

SETTLEMENT COMMISSION

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The Settlement Commission is established in various parts of the country under section 245D of Income Tax Act 1961. They are also functioning under section 22B Wealth Tax Act 1957. The Settlement Commission started functioning with effect from 01/04/1976. It is set up as a result of recommendations made by Direct Tax Enquiry Committee i.e. Wanchoo Committee. The Settlement Commission has its Head Office at Delhi. It has got its other offices at Mumbai, Kolkata and Chennai. The office of the settlement commission is properly known as Additional Bench. It is functioning like a Court of Law. The proceedings of the Settlement Commission are quasi judicial in nature. Every bench of the Settlement Commission consists of 2 members and a Vice Chairman. Vice Chairman is the senior-most among the members. The members, Vice Chairman and Chairman of the Settlement Commission are the persons of integrity, upstanding ability, knowledge of taxation laws and vast experience in the field of Direct Taxes, Accounts etc. The job of the Settlement Commission is very tricky. They have to deal with complicated cases and cases involving doubtful benefit to revenue etc. For avoiding endless and prolong litigation and consequential strain on investigating resources of the Income Tax Department it is established with a view to dispose of such cases speedily. Normally the Chief Commissioner after their retirement from the Income tax Department are reappointed as members of the Settlement Commission to work for two years i.e. upto their age of 62 years. Every member retires from the Settlement Commission on completing 62 years of their age. Hence the Settlement Commission consists of a Chairman and as many no. of Vice Chairman as required to head every Additional Bench of the Settlement Commission. At the same time, since the tenure of their service in the Settlement Commission are short new members are taken up to replace the retiring members. The members of the settlement commission are promoted as Vice Chairman and Chairman on the basis of their Seniority. They are paid salary of the Grade of Chief Commissioner.

No. of Additional benches of the Settlement Commission are appointed as required in their jurisdictional area. The Bench of the Chairman is the Presiding Officer is the Principle bench and other benches are called as Additional Benches. Every Additional Bench has been allotted a Specific area i.e. the states as their jurisdiction. For eg The Additional Bench of the Settlement Commission of Mumbai has been allotted the Jurisdiction of entire Maharashtra, Gujarat and Goa states. So every Additional bench is authorized to decide the cases in their jurisdictional area.

To assist the functioning of the Settlement Commission there is separate wing of Income Tax Department headed by a Commissioner. There are other Officers and staff working in the Department. In addition, the administrative part of the Settlement Commission is taken care of by the Settlement Commission's own staff. Every case of the Settlement Commission is presented by the Authorized representatives on behalf of the Tax Payer. On the other hand the Revenue of every case is taken care of by the Income Tax Wing of the Settlement Commission. The Settlement Commission has to dispose of the case i.e. pass Final order under section 245D(4) of the Income Tax Act within a period of eighteen months from the end of the month in which Settlement Application has admitted the settlement application.

The most peculiarity of the Settlement Commission is the tendency of the Presiding Officers i.e. members and Vice Chairman of the Bench. While working as the Chief Commissioner in the Income Tax Department the tendency of this Officer is strictly pro departmental. However on taking up the Assignment in the Settlement Commission, he has to blend his tendency and mentality to suit the purpose of setting up of Settlement Commission that means he has to become a presiding Officer of Broad mind.

The Principle of the Settlement Commission is that a taxpayer should approach it by keeping its cards open. The Tax Payer is expected to make true and full disclosure of his undisclosed and unaccounted assets, investments and income and pay tax on it with interest before filing application to the Settlement Commission. The Tax payer is also required to disclose the manner in which the undisclosed income was earned i.e. he has to disclose the sources of Income and Investments made. Normally after the Search is taken, appraisal report is prepared by the Investigation Wing. It is estimation of Tax of undisclosed income, investment and property and tax liability arising out of it. This report is sent to the Commissioner of the Central Department of the Income Tax. On the basis of this report the Officer of the Central Department issues notice under section 153A(a) or 153C for filing the

returns by the Tax Payer and his relatives. After receiving this notice, a Tax Payer has option to file Settlement Application before the Settlement Commission. For this purpose he can do so provided his total Tax liability of the entire Block period exceeds Rs. 50 Lakh. In case of relative or relatives of a tax payer, his tax liability should Rs. 10 Lakh so as to enable him to file his application before the Settlement Commission. In addition there is one more condition i.e. the advantage of approaching settlement commission is available only once in the lifetime of a Tax Payer. It is a matter of advantage given to a Tax Payer only once in his lifetime. The biggest advantage given to a tax Payer is that the Settlement Commission gives immunity to a Tax Payer from all penalties and prosecution under Income Tax Act provided a Tax Payer has made true and full disclosure of his undisclosed income and co-operated with the Settlement Commission upto finalization of his application. In addition the order of the Settlement Commission is not appealable. It means no further appeal lies in any Court of Law in India. However if it is found that if order of the Settlement Commission is erroneous or far away from facts it could be challenged by the Income Tax Department by way of a Writ Petition in the concerned High Court. But this incidence hardly takes place because the Settlement Commission passes an order promptly after considering all the facts and circumstances related to a particular case. A strict procedure is adopted by the Settlement Commission for filing an application such as submission of all the returns of income, computation, statements of accounts and all the related documents in support of the claim of the applicant.

The functioning of the Settlement Commission is in the nature of mediation or arbitration. The applicants are also allowed to approach the Settlement Commission in respect of particular assessment year or years only if no assessment order is passed by the concerned Tax Authority and the statutory time limit for passing an Assessment order for that year is not lapsed. It is because the proceedings are considered to be pending from the first year of Assessment year and it is not needed that a return of income is filed or a notice for scrutiny is issued before the application is filed. The Settlement application is liable to be rejected by the Settlement Commission in case it is found that a Tax Payer has not fulfilled all the conditions laid down as mentioned above.

Upto 31.03.2007 the Settlement Commissions used were admitting only those applications in which there was complication involved. This complication was of separating the income of various individuals who invested uncounted money from time to time and that

all these amounts got mixed up due to the process of investment and reinvestment. At the same time, it was difficult to calculate the exact amount of investment made out of undisclosed income by various individuals in the group or family. Due to this many applications were rejected by the Settlement Commission. From 01.04.2007 the provision of complexity involved was removed so that a tax Payer need not prove the complexity. This had a positive effect by increasing number of applications admitted before the settlement commission

Considering all the facts and circumstances it is advisable that after the search is taken in the premises a tax payer should file settlement application and get rid of all the worries in finalizing the assessments of Block period.