

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH 'A', CHANDIGARH**

**BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA Nos.1271 to 1274/Chd/2017

Assessment Years: 1994-95 to 1997-98

The DCIT
Circle
Mandi Gobindgarh

Vs. Sh. Gurinderjit Singh
C/o M/s Patiala Bus Service (P) Ltd.
HO, Railway Road, Sirhind

PAN No. AGFPS2789H

**Cross Objection Nos. 66 to 69 /Chd/2017
(In ITA Nos.1271 to 1274/Chd/2017)**

Assessment Years: 1994-95 to 1997-98

Sh. Gurinderjit Singh
C/o M/s Patiala Bus Service (P) Ltd.
HO, Railway Road, Sirhind

Vs. The DCIT
Circle
Mandi Gobindgarh

ITA Nos.1287 to 1291/Chd/2017

Assessment Years: 1996-97 to 2000-01

The ITO
Ward
Sirhind

Vs. Sh. Kesar Singh
C/o M/s Patiala Bus Service (P) Ltd.
HO, Sirhind

PAN No. AGFPS2791B

**Cross Objection Nos. 58 to 62 /Chd/2017
(In ITA Nos.1287 to 1291/Chd/2017)**

Assessment Years: 1996-97 to 2000-01

Sh. Kesar Singh
S/o M/s Patiala Bus Service (P) Ltd.
HO, Sirhind

Vs. The ITO
Ward
Sirhind

ITA Nos.1292 to 1296/Chd/2017

Assessment Years: 1996-97 to 2000-01

The ITO
Ward
Sirhind

Vs. Sh. Harjit Singh
C/o M/s Patiala Bus Service (P) Ltd.
HO, Sirhind

PAN No. AGFPS2790A

**Cross Objection Nos. 5 to 9 /Chd/2017
(In ITA Nos.1292 to 1296/Chd/2017)**

Assessment Years: 1996-97 to 2000-01

Sh. Harjit Singh
S/o M/s Patiala Bus Service (P) Ltd.

Vs. The ITO
Ward

HO, Sirhind

Sirhind

(Appellant)

(Respondent)

Assessee By : Shri. Prem Singh
 Shri. Gurjeet Singh
 Revenue By : Shri. Manoj Kumar
 Date of hearing : 14/06/2018
 Date of Pronouncement : 29/08/2018

ORDER**PER BENCH:**

All the above appeals have been filed by the Revenue and the Cross Objections filed by the different assessees involve identical issues and hence being disposed of by this consolidated order for the sake of convenience. We shall take Appeal No. 1271/CHD/2017 for the A.Y. 1994-95 and Cross Objection No. 66/CHD/2017 for A.Y. 1994-95 as the lead case.

2. Grounds taken by the Revenue in ITA No. 1281/CHD/2017 reads as under:

1. *Whether on the facts and circumstances of the case, the Ld. CIT(A), Patiala has erred in allowing the appeal of the assessee by annulling the assessment order passed by the Assessing Officer whereas the order under section 245HA(1) r.w.s 245D(2) of the Income Tax Act, 1961 was received in the office of the Pr. CIT, Patiala on 02/05/2016 and the assessment orders were passed by the Assessing Officer within 60 days of the receipt of the same from the office of the Pr. CIT, Patiala i.e. on 22/06/2016.*

2. *It is prayed that the order of Ld. CIT(A) be set aside and that of the Assessing Officer restored.*

2.1 Only one effective ground taken by the Assessee in C.O. No. 66/CHD/2017 reads as under:

1. *That the first appellate authority has failed to appreciate that no notice under section 143(2) of the Act was neither issued nor served on the assessee within statutory time. Hence, the assessment framed under section 143(3) of the Act is not maintainable as per decision of Punjab & Haryana High Court in case of CIT Vs. Cebone India Ltd. (2010) 229 CTR 188 (P&H).*

3. The brief facts of the case as taken from the order of the Ld. CIT(A) are that, after filing return of income on 27/03/1996, the assessee filed an application before the Hon'ble Settlement Commission u/s 245C (1) on 30/08/1996. The Hon'ble Settlement Commission passed order u/s 245D (1) of the Act allowing the application to be proceeded with. The assessee was required to pay the admitted tax and interest within 35 days of the said order. The assessee did not pay the admitted tax and interest.

4. The provisions and the procedure in force as on the date of application is mentioned below for the sake of brevity:

In respect of applications filed on or after 1.10.1984, the Commission in its order passed under section 245D(1) allowing the application to be proceeded with, directs the applicant to pay, within 35 days of receipt of a copy of the order, the additional amount of receipt income tax payable on the income disclosed in the application and to furnish proof of such payment to the Commission and the A.O. having jurisdiction, within fifteen days of such payment. If an assessee is unable to pay the additional amount of Income-tax for good and sufficient reasons, he may apply to the Commission for allowing payment of such income-tax in instalments and the Commission may extend the time for payment or grant suitable instalments subject to the assessee furnishing adequate security. In any case, if payment of the additional tax is delayed beyond 35 days of the date of receipt by the applicant, a copy of the order of the Commission allowing the application to be proceeded with, the assessee shall be required to pay interest on such delayed payment as prescribed under section 245D(2C). In case of default on the part of the applicant, the assessing officer may be directed by the Commission to recover the remaining unpaid amount together with interest payable thereon under sub-section 2(C) of section 245D of Income-tax Act, 1961, and with any penalty imposed in accordance with the provisions of section 245D(2D) and under Chapter XVII of the Income-tax Act, 1961.

4.1 Subsequently, during the pendency of the proceedings for disposal by the ITSC, there has been an amendment by the Finance Act, 2007 w.e.f. 01.06.2007, whereby new provisions i.e. 245D(2D) and 245HA were inserted, which provided that in case the admitted tax and interest was not paid by 31.07.2007, the Settlement application would stand abated on 31.07.2007.

4.2 Since the provisions were against the interests of the assessee, the assessee approached the Hon'ble Punjab and Haryana High Court challenging the validity of the provisions of the section 245D(2D) and 245HA vide writ petition No. 96(as applicable) of 2008 dt. 06/01/2008.

4.3 On 21.09.2012, the Hon'ble Punjab and Haryana High Court disposed of the bunch of writ petitions by following the ratio in the case of Star Television News Ltd Vs. Union of India and others (2009) 317 ITR 66 (Bom) as decided by the Hon'ble Bombay High Court. Later, the Hon'ble Settlement Commission passed an ex-parte order u/s 245D(4) on 28.02.2014 as the assessee did not represent before them. The assessee, being aggrieved by the ex-parte order passed by the Hon'ble Settlement Commission u/s 245D (4), filed a writ petition before the Hon'ble Punjab and Haryana High Court on 02/09/2014 which was disposed of on 24.04.2015 by the Hon'ble Court with a direction to the Settlement Commission to pass a fresh order after affording reasonable opportunity of being heard to the assessee, as the earlier order dt. 28/02/2014 was an ex-parte order passed without affording any opportunity to the assessee.

4.4 Thereafter, the Hon'ble Settlement Commission passed an order on 25.04.2016 under section 245HA(1) r.w.s 245D(2D) and the Assessing Officer was also marked a

copy of the order dtd. 25.04.2016 u/s 245HA(1) r.w.s. 245D(2) of the Act stating that the proceedings had abated on the grounds that the admitted tax and interest on the income disclosed had not been paid as per newly inserted section 245D(2D). As borne out from the record, this intimation letter dated 25.04.2016 was communicated to the Principal Commissioner of Income Tax on 02.05.2016. Following this, the assessee received the notice u/s 142(1) of the Act from the Ld. AO. In response to the said notice, the assessee submitted a reply contending that the proceedings have become time-barred. The Ld. AO has given the reasons for completion of the assessment at para 6.1(ii) and as can be deciphered at para 6.1 of page 10 of the order of the CIT(A) and completed the assessment under section 143(3) of the Income Tax Act, 1961 .

5. During the proceeding before the Ld. CIT(A) the Ld. AR filed written submissions and relied on the same during the arguments taken before us. The relevant extract is as under:-

"Re: Assessment order being barred by limitation.

1. *That the Assessee filed applications before the ITSC, Delhi Bench for two assessment years i.e. A.Y. 1996-97 and A.Y. 97-98 on 15.03.1999 and on 14.02.2001 filed applications before the ITSC Delhi Bench for three assessment years i.e. A. Y. 1998-99 to 2000-01.*

2. *The applications filed before ITSC Delhi Bench involving above mentioned assessment years has been admitted by the ITSC Delhi Bench U/s 245D(1) of the IT Act. Refer Chart.*

3. *By Finance Act, 2007, new provision 245D(2D) was inserted w.e.f 01.06.2007. The Assessee approached the Hon'ble High Court of Punjab and Haryana challenging the aforesaid new provision. On 21.09.2012, the Hon'ble High Court of Punjab and Haryana decided the bunch of writ petition and disposed of the writ petitions in term of Star Television News Ltd. v. UOI and Other, (2009) 317ITR 66 (Bom).*

4. *That during the course of hearing before the ITSC, AO submitted the reply and took the objection that application of the assessee filed by the Assessee should be dismissed as the Assessee has not even made payment of the additional income declared before the settlement commission. That the ITSC passed order U/s 245D(4) on 28.02.2014 deciding the case ex-parte qua the Assessee.*

5. *That the Assessee being aggrieved by the order passed by the ITSC under section 245D(4), filed a writ petition before the Hon'ble High Court of Punjab and Haryana on the ground that No opportunity of being heard was given to the Assessee before passing the said order.*

6. *That AO submitted the reply affidavit to the Civil writ petition No. 17951 of 2014 and took the objection that the civil writ petition filed by the Assessee should be dismissed as the Assessee has not even made payment on the additional income declared before the settlement commission.*

7. *That the Hon'ble High Court of Punjab and Haryana vide order dated 24.04.2015 decided the writ petition directing to the ITSC to pass a fresh order after affording the reasonable opportunity of being heard to the Assessee.*

8. *That during the second round of hearing before the ITSC at Kolkotta, AO once again took the objection that application of the assessee filed by the Assessee should be dismissed as the Assessee has not even made payment of the additional income declared before the settlement commission. The ITSC issued intimation letter dated 25.04.2016 U/s 245HA(1) read with 245D(2) of the IT Act stating that the proceedings had abated. It has not passed the order on the ground that the additional tax on the income disclosed had not been paid.*

9. *The AO issued a letter dated 30.05.2016 along with questionnaire seeking information to the Assessee. The AO also issued a notice under section 142(1) of the IT Act*

to the Assessee The AO also issued a letter dated 10.06.2016 seeking information related to the present matter.

10. The Assessee submitted reply to the questionnaire and to the Notice vide letter dated 20.06.2016. The AO without considering the facts and circumstances of the case and without considering the submission made by the Assessee passed the Assessment order dated 22.06.2016 u/s 143(3) of the IT Act.

11. That the impugned assessment orders dated 22.06.2016 are barred by time limitation as the proceedings before TTSC stands abated in 31.07.2007. Hence, the impugned assessment orders are liable to be quashed.

12. Section 245D(2D) inserted by way of Finance Act, 2007 w.e.f. 1.6.2007, reads as under:

"Where an application was made under sub-section (1) of section 245C before the 1st day of June, 2007 and an order under the provisions of sub-section (1) of this section, as they stood immediately before their amendment by the Finance Act, 2007, allowing the application to have been proceeded with, has been passed before the 1st day of June, 2007, but an order under the provisions of subsection (4), as they stood immediately before their amendment by the Finance Act, 2007, was not passed before the 1st day of June, 2007, such application shall not be allowed to be further proceeded with unless the additional tax on the income disclosed in such application and the interest thereon, is, notwithstanding any extension of time already granted by the Settlement Commission, paid on or before the 31st day of July, 2007."

13. Explanation to Section 245D(2A) inserted by way of Finance Act, 2007 w.e.f. 1.6.2007, which reads as under:

"Explanation - In respect of the applications referred to in this subsection, the 31st day of July, 2007 shall be deemed to be the date of the order of rejection or allowing the application to be proceeded with under sub-section (1)."

14. The next provision is section 245(HA). It was also inserted w.e.f. 1.6.2007 with the Explanation (b) appended to this section. It reads as under:

"245HA. Abatement of proceeding before Settlement Commission. (1) Where—

i) ; or

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

(iii) ; or

iv)..... ,

the proceedings before the Settlement Commission shall abate on the specified date."

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

(a).....

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

(c) ;

(d)....."

15. Section 245(HA)(4) r.w.s. 2nd proviso to section 153(4) provides the time limit to pass assessment order, on abatement of Settlement proceedings. Section 245(HA)(4) reads as under:

"(4) For the purposes of the time-limit under sections 149, 153, 153B, 154, 155, 158BE and 231 and for the purposes of payment of interest under section 243 or 244 or, as the case may be, section 244A, for making the assessment or reassessment under subsection (2), the period commencing on and from the date of the application to the Settlement Commission under section 245C and ending with "specified date" referred to in sub-section (1) 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 subsection (1) of section 186, the period aforesaid shall, likewise, be excluded."

16. Second proviso to section 153(4) reads as under:

"Provided further that where a proceeding before the Settlement Commission abates under section 245HA, the period of limitation available under this section to the Assessing Officer for making an order of assessment, reassessment or re-computation, as the case may be, shall, after the exclusion of the period under subsection (4) of section 245HA, be

not less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year; and for the purposes of determining the period of limitation under sections 149, 153B, 154, 155, 158BE and 231 and for the purposes of payment of interest under section 243 or section 244 or, as the case may be, section 244A, this proviso shall also apply accordingly."

17. Section 245D(2D) as extracted above has been inserted by Finance Act, 2007. This clause deals with the applications where the action under section 245D(1) on the application moved under section 245C(1) was already taken. This clause contemplates that taxes along with additional taxes on the income disclosed in the application should be paid by 31.07.2007. In case an assessee fails to make payment, then the application will be deemed to have been abated.

18. There is no dispute to the fact that no tax has been paid on or before 31st day of July, 2007 and therefore, the application was not to be allowed to be further proceeded with and therefore, the proceedings before the ITSC have abated in view of section 245HA(1)(ii) read with Explanation (b) on 31st day of July, 2007. The application before the ITSC becomes redundant in such circumstances on 31st July, 2007 being the specified date. Reliance is placed on Circular No 3 of 2008 dated 12.03.2008 reported in (2008) 299 JTR 8 (Statute) on page 77.

19. When the application of the assessee had abated or became redundant by operation of Law on 31.07.2007, then there is no occasion for the ITSC to pass an order u/s 245D(4). This view gets further fortified on perusal of the intimation letter of the ITSC dated 25.04.2016 issued u/s 245HA(1) r. w.s. 245D(2D).

20. The case of the AO as discussed at paragraph 6.1 is that the order abating the proceedings was passed by the ITSC on 25.04.2016 and the same was received in the office of the Pr. CU, Patiala on 02.05.2016. Therefore, as per the provisions of section 153(4) read with proviso the assessment is to be completed within 60 days from receipt of order u/s 245C by the CTT. As stated above, the assessee in the present case is covered u/s 245HA(1)(ii) and therefore, the proceedings before the ITSC shall abate on the specified date as referred to in Explanation (b) i.e. 31st day of July, 2007. Once the proceedings before the ITSC are abated on 31st July, 2007, then there cannot be any occasion for the ITSC to pass any order u/s 245D(4). Also the proceedings which have been abated once, i.e. on 31st day of July, 2007 cannot again abate on a later date i.e. on 25.04.2016 which is the case of AO.

21. Reliance is placed on the following decisions:

- a. Late Shri Thakorbhai M. Pate/ vs. TTO (TTA.No.937/Ahd/2010) dt. 01.06.2016
- b. Gurmeet Singh vs. DOT49 taxmann.com 431 dt. 30.07.2014
- c. Nawada Investment Ltd. vs. TTO (TTA No.1769/Kol/2009) dt. 17.9.2010
- d. ShyamkumrP. Modi vs. ACIT(TTA No.28/Mum/2012) dt. 15.01.2014

22. In the present case, taxes and interest thereon have not been paid on or before 31.07.2007. In such cases, the abatement of proceedings before ITSC is covered under section 245HA(1)(ii) read with Explanation (b) being the specified date i.e. 31st day of July, 2007. Therefore, the assessee in the present case is covered u/s 245HA(1)(ii) and therefore, the proceedings before the ITSC shall abate on the specified date as referred to in Explanation (b) i.e. 31st day of July, 2007 and the proceedings before the AO get revived on 01.08.2007. Therefore, the AO was required to pass the assessment order by 31.07.2008, which in fact has been passed on 22.06.2016 and therefore, the assessment order passed by the AO is barred by limitation. Therefore, the assessment so made is bad in law."

6. The scanned image of chart showing sequence of events from the date of filing of application, passing through various writs and completion of the assessment order is as under:

Sr. No.	Particulars	AY 1994-95	AY 1995-96	AY 1996-97	AY 1997-98
1.	Return filed	27.03.1995	27.03.1996	29.08.1996	25.03.1998
2.	Date of issue of Notice u/s 143(2).	Not issued	Not issued	Not issued	Not issued
3.	Date of service of Notice u/s 143(2).	Not served	Not served	Not served	Not served
4.	Settlement Application u/s 245C of the Act.	30.08.1996	30.08.1996	30.08.1996	14.01.2000
5.	Date of order u/s 245D(1) of the Act.	22.04.1997	22.04.1997	22.04.1997	26.09.2000
6.	Abatement of proceeding u/s 245HA(1)(ii) & Explanation (b) r.w.s. 245D(2D): Due to non payment of admitted Tax and Interest before 31-7-2007 as required as per amendment brought by Finance Act, 2007, the proceeding before Settlement Commission are abated u/s 245HA(1)(ii) r.w.s. 245(2D) of the Act.	31.7.2007	31.7.2007	31.7.2007	31.7.2007
7.	Time limit to Complete the abated assessments u/s 245HA(4) r.w.s 2nd proviso of Section 153(4): Date within which the abated assessment was required to be completed by the Assessing Officer as per mandatory requirement u/s.245HA(4) r.w.s 2nd proviso of Section 153(4), but the order is not passed on or before 31.7.2008.	31.7.2008	31.7.2008	31.7.2008	31.7.2008
8.	Date of filing first Writ (CWP no 96, 98, 396 of 2008) challenging the amendments made to section 245(D(2D)).	06.01.2008 ↓	06.01.2008	06.01.2008	06.01.2008
9.	Date of order of the Hon'ble High Court in first writ.	21.09.2012 No stay was granted by the Hon'ble High Court from framing abated	21.09.2012 No stay was granted by the Hon'ble High Court from framing abated assessment order on or before	21.09.2012 No stay was granted by the Hon'ble High Court from framing abated assessment order on or before 31.07.2008.	21.09.2012 No stay was granted by the Hon'ble High Court from framing abated assessment order on or before 31.07.2008.

		<i>assessment order on or before 31.07.2008.</i>	<i>31.07.2008.</i>		
10.	<i>Date of order of ITSC u/s 245D(4) during the first round of hearing</i>	<i>28.02.2014</i>	<i>28.02.2014</i>	<i>28.02.2014</i>	<i>28.02.2014</i>
11.	<i>Date of filing second Writ (CWP no 17937 of 2014) challenging the order of ITSC u/s 245D(4) dated 28.02.2014 before the Hon'ble High Court.</i>	<i>02.09.2014</i>	<i>02.09.2014</i>	<i>02.09.2014</i>	<i>02.09.2014</i>
12.	<i>Date of order of the Hon'ble High Court in second writ.</i>	<i>24.04.2015 Setting aside Order u/s 245D(4) dated 28.02.2014.</i>	<i>24.04.2015 Setting aside Order u/s 245D(4) dated 28.02.2014.</i>	<i>24.04.2015 Setting aside Order u/s 245D(4) dated 28.02.2014.</i>	<i>24.04.2015 Setting aside Order u/s 245D(4) dated 28.02.2014.</i>
13.	<i>Date of intimation of Abatement of proceedings before ITSC u/s 245HA(1) r.w.s. 245D(2D)</i>	<i>25.04.2016</i>	<i>25.04.2016</i>	<i>25.04.2016</i>	<i>25.04.2016</i>
14.	<i>Date of Notice u/s 142(1) along with questionnaire of even date.</i>	<i>10.06.2016</i>	<i>10.06.2016</i>	<i>10.06.2016</i>	<i>10.06.2016</i>
16.	<i>Date of Letter of AO along with fresh questionnaire of even date.</i>	<i>30.05.2016</i>	<i>30.05.2016</i>	<i>30.05.2016</i>	<i>30.05.2016</i>
17.	<i>Reply filed by assessee challenging the jurisdiction of the AO.</i>	<i>20.06.2016</i>	<i>20.06.2016</i>	<i>20.06.2016</i>	<i>20.06.2016</i>
18.	<i>Date of impugned Assessment order.</i>	<i>22.06.2016 Time Barred as passed after 31.7.2008</i>	<i>22.06.2016 Time Barred as passed after 31.7.2008</i>	<i>22.06.2016 Time Barred as passed after 31.7.2008</i>	<i>22.06.2016 Time Barred as passed after 31.7.2008</i>

7. In the proceedings before him, the Ld. CIT(A) held that the impugned assessment order was time barred as per the newly inserted provisions of section 245D(2D), 245HA(1)(ii) & Explanation (b) thereto, 245HA(4) r.w.s 2nd proviso to section 153(4).

8. During the hearing before us, the Ld. DR argued that the Assessing Officer has rightly passed the order and the same was dealt in the paragraph no. 6.1 (ii) of the Assessment Order which reads as under:

"In para 2 the assessee has contended that if the order of the Settlement Commission is correct then the proceedings would have been abated on 31.07.2007 and the order has to be passed within one year as such present 'proceedings are time barred. The contention of the assessee is not correct as the order abating the proceedings was passed by the Hon'ble Settlement Commission on 25.04.2016 and the same was received by the office of the Pr. CIT, Patiala on 02.05.2016. Therefore, as per the provisions of 153(4) clause (v) read with proviso, the AO can pass assessment order within 60 days from the receipt of order u/s 245C by the Commissioner of Income Tax. As such the proceedings are not time barred. "

9. The Ld. DR argued that that the Settlement Commission has passed the orders on 28/02/2014 duly following the order of the High Court dt. 21/09/2012 against the Writ Petition No. 96/2008 filed by the assessee on 06/01/2008. It was an ex-parte order passed by the ITSC. Being an ex-parte order the assessee filed W.P before the Hon'ble High Court on 02/09/2014 for which the Hon'ble High Court has passed the judgment on 24/04/2015. Further owing to the order of the Hon'ble High Court dt. 24/04/2015 the ITSC has rejected the application of the assessee by a speaking order and intimation was sent to the Assessing Officer under section on 25/04/2016 and the same was received by the PCIT on 02/05/2016 and since the assessment was completed on 22/06/2014, the order passed was well within the due time allowed by the Act.

9.1. The Ld. DR further argued that the proceedings before the Settlement Commission were concluded only on 25/04/2016 against the application filed by the assessee on 15/03/1999 / 14/02/2001 (the dates of filing of applications before the ITSC mildly vary from assessee to assessee). Since the proceedings concluded on 25/04/2016 abating the proceedings, the Assessing Officer was correct in passing the assessment order.

10. The Ld. AR vehemently argued that the case has been time barred based on the amendment made in the Section 275HA (1)(ii) r.w. explanation (b) being a specific date i.e; 31/07/2007 and therefore the assessee is covered under section 245HA(1)(ii) and therefore the proceedings before ITSC shall abate on the specified date as referred in the Explanation (b) i.e. 31st day of July, 2007 and the proceedings before the AO get revived on 01.08.2007. Therefore, the AO was required to pass the assessment order by 31.07.2008, which in fact has been passed on 22.06.2016 and therefore, the assessment order passed by the AO is barred by limitation. Therefore, the assessment so made is bad in law.

10.1 The Ld.AR further argued that Section 245D(2D) as extracted above has been inserted by Finance Act, 2007. This clause deal with the applications where the action under section 245D(1) on the application moved under section 245C(1) was already taken. This clause contemplates that taxes along with additional taxes on the income disclosed in the application should be paid by 31.7.2007. In case an assessee fails to make payment, then the application will be deemed to have been abated.

10.2 He argued that since there is no dispute to the fact that no tax has been paid on or before 31st day of July, 2007 and therefore, the application was not to be allowed to be further proceeded with and therefore, the proceedings before the ITSC have abated in view of section 245HA(1)(ii) read with Explanation (b) on 31st day of July, 2007. The application before the ITSC becomes redundant in such circumstances on 31st July, 2007 being the specified date and that by operation of law the proceedings before the Settlement Commission abated on 31.07.2007 (being the specified date) whereas the AO was required to frame assessment latest by 31.07.2008 which has actually been framed on 22.06.2016.

11. We have heard the representatives of both the parties and perused the facts on record.

12. The earlier provisions of Section 245D(1) reads as under:

In respect of applications filed on or after 1.10.1984, the Commission in its order passed under section 245D(1) allowing the application to be proceeded with, directs the applicant to pay, within 35 days of receipt of a copy of the order, the additional amount of receipt income tax payable on the income disclosed in the application and to furnish proof of such payment to the Commission and the A.O. having jurisdiction, within fifteen days of such payment. If an assessee is unable to pay the additional amount of Income-tax for good and sufficient reasons, he may apply to the Commission for allowing payment of such income-tax in instalments and the Commission may extend the time for payment or grant suitable instalments subject to the assessee furnishing adequate security. In any case, if payment of the additional tax is delayed beyond 35 days of the date of receipt by the applicant, a copy of the order of the Commission allowing the application to be proceeded with, the assessee shall be required to pay interest on such delayed payment as prescribed under section 245D(2C). In case of default on the part of the applicant, the assessing officer may be directed by the Commission to recover the remaining unpaid amount together with interest payable thereon under sub-section 2(C) of section 245D of Income-tax Act, 1961, and with any penalty imposed in accordance with the provisions of section 245D(2D) and under Chapter XVII of the Income-tax Act, 1961.

12.1 The amended provisions of section 245D are as under:

64. In section 245D of the Income-tax Act,—

(i) for sub-section (1), the following sub-section shall be substituted with effect from the 1st day of June, 2007, namely:—

"(1) On receipt of an application under section 245C, the Settlement Commission shall, within seven days from the date of receipt of the application, issue a notice to the applicant requiring him to explain as to why the application made by him be allowed to be proceeded with, and on hearing the applicant, the Settlement Commission shall, within a period of fourteen days from the date of the application, by an order in writing, reject the application or allow the application to be proceeded with :

Provided that where no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with.";

(ii) for sub-sections (2A), (2B) , (2C) and (2D), the following sub-sections shall be substituted with effect from the 1st day of June, 2007, namely:—

"(2A) Where an application was made under section 245C before the 1st day of June, 2007, but an order under the provisions of sub-section (1) of this section, as they stood immediately before their amendment by the Finance Act, 2007, has not been made before the 1st day of June, 2007, such application shall be deemed to have been allowed to be proceeded with if the additional tax on the income disclosed in such application and the interest thereon is paid on or before the 31st day of July, 2007.

Explanation.—In respect of the applications referred to in this sub-section, the 31st day of July, 2007 shall be deemed to be the date of the order of rejection or allowing the application to be proceeded with under sub-section (1).

(2B) The Settlement Commission shall,—

(i) in respect of an application which is allowed to be proceeded with under sub-section (1), within thirty days from the date on which the application was made; or

(ii) in respect of an application referred to in sub-section (2A) which is deemed to have been allowed to be proceeded with under that sub-section, on or before the 7th day of August, 2007,

call for a report from the Commissioner, and the Commissioner shall furnish the report within a period of thirty days of the receipt of communication from the Settlement Commission.

(2C) Where a report of the Commissioner called for under sub-section (2B) has been furnished within the period specified therein, the Settlement Commission may, on the basis of the report and within a period of fifteen days of the receipt of the report, by an order in writing, declare the application in question as invalid, and shall send the copy of such order to the applicant and the Commissioner:

Provided that an application shall not be declared invalid unless an opportunity has been given to the applicant of being heard:

Provided further that where the Commissioner has not furnished the report within the aforesaid period, the Settlement Commission shall proceed further in the matter without the report of the Commissioner.

(2D) Where an application was made under sub-section (1) of section 245C before the 1st day of June, 2007 and an order under the provisions of sub-section (1) of this section, as they stood immediately before their amendment by the Finance Act, 2007, allowing the application to have been proceeded with, has been passed before the 1st day of June, 2007, but an order under the provisions of sub-section (4), as they stood immediately before their amendment by the Finance Act, 2007, was not passed before the 1st day of June, 2007, such application shall not be allowed to be further proceeded with unless the additional tax on the income disclosed in such application and the interest thereon, is, notwithstanding any extension of time already granted by the Settlement Commission, paid on or before the 31st day of July, 2007.";

(iii) for sub-sections (3), (4) and (4A), the following sub-sections shall be substituted with effect from the 1st day of June, 2007, namely:—

"(3) The Settlement Commission, in respect of—

(i) an application which has not been declared invalid under sub-section (2C); or

(ii) an application referred to in sub-section (2D) which has been allowed to be further proceeded with under that sub-section,

may call for the 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, and the Commissioner shall furnish the report within a period of ninety days of the receipt of communication from the Settlement Commission:

Provided that where the Commissioner does not furnish the report within the aforesaid period, the Settlement Commission may proceed to pass an order under sub-section (4) without such report.

(4) After examination of the records and the report of the Commissioner, if any, received under—

(i) sub-section (2B) or sub-section (3), or

(ii) the provisions of sub-section (1) as they stood immediately before their amendment by the Finance Act, 2007,

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.

(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.";

(iv) in sub-section (6A), for the words "fifteen per cent per annum", the words "one and one-fourth per cent for every month or part of a month" shall be substituted with effect from the 1st day of April, 2008.

13. At the outset it is to be mentioned here that the Assessee, pending the disposal of the application by the ITSC has filed writ petition on 06/01/2008 challenging the validity of the amendments of section 245D(2D) made by the Finance Act, 2007 before the Hon'ble High Court of Punjab and Haryana. The ITSC has already passed an order under section 245D(1) on 14/10/1999 (and 05/10/2001 as applicable) by issuing a notice requiring to explain as to why the application made by him be allowed to be proceeded with. Since the matter of legal validity of the amendment to 245D(2D) of the Act has been subject matter of litigation before the Hon'ble High Court the ITSC could not have completed the proceedings nor passed any order rejecting the application of the assessee owing to nonpayment of the tax. The core subject matter of payment of the tax and interest as amended by the Finance Act, 2007 was

before the Hon'ble Court and is *sub judice* owing to the writ petition filed by the assessee.

14. The Hon'ble High Court while disposing the bunch of applications, vide order dt. 21/09/2012 on the issue of constitutional validity of Section 245HA (1) (iv) and 245HA(3) of Income Tax Act, 1961 as amended by the Finance Act, 2007 held that, the issue before them was that where the settlement application is filed before 1st June, 2007, the Settlement Commissioner shall have to pass an order on or before 31/03/2008 and in case the order is not passed effectively deciding the settlement application on or before 31/03/2008, it would abate by operation of law. The petitioners were also expected to pay additional tax on the income disclosed in the settlement application and interest thereon before 31/07/2007, failing which their application was to be abated by operation of law.

15. During the course of hearing of the cases involving the constitutional validity of the said amendments of the Income Tax Act, 1961, it was brought to the notice of the Hon'ble High Court of Punjab & Haryana that the writ petitions can be disposed of in terms of the decision rendered by Division Bench of Bombay High Court in the case of Star Television News Vs. Union of India and Others 317 ITR 66. It was also brought to the notice of the Court that the same judgment was followed by the Hon'ble High Court of Jharkhand in the case of Md. Sanaul Haque Vs. Union of India in its order dt. 21/03/2012.

15.1 Based on the above submissions, the Hon'ble High Court of Punjab & Haryana has held that the decision in Star Television News would be applicable for the disposal of issue pertaining to the constitutional validity of Sections 245D(1A), 245(2D), 245D(4A), 245HA(1)(iv) of the Act.

15.2 Now, to know the outcome about the writ petitions the decision of the Star Television which is applicable *mutatis mutandis* to the case before us is also being examined. The snapshot of the judgment as published is as under:

Settlement Applications not disposed of by 31.3.2008 for reasons not attributable to the applicant cannot be treated as having abated. S. 254 D (4A) was amended by the Finance Act 2007 to provide that if in respect of an application filed before 1.6.2007, the Settlement Commission did not pass a final order before 31.3.2008, the proceedings would abate. S. 245 HA (3) provided that the consequence of such abatement was that the income-tax authorities could, in making the assessment, use all the confidential material furnished by the assessee before the Settlement Commission. The said provisions were challenged as being ultra vires Article 14 of the Constitution. HELD, upholding the challenge:

(i) Though Article 14 does not prohibit classification, the same has to be reasonable and not arbitrary. The FA 2007 created two classes of applicants – those whose applications were pending as of 1.6.2007 and those who filed thereafter. While the classification was not unreasonable, the choice of 31.3.2008 as the cut-off date was arbitrary & irrational. The question whether an application could be disposed of by 31.3.2008 depended on the fortuitous circumstance of the Settlement Commission at its whims and fancies deciding to do so. The said date had no rational relation to the object of expeditious disposal of cases;

(ii) S. 245HA (3) which makes available to the AO the hitherto confidential information furnished by the applicant has the effect of severely prejudicing the assessee for no fault of his but solely for the inability of the Settlement Commission to dispose of the application by the specified date. This provision is also arbitrary, unreasonable and violative of Article 14;

(iii) S. 278 AB inserted by the FA 2008 to confer power in the Commissioner to grant immunity from penalty and prosecution in abated proceedings is no remedy to the unconstitutionality because it is inconceivable that the CIT who may have earlier objected to the maintainability of the application would now hold the applicant to be worthy of immunity;

(iv) The fixing of the cut-off date u/s 245 D (4A) (1), the abatement of proceedings u/s 245HA (1)(iv) & the making available of confidential information u/s 245HA (3) for no fault of the applicant are ultra vires the Constitution. In order to save these provisions from being struck down as being unconstitutional, they will have to be read down as applying only to cases where the Settlement Commission is unable to pass an order on or before 31.3.2008 for any reason attributable on the part of the applicant. The expression "reasons attributable" should be reasonably construed. If in the writ petition, the applicant has urged that it was not responsible for the non-disposal of the application and the same is not denied by the revenue, the circumstance should be considered in favour of the applicant;

(v) Accordingly, the Settlement Commission has to consider whether the proceedings have been delayed on account of any reasons attributable on the part of the applicant. If it comes to the conclusion it is not so, then it has to proceed with the application as if not abated;

(vi) The Government should consider appointment of more benches of the Settlement Commission if it desires early disposal of pending applications.

15.3 Thus it could be found that all the applications which have not been delayed on account of reasons not attributable to the assessee are directed to be allowed by the ITSC by the Hon'ble Court. While delivering the judgment, Hon'ble Court has held that though Article 14 doesn't prohibit classification the same has to be reasonable and non arbitrary and held that the choice of cutoff date of 31/03/2008 was arbitrary and irrational. So as to say that the amendments have been liberated to the extent of allowing the assessee's application to be dealt in accordance with the provisions as if the amended provisions are not applicable to the assessee as there was no fault or reasons attributable to the assessee in the instant case too.

15.4 It is to be mentioned that while Hon'ble High Court has taken the facts from CWP No. 18244 of 2007 and the decision was put on hold and the case was adjourned *sine-die*. This sine-die adjournment was necessitated as the Hon'ble High Court has explicitly mentioned in the order that the orders of Hon'ble Supreme Court in CWP No. 113 of 2008 titled as Prabhudev Vs. UOI &

Others was being abated. Keeping in view the proceedings before the respectable higher judiciary the ITSC has rightly kept the proceedings in abeyance as the moot issue revolves around the validity of the amendments brought by the Finance Act, 2007 which goes to the root of the issue before them. Hence, the assessee's contention that no stay has been given by the Hon'ble High Court cannot be accepted especially more so when the assessee's application has been dealt by the ITSC against which the assessee again approached the Hon'ble High Court for affording principles of natural justice. On obtaining the order from the Hon'ble High Court of Punjab & Haryana, the assessee has diligently represented himself before the ITSC.

15.5 To elaborate, thereafter the ITSC has passed an order in relation to the application filed by the assessee. Thus at this juncture it can be said that the application of the assessee has been considered rightly by the ITSC based on the judicial pronouncement that the assessee is fairly eligible to be treated as if the amendment is not applicable to the assessee's case. It is a matter of fact that the assessee was represented by Shri Prem Singh, Advocate and Shri Gunjeet Singh as per the Column No. 13 " present for the applicants" on the page 1 of the order of the Settlement Commission, Additional Bench Kolkata. As per Column No. 12 date of hearing 28/01/2013 – "Notices issued for hearing on 07/10/2013 and 26/02/2014 not availed of" is also mentioned in the order of the Settlement Commission. Thus it could be seen that the assessee did not attend the hearings before the Settlement Commission for which the notices have been duly issued.

16. Thereafter, aggrieved with the order of the ITSC dtd. 28/02/2014 the assessee filed writ petition before the Hon'ble High Court of Punjab & Haryana on 02/09/2014. The writ was disposed off on 24/04/2015 by the Hon'ble High Court with the directions to grant an opportunity of being heard to the assessee and the ITSC shall pass fresh order after affording the petitioner an opportunity of being heard. The ITSC owing to the order of the Hon'ble High Court duly granted an opportunity to the assessee and passed order under section 245HA(1) r.w.s 245D(2D) as a result of which the proceedings have been abated and the application under reference are not allowed to be proceeded further. Thus the assessee's contention and the reliance placed on the case of Gurmeet Singh Vs. UOI in IT(SS) A.No.01 (Asr)/201 cannot be accepted as only the bare

provisions of the Act as amended by the Finance Act, 2007 were discussed. Whereas the instant case has to be adjudicated based on the law of land as enunciated by the Hon'ble Courts which allowed the plea of the assessee along with others to avail the right of being processed by the ITSC irrespective of the fact that the amendment brought by the way of Finance Act, 2007. There was no situation of abating the abated proceedings as the earlier proceedings were never abated but being waited for the judgment of the Hon'ble Courts and finalization of the issue of constitutional validity of the amendment in view of the writs pending before the Hon'ble Supreme Court as well as High Court of Punjab & Haryana and Hon'ble Bombay High Court.

17. The assessee having obtained himself by the Settlement Commission an order on 28/02/2014 and also represent themselves before the ITSC again for processing and disposal of application for the proceedings concluded on 25/04/2016 is estopped from making assertions or from going back on his word. The assessee has no doubt represented himself before the Hon'ble High Court on constitutional validity of the amendment and further approached the High Court for giving him another opportunity of being heard after the ITSC has passed its order once on 28/02/2014 and again an order was passed on 25/04/2016 taking into cognizance the representation and submissions of the assessee. There was no other new application before the ITSC other than the one filed by the assessee on 30/08/1996 which has gone through two stages of writ petitions and two rounds of ITSC orders. The orders and directions given by the Hon'ble High Courts stands merged legally in the order of the Settlement Commission. The facts make it very clear that it was very same application and the processes thereof have gone through different rounds and stages of judgments by judicial hierarchy. Hence, the assessee's contention that his case got time barred by the virtue of amendment of 2007 cannot be accepted as the benefit of the judgments has been well obtained by the assessee at all stages. A judgment pronounced by the Hon'ble High Court in exercise of its jurisdiction after issue of notice and a full hearing in the presence of both the parties (the assessee and UOI) would be the only final judgment to be executed in accordance with the law by the authorities below.

18. Hence, keeping in view the entire facts and circumstances of the case that the constitutional validity of the amendment was challenged by the assessee, the Hon'ble High Court has adjourned the case *sine-die* awaiting the

judgment of Hon'ble Supreme Court in the case of Prabhu Dayal Vs. UOI which was later withdrawn, passing of the judgment by the Hon'ble jurisdictional High Court based on the ratio laid down by the Hon'ble Bombay High Court in the case of Star Television News Ltd. Vs. UOI 317 ITR 66 which was also followed by Hon'ble High Court of Jharkhand in the case of Sanaul Haq Vs. UOI dt. 21/03/2012 and keeping in view the fact that the assessee's case has been duly taken up and an order has been passed by the ITSC against which the assessee has filed writ petition before the Hon'ble High Court of Punjab & Haryana by the virtue of whose orders the assessee has been granted the benefit of being heard by the ITSC in the second round which abated the proceedings and since the Assessing Officer, having received the information regarding the abatement of the cases on 25/04/2016 has completed the proceedings on 22/06/2016 which is well within the time allowed by the Act as the orders have been passed within 60 days from the order of the ITSC under section 245HA(1) r.w.s 245D(2D) of Income Tax Act,1961. Hence, we hold that the order of the Ld. CIT(A) cannot be sustained neither on the factual grounds nor on the legal grounds.

19. In the Cross Objection the has taken a plea that the notice under section 143(2) of the Income Tax Act,1961 was not issued. The provisions of Section 143(2) are as under:

143(2) Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer shall,—

(i) where he has reason to believe that any claim of loss, exemption, deduction, allowance or relief made in the return is inadmissible, serve on the assessee a notice specifying particulars of such claim of loss, exemption, deduction, allowance or relief and require him, on a date to be specified therein to produce, or cause to be produced, any evidence or particulars specified therein or on which the assessee may rely, in support of such claim:

Provided that no notice under this clause shall be served on the assessee on or after the 1st day of June, 2003;

(ii) notwithstanding anything contained in clause (i), if he considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced, any evidence on which the assessee may rely in support of the return:

Provided that no notice under clause (ii) shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished.

Section 245HA(2)...

(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 the 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.

245A

(a)

(b) "case" means any proceeding for assessment under this Act, of any person in respect of any assessment year or assessment years which may be pending before an Assessing Officer on the date on which an application under sub-section(1) of section 245C is made.

20. As per section 245A the 'case' is admitted to the Settlement Commission when the proceedings are pending before the Assessing Officer and the assessment proceedings gets initiated only by issue of Section 143(2) which is a sine-qua-non for filing of application before the ITAT. Thus at this juncture revisiting the issue of notice under section 143(2) issued in the year 1996 after a period of 12 years would be an infructuous exercise as the settlement application would be accepted only if the assessment proceedings are pending and fact that the application has been allowed by the order of the ITSC under section 245D(1). Since the assessment order passed by the Assessing Officer is as a consequent to the order passed by the ITSC under section 245HA(2) the C.O of the assessee is liable to be dismissed.

21. As a result, the appeals of the Revenue is allowed whereas Cross Objection of the Assessee is dismissed.

Order pronounced in the open Court.

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Dated : 29/08/2018

AG

Copy to:

1. The Appellant, 2. The Respondent, 3. The CIT, 4. The CIT(A), 5. The DR