroop Mahawar & Anr
84- 11525/2008	CIT	Vs	M/s Mittal Prakash (P) Ltd & Anr

85- 11526/2008	CIT	Vs	Manoj Mittal & Anr
86- 11527/2008	CIT	Vs	M/s Sanjeev Prakashan & Anr
87- 11528/2008	CIT	Vs	Pawan Modi & Anr
88- 11529/2008	CIT	Vs	Narendra Kumar & Anr
89- 11530/2008	CIT	Vs	M/s Modi Exports & Anr
90- 11531/2008	CIT	Vs	Smt. Renu Modi & Anr
91- 12661/2008	CIT	Vs	Aalishan Petro Products Ltd & Anr
92- 12663/2008	CIT	Vs	Ashok Kumar & Anr
93- 12664/2008	CIT	Vs	Pramod Kumar & Anr
94- 12665/2008	CIT	Vs	Sushil Kr Purohit & Anr (Kolkotta)
95- 12667/2008	CIT	Vs	Ram Charan Modi & Anr
96- 12668/2008	CIT	Vs	Mukesh Vijay Vergia & Anr
97- 12669/2008	CIT	Vs	Om Prakash Gupta & Anr
98- 12670/2008	CIT	Vs	Hari Kishan Vijay Vergia & Anr
99- 12671/2008	CIT	Vs	Pancham Plywood (P) Ltd & Anr
100- 12672/2008	CIT	Vs	DS Bhandari & Anr
101- 12673/2008	CIT	Vs	Smt. Renu Bhandari & Anr
102- 12674/2008	CIT	Vs	B G Exports & Anr
103- 12675/2008	CIT	Vs	Sunder Kumar & Anr
104- 12676/2008	CIT	Vs	B G Jewellers & Anr
105- 12677/2008	CIT	Vs	Shri Nav Ratan Maheshwari & Anr
106- 12678/2008	CIT	Vs	Madan Lal Jain & Anr
107- 12679/2008	CIT	Vs	Nathulal Jain & Anr
108- 12680/2008	CIT	Vs	Smt. Shella Modi & Anr
109- 12907/2008	CIT	Vs	Lalit Kumar & Anr
110- 12908/2008	CIT	Vs	Ashok Kr. Jain & Anr
111- 12909/2008	CIT	Vs	M/s Jain Township/Land Dev & Anr
112- 12910/2008	CIT	Vs	M/s Singhania Oil Mills & Anr
113- 12912/2008	CIT	Vs	M/s Birdhi C.Ghanshyam & Anr
114- 12913/2008	CIT	Vs	Rajesh Vijayvergia & Anr
115- 13316/2008	CIT	Vs	M/s Shanti Kr.Vipul & Anr
116- 13317/2008	CIT	Vs	M/s Shruti Gems & Anr
117-12662/2008	CIT	Vs	Sunder Das Sonkia & Anr

(Ajay Rastogi), J.

Schedule B -
Writ petitions filed by Assesseees

<u>S.No.</u>	<u>Civil Writ Petition No.</u>	<u>Name of Assessee / Respondent</u>
1-5036/2008	Prakash C. Jalan	Vs Settlement Commission & Anr.
2-3576/2008	M/s The Gem Palace	Vs Union of India & Ors.
3-4332/2008	M/s RS Metal (P) Ltd	Vs IT Settlement Comn & Anr.
4-5030/2008	Nawal Kr. Jalan	Vs Settlement Comn & Anr.
5-5031/2008	Rajendra Prasad Jalan	Vs Settlement Comn & Anr.
6-6879/2008	M/s ShivKant & Bros	Vs IT Settlement Comn. & Anr.
7-6880/2008	M/s Ispat Traders	Vs IT Settlement Comn. & Anr.
8-7930/2008	M/s Delhi Loha Ydyog	Vs IT Settlement Comn. & Anr.
9-3816/2008	Ajay Gangwal & Ors.	Vs Union of India & Ors.
10-4245/2008	Anant Kr. Goyal	Vs IT Settlement Comn. & Ors.
11-4246/2008	Om Prakash Goyal	Vs IT Settlement Comn. & Ors.
12- 4272/2008	M/s Shreeji Builders & Developers	Vs IT Settlement Comn. & Ors.
13-4274/2008	M/s Shri Anant Builders & Developers	Vs IT Settlement Comn. & Ors.
14-10215/2008	M/s Mittal Gems	Vs IT Settlement Comn. & Ors.

(Ajay Rastogi), J.