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

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W.P.(C) 11256/2016

UNITECH WIRELESS (TAMIL NADU) PVT. LTD. Petitioner
Through: Mr. Balbir Singh, Senior Advocate, Mr.
Prakash Kumar and Mr. Rusal Maini and Ms.
Rubal Maini, Advocates.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX, NEW DELHI & ORS.
... Respondents
Through: Mr. Rahul Kaushik, Senior Standing
Counsel

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH**

ORDER
11.08.2017

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Dr. S. Muralidhar, J.:

1. This writ petition under Articles 226 and 227 of the Constitution of India has been filed by the Petitioner, Unitech Wireless (Tamil Nadu) Private Limited, challenging the impugned order dated 4th November, 2016 passed by the Income Tax Settlement Commission, ('ITSC'), Additional Bench – II, New Delhi under Section 245D (1) of the Income Tax Act, 1961 ('Act') declining to proceed on the Petitioner's application under Section 245C (1) of the Act.

2. The brief facts are that the Petitioner is a step-down subsidiary company of the Norway based Telenor Group. Pursuant to a Business Transfer

Agreement ('BTA') entered into with Telewings Communication Services Pvt. Ltd. [now known as Telenor (India) Communications Pvt. Ltd. ('Telenor India')] on 6th December, 2012, the business of the Petitioner [GSM as well as national and international long distance services ('ILD/NLD business')] was transferred to Telenor India as a going concern on a 'Slump Sale' basis on the completion date as mentioned in the BTA.

3. After the Department of Telecommunications ('DOT') approved transfer of resources to Telenor India on 27th November 2013, the Petitioner applied for surrender of its ILD/NLD licenses by its letter dated 27th October, 2014. The surrender was approved by the DOT on 13th February, 2015 and the Petitioner transferred the resources related to ILD/NLD business to Telenor India. The Petitioner thereby became non-operational and is, at present, not carrying on any business activity. It is stated that the Petitioner proposes to apply for liquidation in the near future.

4. For Assessment Year ('AY') 2012-13, the Petitioner filed its return of income on 30th November, 2012 which was picked up for scrutiny and a notice under Section 143(2) of the Act was issued to the Petitioner by the AO. A reference was made to the Transfer Pricing Officer ('TPO') who passed an order on 27th January, 2016 proposing a transfer pricing adjustment on account of Guarantee Fees. Thereafter, on 18th March 2016, the AO passed a draft assessment order. The Petitioner went before the Dispute Resolution Panel ('DRP'). It is stated that those proceedings are pending.

5. Likewise, for AYs 2013-14 to 2016-17, the Petitioner's returns were

picked up for scrutiny and those proceedings are also stated to be pending.

6. During the pendency of the aforesaid proceedings the Petitioner, on 28th October 2016, filed a settlement application before the ITSC under Section 245C (1) of the Act for AYs 2012-13 to 2016-17. On 31st October, 2016, notice was issued by the ITSC on said application.

7. It is stated that, thereafter, the impugned order was passed by the ITSC, holding that the Petitioner had failed to fulfil the requirement of Section 245C relating to making a full and true disclosure of its income “which has not been disclosed” before the AO.

8. This Court has heard the submissions of Mr. Balbir Singh, learned Senior Counsel for the Petitioner, and Mr. Rahul Kaushik, learned Senior Standing Counsel for the Revenue.

9. A perusal of the impugned order of the ITSC reveals that in the Statement of Facts (SoF) filed before the ITSC, the Petitioner had offered to give up its claim for depreciation on Assets Retirement Obligation (‘ARO’) provision. It also proposed to offer the unearned revenue to tax for the relevant AY, which was earlier not offered to tax. It also proposed to withdraw the deduction claimed for legal expenses on prosecution proceedings and in respect of which deduction was earlier claimed. Fourthly, the Petitioner offered the finance charges for obtaining the Bank Guarantee (‘BG’) to tax, which was earlier claimed as deduction. It also stated in its SoF that the deduction of penalty imposed by the DOT, expenses on account of the prior period guarantee fee, etc. had earlier been inadvertently claimed in the

returns. However, in respect of certain other issues like disallowance of roaming charges, amalgamated license fee and depreciation of finance costs, etc. the Assessee maintained the position taken in the original returns filed.

10. The ITSC was of the view that since what was being offered by the Petitioner to tax before it were the amounts which were earlier claimed in the returns filed before the AO as deductions but were now sought to be withdrawn, “there are no fresh issues or incomes being offered for tax which have not been declared before the AO.”

11. In the considered view of the Court, the above approach of the ITSC appears to be erroneous. No doubt, Section 245C (1) of the Act requires the applicant to make a full and true disclosure of the income which has not been disclosed before the AO and the manner in which said income has been earned but this, by no means, requires to the applicant to demonstrate that there is a fresh source of income which was not earlier disclosed by the Assessee. It can happen that an income which was not earlier offered to tax, like an excessive claim for depreciation, is now withdrawn and, as a result, income is offered to tax before the ITSC. This will satisfy the requirement of Section 245C (1) of that Act that what was not earlier disclosed before the AO is now offered to tax. This view of the Court finds support from the decisions of the Bombay High Court in *Director of Income Tax (International Taxation) v. Income Tax Settlement Commission [2014] 365 ITR 108 (Bom)* and of the Karnataka High Court in *CIT v. Vysya Bank Limited [2012] 344 ITR 658 (Kar)*.

12. Consequently, the Court sets aside the order dated 4th November, 2016

passed by the ITSC and restores the Petitioner's application to the file of the ITSC. The said application will be taken as having been proceeded with by the ITSC in terms of Section 245D (1) of the Act. For the further stages in the application, it will be listed before the ITSC on 20th September, 2017.

13. The writ petition is disposed of in the above terms.

14. *Dasti* under the signatures of the Court Master to the parties.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

AUGUST 11, 2017
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