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

\+ **W.P.(C) 8101/2015 & CM No. 16773/2015**

MR. MOIN A. QURESHI ..... Petitioner

Through: Mr. R.K. Handoo, Mr. Yoginder Handoo, Mr. Aditya Chaudhary, Mr. Nikhil Bhat and Mr. Nishant Kumar, Advocates.

versus

COMMISSIONER OF INCOME TAX (CENTRAL) – II, NEW DELHI & ANR. ..... Respondents

Through: Mr. Dileep Shivpuri, Mr. Sanjay Kumar and Mr. Vikrant A. Maheshwari, Advocates.

**CORAM: JUSTICE S.MURALIDHAR**
**JUSTICE NAJMI WAZIRI**

**O R D E R**

**% 13.04.2017**

1. This writ petition challenges two orders; first the order dated 04th June, 2015, and then an order dated 26th June, 2015 passed by the Income Tax Settlement Commission (ITSC). This writ petition is in fact a second of its kind by the same petitioner.

2. The earlier Writ Petition (Civil) No. 4900 of 2015 was filed by the Petitioner challenging the order dated 24th February, 2015 passed by the ITSC. By an order dated 18th May, 2015, that writ petition was allowed by this Court and the order dated 24th February, 2015 of the ITSC was set aside. The reason was that on the date of hearing before the ITSC i.e. 19th February, 2015, an additional set of documents, running to over 200 pages,

was placed by the Commissioner Income Tax (CIT) before the ITSC. Apart from the hearing conducted on the very next date i.e. 20th February 2015, there was no occasion for the Petitioner to deal with the additional set of documents and address the ITSC on them. This Court noted that the ITSC had in fact relied upon the additional documents in arriving at a conclusion in its order dated 24th February, 2015 that the Petitioner had not made a full and true disclosure of all facts as was required by Section 245C of the Income Tax Act, 1961 ('Act').

3. The operative portion of the order passed by this Court on 18th May, 2015 allowing W.P. (C) No. 4900 of 2015 reads as under:

> "..... For this reason we are setting aside the impugned order dated 24.02.2015. We are remitting the matter to the Settlement Commission to the stage of consideration of the Commissioner's report and of giving an opportunity of hearing to the petitioner. Mr. Syali, the learned senior counsel appearing on behalf of the petitioner, states that he shall not take the plea of limitation with regard to the additional documents dated 19.02.2015 and they shall be construed and deemed to be part of the original report dated 10.02.2015 submitted by the Commissioner.
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> Consequently, we direct the Settlement Commission to render its decision at the stage of Section 245D (2C) of the said Act within 10 days from the first date of hearing before the Settlement Commission. The hearing shall be granted to the petitioner by the Settlement Commission, in the first instance, on 25.05.2015. Before that date, the petitioner shall submit its response to the documents which were filed on 19.02.2015.
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> The writ petition stands allowed to the aforesaid extent.
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> We are making it clear that we have not expressed any

> opinion on the merits of the matter and that the setting aside of the order dated 24.02.2015 shall not come in the way of the Settlement Commission on taking a view on the matter.
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> Dasti under the signature of the Court Master...."

4. The matter then went back to the ITSC. It appears that within four days of the passing of the above order by this Court, the Petitioner tendered a written note of submissions dated 22nd May, 2015 before the ITSC. The Department appears to have objected to the ITSC considering this written note of submissions. This is evident from para 13.2 of the impugned order. In para 13.3 of the impugned order dated 4th June, 2015 the ITSC observed as under:

> "13.3. We have considered the submissions made by the AR and the CIT. The Hon'ble High Court has remitted the matter back to us to allow an opportunity to the applicant to give his submissions on the entire 260 pages (rest being forwarding letters) which we find relate to the bank accounts at Singapore and the Flat at London. The Commission does not have to travel beyond the directions of the Hon'ble High Court referred at para 13.2.3 above which unequivocally stated that the said writ petition is allowed to the aforesaid extent...."

5. Mr. Handoo, the learned counsel for the Petitioner, submitted that the above written submissions were not considered by the ITSC. This appears to be correct. The Court is unable to find in what manner in the impugned order has the ITSC considered those submissions. The said submissions are significant in view of the two factors adverted to by the ITSC in the impugned order which weighed with it in reiterating its conclusion that the

Petitioner had not made a full and true disclosure of all facts within his knowledge. In this connection a reference needs to be made to para 14.3(a) of the impugned order where the ITSC adverts to the two pieces of information that apparently was received by the Department on 20th February, 2015 and 12th March, 2015. Para 14.3 of the impugned order of the ITSC reads as under:

> "14.3 (a) The issue before us is whether the information received by the Department dated 12.03.2015 by the JS (FT & TR), CBDT and by the DIT (Investigation) on 20.02.2015 relating to the bank account opened/ operated by the applicant is to be taken into consideration during the present proceeding or not. It is the submission of the Department that these two informations are very vital to determine the truth in the matter and it will be fatal on the part of the Commission to ignore the same. It is also the submission of the Department that these two letters relate only to the issue of the bank account and the flat at London which are in consideration and remitted by the Hon'ble High Court to the Commission.
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> (b) We agree with the submissions made by the Department that these two informations submitted by the Department dated 25.05.2015 with the Commission and received by the Department subsequent dated 19.02.2015 helps the Commission to determine whether the disclosure made by the applicant is full and true or not. Hence these documents require to be considered and the applicant can very well give his comments on these documents...."

6. Then from para 15.1 onwards, both the pieces of information are discussed in *extenso* by the ITSC. In para 15.17 the conclusion drawn by it, as regards the opening of an account, reads as under:

> "15.17. If there was a POA (Power of Attorney) arrangement between Mr. Yusuf Mehboob Khan and MR. Qureshi, it was a legal obligation of Mr. Qureshi to provide the alleged POA to the bank, as the Bank was interested in knowing the profile, background and business interests only of the 'Real Client' and not of an attorney of a client. Thus, the POA and the balance sheets of Barro and Bulova produced in support of ownership of these entities by Mr. Yusuf Mehboob Khan are an afterthought. It is noted that these documents have already been considered and not accepted by the Commission in the earlier order dated 24.02.2015...."

7. The next paragraph i.e. para 15.18 deals with purchase of the property in London in respect of which the conclusion drawn by the ITSC reads as under:

> "... 15.18. Another very important document which is relied by the Department is an Annexure-C of the submission dated 25.05.2015 of the CIT at page 55 which is an indemnity signed by the applicant Mr. Qureshi to the Board of Directors of Bulova authorising them to purchase the property being Flat NO. 4, Chesterfield House, South Audley Street, London for purchase price of GBP 38,50,000/-. This indemnity also authorized Board of Directors to appoint Solicitor Mischan de Raya for purchase of this property at London. This further establishes that the applicant Mr. Qureshi is the real owner of that flat. Besides that there are lots of e-mails which are part of the submission made by the CIT in their earlier submission and earlier hearing on 10.02.2015 and 19.02.2015 where the approval of artefacts and other furnishing including the carpets have been done by the applicant for which e-mails have been sent to employees of Sh. Qureshi for his approval. This also corroborates the fact of Sh. Moin Akhtar Qureshi being the real owner of the flat at London and not a power of attorney holder only as it is the real owner who normally approves/ decides, now and with what his flat is to be furnished and not the power of attorney holder...."

8. What happened before the ITSC after the passing of impugned the order dated 4th June, 2015 is interesting. It appears that an application was filed, apparently, under 'Section 154 read with Section 245D(2C) of the Act' by the Pr. CIT- Central-II on 12th June, 2015 seeking correction of a factual discrepancy that occurred in para 15.10 of the order dated 4th June, 2015. In order to appreciate what the correction sought was, it is necessary to set out para 15.10 of the order dated 4th June, 2015, which reads as under:

> "15.10. All the Bank Account opening forms were signed by Shri Moin Qureshi and his address mentioned is C 134 Defence Colony, New Delhi – 110024, India as seen from page 18 and 19 of pages marked as 7 to 49 received from Singapore authorities. The copies of the passport of Shri Qureshi were enclosed by Singapore authorities.
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> The CIT(DR) argued that Shri Moin Akhtar Qureshi is the beneficial owner of account No. 6CO3122 held by Barro Holdings Ltd. (Barro) with BSI Bank Ltd. Singapore in Form A and that this account was opened on 22.07.2011 and closed on 19.04.2013..."

9. The correction now sought was that the acknowledgement of the fact that the bank account opening forms for both Barro Holdings Ltd. and Bulova Holdings Ltd. were not signed by Sh. Moin Akhtar Qureshi but by Arcas Holdings Ltd. 'the authorized signatory and a director of Barro and Bulova'. The important change which was sought by the Pr. CIT himself was for the ITSC to now acknowledge that there did exist a Power of Attorney (POA) on record which is now enclosed by the Pr. CIT with its application seeking the correction.

10. This application by the Pr. CIT was heard by the ITSC in the absence of

any notice to the Petitioner. The ITSC accepted the application and by its subsequent order dated 26th June, 2015 corrected para 15.10 to read thus:

> "15.10. The power of attorney for the management of assets was signed by M/s Arcas Holding Ltd. and Shri Moin Qureshi and his address mentioned is C 134 Defence Colony, New Delhi – 110024, Indas as seen from page 18 and 19 of pages marked as 7 to 49 received from Singapore authorities. The copies of the passport of Shri Qureshi were enclosed by Singapore authorities.
>
> The CIT(DR) argued that Shri Moin Akhtar Qureshi is the beneficial owner of account No. 6CO3122 held by Barro Holdings Ltd. (Barro) with BSI Bank Ltd. Singapore in Form A and that this account was opened on 22.07.2011 and closed on 19.04.2013...."

11. As a result of the above correction in para 15.10 the conclusion that the Petitioner had not made a full and true disclosure of the facts in respect of the above account, completely changed. There was now an acknowledgement by the ITSC that there was no failure to make a full and true disclosure by the Petitioner as far as the above bank account was concerned.

12. The question that next arises is whether the above change brought about to the order dated 4th June, 2015 by the subsequent order dated 26th June, 2015 would have an impact on the main conclusion drawn by the ITSC in its order dated 4th June, 2015, that the Petitioner did not make a full and true disclosure of all facts. It will be recalled that there were two pieces of information which were brought before the ITSC by the Department in the second round to persuade the ITSC to hold that there was no full and true

disclosure by the Petitioner; one was regarding the bank account and the other was regarding the property at London. As regards the property at London, the case of the Petitioner is that he offered further explanation before the ITSC by his written submissions dated 15th May, 2015 enclosing certain documents and that was never considered by the ITSC.

13. Neither the conclusion in para 15.18 of the order dated 4th June, 2015 or in any other portion of the said order, have the above written submissions of the Petitioner dated 22nd May, 2015 been discussed.

14. The Court is of the considered view that the ITSC ought to have, in the first instance, put the Petitioner on notice if it was going to entertain an application by the Department seeking 'correction' of its order. It is one thing to state that the said 'correction' was in fact beneficial to the Petitioner since the allowing of the application meant that the Petitioner's case that there was no failure by him to make a full and true disclosure of facts pertaining to the bank account was in fact accepted by the ITSC. But there is also merit in the contention of the learned counsel for the Petitioner that had the Petitioner known of the application, the Petitioner may have been able to persuade the ITSC even as regards the other 'errors' which according to the Petitioner vitiate the impugned order dated 4th June 2015. Whether in fact the ITSC may have been persuaded or not is not the point. The fact remains that an order passed by the ITSC cannot be sought to be 'corrected' by it without putting both parties to the order to notice. The procedure adopted by the ITSC of passing an order ex parte, correcting an earlier order, is not acceptable to the Court.

15. The Court is of the considered view that the ITSC should again undertake the exercise that it was expected to undertake pursuant to the order passed by this Court on 18th May, 2015 in WP(C) No. 4900/2015. Accordingly, the impugned order dated 4th June, 2015 read with the order dated 26th June, 2015 are hereby set aside. The result would be that the exercise that was to be undertaken by the ITSC as a result of the order passed by this Court on 18th May, 2015 will have to be undertaken by it afresh. This time round there will be no further documents filed either by the Department or by the Petitioner. On the basis of the existing documents, the ITSC will, after giving opportunity of being heard to both the parties, pass a fresh decision on merits, in accordance with law. The ITSC will pass an order uninfluenced by any of its earlier orders that have been set aside by this Court.

16. The writ petition and the application are disposed of in the above terms. The matter will now be placed before the ITSC on 2nd May, 2017.

**S.MURALIDHAR, J.**

**NAJMI WAZIRI, J.**

**APRIL 13, 2017**
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