

*Explanation.*—In this section, “tax due on the returned income” means the tax chargeable on the total income declared in the return of income furnished by the assessee for the assessment year commencing on the 1st day of April immediately following the financial year in which the advance tax is paid <sup>12</sup>[or payable], as reduced by <sup>13</sup>[the amount of tax deductible or collectible at source in accordance with the provisions of Chapter XVII on any income which is subject to such deduction or collection] and which is taken into account in computing such total income.

(2) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989 and subsequent assessment years.]]

### CHAPTER XVIII

#### RELIEF RESPECTING TAX ON DIVIDENDS IN CERTAIN CASES

#### **Relief to shareholders in respect of agricultural income-tax attributable to dividends.**

**235.** [*Omitted by the Finance (No. 2) Act, 1971, w.e.f. 1-4-1972. Prior to its omission, section was amended by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971 and with retrospective effect from 1-4-1962, the Finance Act, 1966, w.e.f. 1-4-1966, and the Finance Act, 1965, w.e.f. 1-4-1965.*]

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(Contd. from p. 1.685)

(a) restricting the amount of deduction under the third proviso to clause (ii) of subsection (1) of section 32;

(b) increase in the rate of surcharge under section 2 of the Finance Act, 1990 (12 of 1990), as amended by the Taxation Laws (Amendment) Act, 1991,

and the assessee has paid the amount of shortfall,—

(i) where it is a domestic company and—

(1) the case falls under clause (a), as part of the instalment of advance tax which is immediately due;

(2) the case falls under clause (b), on or before the 15th day of November, 1990, in respect of the instalment of advance tax due on the 15th day of September, 1990;

(ii) where it is not a domestic company and—

(1) the case falls under clause (a), as part of the instalment of advance tax which is immediately due;

(2) the case falls under clause (b), as part of the instalment of advance tax due on or before the 15th day of March, 1991.”

12. Inserted by the Finance Act, 1992, w.r.e.f. 1-4-1989.

13. Substituted for “the amount of tax deductible at source in accordance with the provisions of Chapter XVII-B on any income which is subject to such deduction” by the Taxation Laws (Amendment) Act, 1991, w.e.f. 15-1-1991.

**Relief to company in respect of dividend paid out of past taxed profits.**

**236.** <sup>14</sup>(1) Where in respect of any previous year relevant to the assessment year commencing after the 31st day of March, 1960, an Indian company or a company which has made the prescribed arrangements for the declaration and payment of dividends within India, pays any dividend wholly or partly out of its profits and gains actually charged to income-tax for any assessment year ending before the 1st day of April, 1960, and deducts tax therefrom in accordance with the provisions of Chapter XVII-B, credit shall be given to the company against the income-tax, if any, payable by it on the profits and gains of the previous year during which the dividend is paid, of a sum calculated in accordance with the provisions of sub-section (2), and, where the amount of credit so calculated exceeds the income-tax payable by the company as aforesaid, the excess shall be refunded.

(2) The amount of income-tax to be given as credit under sub-section (1) shall be a sum equal to ten per cent of so much of the dividends referred to in sub-section (1) as are paid out of the profits and gains actually charged to income-tax for any assessment year ending before the 1st day of April, 1960.

*Explanation 1.*—For the purposes of this section, the aggregate of the dividends declared by a company in respect of any previous year shall be deemed first to have come out of the distributable income of that previous year and the balance, if any, out of the undistributed part of the distributable income of one or more previous years immediately preceding that previous year as would be just sufficient to cover the amount of such balance and as has not likewise been taken into account for covering such balance of any other previous year.

*Explanation 2.*—The expression “distributable income of any previous year” shall mean the total income <sup>15</sup>[(as computed before making any deduction under Chapter VI-A)] assessed for that year as reduced by—

- (i) the amount of tax payable by the company in respect of <sup>16</sup>[its] total income;
- (ii) the amount of any other tax levied under any law for the time being in force on the company by the Government or by a local authority in excess of the amount, if any, which has been allowed in computing the total income;

<sup>17</sup>[(iii) any sum with reference to which a deduction is allowable to the company under the provisions of section 80G; and]

- (iv) in the case of a banking company, the amount actually transferred to a reserve fund under section 17 of the Banking Companies Act, 1949 (10 of 1949),

and as increased by—

- (a) any profits and gains or receipts of the company, not included in its total income <sup>18</sup>[(as computed before making any deduction under Chapter VI-A)]; and

14. See rule 27.

15. Inserted by the Finance (No. 2) Act, 1967, w.e.f. 1-4-1968.

16. Substituted for “the said”, *ibid.*

17. Substituted, *ibid.*

18. Inserted, *ibid.*

(b) any amount attributable to any allowance made in computing the profits and gains of the company for purposes of assessment, which the company has not taken into account in its profit and loss account.

<sup>19</sup>[**Relief to certain charitable institutions or funds in respect of certain dividends.**

**236A.** (1) <sup>20</sup>[Where seventy-five per cent of the share capital of any company is throughout the previous year beneficially held by an institution or fund established in India for a charitable purpose the income from dividend whereof is exempt under section 11], credit shall be given to the institution or fund against the tax, if any, payable by it, of a sum calculated in accordance with the provisions of sub-section (2), in respect of its income from dividends (other than dividends on preference shares) declared or distributed during the previous year relevant to any assessment year beginning on or after the 1st day of April, <sup>21</sup>[1966] <sup>22</sup>[by such a company], and where the amount of credit so calculated exceeds the tax, if any, payable by the said institution or fund, the excess shall be refunded.

<sup>23</sup>[(2) The amount to be given as credit under sub-section (1) shall be a sum which bears to the amount of the tax payable by the company under the provisions of the annual Finance Act with reference to the relevant amount of distributions of dividends by it the same proportion as the amount of the dividends (other than dividends on preference shares) received by the institution or fund from the company bears to the total amount of dividends (other than dividends on preference shares) declared or distributed by the company during the previous year.

*Explanation.*—In sub-section (2) of this section and in section 280ZB, the expression “the relevant amount of distributions of dividends” has the meaning assigned to it in the Finance Act of the relevant year.]]

## **CHAPTER XIX**

### **REFUNDS**

#### **Refunds.**

<sup>24</sup>**237.** If any person satisfies the <sup>25</sup>[Assessing] Officer that the amount of tax paid by him or on his behalf or treated as paid by him or on his behalf

19. Inserted by the Direct Taxes (Amendment) Act, 1964, w.e.f. 1-4-1964.

20. Substituted for “In the case of an institution or fund referred to in clause (iii) of sub-section (2) of section 104” by the Finance Act, 1987, w.e.f. 1-4-1988.

21. Substituted for “1964” by the Finance Act, 1966, w.e.f. 1-4-1966.

22. Substituted for “by such a company as is referred to in the said clause” by the Finance Act, 1987, w.e.f. 1-4-1988.

23. Substituted by the Finance Act, 1966, w.e.f. 1-4-1966.

24. See also Circular No. 23 (LXXII-18), dated 3-8-1962. Letter [F. No. 91/31/64-ITJ], dated 9-6-1964, Circular No. 503, dated 6-2-1988, Circular No. 521, dated 17-8-1988, Circular No. 670, dated 26-10-1993 and Circular No. 773, dated 15-2-1999. For details, see Taxmann’s Master Guide to Income-tax Act.

25. Substituted for “Income-tax” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

for any assessment year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of the excess.

**Person entitled to claim refund in certain special cases.**

<sup>26</sup>**238.** (1) Where the income of one person is included under any provision of this Act in the total income of any other person, the latter alone shall be entitled to a refund under this Chapter in respect of such income.

(2) Where through death, incapacity, insolvency, liquidation or other cause, a person is unable to claim or receive any refund due to him, his legal representative or the trustee or guardian or receiver, as the case may be, shall be entitled to claim or receive such refund for the benefit of such person or his estate.

**Form of claim for refund and limitation.**

<sup>27</sup>**239.** <sup>28</sup>(1) Every claim for refund under this Chapter shall be made in the prescribed form and verified in the prescribed manner.

<sup>29</sup>(2) No such claim shall be allowed, unless it is made within the period specified hereunder, namely :—

- (a) where the claim is in respect of income which is assessable for any assessment year commencing on or before the 1st day of April, 1967, four years from the last day of such assessment year;
- (b) where the claim is in respect of income which is assessable for the assessment year commencing on the first day of April, 1968, three years from the last day of the assessment year;
- (c) where the claim is in respect of income which is assessable for any other assessment year, <sup>30</sup>[one] year from the last day of such assessment year.]

**Refund on appeal, etc.**

**240.** Where, as a result of any order passed in appeal or other proceeding under this Act, refund of any amount becomes due to the assessee, the <sup>31</sup>[Assessing] Officer shall, except as otherwise provided in this Act, refund the amount to the assessee without his having to make any claim in that behalf:

<sup>32</sup>[**Provided** that where, by the order aforesaid,—

- (a) an assessment is set aside or cancelled and an order of fresh assessment is directed to be made, the refund, if any, shall become due only on the making of such fresh assessment;

26. See also Circular No. 22(LXXII-17), dated 8-8-1961. For details, see Taxmann's Master Guide to Income-tax Act.

27. For order of the Board under section 119(2)(b) condoning delay in filing application for refund, refer Taxmann's Direct Taxes Circulars, 1999 edn., Vol. 3, p. 1.3521. See also Circular No. 225/208/95-IT(A-II), dated 26-10-1993.

28. See rule 41 and Form No. 30 for claim for refund.

29. Substituted by the Finance Act, 1968, w.e.f. 1-4-1968.

30. Substituted for "two" by the Finance Act, 1992, w.e.f. 1-4-1993.

31. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

32. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

- (b) the assessment is annulled, the refund shall become due only of the amount, if any, of the tax paid in excess of the tax chargeable on the total income returned by the assessee.]

<sup>33</sup>[**Power to withhold refund in certain cases.**

**241.** Where refund of any amount becomes due to the assessee as a result of an order under this Act or under the provisions of sub-section (1) of section 143 after a return has been made under section 139 or in response to a notice under sub-section (1) of section 142 and the Assessing Officer is of the opinion, having regard to the fact that—

- (i) a notice has been issued, or is likely to be issued, under sub-section (2) of section 143 in respect of the said return; or
- (ii) the order is the subject-matter of an appeal or further proceeding; or
- (iii) any other proceeding under this Act is pending,

that the grant of the refund is likely to adversely affect the revenue, the Assessing Officer may, with the previous approval of the Chief Commissioner or Commissioner, withhold the refund till such time as the Chief Commissioner or Commissioner may determine.]

**Correctness of assessment not to be questioned.**

**242.** In a claim under this Chapter, it shall not be open to the assessee to question the correctness of any assessment or other matter decided which has become final and conclusive or ask for a review of the same, and the assessee shall not be entitled to any relief on such claim except refund of tax wrongly paid or paid in excess.

<sup>34</sup>**Interest on delayed refunds.**

**243.** <sup>35</sup>[(1) If the <sup>36</sup>[Assessing] Officer does not grant the refund,—

- (a) in any case where the total income of the assessee does not consist solely of income from interest on securities or dividends, within three months from the end of the month in which the total income is determined under this Act, and
- (b) in any other case, within three months from the end of the month in which the claim for refund is made under this Chapter,

33. Substituted by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier section 241, as amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988, read as under :

“241. *Power to withhold refund in certain cases.*—Where an order giving rise to a refund is the subject-matter of an appeal or further proceeding or where any other proceeding under this Act is pending, and the Assessing Officer is of the opinion that the grant of the refund is likely to adversely affect the revenue, the Assessing Officer may, with the previous approval of the Chief Commissioner or Commissioner, withhold the refund till such time as the Chief Commissioner or Commissioner may determine.”

34. See rule 119A.

35. Substituted for sub-section (1) by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

36. Substituted for “Income-tax” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

the Central Government shall pay the assessee simple interest at <sup>37</sup>[fifteen] per cent per annum on the amount directed to be refunded from the date immediately following the expiry of the period of three months aforesaid to the date of the order granting the refund.

*Explanation.*—If the delay in granting the refund within the period of three months aforesaid is attributable to the assessee, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which interest is payable.]

(2) Where any question arises as to the period to be excluded for the purposes of calculation of interest under the provisions of this section, such question shall be determined by the <sup>38</sup>[Chief Commissioner or Commissioner] whose decision shall be final.

<sup>39</sup>[(3) The provisions of this section shall not apply in respect of any assessment for the assessment year commencing on the 1st day of April, 1989 or any subsequent assessment years.]

**Interest on refund where no claim is needed.**

<sup>40</sup>**244.** (1) Where a refund is due to the assessee in pursuance of an order referred to in section 240 and the <sup>41</sup>[Assessing] Officer does not grant the refund within a period of <sup>42</sup>[three months from the end of the month in which such order is passed], the Central Government shall pay to the assessee simple interest at <sup>43</sup>[fifteen] per cent per annum on the amount of refund due from the date immediately following the expiry of the period of <sup>44</sup>[three] months aforesaid to the date on which the refund is granted.

<sup>45</sup>[(1A) Where the whole or any part of the refund referred to in sub-section (1) is due to the assessee, as a result of any amount having been paid by him after

37. Substituted for “twelve” by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984. Earlier “twelve” was substituted for “nine” by the Finance Act, 1972, w.e.f. 1-4-1972. Section 84 of the Amendment Act, 1984 has clarified that the increase in the rate of interest will apply in respect of any period falling after 30-9-1984, and also in those cases where the interest became chargeable or payable from an earlier date.

38. Substituted for “Commissioner” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

39. Inserted, *ibid.*, w.e.f. 1-4-1989.

40. See rule 119A.

41. Substituted for “Income-tax” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

42. Substituted for “six months from the date of such order” by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

43. Substituted for “twelve” by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984; section 84 of the Amendment Act has clarified that the increase in the rate of interest will apply in respect of any period falling after 30-9-1984, and also in those cases where the interest became chargeable or payable from an earlier date. Earlier, “twelve” was substituted for “nine” by the Finance Act, 1972, w.e.f. 1-4-1972, “nine” was substituted for “six” by the Taxation Laws (Amendment) Act, 1967, w.e.f. 1-10-1967 and “six” was substituted for “four” by the Finance Act, 1965, w.e.f. 1-4-1965.

44. Substituted for “six” by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

45. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

the 31st day of March, 1975, in pursuance of any order of assessment or penalty and such amount or any part thereof having been found in appeal or other proceeding under this Act to be in excess of the amount which such assessee is liable to pay as tax or penalty, as the case may be, under this Act, the Central Government shall pay to such assessee simple interest at the rate specified in sub-section (1) on the amount so found to be in excess from the date on which such amount was paid to the date on which the refund is granted :

**Provided** that where the amount so found to be in excess was paid in instalments, such interest shall be payable on the amount of each such instalment or any part of such instalment, which was in excess, from the date on which such instalment was paid to the date on which the refund is granted :

**Provided further** that no interest under this sub-section shall be payable for a period of one month from the date of the passing of the order in appeal or other proceeding :

**Provided also** that where any interest is payable to an assessee under this sub-section, no interest under sub-section (1) shall be payable to him in respect of the amount so found to be in excess.]

(2) Where a refund is withheld under the provisions of section 241, the Central Government shall pay interest at the aforesaid rate on the amount of refund ultimately determined to be due as a result of the appeal or further proceeding for the period commencing after the expiry of <sup>46</sup>[three months from the end of the month in which the order referred to in section 241 is passed] to the date the refund is granted.

<sup>47</sup>[(3) The provisions of this section shall not apply in respect of any assessment for the assessment year commencing on the 1st day of April, 1989, or any subsequent assessment years.]

<sup>48</sup>[**Interest on refunds.**

<sup>49</sup>**244A.** (1) <sup>50</sup>[Where refund of any amount becomes due to the assessee under this Act], he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely :—

(a) where the refund is out of any tax <sup>51</sup>[collected at source under section 206C or] paid by way of advance tax or treated as paid under section 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of one <sup>52</sup>[\* \* \*] per cent

46. Substituted for “six months from the date of the order referred to in section 241” by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

47. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

48. Inserted, *ibid.*

49. See also Circular No. 20D(XXII-22), dated 20-8-1968. For details, see Taxmann’s Master Guide to Income-tax Act.

50. Substituted for “Where, in pursuance of any order passed under this Act, refund of any amount becomes due to the assessee” by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

51. Inserted, *ibid.*

52. Words “and one half” omitted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

for every month or part of a month comprised in the period from the 1st day of April of the assessment year to the date on which the refund is granted:

**Provided** that no interest shall be payable if the amount of refund is less than ten per cent of the tax as determined<sup>53</sup>[under sub-section (1) of section 143 or] on regular assessment;

- (b) in any other case, such interest shall be calculated at the rate of one<sup>54</sup>[\* \* \*] per cent for every month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of the tax or penalty to the date on which the refund is granted.

*Explanation.*—For the purposes of this clause, “date of payment of tax or penalty” means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand.

(2) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee, whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which interest is payable, and where any question arises as to the period to be excluded, it shall be decided by the Chief Commissioner or Commissioner whose decision thereon shall be final.

(3) Where, as a result of an order under<sup>55</sup>[sub-section (3) of section 143 or section 144 or] section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-section (1) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and in a case where the interest is reduced, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the amount of the excess interest paid and requiring him to pay such amount; and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly.

(4) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989, and subsequent assessment years.]

### **Set off of refunds against tax remaining payable.**

<sup>56</sup>**245.** Where under any of the provisions of this Act, a refund is found to be due to any person, the<sup>57</sup>[Assessing] Officer, <sup>58</sup>[Deputy Commissioner

53. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

54. Words “and one half” omitted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

55. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

56. See also Circular No. 3-D(LXXII-21), dated 29/31-1-1968. For details, see Taxmann’s Master Guide to Income-tax Act.

57. Substituted for “Income-tax” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

58. Substituted for “Appellate Assistant Commissioner”, *ibid.*

(Appeals)]<sup>59</sup>, Commissioner (Appeals)] or<sup>60</sup>[Chief Commissioner or Commissioner], as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded or any part of that amount, against the sum, if any, remaining payable under this Act by the person to whom the refund is due, after giving an intimation in writing to such person of the action proposed to be taken under this section.

<sup>61</sup>[**CHAPTER XIX-A**  
**SETTLEMENT OF CASES**]

<sup>62</sup>[**Definitions.**]

**245A.** In this Chapter, unless the context otherwise requires,—

- (a) “Bench” means a Bench of the Settlement Commission;
- (b) “case” means any proceeding under this Act for the assessment or reassessment of any person in respect of any year or years, or by way of appeal or revision in connection with such assessment or reassessment, which may be pending before an income-tax authority on the date on which an application under sub-section (1) of section 245C is made :  
**Provided** that where any appeal or application for revision has been preferred after the expiry of the period specified for the filing of such appeal or application for revision under this Act and which has not been admitted, such appeal or revision shall not be deemed to be a proceeding pending within the meaning of this clause;
- (c) “Chairman” means the Chairman of the Settlement Commission;
- (d) “income-tax authority” means an income-tax authority specified in section 116;
- (e) “Member” means a Member of the Settlement Commission, and includes the Chairman and a Vice-Chairman;

59. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

60. Substituted for “Commissioner” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

61. Chapter XIX-A, consisting of sections 245A to 245M, inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

62. Substituted by the Finance Act, 1987, w.e.f. 1-6-1987. Prior to its substitution, section 245A, as amended by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978 and Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984, stood as under :

*Definitions.*—In this Chapter, unless the context otherwise requires,—

- (a) “case” means any proceeding under this Act for the assessment or reassessment of any person in respect of any year or years, or by way of appeal or revision in connection with such assessment or reassessment, which may be pending before an income-tax authority on the date on which an application under sub-section (1) of section 245C is made;
- (b) “income-tax authority” means a Director of Inspection, a Commissioner, a Commissioner (Appeals), an Appellate Assistant Commissioner, an Inspecting Assistant Commissioner or an Income-tax Officer.’

- (f) "Settlement Commission" means the Income-tax Settlement Commission constituted under section 245B;
- (g) "Vice-Chairman" means a Vice-Chairman of the Settlement Commission.]

### **Income-tax Settlement Commission.**

**245B.** (1) The Central Government shall constitute a Commission to be called the Income-tax Settlement Commission <sup>63</sup>[\* \* \*] for the settlement of cases under this Chapter.

(2) The Settlement Commission shall consist of a Chairman <sup>64</sup>[and as many Vice-Chairmen and other members as the Central Government thinks fit] and shall function within the Department of the Central Government dealing with direct taxes.

(2A) <sup>65</sup>[\* \* \*]

(3) The Chairman <sup>66</sup>[, Vice-Chairman] and other members of the Settlement Commission shall 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:

**Provided** that, where a member of the Board is appointed as the Chairman <sup>66</sup>[, Vice-Chairman] or as a member of the Settlement Commission, he shall cease to be a member of the Board.

<sup>67</sup>[\* \* \*]

### **<sup>68</sup>[Jurisdiction and powers of Settlement Commission.**

**245BA.**(1) Subject to the other provisions of this Chapter, the jurisdiction, powers and authority of the Settlement Commission may be exercised by Benches thereof.

63. ' (hereafter in this Chapter referred to as "the Settlement Commission" )' omitted by the Finance Act, 1987, w.e.f. 1-6-1987.

64. Substituted for "and two other members" by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

65. Omitted, *ibid.* Prior to its omission, sub-section (2A), as inserted by the Finance Act, 1982, w.e.f. 1-4-1982, stood as under :

"(2A) Notwithstanding anything contained in sub-section (2), when the post of one of the other members of the Settlement Commission is vacant for any reason, the Chairman and the other members of the Settlement Commission may function as, and exercise and discharge the powers and functions of, the Settlement Commission under this Chapter :

**Provided** that if in any case the Chairman and member so functioning differ on any point or points, they shall state the point or points on which they differ and refer the same, as soon as may be after the said vacancy is filled, to the member appointed to fill the vacancy for hearing on such point or points and such point or points shall be decided according to his opinion."

66. Inserted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

67. Second proviso omitted, *ibid.* Prior to its omission, second proviso stood as under :  
**"Provided further** that, until the members are appointed under this sub-section, it shall be competent for the Central Government to require, from time to time, any two members of the Board to serve as members of the Settlement Commission for such period as the Central Government thinks fit, in addition to their duties as members of the Board."

68. Inserted by the Finance Act, 1987, w.e.f. 1-6-1987.

(2) Subject to the other provisions of this section, a Bench shall be presided over by the Chairman or a Vice-Chairman and shall consist of two other Members.

(3) 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.

(4) Notwithstanding anything contained in sub-sections (1) and (2), the Chairman may authorise the Vice-Chairman or other Member appointed to one Bench to discharge also the functions of the Vice-Chairman or, as the case may be, other Member of another Bench.

(5) Notwithstanding anything contained in the foregoing provisions of this section, and subject to any rules that may be made in this behalf, when one of the persons constituting a Bench (whether such person be the Presiding Officer or other Member of the Bench) is unable to discharge his functions owing to absence, illness or any other cause or in the event of the occurrence of any vacancy either in the office of the Presiding Officer or in the office of one or the other Members of the Bench, the remaining two persons may function as the Bench and if the Presiding Officer of the Bench is not one of the remaining two persons, the senior among the remaining persons shall act as the Presiding Officer of the Bench :

**Provided** that if at any stage of the hearing of any such case or matter, it appears to the Presiding Officer that the case or matter is of such a nature that it ought to be heard of by a Bench consisting of three Members, the case or matter may be referred by the Presiding Officer of such Bench to the Chairman for transfer to such Bench as the Chairman may deem fit.

<sup>69</sup>[(5A) Notwithstanding anything contained in the foregoing provisions of this section, the Chairman may, for the disposal of any particular case, constitute a Special Bench consisting of more than three Members.]

(6) Subject to the other provisions of this Chapter, the places at which the principal Bench and the additional Benches shall ordinarily sit shall be such as the Central Government may, by notification<sup>70</sup> in the Official Gazette, specify<sup>69</sup>[and the Special Bench shall sit at a place to be fixed by the Chairman.]]

<sup>71</sup>[**Vice-Chairman to act as Chairman or to discharge his functions in certain circumstances.**

**245BB.** (1) In the event of the occurrence of any vacancy in the office of the Chairman by reason of his death, resignation or otherwise, the Vice-Chairman or, as the case may be, such one of the Vice-Chairmen as the Central Government may, by notification in the Official Gazette, authorise in this behalf, shall act as the Chairman until the date on which a new Chairman, appointed in accordance with the provisions of this Chapter to fill such vacancy, enters upon his office.

(2) When the Chairman is unable to discharge his functions owing to absence, illness or any other cause, the Vice-Chairman or, as the case may be, such one of the Vice-Chairmen as the Central Government may, by notification in the Official

69. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

70. For notification specifying Principal Bench, *see* Taxmann's Master Guide to Income-tax Act.

71. Inserted by the Finance Act, 1987, w.e.f. 1-6-1987.

Gazette, authorise in this behalf, shall discharge the functions of the Chairman until the date on which the Chairman resumes his duties.]

<sup>72</sup>[**Power of Chairman to transfer cases from one Bench to another.**

**245BC.** On the application of the assessee or the <sup>73</sup>[Chief Commissioner or Commissioner] and after notice to them, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to another Bench.]

<sup>74</sup>[**Decision to be by majority.**

**245BD.** 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 there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Settlement Commission and such point or points shall be decided according to the opinion of the majority of the Members of the Settlement Commission who have heard the case, including those who first heard it.]

**Application for settlement of cases.**

<sup>75</sup>**245C.** <sup>76</sup>[(1) An assessee may, at any stage of a case relating to him, make an application in such form and in such manner as may be prescribed, and containing a full and true disclosure of his income which has not been disclosed before the <sup>77</sup>[Assessing] Officer, the manner in which such income has been derived, the additional amount of income-tax payable on such income and such other particulars as may be prescribed, to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided:

<sup>78</sup>[**Provided** that no such application shall be made unless,—

- (a) the assessee has furnished the return of income which he is or was required to furnish under any of the provisions of this Act; and

72. Inserted by the Finance Act, 1987, w.e.f. 1-6-1987.

73. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

74. Inserted by the Finance Act, 1987, w.e.f. 1-6-1987.

75. See rule 44C and Form No. 34B for form of application for settlement of case. Application should be accompanied by a fee of Rs. 500.

76. Substituted for following sub-section (1) by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984:

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

77. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

78. Substituted by the Finance Act, 1987, w.e.f. 1-6-1987. Prior to its substitution, proviso stood as under :

"**Provided** that no such application shall be made unless the additional amount of income-tax payable on the income disclosed in the application exceeds fifty thousand rupees."

(b) the additional amount of income-tax payable on the income disclosed in the application exceeds <sup>79</sup>[one hundred] thousand rupees.]

(1A) For the purposes of sub-section (1) of this section and sub-sections (2A) to (2D) of section 245D, the additional amount of income-tax payable in respect of the income disclosed in an application made under sub-section (1) of this section shall be the amount calculated in accordance with the provisions of sub-sections (1B) to (1D).

<sup>80</sup>[(1B) 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 (whether or not an assessment has been made in respect of the total income of that year), then, except in a case covered by clause (iii), tax shall be calculated on the income disclosed in the application as if such income were the total income;
- (ii) if the applicant has furnished a return in respect of the total income of that year (whether or not an assessment has been made in pursuance of such return), tax shall be calculated on the aggregate of the total income returned and the income disclosed in the application as if such aggregate were the total income;
- (iii) if the proceeding pending before the income-tax authority is in the nature of a proceeding for reassessment of the applicant under section 147 or by way of appeal or revision in connection with such reassessment, and the applicant has not furnished a return in respect of the total income of that year in the course of such proceeding for reassessment, tax shall be calculated on the aggregate of the total income as assessed in the earlier proceeding for assessment under section 143 or section 144 or section 147 and the income disclosed in the application as if such aggregate were the total income.]

79. Substituted for “fifty” by the Finance Act, 1995, w.e.f. 1-7-1995.

80. Substituted by the Finance Act, 1987, w.e.f. 1-6-1987. Prior to its substitution, sub-section (1B) stood as under :

“(1B) 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 and no assessment has been made in respect of the total income of that year, tax shall be calculated on the income disclosed in the application as if such income were the total income;
- (ii) if the applicant has furnished a return in respect of the total income of that year and no assessment has been made in pursuance of such return, tax shall be calculated on the aggregate of the total income returned and the income disclosed in the application as if such aggregate were the total income; and
- (iii) if an assessment in respect of the total income of that year has been made, tax shall be calculated on the aggregate of the total income as assessed and the income disclosed in the application as if such aggregate were the total income.”

<sup>81</sup>[(1C) The additional amount of income-tax payable in respect of the income disclosed in the application relating to the previous year referred to in sub-section (1B) shall be,—

- (a) in a case referred to in clause (i) of that sub-section, the amount of tax calculated under that clause;
- (b) in a case referred to in clause (ii) of that sub-section, the amount of tax calculated under that clause as reduced by the amount of tax calculated on the total income returned for that year;
- (c) in a case referred to in clause (iii) of that sub-section, the amount of tax calculated under that clause as reduced by the amount of tax calculated on the total income assessed in the earlier proceeding for assessment under section 143 or section 144 or section 147.]

(1D) Where the income disclosed in the application relates to more than one previous year, the additional amount of income-tax payable in respect of the income disclosed for each of the years shall first be calculated in accordance with the provisions of sub-sections (1B) and (1C) and the aggregate of the amount so arrived at in respect of each of the years for which the application has been made under sub-section (1) shall be the additional amount of income-tax payable in respect of the income disclosed in the application.

(1E) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing belonging to an assessee are seized under section 132, the assessee shall not be entitled to make an application under sub-section (1) before the expiry of one hundred and twenty days from the date of the seizure.]

(2) Every application made under sub-section (1) shall be accompanied by such fees as may be prescribed<sup>81a</sup>.

(3) An application made under sub-section (1) shall not be allowed to be withdrawn by the applicant.

### **Procedure on receipt of an application under section 245C.<sup>82</sup>**

**245D.** (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 the materials contained in such report and having regard to the nature

<sup>81</sup>. Substituted by the Finance Act, 1987, w.e.f. 1-6-1987. Prior to its substitution, sub-section (1C) stood as under :

“(1C) The tax as calculated under sub-section (1B) shall be reduced,—

- (a) in a case referred to in clause (i) of sub-section (1B), by the sum, if any, deducted at source under Chapter XVII-B or paid in advance under Chapter XVII-C;
- (b) in a case referred to in clause (ii) of sub-section (1B), by the aggregate of the sums referred to in clause (a) and the tax, if any, paid by the applicant under section 140A; and
- (c) in a case referred to in clause (iii) of sub-section (1B) by the aggregate of the sums and tax referred to in clause (b) as increased by the tax, if any, paid in pursuance of the assessment made in respect of the total income of that year,

and the resultant amount so arrived at shall be the additional amount of income-tax payable in respect of the income disclosed in the application relating to that year.”

<sup>81a</sup>. Fee prescribed is Rs. 500.

<sup>82</sup>. See rule 44CA and Form No. 34B.

and circumstances of the case or the complexity of the investigation involved therein, the Settlement Commission may, by order, allow the application to be proceeded with or reject the application :

**Provided** that an application shall not be rejected under this sub-section unless an opportunity has been given to the applicant of being heard :

<sup>83</sup>[**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.]

(1A) <sup>84</sup>[*Omitted by the Finance (No. 2) Act, 1991, w.e.f. 27-9-1991.*]

(2) A copy of every order under sub-section (1) shall be sent to the applicant and to the Commissioner.

<sup>85</sup>[(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) <sup>86</sup>[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 to the Settlement Commission.]

<sup>86</sup>[(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 thereof by instalments if the assessee furnishes adequate security for the payment thereof.]

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83. Substituted by the Finance Act, 1995, w.e.f. 1-7-1995. Prior to its substitution, the second proviso, as earlier omitted by the Finance Act, 1979, w.e.f. 1-4-1979 and later inserted by the Finance (No. 2) Act, 1991, w.e.f. 27-9-1991, read as under :

“**Provided further** that the Commissioner shall furnish the report within a period of one hundred and twenty days of the receipt of communication from the Settlement Commission in case of all applications made under section 245C on or after the date on which the Finance (No. 2) Bill, 1991 receive the assent of the President and if the Commissioner fails to furnish the report within the said period, the Settlement Commission may make the order without such report.”

84. Prior to omission, sub-section (1A) as inserted by the Finance Act, 1979, w.e.f. 1-4-1979 and amended by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1984, read as under :

“(1A) Notwithstanding anything contained in sub-section (1), an application shall not be proceeded with under that sub-section if the Commissioner objects to the application being proceeded with on the ground that concealment of particulars of income on the part of the applicant or perpetration of fraud by him for evading any tax or other sum chargeable or imposable under this Act, has been established or is likely to be established by any income-tax authority, in relation to the case :

**Provided** that where the Settlement Commission is not satisfied with the correctness of the objection raised by the Commissioner, the Settlement Commission may, after giving the Commissioner an opportunity of being heard, by order, allow the application to be proceeded with under sub-section (1) and send a copy of its order to the Commissioner.”

85. Inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

86. Inserted by the Finance Act, 1985, with retrospective effect from 1-10-1984.

<sup>87</sup>[(2C) Where the additional amount of 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)].

<sup>88</sup>[(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 <sup>89</sup>[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 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, received under sub-section (1), and the report, if any, of the Commissioner 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).

<sup>90</sup>[(5) Subject to the provisions of section 245BA, the materials brought on record before the Settlement Commission shall be considered by the Members

87. Inserted by the Finance Act, 1985, w.r.e.f. 1-10-1984.

88. Inserted, *ibid*.

89. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

90. Inserted by the Finance Act, 1987, w.e.f. 1-6-1987. Original sub-section (5), as amended by the Finance Act, 1982, w.e.f. 1-4-1982, was omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986. Omitted sub-section read as under :  
 "(5) Subject to the provisions of sub-section (2A) of section 245B, the materials brought on record before the Settlement Commission shall be considered by all the members thereof before passing any order under sub-section (4) and, in the case of a difference of opinion among the members, the opinion of the majority shall prevail and such order shall be expressed in terms of the views of the majority."

of the concerned Bench before passing any order under sub-section (4) and, in relation to the passing of such order, the provisions of section 245BD shall apply.]

(6) Every order passed under sub-section (4) shall provide for the terms of settlement including any demand by way of <sup>91</sup>[tax, penalty or interest], the manner in which any sum due under the settlement shall be paid and all other matters to make the settlement effective and shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.

<sup>92</sup>[(6A) Where any tax payable in pursuance of an order under sub-section (4) is not paid by the assessee within thirty-five days of the receipt of a copy of the order by him, then, whether or not the Settlement Commission has extended the time for payment of such tax or has allowed payment thereof by instalments, the assessee shall be liable to pay simple interest at fifteen per cent per annum on the amount remaining unpaid from the date of expiry of the period of thirty-five days aforesaid.]

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

<sup>93</sup>[(8) For the removal of doubts, it is hereby declared that nothing contained in section 153 shall apply to any order passed under sub-section (4) or to any order of assessment, reassessment or recomputation required to be made by the <sup>94</sup>[Assessing] Officer in pursuance of any directions contained in such order passed by the Settlement Commission <sup>95</sup>[and nothing contained in the proviso to sub-section (1) of section 186 shall apply to the cancellation of the registration of a firm required to be made in pursuance of any such directions as aforesaid.]]

<sup>96</sup>[**Power of Settlement Commission to order provisional attachment to protect revenue.**

**245DD.** (1) Where, during the pendency of any proceeding before it, the Settlement Commission is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, it may, by order,

91. Substituted for "tax or penalty" by the Finance Act, 1987, w.e.f. 1-6-1987. Earlier "tax or penalty" was substituted for "tax, penalty or interest" by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

92. Inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

93. Inserted, *ibid*.

94. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

95. Inserted by the Finance Act, 1987, w.e.f. 1-6-1987.

96. Inserted by the Finance Act, 1988, w.e.f. 1-4-1988.

attach provisionally any property belonging to the applicant in the manner provided in the Second Schedule :

**Provided** that where a provisional attachment made under section 281B is pending immediately before an application is made under section 245C, an order under this sub-section shall continue such provisional attachment up to the period up to which an order made under section 281B would have continued if such application had not been made :

**Provided further** that where the Settlement Commission passes an order under this sub-section after the expiry of the period referred to in the preceding proviso, the provisions of sub-section (2) shall apply to such order as if the said order had originally been passed by the Settlement Commission.

(2) Every provisional attachment made by the Settlement Commission under sub-section (1) shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1) :

**Provided** that the Settlement Commission may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as it thinks fit, so, however, that the total period of extension shall not in any case exceed two years.]

#### **Power of Settlement Commission to reopen completed proceedings.**

**245E.** If the Settlement Commission is of the opinion (the reasons for such opinion to be recorded by it in writing) that, for the proper disposal of the case pending before it, it is necessary or expedient to reopen any proceeding connected with the case but which has been completed <sup>97</sup>[\* \* \*] under this Act by any income-tax authority before the application under section 245C was made, it may, with the concurrence of the applicant, reopen such proceeding and pass such order thereon as it thinks fit, as if the case in relation to which the application for settlement had been made by the applicant under that section covered such proceeding also:

<sup>98</sup>[**Provided** that no proceeding shall be reopened by the Settlement Commission under this section if the period between the end of the assessment year to which such a proceeding relates and the date of application for settlement under section 245C exceeds nine years.]

#### **Powers and procedure of Settlement Commission.**

**245F.** (1) In addition to the powers conferred on the Settlement Commission under this Chapter, it shall have all the powers which are vested in an income-tax authority under this Act.

97. "under the Indian Income-tax Act, 1922 (11 of 1922), or" omitted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

98. Substituted by the Finance Act, 1987, w.e.f. 1-6-1987. Prior to its substitution, it read as under:

"**Provided** that no proceeding shall be reopened by the Settlement Commission under this section after the expiry of a period of eight years from the end of the assessment year to which such proceeding relates."

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

(3) Notwithstanding anything contained in sub-section (2) and in the absence of any express direction to the contrary by the Settlement Commission, nothing contained in this section shall affect the operation of any other provision of this Act requiring the applicant to pay tax on the basis of self-assessment<sup>99</sup>[\* \* \*] in relation to the matters before the Settlement Commission.

(4) For the removal of doubt, it is hereby declared that, in the absence of any express direction by the Settlement Commission to the contrary, nothing in this Chapter shall affect the operation of the provisions of this Act in so far as they relate to any matters other than those before the Settlement Commission.

(5) <sup>1</sup>[\* \* \*]

(6) <sup>2</sup>[\* \* \*]

<sup>3</sup>(7) The Settlement 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 Benches shall hold their sittings.]

### **Inspection, etc., of reports.**

**245G.**<sup>4</sup>No person shall be entitled to inspect, or obtain copies of, any reports made by any income-tax authority to the Settlement Commission; but the Settlement Commission may, in its discretion, furnish copies thereof to any such person on an application made to it in this behalf and on payment of the prescribed fee :

**Provided** that, for the purpose of enabling any person whose case is under consideration to rebut any evidence brought on record against him in any such report, the Settlement Commission shall, on an application made in this behalf, and on payment of the prescribed fee by such person, furnish him with a certified copy of any such report or part thereof relevant for the purpose.

99. "or by way of advance tax" omitted by the Finance Act, 1987, w.e.f. 1-6-1987.

1. Omitted, *ibid*. Original sub-section (5), which was earlier substituted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986, stood as under :

"(5) The powers or functions of the Settlement Commission may be exercised or discharged by Benches constituted by the Chairman of the Settlement Commission from amongst the members thereof."

2. Omitted by the Finance Act, 1987, w.e.f. 1-6-1987. Original sub-section (6), which was inserted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986, stood as under :

"(6) A Bench constituted under sub-section (5) shall consist of three members, one of whom shall be the Chairman or a Vice-Chairman."

3. Inserted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10-9-1986.

4. See rule 44D.

**Power of Settlement Commission to grant immunity from prosecution and penalty.**

**245H.** (1) The Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 245C has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1860) or under any other Central Act for the time being in force and also <sup>5</sup>[(either wholly or in part)] from the imposition of any penalty under this Act, with respect to the case covered by the settlement :

<sup>6</sup>[**Provided** that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under section 245C.]

<sup>6</sup>[(1A) An immunity granted to a person under sub-section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of settlement passed under sub-section (4) of section 245D within the time specified in such order or within such further time as may be allowed by the Settlement 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.]

(2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Settlement Commission, if it is satisfied that such person <sup>7</sup>[\* \* \*] had, in the course of the settlement proceedings, concealed any particulars material to the settlement or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the settlement and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

<sup>8</sup>[**Power of Settlement Commission to send a case back to the** <sup>9</sup>[Assessing] **Officer if the assessee does not co-operate.**

**245HA.** (1) The Settlement Commission may, if it is of opinion that any person who made an application for settlement under section 245C has not co-operated with the Settlement Commission in the proceedings before it, send the case back to the <sup>9</sup>[Assessing] Officer who shall thereupon dispose of the case

5. Inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

6. Inserted by the Finance Act, 1987, w.e.f. 1-6-1987.

7. "has not complied with the conditions subject to which the immunity was granted or that such person" omitted, *ibid*.

8. Inserted, *ibid*.

9. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

in accordance with the provisions of this Act as if no application under section 245C had been made.

(2) For the purposes of sub-section (1), the <sup>10</sup>[Assessing] Officer shall be entitled to use all the materials 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 materials, information, inquiry and evidence had been produced before the <sup>10</sup>[Assessing] Officer or held or recorded by him in the course of the proceedings before him.

(3) For the purposes of the time-limit under sections 149, 153, 154, 155 and 231 and for the purposes of payment of interest under sections 243 and 244, in a case referred to in sub-section (1), the period commencing on and from the date of the application to the Settlement Commission under section 245C and ending with the date of receipt by the <sup>10</sup>[Assessing] Officer of the order of the Settlement Commission sending the case back to the <sup>10</sup>[Assessing] Officer shall be excluded; and where the assessee is a firm, for the purposes of the time-limit for cancellation of registration of the firm under sub-section (1) of section 186<sup>11</sup>, the period aforesaid shall, likewise, be excluded.]

#### **Order of settlement to be conclusive.**

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

#### **Recovery of sums due under order of settlement.**

**245J.** Any sum specified in an order of settlement passed under sub-section (4) of section 245D may, subject to such conditions, if any, as may be specified therein, be recovered, and any penalty for default in making payment of such sum may be imposed and recovered in accordance with the provisions of Chapter XVII, by the <sup>10</sup>[Assessing] Officer having jurisdiction over the person who made the application for settlement under section 245C.

#### **Bar on subsequent application for settlement in certain cases.**

**245K.** Where,—

- (i) an order of settlement passed under sub-section (4) of section 245D provides for the imposition of a penalty on the person who made the application under section 245C for settlement, on the ground of concealment of particulars of his income; or
- (ii) after the passing of an order of settlement under the said sub-section (4) in relation to a case, such person is convicted of any offence under Chapter XXII in relation to that case; <sup>12</sup>[or]

10. Substituted for “Income-tax” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

11. Section 186 has been omitted by the Finance Act, 1992, w.e.f. 1-4-1993.

12. Inserted by the Finance Act, 1987, w.e.f. 1-6-1987.

<sup>13</sup>[(iii) the case of such person is sent back to the <sup>14</sup>[Assessing] Officer by the Settlement Commission under section 245HA,] then, he shall not be entitled to apply for settlement under section 245C in relation to any other matter.

**Proceedings before Settlement Commission to be judicial proceedings.**

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

**Certain persons who have filed appeals to the Appellate Tribunal entitled to make applications to the Settlement Commission.**

<sup>15</sup>**245M.** [*Omitted by the Finance Act, 1987, w.e.f. 1-6-1987.*]

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13. Inserted by the Finance Act, 1987, w.e.f. 1-6-1987.

14. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

15. Prior to its omission, section 245M, which was originally inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976 and later amended by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984, stood as under :

"245M. (1) Notwithstanding anything contained in this Chapter, any assessee who has filed an appeal to the Appellate Tribunal under this Act which is pending before it shall, on withdrawing such appeal from the Appellate Tribunal before the 1st day of October, 1984, be entitled to make an application to the Settlement Commission to have his case settled under this Chapter :

**Provided** that no such assessee shall be entitled to make an application in a case where the Income-tax Officer has preferred an appeal under sub-section (2) of section 253 against the order to which the assessee's appeal relates.

(2) Any assessee referred to in sub-section (1) may make an application to the Appellate Tribunal for permission to withdraw the appeal.

(3) On receipt of an application under sub-section (2), the Appellate Tribunal shall grant permission to withdraw the appeal.

(4) Upon the withdrawal of the appeal, the proceeding in appeal immediately before such withdrawal shall, for the purposes of this Chapter, be deemed to be a proceeding pending before an income-tax authority.

(5) An application to the Settlement Commission under this section shall be made within a period of thirty days from the date on which the order of the Appellate Tribunal permitting the withdrawal of the appeal is communicated to the assessee.

(6) An application made to the Settlement Commission under this section shall be deemed to be an application made under sub-section (1) of section 245C and the provisions of this Chapter [except sub-section (7) of section 245D] shall apply accordingly.

(7) Where an application made to the Settlement Commission under this section is not entertained by the Settlement Commission, then the assessee shall not be deemed to have withdrawn the appeal from the Appellate Tribunal and the provisions contained in section 253, section 254 and section 255 shall, so far as may be, apply accordingly."

<sup>16</sup>[**CHAPTER XIX-B**  
**ADVANCE RULINGS**

**Definitions.**

**245N.** In this Chapter, unless the context otherwise requires,—

<sup>17</sup>(a) “advance ruling” means—

- (i) a determination by the Authority in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant and such determination shall include the determination of any question of law or of fact specified in the application;
  - (ii) a decision by the Authority in relation to an assessment which is pending before any of the Income-tax Authority or the Tribunal in case of an applicant who is a resident in India and such decision shall include the decision on question of law or fact arising out of the orders of assessment in respect of which an application has been made by a resident applicant;
- (b) “applicant” means any person who—
- (i) is a non-resident; or
  - (ii) is a resident falling within any such class or category of persons as the Central Government may, by notification in the Official Gazette, specify in this behalf;
- (iii) makes an application under sub-section (1) of section 245Q;]
- (c) “application” means an application made to the Authority under sub-section (1) of section 245Q;
- (d) “Authority” means the Authority for Advance Rulings constituted under section 245-O;
- (e) “Chairman” means the Chairman of the Authority;
- (f) “Member” means a Member of the Authority and includes the Chairman.

**Authority for Advance Rulings.**

**245-O.** (1) The Central Government shall constitute an Authority for giving advance rulings, to be known as “Authority for Advance Rulings”.

(2) The Authority shall consist of the following Members appointed by the Central Government, namely :—

- (a) a Chairman, who is a retired Judge of the Supreme Court;
- (b) an officer of the Indian Revenue Service who is qualified to be a member of the Central Board of Direct Taxes;

16. Chapter XIX-B, consisting of sections 245N to 245V, inserted by the Finance Act, 1993, w.e.f. 1-6-1993.

17. Clauses (a) and (b) substituted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Prior to their substitution clauses (a) and (b), as inserted by the Finance Act, 1993, w.e.f. 1-6-1993, read as under :

- ‘(a) “advance ruling” means the determination, by the Authority, of a question of law or fact specified in the application in relation to a transaction which has been undertaken, or is proposed to be undertaken, by the applicant;
- (b) “applicant” means a non-resident making an application;’

(c) an officer of the Indian Legal Service who is, or is qualified to be, an Additional Secretary to the Government of India.

(3) The salaries and allowances payable to, and the terms and conditions of service of, the Members shall be such as may be prescribed.

(4) The Central Government shall provide the Authority with such officers and staff as may be necessary for the efficient exercise of the powers of the Authority under this Act.

(5) The office of the Authority shall be located in Delhi.

**Vacancies, etc., not to invalidate proceedings.**

**245P.** No proceeding before, or pronouncement of advance ruling by, the Authority shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Authority.

**Application for advance ruling.**

**245Q.** (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and in such manner as may be prescribed<sup>18</sup>, stating the question on which the advance ruling is sought.

(2) The application shall be made in quadruplicate and be accompanied by a fee of two thousand five hundred rupees.

(3) An applicant may withdraw an application within thirty days from the date of the application.

**Procedure on receipt of application.**

**245R.** (1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Commissioner and, if necessary, call upon him to furnish the relevant records:

**Provided** that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the Commissioner.

(2) The Authority may, after examining the application and the records called for, by order, either allow or reject the application:

**Provided** that the Authority shall not allow the application<sup>19</sup> [except in the case of a resident applicant] where the question raised in the application,—

(a) is already pending in the applicant's case before any income-tax authority, the Appellate Tribunal or any court;

(b) involves determination of fair market value of any property;

(c) relates to a transaction which is designed *prima facie* for the avoidance of income-tax:

**Provided further** that no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard:

**Provided also** that where the application is rejected, reasons for such rejection shall be given in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the Commissioner.

<sup>18</sup>. See rule 44E and Form No. 34C for application for obtaining advance ruling in quadruplicate.

<sup>19</sup>. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

(4) Where an application is allowed under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority, pronounce its advance ruling on the question specified in the application.

(5) On a request received from the applicant, the Authority shall, before pronouncing its advance ruling, provide an opportunity to the applicant of being heard, either in person or through a duly authorised representative.

*Explanation.*—For the purposes of this sub-section, “authorised representative” shall have the meaning assigned to it in sub-section (2) of section 288, as if the applicant were an assessee.

(6) The Authority shall pronounce its advance ruling in writing within six months of the receipt of application.

(7) A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in the prescribed manner<sup>20</sup> shall be sent to the applicant and to the Commissioner, as soon as may be, after such pronouncement.

### **<sup>21</sup>[Appellate authority not to proceed in certain cases.]**

**245RR.** No income-tax authority or the Appellate Tribunal shall proceed to decide any issue in respect to which an application has been made by an applicant, being a resident, under sub-section (1) of section 245R.]

### **Applicability of advance ruling.**

**245S.** (1) The advance ruling pronounced by the Authority under section 245R shall be binding only—

- (a) on the applicant who had sought it;
- (b) in respect of the transaction in relation to which the ruling had been sought; and
- (c) on the Commissioner, and the income-tax authorities subordinate to him, in respect of the applicant and the said transaction.

(2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

### **Advance ruling to be void in certain circumstances.**

**245T.** (1) Where the Authority finds, on a representation made to it by the Commissioner or otherwise, that an advance ruling pronounced by it under sub-section (6) of section 245R has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be void *ab initio* and thereupon all the provisions of this Act shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) to the applicant as if such advance ruling had never been made.

(2) A copy of the order made under sub-section (1) shall be sent to the applicant and the Commissioner.

### **Powers of the Authority.**

**245U.** (1) The Authority shall, for the purpose of exercising its powers, have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908) as are referred to in section 131 of this Act.

20. See rule 44F for certification of copies of the advance rulings pronounced by the authority.

21. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

(2) The Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI, of the Code of Criminal Procedure, 1973 (2 of 1974) and every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

### **Procedure of Authority.**

**245V.** The Authority shall, subject to the provisions of this Chapter, have power to regulate<sup>22</sup> its own procedure in all matters arising out of the exercise of its powers under this Act.]

## CHAPTER XX **APPEALS AND REVISION**

<sup>23</sup>[A.—*Appeals* <sup>24</sup>[\*\*\*] *to the Deputy Commissioner (Appeals) and Commissioner (Appeals)*]

### **Appealable orders.**

**246.** (1) Subject to the provisions of sub-section (2), any assessee aggrieved by any of the following orders of an Assessing Officer (other than the Deputy

22. *See also Authority for Advance Ruling (Procedure) Rules, 1996.*

23. Substituted for the heading and section 246 by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to its substitution sub-heading along with section 246, as amended by the Finance Act, 1964, w.e.f. 1-4-1964, Finance Act, 1966, w.e.f. 1-4-1967, Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971, Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976, Finance (No. 2) Act, 1977, w.e.f. 10-7-1978, Finance Act, 1979, w.e.f. 1-6-1979, Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984, Finance Act, 1984, w.e.f. 1-4-1985, Finance Act, 1987, w.e.f. 1-4-1988 and Finance Act, 1988, with retrospective effect from 1-4-1988/1-6-1987, stood as under:

*'A.—Appeals to the Deputy Commissioner (Appeals) and Commissioner (Appeals)*

**246. Appealable orders.**—(1) Subject to the provisions of sub-section (2), any assessee aggrieved by any of the following orders of any Assessing Officer may appeal to the Deputy Commissioner (Appeals) against such order—

- (a) [\*\*\*]
- (b) an order imposing a fine under sub-section (2) of section 131;
- (c) an order against the assessee, where the assessee denies his liability to be assessed under this Act or any order of assessment under sub-section (3) of section 143 or section 144, where the assessee objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;
- (d) an order under section 146 refusing to reopen an assessment made under section 144;
- (e) an order of assessment, reassessment or recomputation under section 147 or section 150;
- (f) an order under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections;
- (g) an order made under section 163 treating the assessee as the agent of a non-resident;
- (h) an order under sub-section (2) or sub-section (3) of section 170;
- (i) an order under section 171;
- (j) an order under clause (b) of sub-section (1) or under sub-section (2) or sub-section (3) or sub-section (5) of section 185;

*(Contd. on p. 1.712)*