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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 3331/2014

THE COMMISSIONER OF INCOME TAX CENTRAL-II

..... Petitioner

versus

M/S. MUDRIKA FISCAL SERVICES (P) LTD. ..... Respondent

\+ W.P.(C) 3332/2014

M/S CIPL ESTATE PVT. LTD. ..... Respondent

\+ W.P.(C) 3333/2014

M/S BANSAL CORPORATION LTD. ..... Respondent

\+ W.P.(C) 3334/2014

M/S PACIFIC BULIDCON PVT. LTD. ..... Respondent

\+ W.P.(C) 3335/2014

M/S PACIFIC DEVELOPMENT CORPN. LTD. ..... Respondent

\+ W.P.(C) 3336/2014

M/S URBAN PLAST PVT. LTD. ..... Respondent

\+ W.P.(C) 3337/2014

M/S LAKSHYA COMMERCIALS PVT. LTD. ..... Respondent

\+ W.P.(C) 3338/2014

M/S MRG DEVELOPERS PVT. LTD. ..... Respondent

+ W.P.(C) 3339/2014

PICKUP TRADE LINK PVT. LTD. ..... Respondent

+ W.P.(C) 3340/2014

M/S SARWAR VINMAY PVT. LTD. ..... Respondent

+ W.P.(C) 3341/2014

M/S SUKHSAGAR VANIYA PVT. LTD. ..... Respondent

+ W.P.(C) 3342/2014

SH. SUDERSHN KUMAR BANSAL ..... Respondent

Through: Mr.Rahul Chaudhary, Sr.Adv. with Mr. Raghvendra Jr. Standing counsel for petitioner
Mr. Y.K.Kapur and Mr. Bhushan Kapur, Adv. for respondent

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

<u>O R D E R</u>

% **03.10.2016**

1. These writ petitions by the Commissioner of Income Tax challenge the common order dated 08.02.2013, made by Income Tax Settlement Commission (hereinafter referred to as "ITSC"), under Section 245 D(4) of the Income Tax Act ("the Act").

2. The brief facts are that the respondents (hereinafter referred to as the "assessees") were subjected to search and seizure proceedings on 31.08.2009. As a consequence, they received notice under Section 143A. Notices under Section 153 C were sent and received by other concerns in

respect of transactions that they had with the assessees. There were 12 entities/assessees in total. The assessees and all other concerns/companies approached the ITSC under Section 245C, seeking intervention. At the time of initiation of proceedings for settlement, the assessee deposited ₹14.63 crores as an admitted amount of tax due. In the course of the proceedings, the revenue furnished a report under Rule 9 of the Income Tax Settlement Commission (Procedure) Rules. In response to this report, the assessees furnished certain documents on 12.12.2012. The revenue/petitioner applied for leave to investigate the matter in the light of the explanation furnished by the assessees on 18.12.2012. Without specific ruling on this application, the ITSC proceeded to consider the matter on merits. After hearing the parties and evaluating the matter, the ITSC, in its majority opinion, decided to accept ₹74 crores offered (in addition) to ₹12.6 crores deposited at the outset by the assessees) and on the terms that they offered for the block period in question.

3. The revenue which has preferred these proceedings contends that the impugned order of the Commissioner is erroneous. It was contended that given the contents of the report which had implicated the assessees for concealing substantial income, fair opportunity should have been given to the Revenue to examine the materials made available during the course of the settlement hearing. It was highlighted that in the absence of the specific order, Revenue was hamstrung and should have been allowed to rebut the documents which provided the basis for the assessees' explanation and ultimately found favour with the Commissioner. The Revenue relied upon ruling of this court reported as *Commissioner of Income Tax vs. Income Tax Settlement Commissioner* 55 Tax 1 270 CTR 140.

4. The assesses, on the other hand, contended through their counsel that no interference is called for. Pointed reference is made to the impugned order which states that the amounts surrendered i.e. ₹74 crores were examined and the contentions of the Revenue, of reserving ₹6.26 crores was specific subject matter of examination not only with respect to the assessees but also with respect to other entities. It was, therefore, contended that the petition lacks any merit and should not be entertained.

5. During the course of hearing, it is evident from the factual narration itself that the assessee's response to revenue's Rule 9 report in the form of document/fresh material was placed on record before the Settlement Commissioner on 12.12.2012. The Revenue swiftly preferred an application for permission to investigate further and place material on record. This court is of the opinion that given these facts, it was incumbent upon the Settlement Commission to make a specific ruling on the application permitting the Revenue to carry out further necessary investigation, before proceeding with the hearing on the merits of the application.

6. In these circumstances, whilst the assessees may be correct in arguing that the specific head which was sought to be taxed can independently be explained irrespective of the surrendered amount or that the same amount which is sought to be brought under Rule 9 does not need to be examined, yet in the absence of a proper report after due investigation, the materials on record were inadequate for the Commissioner in the circumstances of this case to blindly accept whatever was offered by the assessees.

7. In the light of the above discussion, the impugned order dated 08.02.2013 allowing the settlement application and granting immunity to

respondent/assessees is hereby set aside and consequently the petitioner/Revenue is permitted to proceed and file a further report in the light of such enquiries, which may be conducted under provisions of this Act before the Commissioner. The investigation shall be concluded within a period of three months and the report shall be filed within two weeks thereafter. The matter is now remitted for fresh consideration by the ITSC which should, needless to add, consider all materials including a fresh report filed by the Revenue.

8. The writ petitions are allowed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

OCTOBER 03, 2016

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