

Income-Tax Settlement Commission (Procedure) Rules, 1997

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Rule

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1997.

G.S.R. 361(E), dated 4th July, 1997 - In exercise of the powers conferred by sub-section (7) of section 245F of the Income-tax Act, 1961 (43 of 1961), and in supersession of the Income-tax Settlement Commission (Procedure) Rules, 1987, except as respects things done or omitted to be done before such supersession, the Income-tax Settlement Commission hereby makes the following rules, namely :-

1. Short title and commencement - (1) These rules may be called the Income-tax Settlement Commission (Procedure) Rules, 1997.

(2) These shall come into force on the date of their publication in the Official Gazette.

2. Definitions - In these rules, unless the context otherwise requires,-

(i)"Act" means the Income-tax Act, 1961 (43 of 1961);(ii)"annexure" means the annexure to the application in Form No. 34B, set out in Appendix II to the Income-tax Rules, 1962;(iii)"applicant" means a person who makes an application to the Commission under sub-section (1) of section 245C to have a case relating to him settled;(iv)"authorised representative" means,-(a)in relation to an applicant, except where such applicant is required under any of the provisions of Chapter XIX-A of the Act to attend in person, a person who would be entitled to represent him before any income-tax

authority or the Appellate Tribunal under section 288;(b)in relation to a Commissioner, a person,-(i)authorised in writing by the Commissioner or the Chief Commissioner; or(ii)duly appointed by the Central Government as authorised representative or duly authorised by the Central Board of Direct Taxes to appear, plead and act for the Commissioner in any proceeding before the Commission;(v)"Commission" means the Income-tax Settlement Commission constituted under sub-section (1) of section 245B and includes, where the context so requires, any Bench exercising or discharging the powers or functions of the Commission;(vi)["Officer of the Commission" means Secretary, Director of Income-tax (Investigation), Additional Director of Income-tax (Investigation), Joint Director of Income-tax (Investigation), Deputy Director of Income-tax (Investigation) and Assistant Director of Income-tax (Investigation).] [Substituted by Notification No. G.S.R. 820 (E) dated 6.10.2010 (w.e.f. 4.7.1997)](vii)"Secretary" means the Secretary of the Commission and includes an Administrative Officer [and a superintendent] [Inserted by Notification No. G.S.R. 820 (E) dated 6.10.2010 (w.e.f. 4.7.1997)] and a superintendent;(viii)"Section" means a section of the Act;(ix)"Settlement application" means an application made by a person to the Commission under sub-section (1) of section 245C to have a case relating to him settled;(x)all other words and expressions used in these rules and not defined but defined in the Act, shall have the same meaning respectively assigned to them in the Act.

3. Language of the Commission - (1) All pleadings before the Commission may, at the option of the applicant, be in Hindi or in English.

(2)All orders and other proceedings of the Commission may, at the option of the Commission, be in Hindi or in English.

4. Signing of notices, etc. - (1) Any requisition, direction, letter, authorisation, order or written notice to be issued by the Commission shall be signed by the Chairman or a Vice-Chairman or any other Member of the Commission or by the Secretary (or by any other officer of the Commission).

(2)Nothing in sub-rule (1) shall apply to any requisition or direction which the Commission may, in the course of the hearing, issue to an applicant or a Commissioner or an authorised representative personally.

5. Procedure for filing settlement application - [(1) A settlement application shall be made by the applicant in person or his authorised representative, to the Secretary at the headquarters of the Commission at New Delhi or of the Bench within whose jurisdiction his case falls or to an officer authorised in this behalf by the Secretary, or shall be sent by registered post addressed to the Secretary, or to such officer.] [Substituted by Notification No. G.S.R. 820 (E) dated 6.10.2010 (w.e.f. 4.7.1997)]

(2) A settlement application sent by post under sub-rule (1) shall be deemed to have been presented to the Secretary or the officer authorised by the Secretary on the day on which it is received in the office of the Commission. (3) [The application shall be accompanied by a copy of self(-)attested challans or other documents as evidence in respect of payment of tax and interest by the applicant.] [Inserted by Notification No. G.S.R. 820 (E) dated 6.10.2010 (w.e.f. 4.7.1997)] [6. Report of the Commissioner under sub-section (2B) of Section 245D. - The Commissioner shall furnish seven copies of report referred to in sub-section (2B) of Section 245D, to the Commission and one copy to the applicant simultaneously.] [Substituted by Notification No. G.S.R. 820 (E) dated 6.10.2010 (w.e.f. 4.7.1997)] [7. Preparation of paper books, etc. - (1) If the applicant proposed to refer to or rely upon any documents or statements or other papers, during the course of hearing under sub-section (4) of Section 245D of the Act, he may submit seven copies of a paper books containing such papers duly indexed and numbered, within thirty days of the receipt of an order under sub-section (2C) of Section 245D, or within thirty days of the date by which the application was required to be declared invalid but has not been so declared: Provided that the Commission may, in appropriate cases, condone the delay and admit the paper book. (2) If the Commissioner proposes to refer to or rely upon any documents or statements or other papers during the course of hearing under sub-section (4) of Section 245D of the Act, he may submit seven copies of a paper book containing such papers duly indexed and numbered along with his report referred in rule 9. (3) The papers referred to in sub-rules (1) and (2) must be legibly written or type-written in double space or printed and each paper shall be certified as a true copy by the party filing the same, or his authorised representative and indexed in such a manner as to give a brief description of the documents, with page numbers and the authority before whom it was filed.] [Substituted by Notification No. G.S.R. 820 (E) dated 6.10.2010 (w.e.f. 4.7.1997)]

8. Filing of affidavit - Where a fact, which is not borne out by or is contrary to the record relating to the case, is alleged in the settlement application (including the annexure and the statement or other documents accompanying such annexure), it shall be stated clearly and concisely and supported by a duly sworn affidavit.

[9. Commissioner's further report. - (1) Where an application has not been declared invalid under sub-section (2C) of Section 245D or an application has been allowed to be further proceeded with under sub-section (2D) of Section 245D, the information contained in the annexure and in the statements and other documents accompanying such annexure shall be sent to the Commissioner by the Commission with the direction that the Commissioner shall furnish a further report in seven copies within forty-five days of the receipt of said annexure or within such extended period as may be allowed by the Commissioner. (2) If the Commissioner fails to furnish his report on or before the expiry of the specified period of forty-five days or within further extended period as the Commission may allow, as the case may be, the Commission may proceed to hear the case without such report. (3) A copy of the report of the Commissioner under sub-rule (1) of rule 9 shall be sent to the applicant by the Commission.

9A. Applicant's Comments on Commissioner's report under rule 9. - (1) The applicant may furnish comments on the Commissioner's report received under rule 9 within fifteen days of the receipt of the copy of the said report by him or within such extended period as may be allowed by the Commission on a written request made by the applicant.

(2)The comments of the applicant shall be accompanied by a paper book in support thereof, having the specifications referred to in rule 7.(3)If the applicant fails to furnish comments on or before the expiry of the specified period of fifteen days or within further extended period under sub-rule (1), the Commission may proceed further with the case without such comments.]

10. Date and place of hearing of application to be notified - On receipt of the Commissioner's further report, if any, referred to in rule 9, the Commission shall notify to the applicant and the Commissioner the date and place of hearing of the application.

11. Sitting of Bench - A Bench shall hold its sittings at its headquarters. The Bench may, however, at the discretion of the Presiding Officer, hold its sittings at any place in its jurisdiction notified by the Commission.

12. Powers of a Bench - A Bench shall dispose of such settlement applications or matters arising therefrom as the Chairman may by general or special order direct.

[12A. Constitution of Two-member bench. - Where one of the member (whether such person be the Presiding Officer or other member of the bench) is unable to discharge his function on the bench under the circumstances referred to in sub-section (5) of Section 245BA, the remaining members with the approval of the Chairman or the Vice-Chairman, as the case may be, may function as a bench.] [Inserted by Notification No. G.S.R. 820 (E) dated 6.10.2010 (w.e.f. 4.7.1997)]

13. Constitution of Special Bench - (1) The Chairman may, for the disposal of any particular case, constitute a Special Bench consisting of at least five Members drawn from all the Benches of the Commission.

(2)The Special Bench shall be presided over by the Chairman or a Vice-Chairman.(3)If the Members of the Special Bench are equally divided, they shall state the point or points on which they differ and make a reference to the Chairman who shall refer the case for hearing on such point or points by one or more of other Members of the Settlement Commission and such point or points shall be decided according to the opinion of the majority of the Members of the Settlement Commission who have heard the case.(4)Notwithstanding anything contained in the foregoing provisions of this rule, if one or more persons constituting the Special Bench (whether such person is the Presiding Officer or any

other Member of the Special Bench) are unable to function in the Special Bench owing to illness or any other cause or in the event of occurrence of a vacancy either in the office of the Presiding Officer or in the office of one or other Members of the Special Bench, the remaining Members, if more than three may function as the Special Bench, and the senior most of the remaining Members shall act as the Presiding Officer of the Special Bench.

14. Filing of authorisation - An authorised representative appearing for the applicant at the hearing of an application shall file before the commencement of the hearing a document authorising him to appear for the applicant and if he is a relative of the applicant, the document shall state the nature of his relationship with the applicant, or if he is a person regularly employed by the applicant, the capacity in which he is at the time employed.

15. Verification of additional facts - Where in the course of any proceedings before the Commission any facts not contained in the settlement application (including the annexure and the statements and other documents accompanying such annexure) are sought to be relied upon, they shall be submitted to the Commission in writing and shall be verified in the same manner as provided for in the settlement application.

16. Proceedings not open to the public - The proceedings before the Commission shall not be open to the public and no person (other than the applicant, his employee, the concerned officers of the Commission or the Income-tax Department or the authorised representatives) shall, without the permission of the Commission, remain present during such proceedings.

17. Publication of orders of the Special Bench - The Chairman may, at his discretion, direct the publication of orders or portions containing the rulings of the Special Bench with such modifications as to names and other particulars therein, as he may deem fit.

18. Adjournment of hearings - The Commission may, on such terms as it thinks fit and at any stage of the proceedings, adjourn the hearing of the application or any matters arising therefrom.

19. Special provisions in respect of settlement applications made before 1st day of October, 1984 - (1) Where, in respect of a settlement application made before the 1st day of October, 1984, an order is passed by the Commission under sub-section (1) of section 245D of the Act allowing the application to

be proceeded with, a notice shall be issued by the Commission to the applicant requiring him to furnish in quintuplicate :-

(a) a full and true statement of facts regarding the matters to be settled (including the manner in which any income disclosed or proposed to be disclosed by the applicant has been derived); and where the settlement involves determination of income, accompanied with annexures containing :- (i) computation of total income of the applicant for the assessment year or years to which the settlement application relates, in accordance with the provisions of the Act; (ii) copies of manufacturing account or trading account or both, as the case may be, profit and loss account or income and expenditure account or any other similar account, as the case may be, and balance sheet; and (iii) in the case of: - (a) a proprietary business or profession, copy of the personal account of the proprietor; (b) a firm or association of persons or body of individuals, copies of the personal accounts of the partners or members thereof, as the case may be; and (c) a partner of a firm or a member of an association of persons or body of individuals, copies of the personal account of such partner or member in the firm or association of persons or body of individuals, as the case may be; (b) the terms of settlement sought for by the applicant. (2) The statement of facts, the annexures thereto and the terms of settlement shall each be signed separately by the applicant and the statement of facts shall be verified in the following manner, namely :- "I....., son/daughter/wife of (Name in full and in block letters)..... solemnly declare that to the best of my knowledge and belief, the information given in this statement of facts and the annexures accompanying it is correct and complete and other particulars shown therein are truly stated. I further declare that I am making this statement in my capacity as and that I am competent to make (designation) this statement of facts and to verify it. Place :..... Date :..... Signature (3) Where a fact which cannot be borne out by or is contrary to the record relating to the case is alleged in the statement of facts furnished under sub-rule (1), it shall be stated clearly and concisely and supported by a duly sworn affidavit. (4) On receipt of the statement of facts and the terms of settlement under sub-rule (1), the Commission shall forward a copy thereof to the Commissioner calling for his further report.