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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 5424/2016 & CM 22583/2016 (for stay)

BINDLAS DUPLUX LTD.

..... Petitioner

Through: Mr. Ajay Vohra, Senior Advocate with
Mr. Rohit Jain and Mr. Vaibhav Kulkarni,
Advocates.

versus

**PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)
DELHI-3 & ORS.**

..... Respondents

Through: Mr. Zoheb Hossain, Senior Standing
Counsel with Mr. Deepak Anand, Advocate.

WITH

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W.P.(C) 5425/2016 & CM 22585/2016 (for stay)

SWABHIMAN VYAPAAR PVT LTD.

..... Petitioner

Through: Mr. Ajay Vohra, Senior Advocate with
Mr. Rohit Jain and Mr. Vaibhav Kulkarni,
Advocates.

versus

**PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)
DELHI-3 & ORS.**

..... Respondents

Through: Mr. Zoheb Hossain, Senior Standing
Counsel with Mr. Deepak Anand, Advocate.

WITH

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W.P.(C) 5427/2016 & CM 22589/2016 (for stay)

BRINA GOPAL TRADERS PVT. LTD.

..... Petitioner

Through: Mr. Ajay Vohra, Senior Advocate with
Mr. Rohit Jain and Mr. Vaibhav Kulkarni,

Advocates.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)
DELHI-3 & ORS. Respondents

Through: Mr. Zoheb Hossain, Senior Standing
Counsel with Mr. Deepak Anand, Advocate.

AND

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W.P.(C) 5428/2016 & CM 22591/2016 (for stay)

TEHRI PULP & PAPER LTD. Petitioner

Through: Mr. Ajay Vohra, Senior Advocate with
Mr. Rohit Jain and Mr. Vaibhav Kulkarni,
Advocates.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)
DELHI-3 & ORS. Respondents

Through: Mr. Zoheb Hossain, Senior Standing
Counsel with Mr. Deepak Anand, Advocate.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE CHANDER SHEKHAR

ORDER
17.05.2017

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Dr. S. Muralidhar, J.:

1. These are four writ petitions filed by four entities whose applications before the Income Tax Settlement Commission ('ITSC') were not allowed to be proceeded with by the impugned order dated 13th May 2016 passed by the ITSC under Section 245D(2C) for the Assessment Years ('AYs') 2008-09 to 2015-16.

2. The four Petitioners belong to the 'Bindal Group', which comprises of ten such companies. The Petitioner in WP(C) No.5424/2016, Bindals Duplex Limited ('BDL') and the Petitioner in WP (C) No.5428/2016, Tehri Pulp & Paper Limited, are engaged in the business of manufacturing of craft paper. The other two Petitioners i.e., Swabhimani Vyapaar Private Limited, Petitioner in WP(C) No.5425/2016 and Brina Gopal Traders Private Limited, Petitioner in WP(C) No.5427/2016 are entities created by the Bindal Group for providing entries to facilitate unaccounted income/funds generated by the group for unaccounted business transactions and inflation of expenses.

3. A search was undertaken on various premises of the Bindal Group under Section 132 of the Income Tax Act, 1961 ('Act') on 7th March, 2014. Proceedings under Section 153A and 143(3) of the Act were initiated for AYs 2008-09 to 2014-15, and for AY 2015-16. Returns were filed and the assessment was pending. Pursuant to the notices issued to each of the ten companies including the present four Petitioners under Section 153A of the Act for AYs 2008-09 to 2013-14, the Petitioners filed their respective returns.

4. While the assessments were pending, applications were filed by the Petitioners and the six other companies comprising the Bindal Group before the ITSC on 17th March 2016 under Section 245 C (1) of the Act for AYs 2008-09 to 2015-16. The income which was not disclosed before the AO and which was offered by Bindals Duplex Limited for tax was Rs. 4.10 crore comprising of unsecured loans for AY 2013-14, Rs. 3.50 crore comprising

of unsecured loans and sum for AY 2014-15 and Rs. 10 lakhs towards unaccounted stock. Likewise, Swabhimani Vyapaar Private Limited, Brina Gopal Traders Pvt. Ltd. and Tehri Pulp & Paper Limited offered for tax sums that were not earlier disclosed aggregating to Rs. 32.50 lakhs, Rs. 33.51 lakhs and Rs. 8.25 crores respectively.

5. Enclosed with the applications was the “full and true statement of facts.” *Inter alia* it was stated therein that the main promoter of Bindal Group of companies, Shri Rakesh Kumar, had been in business since 1976; that he started with the family business of sugar, gur etc; he set up a couple of mini sugar plants in Muzaffarnagar, Saharanpur and in adjoining areas; Bindals Duplux Ltd. was promoted by him in 1989 for manufacturing Kraft Paper; thereafter, for purposes of trading, Neeraj Paper Marketing Ltd, was set up in 1995; in 1998, the company, Teri Pulp and Paper Limited (‘TPPL’) was taken over by the Bindal Group for manufacturing high quality kraft paper in 2001, the company, Agarwal Duplex Board Mills Limited (‘ADBML’) was taken over for the purpose of duplex board. In the year 2002, Uttaranchal Iron and Ispat Limited in Kotdwar for manufacturing MS Bars, Flats, rounds etc., and in 2003, Bindals Sponge Limited (for manufacturing Sponge Iron) were set up in the Angul District in Orissa. The group has also set up a writing printing paper manufacturing unit named Bindal Paper Mills Limited. It is stated that the interest in Uttaranchal Iron and Ispat Limited was transferred to an unrelated group in 2012 and the shares in Bindal Sponge Industries Limited were transferred to a different unrelated group in 2013.

6. The details of the cash, jewellery and other valuables seized during the search as well as the details of the documents seized during the search were set out in this statement. The narration then shifted to unaccounted receipts in Bindal Group, and, in particular, in relation to Bindal Sponge Industries Limited, Bindal Papers Mills Limited and TPPL. *Inter alia* it was stated that there were unaccounted receipts in the Group in different years, for which the promoters indulged in sales outside books and in suppressing production end by raising bogus bills for inflation of capital expenditure. The details of such receipts were set out. The details of non-genuine share capital and non-genuine unsecured loans introduced in different AYs in different group companies were set out in a tabular chart as set out in para 7 of the statement.

7. *Inter alia*, the fact that the four Petitioners herein were also beneficiaries of the unaccounted funds generated in the group and the introduction of funds in the Petitioner companies by way of accommodation entries for share capital was disclosed. In para 12 of the application, the ‘manner of earning income’ was given for each of the applicants.

8. On 30th March 2016, the ITSC passed an order under Section 245D (1) of the Act. In para 7 of the said order, it was recorded as under:

“7. We have carefully considered the contents of the settlement applications filed before us/ the paper books filed along with the applications, submissions made during the hearing by the Learned AR, details filed before us and clarifications given to queries made by us, all the technical requirements prescribed u/s 245C(1) have been fulfilled by all the applicants. On the basis of the material placed before us, we are of the view that as of now, there is no reason to hold that the disclosures made by the applicants are not full and true. The

applicants have also explained the manner of deriving additional income not disclosed to the Assessing Officer, in their respective settlement applications. We accordingly hold that all the ten applications dated 18.03.2016 are fit to be allowed and proceeded with. Ordered accordingly.”

9. After the application was allowed to be proceeded as above, the Principal Commissioner of Income Tax (Central), Delhi-3, Respondent No.1, filed a report under Section 245D (2B) of the Act before the ITSC. It is significant that the report submitted by Respondent No. 1 was a consolidated report and did not make any distinction between the 10 applicants. The main areas of undisclosed income declared in six companies i.e., Bindal Papers Mills Ltd., Bindal Sponge Industries Ltd., Tehri Pulp & Paper Ltd., Neeraj Paper Marketing Pvt. Ltd., Agarwal Duplex Board Mills Ltd. and Bindlas Duplex Ltd. were found as following:

- a. Bogus share capital/Share premium
- b. Unsecured Loan
- c. Unaccounted stock found during the search and other expenses
- d. Other issues

10. It was mentioned that the other four companies i.e., Brina Gopal Traders Pvt. Ltd., Satyavan Sales Promotions Pvt. Ltd., Swabhimaan Vyapar Pvt. Ltd and V.R. Digital Pvt Ltd were companies where the issue involved was of share trading without any proper evidence. In the case of Swabhiman Vyapar Pvt Ltd and Brina Gopal Traders Pvt. Ltd., the amount of unsecured loan declared was Rs.25 lakh each. According to Respondent No.1, there was inadequate disclosure on account of bogus share capital/share premium and bogus unsecured loans. The report questioned the genuineness of the

share capital and unsecured loans. It is stated that during the course of assessment proceedings, notices were sent under Section 133 (6) of the Act to all investors companies/lending companies and in most of the cases the notices were received back. Therefore, no confirmation was forthcoming even from a single person from whom the Assessee claimed to have received the share capital with huge premium or unsecured loans. It was, therefore, stated that the Assessee failed to establish the identity and genuineness of the share capital/unsecured loans transactions within the meaning of Section 68 of the Act. Further, under the head 'other issues' in the report, it was stated that the Assessee had submitted "a detailed cash flow evidently to take advantage of netting/telescoping".

11. It was further stated by Respondent No.1 in the report that the above cash flow prepared with an intention to establish non-existent availability of cash on account of unaccounted sales made in the case of Bindals Sponge Industries Ltd., where the Assessee Company had huge business losses and unabsorbed depreciation allowances. The cash flow statement indicated that the closing balance was in excess of Rs. 10 crores for many financial years, which was highly improbable. It was observed that "no prudent business person would keep such amount of cash idle at his residential or business premises especially considering the business of the Assessee where heavy capital is required and huge working capital loan is always required on which substantial interest has been paid by the Assessee group to the Banks." No supporting evidence had been filed. The transactions mentioned in the cash flow statement were held not to be supported by the seized documents. According to Respondent No. 1, the additional disclosure of

income made by the Assessee was just about 50% of what ought to have been disclosed.

12. To the above report, the Petitioner submitted a para-wise reply on 11th May 2016. The impugned order dated 13th May 2016 of the ITSC held that “no clinching and direct evidence has been placed on record by the Department upto this stage before us to come to the conclusion that the Applicant has not made true and full disclosure of its income in the settlement application.” It was stated that most of the issues raised by Respondent No. 1 in his report “need further verification/inquiry which can be taken up in the later proceedings.” Accordingly, six applications were allowed to be proceeded with further within the meaning of Section 245D (2C) of the Act.

13. Further, as far as four Petitioners before the Court were concerned, by a separate order of the same date i.e., 13th May 2016, it was observed as follows:

“On a perusal of PCIT's report, it is seen that no specific comments have been made with regard to the present four Applicants under consideration; as to the manner of their deriving undisclosed income offered for taxation in the settlement applications.”

14. The ITSC took up for consideration whether each of the four Petitioners herein had made a true and full disclosure of income and the manner of earning income. In para 6 of the impugned order, it was observed as under:

“6. However, other than the income from share dealings in A.Y. 2015- 16, the applicants have not explained the manner of earning the

income which has resulted into unexplained loans, credit balance, stock and transportation cost all being offered in the settlement applications. In view of this, the learned AR, during the course of hearing on 11.05.2016, was required to explain why the applications be not declared invalid since the basic requirement under Section 245C for explaining the manner of deriving income offered in the settlement applications had not been satisfied.”

15. At the adjourned date i.e., 12th May, 2016 the written submissions were filed by the four applicants which was noted in the impugned order. However, in the impugned order, the ITSC was not satisfied with the submissions on behalf of the four applicants/Petitioners for the following reasons:

(a) A consolidated cash flow was filed to explain the non-genuine share capital and non-genuine unsecured loans. Various receipts claimed as 'deemed income' were shown as receipts in the hands of the six other applicants. The non-genuine loans un-explaining credit balance, stock, unaccounted expenditure declared in the hands of four applicants in their settlement applications were “not covered by the above consolidated cash flow.”

(b) The Petitioners had not explained the manner of deriving the undisclosed income used in acquiring such assets incurring such expenses.

16. Accordingly, it was held that the four Petitioners had not satisfactorily explained the manner of deriving such additional income. Therefore, the mandatory requirement for a valid application under Section 245C (1) of the Act was not complied with. The applications were said to be invalid and

were not allowed to be proceeded with.

17. This Court has heard the submissions of Mr. Ajay Vohra, learned Senior counsel for the Petitioner and Mr. Zoheb Hossain, learned Senior standing counsel for the Revenue.

18. Mr. Vohra submitted that in the settlement applications filed by the four Petitioners and also six other companies of the Bindal Group, it was elaborately explained that unaccounted income/funds generated by the group as a whole from the unaccounted business transactions and inflation of expenses were brought into a common pool and "redeployed/introduced in the form of share capital and/or unsecured loans in various companies of the Group." It was also explained that there was intermingling of funds generated by the various companies in the group. These were redeployed and introduced in various group companies, depending upon business requirement. Mr. Vohra accordingly submitted that the ITSC was required to examine all these applications as a whole and not individually for final settlement of the income of various entities in the group.

19. Mr. Vohra further submitted that in the initial order passed by the ITSC on 30th March 2016, there was a categorical finding that the Applicants had explained the manner of deriving additional income. Further, in its report dated 3rd May 2016, Respondent No. 1 did not offer any specific comment on the applications filed by the four Petitioners herein. This was noted by the ITSC in the impugned order. In fact, no comments were offered as to the manner of deriving undisclosed income. In other words, there was no objection raised by the Respondent specific to the manner of deriving

income by the four Petitioners.

20. Mr Vohra submitted that there was no occasion for the ITSC to reverse the stand taken by it in the earlier order and conclude that the Petitioners had failed to explain the manner of earning the undisclosed income. Mr. Vohra referred to a common reply dated 11th May 2016 of the ten companies including the Petitioners reiterating the manner of earning the undisclosed income.

21. In reply to the above submissions, Mr. Hossain, learned counsel for the Revenue referred to the impugned order passed by the ITSC which noted, on the basis of the report of Respondent No.1, as well as the Petitioners' own submissions that the Petitioners were unable to establish the *bona fides* of the parties from whom they purportedly availed loans. It is submitted that merely because the ITSC had directed the applications to be proceeded with earlier, did not preclude it from concluding upon a further examination that the applications did not disclose the manner of earning undisclosed income. Mr. Hossain relied upon the decision of the Supreme Court in ***Ajmera Housing Corporation v. Commissioner of Income Tax (2010) 8 SCC 739***. He submitted that the ITSC was fully within its powers to reject the applications when it had become crystal clear that the Petitioners did not fulfil the requirements of a settlement proceeding.

22. Mr Hossain submitted that in the present writ petition, the Court should only be concerned with the legality of the procedure followed by the ITSC and not with the validity of the order. He placed reliance on the decision in ***R.B. Shreeram Durga Prasad & Fatechand Nursing Das v. Settlement***

Commission (IT & WT) (1989) 1 SCC 628 reiterated in *Jyotendrasinhji v. S.I. Tripathi (1993) Supp (3) SCC 389*. Mr. Hossain submitted that the scope of interference by this Court with the impugned order of the ITSC under Article 226 of the Constitution was limited. Once the ITSC had exercised its powers and jurisdiction consistent with the law declared by the Supreme Court in *Ajmera Housing Corporation (supra)*, this Court ought not to interfere with the impugned order merely because the applications of the six other companies which were part of the Bindal Group were permitted to be proceeded with. There was a rational basis for a different treatment being accorded to the Petitioners since they were not covered under the consolidated cash flow statement filed before the ITSC.

23. The above submissions have been considered. What the Respondents are unable to deny is the fact that the applicants before the ITSC included six companies of Bindal Group whose applications were directed to be proceeded with by the ITSC. As far as the four Petitioners were concerned, the ITSC held their applications to be invalid although they belonged to the same Bindal Group.

24. The second fact is that in their applications the ten companies explained that the unaccounted income diverted generated by the Group formed a common pool and was redeployed into all companies in the Group. The funds generated were introduced in the form of share capital or unsecured loans in various other companies of the Bindal Group. It was, therefore, not possible to examine the state of affairs of any one company of the group in isolation of the entire group.

25. The third aspect is that the report submitted by Respondent No. 1 before the ITSC was a consolidated one. It actually did not differentiate between the companies as far as objections to their, if any, having not made true and full disclosure. That the four Petitioners had failed to indicate the manner of earned the undisclosed income was not raised by Respondent No.1 in its report.

26. A perusal of the applications filed, copies of which have been placed on record, shows that the manner of deriving disclosed and unearned income was indeed disclosed. To what extent this can be verified would be a matter for more detailed examination. There appears to be no rational basis for according a differential treatment to the four Petitioners. As a result of the impugned order, while the regular assessment in respect of the four Petitioners will proceed, the case of the six other companies forming part of the same group would be decided by the ITSC. Obviously, the differential treatment to four of the companies forming part of the same group results in differential treatment which does not appear to be warranted in the instant case.

27. If indeed, as contended by the Revenue, there was no full and true disclosure of facts by all ten companies, then the Respondent ought to have challenged the order of the ITSC permitting the applications of the six other companies to be proceeded with. The Revenue appears to have accepted a part of this order in regard to those six companies. Why it should allow the Petitioners here to be treated differently is not clear. How it could prejudice the Revenue if the Petitioners' applications were allowed to be proceeded

with is also not clear. As rightly pointed out on behalf of the Petitioners, it will not be possible for the ITSC to appreciate the extent and manner of generating undisclosed income in the hands of the four companies / Petitioners constituting a part of the Bindal Group without viewing it in the context of the activities of the other six companies.

28. While indeed the scope of this Court under Article 226 of the Constitution is limited, the Court finds that as far as the impugned order of the ITSC is concerned, it does not spell out any rational criteria for distinguishing between six companies of the Bindal Group and the four Petitioners. Further, the ITSC proceeded to reject the settlement application of the four Petitioners on a ground that was not urged by the Revenue viz., the failure to disclose the manner of earning undisclosed income. Merely because the consolidated cash flow was not in respect of four Petitioners could not mean that they had not disclosed the manner of earned undisclosed income.

29. In the considered view of the Court, the impugned order of the ITSC according a different treatment to the four Petitioners does not appear to be justified in the facts and circumstances of the case. If allowed to stand, the impugned order might defeat the very purpose of the companies of the Bindal Group applying to the ITSC for an early settlement of disputes.

30. For all the aforementioned reasons, the Court is unable to sustain the impugned order dated 13th May 2016 passed by the ITSC declining the prayers of the Petitioners that their applications before the ITSC should be proceeded in accordance with law.

31. While setting aside the impugned orders, the Court directs that the applications of the four Petitioners would be entertained and proceeded with by the ITSC on the same basis as the six other companies in the Bindal Group. The Petitioners' applications shall be permitted to be proceeded with.

32. The writ petitions are allowed and the applications are disposed of in the above terms but, in the circumstances of the case, with no orders as to costs.

33. The applications of the four Petitioners will now be listed before the ITSC along with the applications of the six other companies constituting the Bindal Group on the date that the ITSC may have fixed for further consideration of all the applications of the other six companies.

S. MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 17, 2017

b'nesh/Rm