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

\+ **W.P.(C) 7836/2017**

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL) – 3 ..... Petitioner

Through: Mr. Rahul Chaudhary, Senior Standing Counsel with Mr. Sanjay Kumar, Junior Standing Counsel.

versus

ORCHID INFRASTRUCTURE DEVELOPERSP PVT. LTD. & ANR. ..... Respondents

Through: Mr. Sameer Rohatgi and Mr. Akshit Pradhan, Advocates for R-1.
Mr. Sanjeev Narula, Senior Standing Counsel with Mr. Abhishek Ghai, Advocate for R-2.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R

% **05.09.2017**

CM APPL. 32275/201 (exemption)

1. Allowed, subject to all just exceptions.

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2. The challenge in this petition by Revenue is to an order dated 16th September, 2016 passed by the Income Tax Settlement Commission ('ITSC') to the extent of (i) granting immunity from penalty and prosecution under Section 245H of the Income Tax Act, 1961 ('the Act') and (ii) granting waiver of interest under Section 234A of the Act to the Respondent No.1.

3. As regards the first issue, it is submitted that in terms of the provisions of Section 245H of the Act, no immunity from penalty and prosecution can be granted by the ITSC since the complaint under Section 200 Cr.P.C. for offences punishable under Section 276 CC of the Act, was instituted before the receipt of the application under Section 245C.

4. It is clarified by Mr. Sameer Rohatgi, learned counsel for the Respondent No.1 that in fact, the Respondent No.1 never sought any immunity from prosecution. He pointed out that the said complaint by the Income Tax Department against the Respondent No.1 is still pending.

5. In view of that matter, the question of granting Respondent No.1 immunity from penalty and prosecution under Section 245H of the Act, does not arise.

6. As regards the second issue, learned counsel for the Respondent No.1 submits that all the documents were not supplied by the Department in the first instance. Two reminders had to be sent. In the circumstances, the Court finds that no error has been committed by the ITSC in granting waiver of interest to Respondent No.1.

7. The petition is accordingly dismissed.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

SEPTEMBER 05, 2017/*dk*