

The Chamber of Tax Consultants

Study Group Meeting
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Practical Approach to Income Tax Settlement Commission

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History of ITSC

Income Tax Settlement Commission (ITSC) was set up under Section 245B of the Income Tax Act w.e.f. 1.4.1976 with its head quarters at New Delhi.

It has been set up as a result of recommendations made by Direct Taxes Enquiry Committee set up under the chairmanship of Justice KN Wanchoo (Popularly known as Wanchoo Committee)

It is a quasi judicial body set up with objective of providing mechanism for one time settlement of taxes to evaders or un-intending defaulters, thereby avoiding endless litigation

Constitution u/s 245B



Chairman

Vice chairman

Members of
Settlement
Commission

Appointed by
Central
Government

Settlement Commission Benches

Composition of Bench Benches

■ Chairman /Vice Chairman

■ Two Members

■ 7 functioning benches

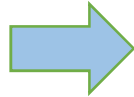
■ Principal Bench – Delhi (presided by Chairman)

■ Additional Benches- Delhi I, Delhi II, Mumbai I , Mumbai II, Kolkata and Chennai

Why Settlement Commission?

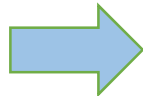


Advantages for the Applicant:



- Immunity from Penalty and Prosecution under the IT Act.
- Avoid prolonged litigation time.

Advantages for the Department:



- The tax and interest on the additional income is paid in full before filing the application to ITSC.
- Cost and efforts of the department is substantially reduced, as the applicant is revealing full and true disclosures.

Settlement v/s Litigation

Settlement

- It is a resolution of dispute between two parties about legal case
- The application for settlement can only be made during the pendency of the assessment proceedings
- Only assessee can approach the settlement authority
- The proceedings are not open to public

Appeal

- A earnest request to higher authority for revision in decision
- An appeal can be filed only after the conclusion of assessment proceedings against an assessment order
- Either of the assessee or AO can approach the appellate authority.
- The proceedings may or may not be open to public

Timeline – Settlement V/s Litigation

Settlement Commission	Litigation
Maximum time period – 18 months from the date of filing application	Longer time for concluding the Proceedings (Appox. 15 Years)
Limited number of hearings	Comparatively higher number of hearings and representation before various judicial authorities
Conclusive judgement – Less chances for further challenge of order	Order/Judgement can be challenged further before CIT(A), ITAT, High Court & Supreme Court successively

Result – Settlement v/s Litigation

Settlement Commission	Litigation
Immunity from Penalty and Prosecution, If – <ol style="list-style-type: none"> 1. Co-operated with ITSC in proceedings before it. 2. Full and True disclosure 3. Disclosure of manner in which income is derived 	<ul style="list-style-type: none"> • Penalty proceedings will be initiated / Prosecution may be launched • Chances of re-opening of assessment proceedings
Once settled, totally settled	Cyclical proceedings from AO to ITAT /Courts multiple times

Other Points - Settlement v/s Litigation

Settlement Commission	Litigation
Forum to settle cases amicably	Adjudicating authority
Once in a life time opportunity	No restriction on number of times to approach the Appellate Authority
Money, time and cost of litigation is saved	Expensive affair
Exclusive authority	Hierarchical authority
No Separate proceedings for assessment and Penalty	Separate proceedings for Assessment and penalty
Proceedings in camera -not open to Public	Proceedings before the ITAT, HC and Supreme Court is open to Public
Application once made will not be allowed to be withdrawn	Appeal preferred before the Appellate authorities may be withdrawn
Upon filing of application, Income tax Department loses its Jurisdiction for respective years	AO continues to exercise the jurisdiction on the assessee

Post Demonetization – Settlement V/s Litigation

Settlement Commission	Litigation
<p>If a person does not disclose the cash or deposits under PMGKY scheme, the following are the implications</p>	
<ul style="list-style-type: none"> • Tax @ 30% of undisclosed income Plus • Surcharge on tax payable, as applicable Plus • Immunity from Penalty 	<ul style="list-style-type: none"> • Tax u/s 115BBE @ 60% of undisclosed income Plus • 25% surcharge on tax payable Plus • 10% penalty u/s 271AAC on tax payable and in case of search, penalty extend up to 30% or 60%.

Income Declaration Scheme – Settlement V/s Litigation

Settlement Commission	Litigation
If disclosure of income not made under IDS or disclosure made but taxes not paid and disclosure became void - the following are the implications	
<ul style="list-style-type: none"> • Tax @ 30% of undisclosed income. <li style="text-align: center;">Plus • Surcharge on tax payable, as applicable 	<ul style="list-style-type: none"> • Tax @ 60%/30% of undisclosed income <li style="text-align: center;">Plus • Surcharge on tax payable, as applicable <li style="text-align: center;">Plus • Penalty and Prosecution as per the Income Tax Act, 1961.

Who can file application?



Any person whose case is pending

- u/s 143(1)
- u/s 143(2)
- u/s 147
- u/s 153A/153C
- Fresh assessment u/s 254, 263 or 264, setting aside or cancelling an assessment
- In any other case, the date on which the ROI is furnished.

Is it a pending proceedings ?

- Appeals pending before CIT (A)/ ITAT?
- Appeals pending before High court/supreme court?
- Rectification u/s 154
- When no ROI is filed in case of search.
- Penalty proceedings u/s 271, 271A or 272A

Who can file application?



Quantum of Tax:

- The quantum of tax has to be checked at an assessee level.
- Manner of computing additional tax:

Total Income Returned	A
Add: Income disclosed in the application	B
Total	C

Additional amount of Income-tax = Tax on C - Tax on A

- Additional tax amount has to exceed the specified limit.
- The tax and interest has to be paid on or before filing the application.

Maintainability of Application



True and full disclosure of income

Manner in which the income is earned

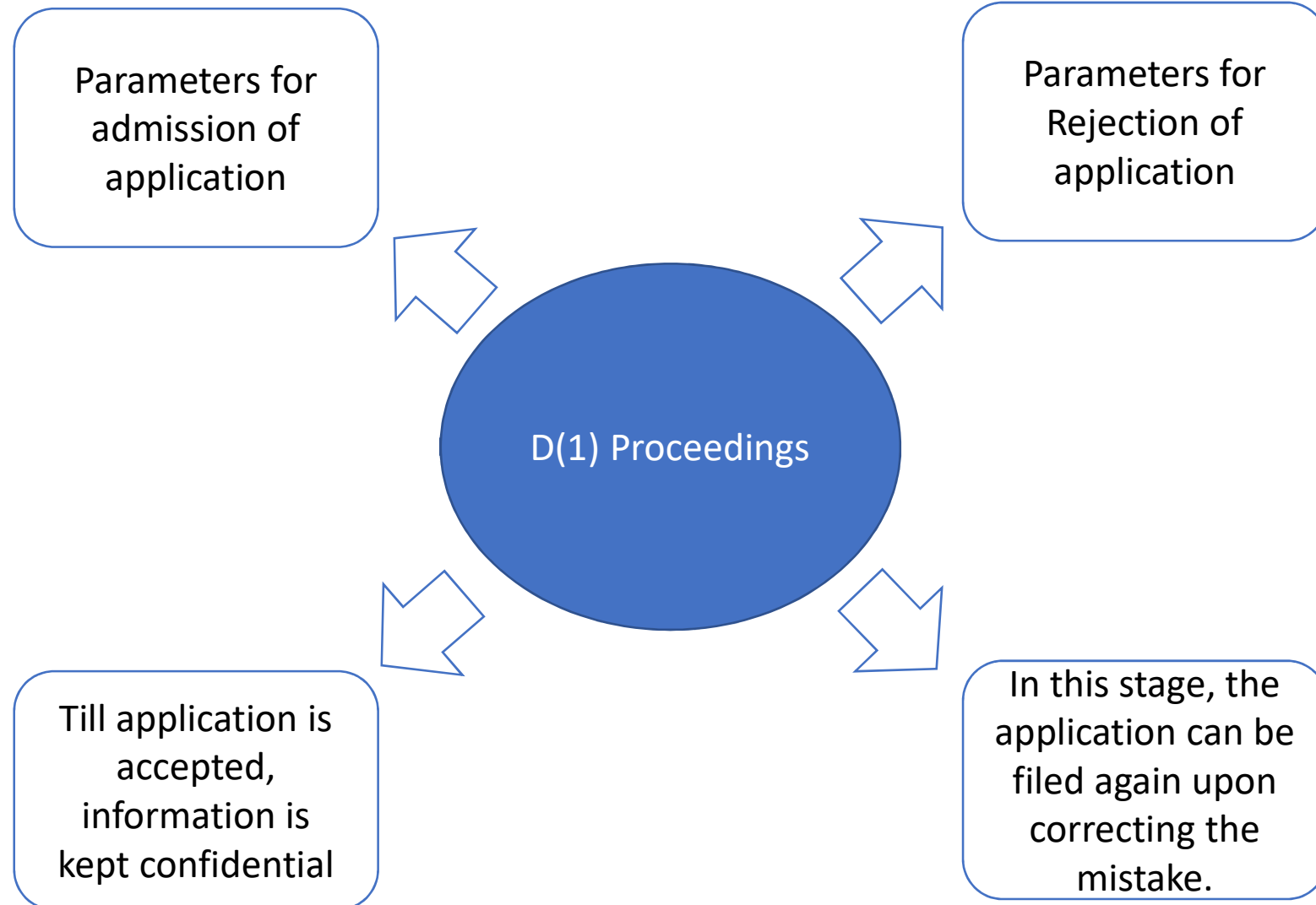
Application to be filed in Form 34 B along with prescribed fee

Intimation to A.O. in Form 34BA on the same day

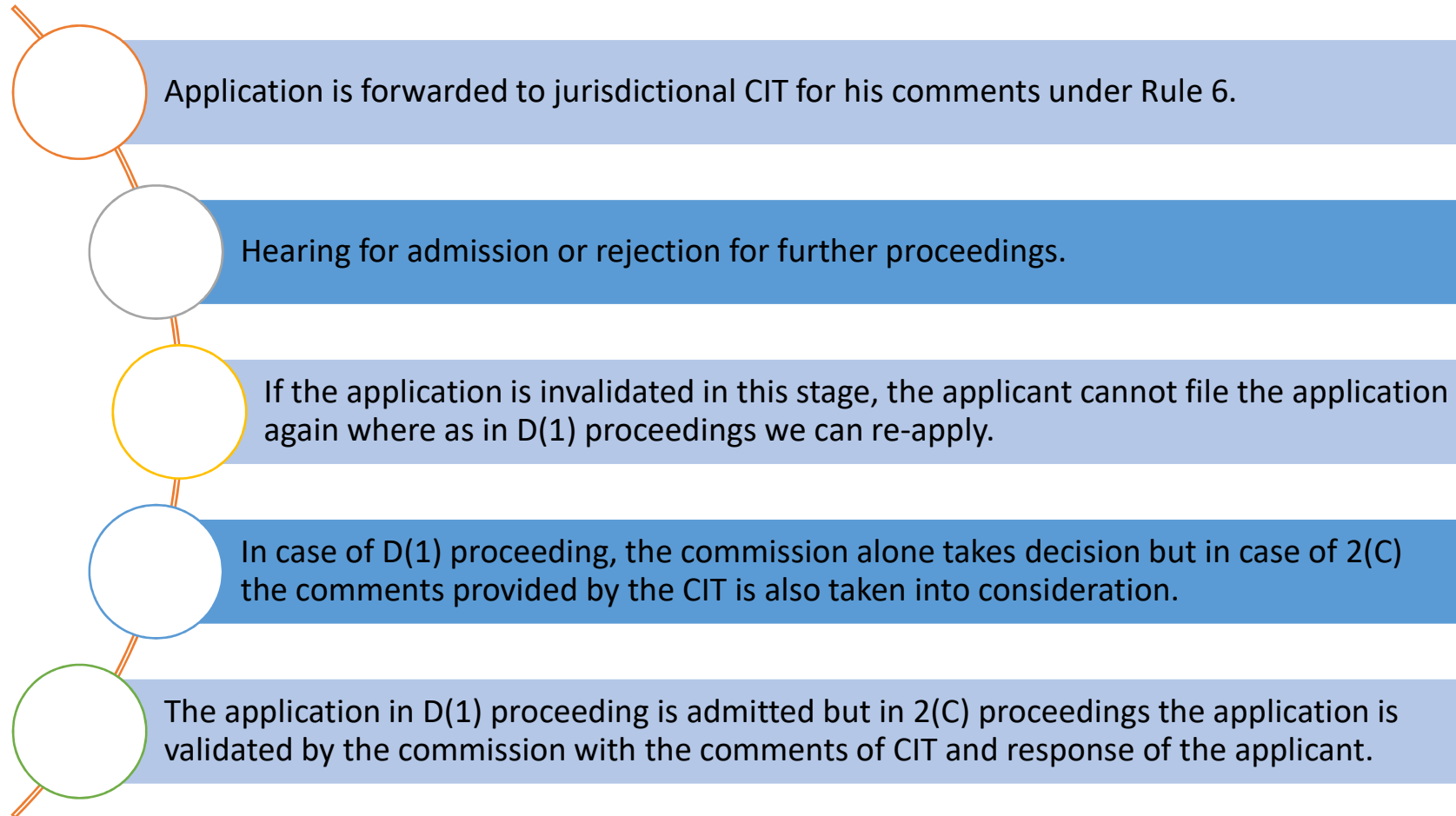
Tax and interest to be paid before filing the application

Additional tax amount should exceed the limit u/s 245C

D(1) Proceedings



2(C) Proceedings



D(3) Proceedings

Post admission of application after 2(C) stage



1. The application is forwarded to CIT along with annexures to submit a Rule 9 report

2. The CIT after examination of records available with the department on the application submitted by the applicant submits Rule 9 report.

3. If the CIT does not submit the requisite reports then the commission can continue with the documents in hand submitted by the applicant.

4. The major difference in 2(C) proceedings and D(3) is that the CIT submits the Rule 9 report after examining the records available with the department. Directing further enquiry in D(3) stage is the prerogative of the Commission.

Abatement of proceedings

In the following cases, the proceedings before the settlement commission shall abate on the specified date as given below:



S No	Case	Specified Date
1	Where an application made to the settlement Commission on or after 1/6/2007 has been rejected u/s 245D(1)	The date on which the application was rejected
2	Where an application has been declared invalid u/s 245D(2C)	The last date of the month in which the application is made invalid
3	Where an order u/s 245D(4) has been passed not providing for the terms of settlement	The day on which the order u/s 245D(4) was passed.
4	Where an order u/s 245D(4) has not been passed within the time allowed u/s 245D(4A)	The date on which the time period is expired.

Issues that can be settled amicably in the ITSC

Contractors

Illegal payments

Educational Institutions

Donations

Professionals

Un accounted professional fees

Jewellers

Ponzi schemes

Foreign Companies having PE in India

Not declared business income in India

Transfer Pricing -

non technical issues

Issues that can be settled amicably in the ITSC

Telescoping of income

On money payments

Capitalization of assets

Bogus Sub contractor payments

Sec 40 A(3) Disallowances, 269 SS, 269 T, 269 ST cases

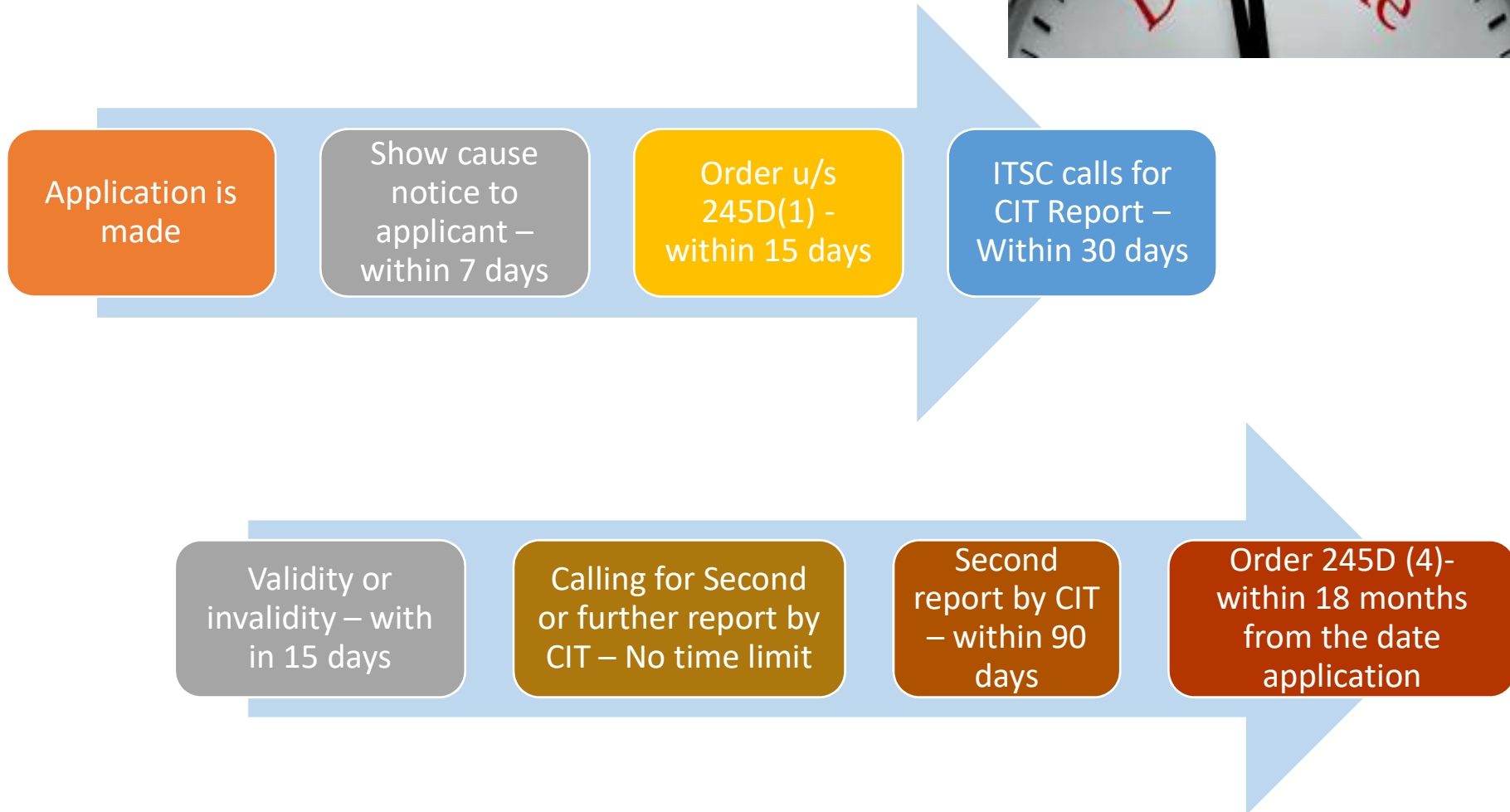
Hawala case

Cash loans

Accommodation entries / Penny stocks

Taxing the income in the hands of a person other than the one who has declared the income. Consequent transfer of tax credits and tax benefits

Time Limits



Power of ITSC

The ITSC has exclusive jurisdiction over the applicant and performs the functions of an income tax authority.

Provisionally attach the properties u/s 245DD of the act to secure the interest of the revenue.

Power to grant immunity from penalty & prosecution under IT Act.

Power to waive interest u/s 220(2) of the IT Act.

Power to grant time for payment of tax on additional income accepted at D4 stage.

Power to withdraw immunity granted earlier, in case the application is made invalid.

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Nature and Finality of the proceedings

245-I

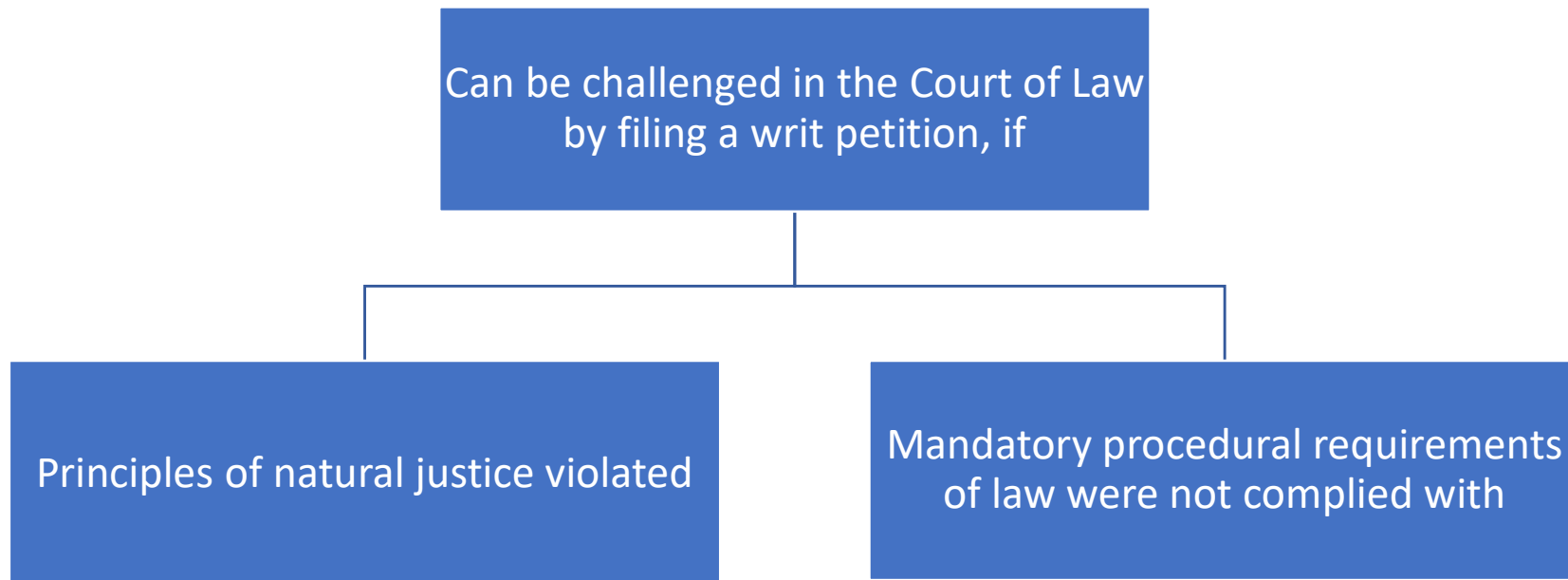
- The order of the Settlement Commission is final and conclusive in nature.

245-L

- Any proceeding before Settlement Commission shall be deemed to be a judicial proceeding.



Challenging the order of ITSC



Landmark Judgements

Case	Gist
Commissioner of Income-tax v. Express Newspaper Ltd. [1994] 72 TAXMAN 438 (SC)	<u>Application must disclose undisclosed income</u> Where assessee merely offered a part of amount claimed by him as losses, towards taxable income and did not disclose any income not disclosed by him before Assessing Officer, application under section 245C(1) was not maintainable
CIT v. B.N. Bhattachargee [1979] 118 ITR 461	<u>Hearing is necessary</u> Application must be heard before application is rejected
Commissioner of Income-tax v. Damani Brothers [2003] 259 ITR 475 (SC)	<u>Scope and Powers of Settlement Commission</u> Only after the Commission allows the petition to be proceeded with, it exercise the power of settlement
Brij Lal v, Commissioner of Income-tax, Jalandhar [2010] 194 Taxman 566 (SC)	<u>Power to re-open concluded assessment</u> Settlement Commission cannot reopen its concluded proceedings by invoking section 154.

Landmark Judgements (contd.)

Case	Gist
Capital Cables (India) (P.) Ltd. v. Income-tax Settlement Commission [2004] 139 TAXMAN 332 (DELHI)	Order made by Settlement Commission under section 245-I is conclusive and final, and same cannot be re-opened in any proceedings under Act or any other law, save as otherwise provided in Chapter XIX-A

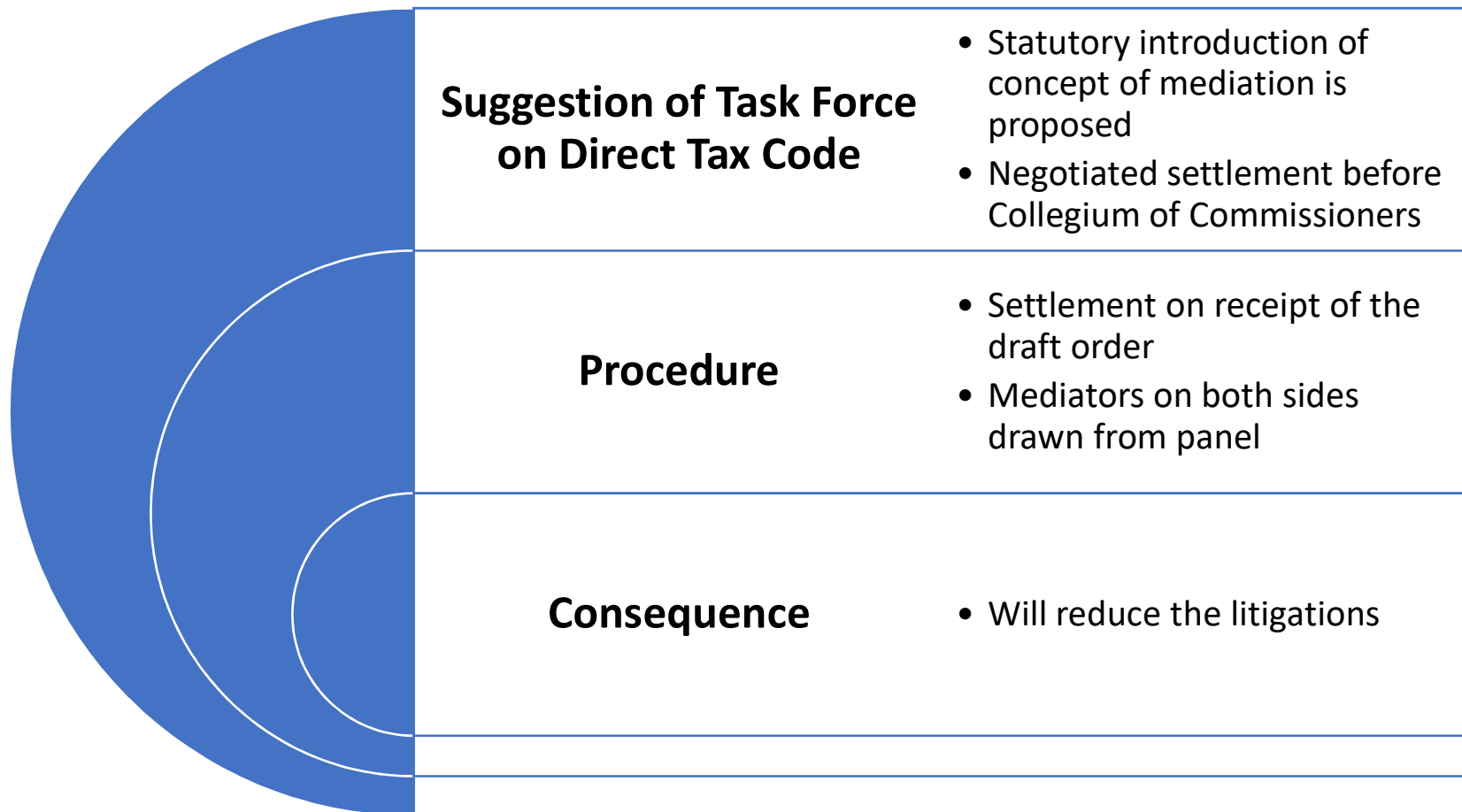
Recent Judgements

Case	Gist
<p>Kannur v. Settlement Commission (Income-tax & Wealth-tax) 107 taxmann.com 137 (Kerala HC)</p>	<p><u>Settlement Commission cannot proceed with the application when the assessee has offered additional income during the pendency of proceedings</u></p> <p>The HC noted that a disclosure of further income was made, which was not available in the original application made under section 245C of the Act. This leads to a definite conclusion that there was no full and true disclosure of the undisclosed income and the source from which it derived in the application filed under section 245C of the Act and therefore the order of the Settlement Commission was set aside for reason of the assessee having not made full and true disclosure under section 245C</p>
<p>Samdariya Builders (P.) Ltd. v. Income-tax Settlement Commissioner 2019] 106 taxmann.com 189 (Madhya Pradesh)</p>	<p>When assessee filed an application under section 245C(1) making full and true disclosure of income and same was admitted to be proceeded with by Settlement Commission under section 245D(1), in such a case, Settlement Commission could have either rejected said application or it could have directed Principal Commissioner or Commissioner to enquire and submit report so as to enable to Commission to take a decision, however, Settlement Commission could not relegate matter to Assessing Officer to dispose of assessee's case on merits</p>

Recent Judgements

Case	Gist
Agarshans v. Income-tax Settlement Commission [2012] 18 taxmann.com 19 (Mad.)	<u>Powers of High Court</u> Unless reasoning is abusive or contrary to provisions of law, which is prejudicial to interest of assessee, High Court does not assume any jurisdiction to interfere with order of Settlement Commission
Arun Mammen v. Union of India [2016] 71 taxmann.com 160 (Madras)	<u>The Black Money (Undisclosed Foreign Income Tax and Assets) and Imposition of Tax Act, 2015</u> The Black Money (Undisclosed Foreign Income Tax and Assets) and Imposition of Tax Act, 2015 comes into effect from 1-7-2015 and the assessee had filed his return of income on 21-5-2015 and notice was issued under section 148 by the Assessing Officer on 29-5-2015 which was before coming into effect of the provisions of the Black Money Act, 2015, the application submitted by the assessee offering undisclosed foreign income and assets before the Commission is maintainable.

Settlement through “mediation”





Thank You

QUESTIONS?