THE HON'BLE SRI JUSTICE B.SUDERSHAN REDDY

AND

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION No.7641 of 2005

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ORDER: (Per Hon'ble Sri Justice S.Ananda Reddy)

This writ petition is filed invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India praying for the issue of Writ of Mandamus declaring the action of the first respondent in dismissing the application of the petitioner society at the admission stage as illegal, arbitrary, untenable and against the provisions of the Income Tax Act and consequently set aside the order of the first respondent dated 3-11-2004 passed in application No.500/Hyd-C/58/2003-IT and direct the first respondent to admit the application and decide the matter on merits as per law.

The facts leading to filing of the present writ petition are that the petitioner is a registered society, registered on 31-1-1987 under the Societies Registration Act, 1860, with the avowed objects of (1) establishing educational institutions both academic and technical, such as Primary, Secondary, College and Professional educational institutions; (2) to open, run or develop Hostels, Orphanages and Care Homes for the students studying in the said institutions; (3) to diffuse useful knowledge which would tend to improve the model, social and ethical standards of the children and youth coming under the jurisdiction of the petitioner society; (4) to develop social, cultural and economic standards of the members of the petitioner society; (5) to establish Balawadies and Libraries for the benefit of the children and the students of the institutions; (6) to open night schools for adult education to

remove illiteracy and to eradicate social evils of the society; and (7) to do all such other acts as incidental or conducive to attainment of the above objects.

In order to achieve the above objects, the petitioner society had established colleges for girl students as well as boys in several places, including Delhi, Chennai, Vijayawada, Visakhapatnam, Tirupati and Guntur and in many other places. In most of the aforesaid places, the petitioner society apart from imparting intermediate education, providing coaching as part of its charitable objects to the students who appear for EAMCET Examination conducted by the Government of Andhra Pradesh for the purpose of admission into Engineering and Medical Colleges in addition to I.I.T. etc.

It is stated that the petitioner claiming as a charitable institution applied for registration before the Commissioner of Income Tax (Central), Visakhapatnam, under Section 12A of the Income Tax Act, 1961 (hereafter referred to as 'the Act') for the grant of registration as a Charitable Trust. The petitioner was granted registration in pursuance of the said application by the Commissioner of Income Tax, by order dated 14-8-1992. The said registration was in operation till 26-7-2004 when it was cancelled by the Commissioner of Income Tax in view of the subsequent events, which brought to light various commissions and omissions made by the petitioner society. The said cancellation was assailed by the petitioner society by filing an appeal before the Income Tax Appellate Tribunal, which is not an issue in the present case.

It is stated that the petitioner society filed its returns under the provisions of the Act for the assessment years 1997-98 to 2001-02. The details of income are furnished in para-9 of the affidavit claiming that the entire income was to exempt either under the provisions of Section 10(22) or under Sections 11 to 13 of the Act. The said claim was accepted. While so, the Income Tax Department conducted search and seizure

operations under Section 132 of the Act, on 2-7-2002, not only in the premises of the petitioner society but also on several premises belonging to the persons associated with the petitioner society and seized cash amounting to Rs.1,07,84,505/- apart from Fixed Deposit Receipts to the tune of Rs.6.70 Crores. The Department also seized voluminous records from different premises of the petitioner society, apart from recording the statements from various persons connected with the petitioner. As a result of the search and seizure, the second respondent-Assessing Officer issued a notice under Section 158BC of the Act on 18-12-2002 calling upon the petitioner to file return of the undisclosed income in Form No.2B of the Act. The said notice was served on the petitioner on

26-12-2002. In response to the said notice, the petitioner filed return admitting a total income of Rs.32,54,000/- for the block period for which notice was issued from the assessment year

1997-98 till the date of search.

After filing of the return by the petitioner society in pursuance of the notice under Section 158BC of the Act, the Assessing Officer issued a notice dated 5-8-2003 proposing to determine the undisclosed income at Rs.208.68 Crores and called for the objections as well as explanation by the petitioner society. According to the petitioner, the said proposal was made by the Assessing Officer without making any enquiry and without any basis. Therefore, the petitioner filed a letter on 13-8-2003 objecting to the proposal and agreed to furnish additional information that was called for by the Assessing Officer. Thereafter the petitioner thought it appropriate to approach the Settlement Commission in view of the voluminous record as well as the different methods of accounting that are adopted by the persons who are holding the charge and dealing with at different Branches of the petitioner society which resulted in complexity of the nature of transactions as well as the investigation required for making proper and appropriate assessment. It is

stated that the petitioner had accordingly filed an application in terms of Section 245C of the Act declaring an additional income of Rs.6,10,83,167/-. The above declaration of the petitioner's income was made in view of the complexity of the nature of the matter and in order to get the matter settled once for all. It is also stated that, subsequently the Assessing Officer proceeded with the assessments despite the fact that the application made by the petitioner before the Settlement Commission was pending and accordingly framed the assessment on 30-7-2004 determining the income of the assessee at Rs.85,34,35,241/-. It is further stated that in the light of the huge disparity in the figures between the declared income by the assessee and the income that was proposed to be assessed by the Assessing Officer and the amount finally determined for the block period and further in view of the fact that the Commissioner of Income Tax passed an order withdrawing the registration under Section 12AA of the Act, it was proper and just for the Commission to entertain the application and decide the same on merit. But, however, rejected the same without noticing the complexity of facts and the investigation involved. Therefore, the petitioner has come up with the present writ petition assailing the said rejection of application made under Section 245C of the Act.

A counter affidavit is filed by the Assessing Officer on behalf the second respondent, disputing and denying the allegations made by the petitioner society. The respondents admitted the fact that the petitioner society was carrying on its activities by establishing educational institutions for providing education only for Intermediate course as well as to provide coaching to those students who appear for the EAMCET Entrance Examination seeking admission into Engineering and Medical Courses in Andhra Pradesh, apart from to those seeking admission into I.I.T. and other Professional Colleges. It is stated that the petitioner was not carrying on any other activity as was specified in the objects of the society. It is further stated that the

Department conducted search operations under Section 132 of the Act on 2-7-2002, which brought to the notice of the Department number of irregularities that have been committed by the petitioner society. It is also admitted that during the said search and seizure operations, voluminous records have been seized, apart from recording the statements from various persons, who were available at different Branches of the petitioner society. It is also admitted that the Department had seized the cash as well as the Fixed Deposit Receipts as specified in the affidavit and also filing of a writ petition being W.P.No.7488 of 2003, which was disposed of on 4-11-2003, where an order was passed in favour of the petitioner for releasing the amounts seized. It is stated that merely because the petitioner deals with large sums of money and that there are large number of students studying in different Branches of the petitioner society, does not *perse* render the investigation a difficult or complex task. In fact, detailed investigations have been undertaken by the Assessing Officer with all the material that was available both with the Department as well as the petitioner. Insofar as the rejection of the application by the Settlement Commission, it was stated that Chapter XIX-A of the Act deals with the settlement of cases by the Settlement Commission. On receipt of an application under Section 245C of the Act, the Commission is required to call for a report from the Commissioner having jurisdiction over the assessee and on the basis of the material contained in such report and having regard to the nature and circumstances of the case or the complexity of investigation involved therein, the Commission is entitled to take a decision either to reject the application or to allow the application to be proceeded with. Accordingly, after considering the report submitted by the Commissioner as well as taking into account the nature and the facts of the case, passed an order on 3-1-2005 rejecting the application. The Commission, based on the report as well as the facts and the material available on record, had come to a conclusion that the case does not involve any complexity of investigation, therefore, it is not a case to be dealt with under Chapter XIX-A of the Act. The said decision taken by the

Commission is unanimous by all the three members constituting the Additional Bench of the Commission, which dealt with the application of the petitioner. As the said decision was rendered on appreciation of facts and the material on record, the same does not call for any interference by this Court while exercising the judicial review under Article 226 of the Constitution of India. It is also stated that the petitioner society, claiming to be an Educational Institution as well as Charitable Institution, has evidently flouted all the rules, but claimed the benefit of exemption, therefore, sought for dismissal of the writ petition.

Assailing the said order of the Settlement Commission, the learned senior counsel Sri V. Ramchandran contended that the rejection order passed by the Settlement Commission is not just and legal. According to the learned counsel, Chapter XIX-A was enacted and brought on the statute with an intention to get the matter settled once for all to avoid long litigation in view of the nature of the case and the complexity of investigation that is involved. It is the contention of the learned counsel that the petitioner-assessee has got a right to make an application to the Settlement Commission by disclosing additional income which was not declared or disclosed before the Assessing Officer and when such an application is made declaring the additional income, the Commission is bound to consider the said application taking into account the complexity of investigation required. The learned counsel contended that the Commission has got all the powers, including that of the Assessing Officer, to settle the dispute between the assessee and the Department and in the process without causing prejudice to the revenue. The learned counsel referred to the relevant provisions of Section 245C, 245D and other relevant provisions of Chapter XIX-A of the Act and contended that if the application of the petitioner is considered and an order is passed, the petitioner is also entitled not only to the finality of the order but also entitled for immunity, therefore, it is not proper

and just for the Commission to reject the application when the petitioner had complied with the requirements of the provisions of the Chapter. The learned counsel also contended that the Commission has to consider the facts and circumstances of the case as well as the complexity of investigation before accepting or rejecting the application made under Section 245C of the Act. The learned counsel contended that the Commission proceeded that since the Books of Accounts are maintained and are audited, no complexity is involved. It is contended that if the audited accounts of the petitioner-assessee are accepted, there is no scope for any undisclosed income to be determined by the authority for the block period. But during the course of search and seizure, the Department had collected certain information including statements from some of the persons associated with the petitioner society and also seized voluminous records that are being maintained by the petitioner at its different Branches and it is very difficult either to the Department or to the petitioner to reconcile all the documents and the accounts maintained in view of the innumerable transactions and different methods that are adopted. According to the learned counsel, the Settlement Commission failed to take into account all these factors before coming to the conclusion to reject the application, therefore, the impugned order is liable to be set aside. The learned counsel also referred to and relied upon the term 'complexity' found in Section 142 (2A) of the Act, where the Assessing Officer was given the power for ordering special audit and referred to following decisions where the said term 'complexity' was considered by various Courts.

Joint C.I.T. v. I.T.C. Ltd. (CAL.); Living Media Ltd. v. C.I.T. (S.C.); Peerless v. Deputy C.I.T. (CAL.); Swadeshi Cotton Mills Company Ltd. v. C.I.T. (All.); U.P. State Handloom Corporation Ltd. v. C.I.T. (All.); Sahara India Mutual Benefit Co. Ltd. v. C.I.T. (All.); Uttaranchal Welfare Society v. C.I.T. (All.); C.I.T. v. Om Prakash Mittal (SC).

The learned counsel also referred to the Circular instruction No.1076, dated 12-7-1977 where certain guidelines were issued for selecting cases for audit under Section 142A of the Act. Therefore, the learned counsel sought to set aside the impugned order and to issue a consequential direction to admit the application by the Commission for being proceeded with.

The learned standing counsel for the Department Sri J.V. Prasad on the other hand opposed the said contentions. He contended that the scope of judicial review under Article 226 of the Constitution of India is very limited and confined only to the procedural aspects and cannot be looked into as to the merits of the conclusions that have been arrived at by the Commission. The learned counsel reiterated the stand of the Department that the petitioner society maintained the Books of Accounts, which were audited, therefore, there is no complexity in conducting investigation of the case. In fact, the learned counsel contended that mere volume of the transactions or the record by itself cannot infer that there is complexity for investigation. The learned counsel further contended that basing on the seized material, the Assessing Officer had, in fact, initiated assessment proceedings after conducting necessary investigation and in the process served a notice on the petitioner-assessee calling upon its objections for the proposed determination of the undisclosed income for the block period. In that process, the Assessing Officer also called for other information and in fact, put to the assessee for making additions basing on the amounts that are available in various bank accounts. The petitioner-assessee, instead of cooperating with the Assessing Officer, delayed the matter by seeking repeated adjournments and finally approached the Settlement Commission. It is contended by the learned counsel that after the search and seizure operations, the petitioner was prepared to declare the undisclosed income of about Rs.3,22,96,000/- for

the assessment years 1999-2000 to 2003-04, but finally by the date of filing of the

return in response to the notice issued under Section 158BC of the Act, the petitioner declared the undisclosed income at Rs.32,54,000/- only for the block period. The learned counsel also contended that the petitioner had approached the Settlement Commission only to take shelter under the provisions of Chapter XIX-A of the Act to avoid further liability for the huge undisclosed income for which material was available with the Assessing Officer where the Assessing Officer had noticed the fraud played by the petitioner society and also the modus operandi adopted by the petitioner society. Further, according to the learned counsel, the Settlement Commission, on consideration of the nature and the circumstances of the case as well as the complexity of investigation involved, found that this is not a case where the Commission has to show indulgence in entertaining the application. The said finding recorded by the Commission is on appreciation of the material on record and such a finding of the Commission does not call for any interference while exercising the jurisdiction of judicial review. The learned counsel also referred to the following decisions in supports of his contention that this is not a fit case where the Commission should be directed to admit the application.

C.I.T. v. Express Newspapers Ltd. (S.C.); Jyotendrasinhji v. S.I. Tripathi (S.C.); Patel Desai and Co. v. Asst.C.I.T. (A.P.); Harphool Singh v. I.T.S.C. (P. & H.); Income Tax Reports (Statutes); Shyam Glass Works v. I.T.S.C. (All.); and **Ganesh Bartan Bhandar v. ITSC (All.).**

From the above rival contentions, the issue that calls for consideration of this Court is whether the order passed by the Commission rejecting the application filed by the petitioner under Section 245C of the Act is just and proper.

The admitted facts of the case are that the petitioner society is a society registered under the Societies Registration Act, formed with the objects of establishing

educational institutions apart from some other avowed objects of charitable nature referred to earlier. Admittedly, the petitioner was only engaged in establishing and running of educational institutions for providing education to the Intermediate Course, mostly in the State of Andhra Pradesh, apart from providing coaching facilities to those students as preparatory to appear for the Entrance Examination to get admission into Engineering and Medical Courses in Andhra Pradesh, apart from other institutions like I.I.T. etc. It is also an admitted fact that the petitioner had established number of Branches at different cities, towns, etc. In fact, according to the petitioner, the number of students in its various Branches are about 50,000. The petitioner society also filed an application under Section 12A of the Act claiming that it is a charitable institution and obtained registration with the Income Tax Department, which was granted on

14-8-1992. From the assessment years 1997-98 to till 2001-02 the assessee had filed its returns and claimed exemption either under Section 10(22) or under Sections 11 to 13 of the Act, and in fact, got the benefit of exemption for all the above years. However, search and seizure operations were conducted under Section 132 of the Act on 2-7-2002 till 13-7-2002 which had resulted in the seizure of voluminous records, apart from cash of

Rs.1,07,84,505/- and Fixed Deposit Receipts of Rs.6.70 Crores.

As a result of the search and seizure operations, the Assessing Officer issued a notice under Section 158BC of the Act on 18-12-2002 calling upon the petitioner assessee to file its return for the block period 1997-98 to till the date of search. Though the petitioner, after the search proceedings, was prepared to declare an undisclosed income of Rs.3,22,96,000/-, but however, filed its return of undisclosed income at Rs.32,54,000/- only. Thereafter the Assessing Officer, after considering the seized material, issued a noticed on 5-8-2003 proposing to determine the undisclosed income at Rs.208.68 Crores and called for the objections as well as

further information from the assessee. The assessee, thereafter, took time by filing objection letter to the proposed determination and also provided some information to the Assessing Officer, as called for by him, and in fact, the Assessing Officer had even proposed to make a further addition basing on the amounts that are available in various Bank accounts standing in the name of different individuals and in fact sought for further information from the assessee. It is only thereafter the petitioner had filed the application before the Settlement Commission on
9-1-2004 where the petitioner has declared an amount of Rs.6,10,83,167/-. During the pendency of the said application and before passing the order by the Commission, the Commissioner of Income Tax passed an order dated 26-7-2004 withdrawing the registration that was granted under Section 12A of the Act. Further the Assessing Officer framed the assessment on 30-7-2004 determining the undisclosed income for the block period at Rs.85,34,35,241/-. After filing of the application under Section 245C (1) of the Act, the Commission called for a report from the Commissioner having jurisdiction over the petitioner, who submitted a report, and after considering the report, the impugned order was passed by the Settlement Commission.

Before proceeding to consider the contentions that are advanced by the counsel for the petitioner, it would be appropriate to refer to the scheme of the Act, which provided for settlement of cases. Chapter XIX-A of the Act was inserted by the Taxation Laws (Amendment) Act, 1975 with effect from 1-4-1976. Though Sections 245A to 245L are covered by this Chapter, we are not concerned with all provisions of this Chapter in the present case and we shall be dealing only with the relevant provisions necessary for the purpose of the present case. The Commission is constituted by the Central Government for the settlement of cases under Chapter XIX-A of the Act. The expression ‘case’ as appearing in Section 245A(b) of the Act

refers to any proceeding under the Act for the assessment or re-assessment of income of any person in respect of any year or years, or by way of appeal or revision in connection with such assessment or re-assessment, which may be pending before any Income Tax authority on the date on which an application under sub-section (1) of Section 245C of the Act is made. From this, it is clear that if any of the matters, referred to earlier, are not pending before the Income Tax authorities, the assessee has no right to make any application. The scheme of Chapter XIX-A of the Act shows that filing of an application by the assessee is a unilateral act, but however, the application made by the assessee for settlement is not automatically be admitted, but the discretion is vested with the Commission, which is conditional upon the compliance of the provisions in this Chapter.

The basic feature of Chapter XIX-A of the Act is that it relates to the income which was not disclosed before the Income Tax authorities, which is evident from Section 245C of the Act. As per this section, an assessee may, at any stage of the case relating to him, make an application in the prescribed form containing a full and true disclosure of his income which has not been disclosed before the Assessing Officer, the manner in which such income has been derived, the additional amount of income tax payable on such income and other particulars as prescribed, to the Settlement Commission to have the case settled. The said application under Section 245C of the Act is to be considered as per the procedure provided under Section 245D of the Act. Under sub-section (1) of the said section, the Commission after receipt of an application shall call for a report from the Commissioner and on the basis of the material contained in such report and having regard to the nature and circumstances of the case or the complexity of investigation involved therein, the Settlement Commission shall where it is possible by order reject the application or allow the application to be proceeded with and if the Commission ordered to be proceeded with the application, the said process has to be completed within a

period of one year. Under this provision, the Settlement Commission is also empowered to grant extension of time for payment of additional amount in the circumstances as provided under the said provision. Finally, if an order of settlement is passed by the Settlement Commission with reference to an application, the Settlement Commission is also empowered to grant certain benefits of immunity from prosecution as well as penalty under Section 245H of the Act. The finality to the order passed by the Commission is also provided under Section 245-I of the Act. But however, the Commission's power of settlement has to be exercised subject to the provisions of the Act, but not dehors the provisions of the Act.

From the above scheme, it is clear that an assessee, who is approaching the Settlement Commission, has to make a full and true disclosure of his income, declaring the additional income, which was not disclosed before the Income Tax authorities and has to pay the additional tax payable on the said additional income. Thereafter the Settlement Commission has to consider after calling for a report from the Commissioner having regards to the nature and circumstances of the case or the complexity of investigation involved therein either to reject the application or to proceed with the said application.

In the present case, it is the contention of the petitioner society that it made an application in terms of Section 245C of the Act disclosing an additional income of Rs.6,10,83,167/- and also pleaded that in view of the huge volume of records seized by the Department and the nature of the transactions and the method adopted by different Branches of the petitioner society, complexity of investigation is involved, therefore, it is a case for admission of the application presented by the petitioner. But however, the Settlement Commission erroneously rejected the application.

The claim of the petitioner was that the case involves verification and

reconciliation of voluminous records maintained by different Branches of the petitioner society where different methods have been adopted involving huge transactions, that there are more than 50,000 students admitted at its different Branches which had resulted in more number of transactions, therefore, the case involves complexity of investigation. But this claim was denied by the Department, which was accepted by the Settlement Commission. The case of the Department was that the petitioner society has maintained its books of accounts, got them audited basing on which returns were filed for the earlier years. Therefore, there is no complexity of investigation involved. According to the Department, the issue has to be considered only in the light of the exemptions claimed whether the assessee is entitled to any exemptions as was claimed and accepted by the Department earlier under Section 10(22) or Sections 11 to 13 of the Act. Admittedly, the registration, which was granted in favour of the petitioner society was withdrawn or cancelled by the competent authority, which is the subject matter of an appeal before the Income Tax Appellate Tribunal. Therefore, that issue cannot be made a subject matter in the application filed before the Commission, as the said issue was not before any of the Income Tax authorities, which is one of the pre-condition. In addition, the seized material, as is evident, shows that huge amounts were paid to the members of the petitioner society either by way of salaries or by way of rentals or advances etc. If such payments have been made by the petitioner society to its members, it cannot claim the benefit of exemption as a charitable institution. Further, number of statements have been recorded from various persons where information has been gathered showing that the petitioner not only received the amounts outside the Books of Accounts, but also made payments to various persons, mostly to the members and Teaching staff, outside the Books of Accounts. Therefore, the matter is confined for the adjudication of these aspects as to the truth or otherwise of the allegations made by the Department against the petitioner society. It is for the petitioner society to adduce evidence and satisfy the Departmental authorities to

prove its case. Therefore, according to the Department, there is no complexity of investigation involved.

Here, it would be appropriate to refer to the decisions relied upon by both sides.

In **I.T.C. Ltd. (CAL.)** (supra-1) a Division Bench of the Calcutta High Court referred the term 'complexity' used in Section 142 (2A) of the Act. Under the above provision, the Assessing Officer was empowered to appoint a Special Auditor for auditing the accounts where the nature and complexity is such that it is not possible for the Assessing Officer to justify the correct assessment of the income and to examine the correctness of the accounts. While exercising its power, the Assessing Officer is required to obtain approval of the Commissioner or the Chief Commissioner. Though no ratio was laid in the said decision, the Calcutta High Court, on facts, held that no objection could be raised as to the appointment of Special Auditor by the Assessing Officer in view of the facts and circumstances of the case.

In the case of **Living Media Ltd.** (supra-2) the Apex Court, while affirming the order of the High Court dismissing the writ petition filed by the assessee assailing the appointment of Special Auditor, observed that the voluminous details and the material placed before the Assessing Officer, prima-facie, supported the formation of the opinion by the Assessing Officer for conducting special audit under Section 142 (2A) of the Act.

In **Peerless** case (supra-3) a learned single Judge of the Calcutta High Court held that two conditions should be fulfilled before appointing a Special Auditor by the assessing authority under Section 142 (2A) of the Act i.e., complexity of accounts and interest of the revenue. The order of the Assessing Officer was set aside in this case on the ground that the relevant material was not placed before the Chief Commissioner of Income Tax and the approval granted was without any application

of mind.

In **Swadeshi Cotton Mills Company Ltd.** case (supra-4) a Division Bench of the Allahabad High Court considered the same provision of the Act and held that the satisfaction of the authorities should be objective satisfaction, but not subjective satisfaction. The Bench also while considering the word 'complexity' observed, "*all that are difficult to understand should be regarded as complex. What is complex to one may be simple to another. Sometimes, what appears to be complex on the face of it may not be really so if one tries to understand it carefully. Therefore, special audit should not be directed on a cursory look at the accounts. There should be an honest attempt to understand the accounts of the assessee."* Observing so, the action of the assessing authority in appointing the Special Auditor was upheld.

Similar view has been expressed in **U.P. State Handloom Corporation Ltd.** case (supra-5) by the same High Court.

In **Sahara India Mutual Benefit Co. Ltd.** case (supra-6) a Division Bench of the same High Court held that the following must be fulfilled before an assessee be directed to get his accounts audited by the Special Auditor by the Assessing Officer, viz., (i) the account books of the petitioners should be of complex nature;
(ii) Special Audit should be in the interest of revenue; (iii) the Special Audit must be necessary because of the aforesaid complexity and interest of revenue; (iv) there should be previous approval of the Chief Commissioner or the Commissioner; (v) the Special Audit, having regard to aforesaid necessity, must be relevant for the assessment proceedings. Therefore, on facts, the order of the assessing authority ordering for Special Audit was upheld.

In **Uttaranchal Welfare Society** case (supra-7) a Division Bench of the Allahabad High Court upheld the order of the Assessing Officer, on facts, as to the appointment of a Special Auditor.

In the case of **Om Prakash Mittal** (supra-8) the Apex Court had an occasion to review the entire scheme formulated under Chapter XIX-A of the Act while considering the scope and powers of the Settlement Commission to review its own order. The Apex Court though held that the Settlement Commission has no power of review, but however, the Commission has sufficient elbow room in assessing the income of the applicant, it cannot make any order with a term of settlement which would be in conflict with the mandatory provisions of the Act like the quantum and payment of tax and interest. It was also held that the Commission has got the power to set aside or modify the order, if it has been obtained by fraud or misrepresentation of facts and the said power cannot be equated to the power of review.

Though the learned counsel relied upon the above decisions, but the said decisions may not be of any assistance to the petitioner either to claim that the investigation that is required involves complexity, as investigation has already been completed by the Assessing Officer by the time the impugned order was passed, and in fact, part of the investigation has already been made by the Assessing Officer by the time the petitioner-assessee had made its application to the Settlement Commission.

Coming to the decisions relied upon by the learned counsel for the respondent-Department, in the case of **Jyotendrasinhji** (supra-10), the Apex Court had an occasion to consider the scope of judicial review as well as finality of the orders referred to under the provisions of Chapter XIX-A of the Act. The Apex Court held that the scope of judicial review is restricted to consider whether the order is contrary to any of the provisions of the Act, apart from bias, fraud or malice.

In **Express Newspapers Ltd.** case (supra-9) the Apex Court considered the object of the provisions for settlement of the cases and on considering the facts, as the applicant did not disclose any additional income not disclosed by the applicant

before the Assessing Officer, held that the application is not maintainable. It was also held that the Commissioner's report can also be based on the material obtained even after the date of the application for settlement. It was further held that the Commission can also look into the material obtained after the report filed by the Commissioner.

In **Harphool Singh** case (supra-12) a Division Bench of Punjab and Haryana High Court upheld the order of the Commission, rejecting the application for settlement, observing that the Settlement Commission recorded that most of the controversial issues had already been settled and there was no pending investigation of such a complex nature as to the required intervention of the Settlement Commission. The said order of the High Court was even upheld in S.L.P.No.348 of 1995 reported in **Income Tax Reports (Statutes)** (supra-13).

In **Shyam Glass Works** case (supra-14) a Division Bench of Allahabad High Court while upholding the order of the Settlement Commission, rejecting the application, observed that whether the application could or could not be allowed was a matter to be decided by the Settlement Commission and the Settlement Commission rejected the application for settlement after considering several factors. The High Court, in a writ petition, is concerned only with the legality of the procedure followed i.e., the decision making process and not with the merits of the order passed by the Settlement Commission. In the instant case, there was no evidence to find that the Settlement Commission had not followed the procedure required.

In **Patel Desai and Co.** case (supra-11), a Division Bench of this Court had an occasion to examine the scope of interference under Article 226 of the Constitution of India where final order of the Settlement Commission was assailed. This Court held that it could not be said that the Settlement Commission acted contrary to the provisions of the Act. The Commission actively applied its mind to the mixed question of law and fact with which it was confronted and purported to record its

conclusion in the light of the principles and tests laid down in decided cases on the interpretation of Section 37 of the Income Tax Act, 1961. A mere error of law did not necessarily amount to contravening or disregarding a provision of law, more so when such error could be established by a long drawn process of reasoning and debate. The error, if any, was only in the course of applying law to the facts of the particular case or interpreting the terms of the agreement and the legal error was not one which could be corrected by a writ of certiorari. Therefore, the decision of the Settlement Commission could not be interfered with under Article 226 of the Constitution of India.

In **Ganesh Bartan Bhandar** case (supra-15) a Division Bench of the Allahabad High Court while upholding the order of the Settlement Commission, rejecting the application, observed that the Commission had relied upon the findings recorded by the Assessing authority and come to the conclusion that the loose paper sheets had been connected with the petitioners. The report, if any, of the Commissioner of Income Tax did not contain any fresh material, therefore, no prejudice is caused to the petitioners.

The facts of the case are to be considered in the light of the above referred decisions relied upon by both sides. The petitioner claims that it had number of Branches and the person incharge of each Branch had adopted his own method to deal with the cash transactions. There were more than 50,000 students studying in different Branches of the petitioner society and the same had resulted in numerous transactions. Further, during the course of search and seizure operations, the Department seized voluminous records, and as such, consideration or investigation into all the material involves complexity. Therefore, this is a fit case for the Settlement Commission to consider and settle once for all, to avoid multiplicity of proceedings as well as protracted litigation. But the claim of the petitioner was not accepted by the Settlement Commission, as according to it no complexity of

investigation is involved, as the petitioner maintained its Books of accounts and got them audited. Now the only issue to be considered is whether the petitioner is entitled for the benefit of exemptions under Section 10(22) or Sections 11 to 13 of the Act in view of the contraventions alleged against it as well as withdrawal of registration granted under Section 12A of the Act. Perhaps, there may be further additions on account of undisclosed income, which reflected the payments made to various persons, found during the course of search, which was not referred in the order of the Settlement Commission. But this Court is not exercising the jurisdiction as an appellate authority to go into the merits of the decision of the Commission and to re-appreciate the facts placed before the Settlement Commission and this Court to come to a different conclusion. As held by the Apex Court as well as the other High Courts as referred to earlier, this Court while exercising the jurisdiction of judicial review under Article 226 of the Constitution of India, would look into whether the Commission had committed any procedural lapses which could prejudice the case of the petitioner. In fact, all the contentions that are advanced on behalf of the petitioner were only with reference to the merits of the case and the alleged non-consideration of the facts of the case by the Commission, but not as to the omission of any procedural part. In fact, this Court held that even in respect of a legal error, the same cannot be corrected under Article 226 of the Constitution of India.

At this stage, it would be appropriate to refer the relevant observations of the Apex Court in the case of **Jyotendrasinhji** (supra-10).

> "……The scope of enquiry, whether by the High Court under Article 226 or by this Court under Article 136 is also the same—whether the order of the Commission is contrary to any of the provisions of the Act and if so, apart from ground of bias, fraud and malice which, of course, constitute a separate and independent category, has it prejudiced the petitioner/appellant. Reference in this behalf may be had to the decision of this Court in ***R.B. Shreeram Durga Prasad and Fatechand Nursing Das v. Settlement Commission (I.T. and W.T.) (1989) 176 ITR 169,*** which too was an appeal against the orders of the Settlement Commission. Sabyasachi Mukharji J., speaking for the Bench comprising himself and S.R.Pandian J., observed

> that, in such a case, this court is "concerned with the legality of the procedure followed and not with the validity of the order". The learned Judge added "judicial review is concerned not with the decision but with the decision-making process". Reliance was placed upon the decision of the House of Lords in ***Chief Constable of the North Wales Police v. Evans (1982) 1 WLR 1155 (HL)***. Thus, the appellate power under Article 136 was equated with the power of judicial review, where the appeal is directed against the orders of the Settlement Commission. For all the above reasons, we are of the opinion that the only ground upon which this Court can interfere in these appeals is that the order of the Commission is contrary to the provisions of the Act and that such contravention has prejudiced the appellant……"

In the light of the above binding ratio laid down by the Apex Court, the contentions of the petitioner are devoid of any merit. It is clear that it is not the case where, even according to the petitioner, that there is any violation or non-compliance of any of the provisions of the Act. No bias, fraud or malice was alleged against the Settlement Commission. In the absence of any of the above, as held by the Apex Court, there is absolutely no scope for this Court to interfere with the order of the Settlement Commission. Apart from the above, during the pendency of the application before the Commission, the Assessing Officer, in fact, had completed the enquiry and passed an assessment order as early as on 30-7-2004 itself.

Under the above circumstances, we do not find any merit warranting interference with the impugned order passed by the Settlement Commission. The writ petition, therefore, fails and the same is accordingly dismissed. No costs.

(B. SUDERSHAN REDDY, J)

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(S.ANANDA REDDY, J)

24-10-2005.

Msr.