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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 929/2015& CM 1626/2015 (stay)**

VALLEY IRON & STEEL CO.LTD. ..... Petitioner
Through Mr Sanjeev Sabharwal, Senior Advocate with Mr Abhimanyu Jhamba, Advocates.

versus

INCOME TAX SETTLEMENT COMMISSION AND OTHERS ..... Respondents
Through Mr Zoheb Hossain, Senior Standing Counsel with Mr Deepak Anand, Junior Standing Counsel.

**CORAM:**
**JUSTICE S.MURALIDHAR**
**JUSTICE VIBHU BAKHRU**

**O R D E R**

% **06.05.2016**

1. The challenge in this petition is to an order dated 31st July, 2013 passed by the Income Tax Settlement Commission ("ITSC") where the income of the Petitioner for the Block Period 2004-05 to 2010-11 has been computed under Section 245D(4) of the Income Tax Act, 1961 ('Act'). *Inter alia*, in determining the taxable income for the aforementioned block period the ITSC concluded that the Petitioner cannot claim deduction under Section 80IC of the Act. The ITSC also declined to interfere with the addition proposed in the original assessment on account of introduction of unaccounted income by way of share capital.

2. It is stated by the Petitioner that subsequent to the impugned order of the

ITSC, when the assessment proceedings for the subsequent assessment year ('AY') was in progress, the Petitioner came across a copy of the letter dated 18th July, 2013 written by the Commissioner of Income Tax DR Additional Bench ITSC, to the Commissioner of Income Tax Central-I. The said letter was written on the day that the last hearing of the settlement application took place before the ITSC. The ITSC proceeded to pass the impugned final order on 31st July, 2013.

3. The contents of the above letter are revealing inasmuch as it is stated therein that as far as the share capital for the introduction of money on account of share capital application amounting to Rs.34,66,19,000,it came from "busy books" which are real books and that the said sum was found in the ledger accounts of the share applicants in the regular books.

4. The other aspect which is referred to in the said letter concerns the Section 80IC deduction. The verification undertaken revealed an arithmetical error in the report dated 10th July, 2013 submitted to the ITAC where instead the figure of Rs.28,71,908/- the figure Rs. 2,87,19,008 was written.

5. In the impugned order there is no reference to the above communication at all. Neither fact mentioned in the said letter was brought to the notice of the ITSC.

6. Despite opportunities, no counter affidavit has been filed in the present petition. Therefore, there is no rebuttal of the fact that the above letter was in

fact written by CIT DR, Additional Bench, ITSC to the CIT Central-I.

7. Learned counsel for the Respondent draws attention to the paragraph 15 of the order where ITSC has recorded the concession by the Petitioner during the course of hearing on 18th July, 2013 regarding treating Rs.24,91,54,640/ as additional income attributable to infusion of unexplained share capital.

8. Mr Sanjeev Sabharwal, learned Senior Advocate appearing for the Petitioner, on instructions, however, states that the above concession was given in anticipation of the deduction under Section 80IC as in that event no tax liability would be outstanding. Although the impugned order does not record the above submission, the Court is of the view that the letter dated 18th March, 2013 referred to above was a critical document which ought to have been taken note of by the ITSC while deciding the two issues referred to therein.

9. Consequently, the impugned order dated 31st July, 2013 of the ITSC as regards the above two issues is hereby set aside and the said two issues viz., introduction of unaccounted money as chare capital and claiming of deduction under Section 80 IC are remanded to the ITSC for a fresh adjudication in accordance with law. In particular the ITSC shall take into account the letter dated 13th July, 2013 written by the Principal Commissioner Additional Bench ITSC to the Commissioner of Income Tax Central.

10. The matter shall be listed before the ITSC on 12th July, 2016 for further proceedings in light of the above directions.

11. The writ petition is disposed of in the above terms with no order as to costs.

12. Order *dasti* to the parties.

**S.MURALIDHAR, J**

**VIBHU BAKHRU, J**

**MAY 06, 2016**
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