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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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+ **W.P.(C) 5850/2016**

PR. COMMISSIONER OF INCOME TAX, CENTRAL-I, NEW DELHI ..... Petitioner
Through: Mr. Dileep Shivpuri, Senior Standing counsel with Mr. Sanjay Kumar, Advocate.

versus

INCOME-TAX SETTLEMENT COMMISSION & ORS. ..... Respondents
Through: Mr. Amrender Sharan, Senior Advocate with Mr. Amit Anand Tiwari, Advocate for R-2 & R-3.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE NAJMI WAZIRI

O R D E R
% **11.07.2016**

CM No. 24044/2016 (for condonation of delay in re-filing the petition)

1. For the reasons stated in the application, the delay in re-filing the petition is condoned.

2. The application is disposed of.

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3. The challenge by the Principal Commissioner of Income Tax, Central-I, New Delhi in this petition is to the order dated 27th November 2015 passed by the Income-Tax Settlement Commission ('ITSC') whereby the application made by the Respondent No.2 under Section 245C of the Income

Tax Act, 1961 ('Act') was accepted and an order was passed granting inter alia waiver of a penalty under Section 271(1)(c) of the Act and also immunity from prosecution.

4. Respondent No. 2 initially filed an application under Section 245C(1) of the Act disclosing an additional income of Rs.7,01,17,000 for Assessment Years ('AYs') 2008-09 to 2014-15. By an order dated 5th June 2014 under Section 245D(1) of the Act, the ITSC allowed the applications to be proceeded with. There was a subsequent order passed on 23rd July 2014 holding the application not to be invalid in terms of Section 245D(2C) of the Act.

5. In the impugned order there is an extensive discussion of the objections raised by the Department in its report filed through the Commissioner of Income Tax under Rule 9A of the Rules applicable to the Settlement Commission proceedings. Having considered those objections and submissions made by the authorised representative of the Assessee, the ITSC in para 21 of the impugned order held that "the application of funds though claimed to have been applied for the objects of the Trust remained unverified" and for that reason the ITSC proposed disallowance of such expenses.

6. It appears that with a view to putting a quietus to the matter, the Respondent No.2 filed a letter dated 26th November 2015 before the ITSC offering an income of Rs.60.70 crores over and above the additional income as disclosed in the statement of facts. In the said letter, the Respondent No.

2 inter alia pointed out that the sum offered additionally for tax had been worked out by disallowance of expenses at 22% of the project work (P/W) expenses. The ITSC then observed in paras 26 and 27 of the impugned order as under:

> "26. The amount of tax, together with interest payable as per this order/ shall be paid by the applicants. However/ the learned CIT DR submitted that in view of the substantial tax liability that would arise as also cash flow problems of the, eight quarterly instalments be allowed to the two trusts. Considering the facts and the tax liability, we allow payment to be made in six quarterly instalments. The payment of taxes shall be within prescribed period, the immunity granted under various provisions of Section 245H(1) shall be withdrawn in terms of sub-section (1A) of the said section.
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> 27. The applicant prayed for terms of settlement as per income offered finally, for waiver of penalties imposable under the IT Act, 1961 and also for immunity from prosecution over which CIT (DR) has no objection. In view of cooperation extended and offer based on the disallowance of expenses @22% of P/W expenses (on estimated basis) the penalty u/s 271(1)(c) is waived. For the same reason, immunity from prosecution is also granted in relation to the issues arising from the application and discussed elaborately in the preceding paragraphs.

7. The main objection raised by Mr. Dileep Shivpuri, learned Senior Standing counsel for the Petitioner, is that it was incumbent on the ITSC to have recorded its satisfaction in terms of Section 245H(1) that the Respondent No.2 Assessee had made a full and true disclosure of its income and the manner in which such income had been derived. He submitted that since the ITSC had not expressly recorded such finding, it should not have accepted the application of Respondent No.2 and permitted waiver of penalty and immunity from prosecution.

8. The Court is unable to agree with the above submission. A reading of the impugned order shows that no objection was raised by the Department, which had a full opportunity before the ITSC, that the offer of additional income made by Respondent No.2 was inconsistent with the requirement that it should make a full and true disclosure of its income and the manner in which the income had been derived. In fact, Mr. Dileep Shivpuri was unable to point out that such objection had been raised by the Department before the ITSC but not considered by it. Even in the writ petition there is no averment to that effect. That apart, when the ITSC has recorded in the impugned order that no objection was raised by the Department to the grant of immunity from prosecution as well as waiver of penalty, it cannot be contended that the ITSC was not satisfied regarding the making of full and true disclosure by the Assessee and the manner in which such income had been derived.

9. No grounds have been made out to interfere with the impugned order of the ITSC.

10. The petition is dismissed.

S. MURALIDHAR, J

NAJMI WAZIRI, J

JULY 11, 2016
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