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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 6899/2013**

COMMISSIONER OF INCOME TAX (CENTRAL) –II ..... Petitioner
Through: Mr Rahul Chaudhary, Senior Standing counsel.

versus

BDR BUILDERS & DEVELOPERS LTD. ..... Respondent
Through: Mr Salil Aggarwal and Mr Prakash Kumar, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R
% **04.05.2016**

1. The challenge in this petition by the Income Tax Department ('Department ') is to an order dated 7th February, 2013 passed by the Income Tax Settlement Commission ('ITSC') whereby the Respondent, BDR Builders & Developers Ltd., was granted immunity from prosecution and penalty.

2. The principal facts in the present petition are that the search and seizure operation was carried out by the Investigation Wing of the Department on 11th October, 2006 in the business premises of the BDR group of companies including those of the Respondent and the residences of its Directors. *Inter alia,* cash of Rs. 92,72,250/- and various documents were seized.

3. On 24th May, 2007, during the pendency of the block assessment proceedings, the Respondent filed an application before the ITSC setting out the statement of facts and other details in terms of Section 245C of the Income Tax Act, 1961 (the 'Act'). The Respondent offered an additional income of Rs.10 lakhs claiming it to be true and full disclosure of taxable income that had not been disclosed in the block assessment proceedings.

4. At the stage of final hearing of the matter before the ITSC, a report dated 8th January, 2013 was submitted to it by the Commissioner of Income Tax, Central-II (CIT, Central-II) in which a thorough analysis was done of the disclosure made by the Respondents. It urged that the Respondent Assessee "has not made a true and full disclosure" and, therefore, is "not entitled to any immunity". Thereafter the impugned order was passed by the ITSC.

5. The Court has heard the submissions of Mr. Rahul Chaudhary, learned Senior Standing counsel appearing for the Department and Mr Salil Aggarwal, learned counsel for the Respondent.

6. The Court finds the mandate of Section 245H of the Act which spells out the power of the ITSC to grant immunity from prosecution and penalty is clear. Section 245H (1) states that the ITSC has to be satisfied that the applicant before it: (i) has cooperated with the ITSC in proceedings before it, (ii) has made a full and true disclosure of (a) its income, and (b) the manner in which such income has been derived. It is, therefore, absolutely essential that the ITSC record its satisfaction regarding compliance by the applicant before it on the above mandatory requirements. It is only then the SC can proceed and pass an order granting immunity to the applicant from

prosecution.

7. When the impugned order of the ITSC is examined, it is seen that the reason for granting the Respondent immunity from prosecution and penalty has to be found in para 12, which reads as under:

> "12. The applicants have prayed for immunity from prosecution and imposition of penalties under various provisions of the Income Tax Act. Considering the facts and circumstances of the case and the cooperation extended to the Commission during hearing immunity is granted from prosecution and penalty imposable under the I.T. Act in relation to the issues arising from the applications and covered by this order."

8. Although, it is earnestly pleaded by Mr. Salil Aggarwal that the entire order has to be perused in order to understand the above observations, the Court, even on the reading of the entire order, finds that there has been no conscious application of mind to the mandatory requirement of Section 245H (1) of the Act by the ITSC. In other words, the Court is unable to find, after reading the entire order carefully, any satisfaction recorded by the ITSC of the fulfilment of the above mandatory conditions under Section 254H (1) of the Act. While, the ITSC had noted the cooperation extended by the Respondent to it in the hearing, it has failed to record satisfaction that the Respondent has made a full and true disclosure of his income and the manner in which the said income has been derived. Further, the report submitted by the Department has not been discussed.

9. Mr Salil Aggarwal, then pleaded that the satisfaction of the abovementioned mandatory requirements should be inferred from para 12 of

the impugned order itself and if not, in the preceding paragraphs of the said order. The Court is unable to agree with the above submission. It must be remembered that the ITSC is performing the important task of exercising its discretionary powers under the mandate of Section 245H(1) of the Act to grant immunity from prosecution and penalty. The legislature has in Section 245H(1) of Act mandated the recording of satisfaction by the ITSC of the fulfilment by the applicant of the aforementioned mandatory requirements. The very object and purpose of having an ITSC which is vested with such powers will be defeated if a lenient view is taken of the fulfilment of the requirements in Section 245H (1) of the Act.

10. In the circumstances, without commenting on the merits of the submissions of either of the Department or the Respondent with regard to the disclosure already made before the SC and the report filed before it, the Court sets aside the impugned order and remands the matter to the ITSC for a fresh decision in accordance with law.

11. The application of the Respondent's will be listed for further proceedings before the ITSC on 8th July, 2016. The writ petition is disposed of in the above terms.

S.MURALIDHAR, J

VIBHU BAKHRU, J

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