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

+ **WRIT PETITION (CIVIL) NO. 4824/2017**

Reserved on : 2nd May, 2018

Date of decision: 28th August, 2018

MOIN A QURESHI

..... Petitioner

Through: Mr. R.K. Handoo, Mr. Yoginder Handoo, Mr. Aditya Chaudhary, Mr. Manish Shukla & Mr. Nishant Kumar, Advocates.

versus

COMMISSIONER OF INCOME TAX (CENTRAL)-II AND
ANOTHER

..... Respondents

Through: Mr. Ruchir Bhatia, Sr. Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.:

This writ petition by Moin A. Qureshi (the petitioner for short) assails the order dated 12th May, 2017 under Section 245D(2C) of the Income Tax Act, 1961 (Act, for short) whereby the Income Tax Settlement Commission,

New Delhi (ITSC, for short) has rejected the settlement application filed by the petitioner as invalid.

2. This is the third round of litigation in the High Court from orders passed by the ITSC. The petitioner had earlier filed Writ Petition (C) No. 4900/2015 challenging order of the ITSC dated 24th February, 2015 and Writ Petition (C) No. 8101/2015 impugning orders of the ITSC dated 4th June, 2015 and 26th June, 2015, which petitions were allowed by the High Court vide the orders dated 18th May, 2015 and 13th April, 2017, respectively, with remand to the ITSC for a fresh decision.

3. To curtail prolixity, we would refer to only relevant and material facts. The petitioner, it is claimed and stated, was/is engaged in business of manufacture and export of omasum and cattle casing, by-products of animal husbandry, as a sole proprietor of M/s Abdul Majeed Qureshi. Petitioner is also a director in AMQ Agro India Private Limited (AMQ Agro, for short), in which he and his wife Nasreen Moin Qureshi, hold majority (85%) shares. AMQ was/is entirely engaged in exports and its registered office was/is the residence of the petitioner located at C-134, Defence Colony, New Delhi.

4. On 15th February, 2014, search and seizure operations under Section 132 of the Act were conducted at various business and residential premises of the petitioner. The search had concluded on 19th April, 2014. Survey under Section 133A of the Act was also carried out at different premises.

5. During the course of search, various documents, cash and jewellery were seized. Statements of the petitioner, his family members, employees and directors of associate companies were recorded under Section 132(4) of the Act. The petitioner had surrendered Rs.20 crores before Investigation Wing of the Income Tax Department on 21st April, 2014.

6. Consequent to search, tax cases of the petitioner, his family members and associate companies were centralised before the Deputy Commissioner of Income Tax, Central Circle-19, New Delhi, the respondent No. 2 before us.

7. The respondent No.2 had thereupon issued notices under Section 153A of the Act dated 13th October, 2014, calling upon the petitioner to file returns for the Assessment Years (AY, for short) 2008-09 to 2013-14. The petitioner, it is stated, had filed returns on or about 4th December, 2014.

8. On 5th December, 2014, the petitioner, his wife Nasreen Moin Qureshi, AMQ Agro and his two employees Mohd. Shahnawaz and Aditya Sharma had moved applications under Section 245C(1) of the Act before the ITSC. These applications were, however, withdrawn with liberty to file fresh applications vide order dated 18th December, 2014 passed by the ITSC. The petitioner and four others mentioned above had thereafter filed fresh applications before the ITSC under Section 245C of the Act on 26th December, 2014 for the AYs 2008-09 to 2014-15, the period for which notices under Section 153A of the Act had been issued.

9. The applications filed by the petitioner and others were admitted by the ITSC vide order dated 7th January, 2014 under Section 245D(1) of the Act.

10. On 10th February, 2015, the first respondent, the Commissioner of Income Tax(Central) II, Delhi had filed a report under Section 245D(2B) of the Act asserting and praying that the settlement application of the petitioner should be declared as invalid as there was failure to make full and true disclosure of undisclosed income and the manner in which the undisclosed income was earned.

11. On 19th February, 2015, hearing was held before the ITSC for the purpose of passing of order under Section 245D(2C) of the Act. In the post-lunch hearing, the respondents had filed before the ITSC a set of documents running into 260 pages.

12. As per the respondents, arguments were addressed by the parties before the ITSC on 20th February, 2015 also. The petitioner, however, claims that arguments were heard in the cases of petitioner and AMQ Agro on 19th February, 2015 and arguments in the remaining group of cases including that of Nasreen Moin Qureshi were heard on 20th February, 2015.

13. The ITSC vide common order dated 24th February, 2015 admitted applications for settlement filed by AMQ Agro, Mohd. Shahnawaz and Aditya Sharma for further consideration, but applications filed by the petitioner and Nasreen Moin Qureshi were rejected on the ground of failure to make full and true disclosure of undisclosed income and the manner in

which the undisclosed income was earned. This order in the case of the petitioner had primarily referred to the documents relied upon by the Respondents relating to property located at 4, Chesterfield House, South Audley, Mayfair, London (London property, for short) and the records and documents received from Singapore Tax Authorities and UK Tax Authorities under the Double Taxation Avoidance Agreement. We shall subsequently refer to these documents.

14. Aggrieved, the petitioner had filed Writ Petition (C) No. 4900/2015 before this High Court, which was allowed vide short order dated 18th May, 2015 on the ground that the Respondents had submitted additional set of documents running into 260 pages during the course of hearing before the ITSC on 19th February, 2015. The ITSC, it was observed, had passed the order dated 24th February, 2015 without further hearing apart from hearing conducted on the next date on 20th February, 2015, which included hearing in other group of cases. The Division Bench noted that in the order dated 24th February, 2015, the ITSC had relied upon the documents filed by the Respondents on 19th February, 2015. However, the High Court also observed that the documents filed on 19th February, 2015 constituted a part of the report which the Commissioner, i.e. the second respondent, had initially filed on 10th February, 2015. Nevertheless, the High Court felt that as adequate opportunity had not been granted to the petitioner to respond to these documents, an opportunity of hearing should be given. Accordingly, the order dated 24th February, 2015 was set aside with direction to the ITSC

to render its decision at the stage of Section 245D(2C) of the Act within ten days from the date of first hearing, which was fixed on 25th May, 2015. Before the said date, the petitioner was to submit his response to the documents. The petitioner did not take plea of limitation with regard to additional documents filed on 19th February, 2015 and the documents, it was observed, would be construed to be a part of original report dated 10th February, 2015. The Court had clarified having not expressed any opinion on merits and that setting aside of the order dated 24th February, 2015 shall not come in the way of the ITSC taking a view on the matter.

15. Thereafter, the ITSC vide order dated 4th June, 2015 under Section 245D(2C) of the Act held that the settlement application filed by the petitioner was invalid for various reasons, including failure to make full and true disclosure of undisclosed income with reference to the London property and two foreign bank accounts of M/s Barro Holdings Limited and M/s Bulova Holding Limited in the BSI Bank Limited, Singapore, of which the petitioner was a beneficial and the *de facto* owner. The respondents had thereafter filed an application for rectification in the case of the petitioner, stating that there was a factual mistake and error in paragraph 15.10 of the order dated 4th June, 2015. We shall refer to this order and the correction made by the ITSC subsequently. Suffice at this stage, is to record and notice that the application for rectification was allowed *ex parte* by the ITSC vide order dated 26th June, 2015.

16. Orders dated 4th June, 2015 and 26th June, 2015 became subject matter of challenge in Writ Petition (C) No. 8101/2015, which petition was allowed vide order dated 13th April, 2017 with an order of remand to the ITSC for a fresh decision. We shall be subsequently referring to this order in some detail as the assertion of the petitioner is that the ITSC has not complied with the directions in this order and has misconstrued the same.

17. Pursuant to the second order of the remand, the ITSC has now passed the order dated 12th May, 2017, which order holds that the petitioner had failed to make full and true disclosure and, therefore, the settlement application was rejected as invalid under Section 245D(2C) of the Act. The case of the petitioner for the AYs 2009-10 to 2013-14 have been sent to the Assessing Officer for adjudication and passing assessment orders.

18. We would first refer and examine the primary argument of the petitioner, that the impugned order completely disregards and is contrary to the earlier order of the High Court dated 13th April, 2017 passed in Writ Petition (C) No. 8101/2015 by which orders of the ITSC dated 4th June, 2015 and 26th June, 2015 had been set aside. In order to consider the said contention and decide the plea, we would like to reproduce relevant portions of the judgment dated 13th April, 2017 passed in Writ Petition (C) No. 8101/2015, which reads:-

“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.

(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.

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.”

19. We have reproduced the entire reasoning in the order on record dated 13th April, 2017 in the aforesaid quotation so as to appreciate and understand the contention raised and our reasons. Paragraph 5 of the aforesaid quotation refers to the contention of the counsel for the petitioner that written submissions had not been considered, which it was observed appeared to be correct for the ITSC had not set out the manner in which those submissions were considered. Thereafter, reference was made to the information received by the Revenue and relied upon in relation to the bank accounts and the property at London. Paragraph 6 of the said order states that information received had been discussed *in extenso* by the ITSC before drawing their conclusion and findings in paragraphs 15.17 and 15.18.

20. Thereafter, reference was made to the rectification application filed by the respondents, purportedly for correction of factual mistake and error in paragraph 15.10 of the order dated 4th June, 2015, which had recorded that the bank account opening forms were signed by the petitioner, i.e., Moin Akhar Qureshi and his address was mentioned as C-134, Defence Colony, New Delhi as was seen from papers received from the Singapore authorities, including the passport. Paragraph 9 of the order dated 13th April, 2017 observes that the account opening forms of M/s Barro Holdings Limited and M/s Bulova Holdings Limited were signed by M/s Arcas Holdings Limited,

the authorised signatory and director of the two companies and not by the petitioner, i.e., Moin Akhtar Qureshi.

21. For the time being, we would skip the observations made by the Division Bench in paragraphs 10 and 11, but refer to the reasoning given in paragraph 12. Paragraph 12 of the order dated 13th April, 2017 refers to the fact that the rectification application filed by the Revenue was allowed *ex parte* vide order dated 26th June, 2015. The Division Bench felt that question would arise whether the above change or rectification would impact the main conclusion drawn by the ITSC in its order dated 4th June, 2015 that there was failure to make true and full disclosure of all facts. It was observed that ITSC on two grounds had held that there was failure to make full and true disclosure, namely, the bank accounts in Singapore and the property at London. With regard to the property at London, paragraph 12 observes that the petitioner had made written submissions dated 15th May, 2015 enclosing certain documents, which were not considered. Paragraph 13 states that the order dated 4th June, 2015 had also not considered written submissions dated 22th May, 2015. Paragraph 14 thereupon states and records that the ITSC ought to have, at the first instance, put the petitioner on notice if it was going to entertain an application for correction filed by the Respondents. It did not matter whether the corrections would have been beneficial to the petitioner for it was observed that the petitioner could have persuaded the ITSC with regard to other errors, which according to the petitioner had vitiated the order dated 4th June, 2015. The Court felt that

ITSC could not have corrected the order dated 4th June, 2015 without putting both parties to notice and the procedure of passing an *ex parte* order correcting an earlier order was unacceptable. Accordingly, both orders dated 4th June, 2015 and 26th June, 2015 were set aside with the direction that the ITSC would undertake a fresh exercise in terms of the first order dated 18th May, 2015 passed in Writ Petition (C) No. 4900/2015. It was also directed that parties would not file additional or further documents and the matter would be decided on the basis of existing documents after giving hearing. Fresh decision was to be on merits and in accordance with the law without being influenced by the earlier orders, which had been set aside.

22. As noticed above, we have not, till now, referred to and elucidated on paragraphs 10 and 11 of the decision dated 13th April, 2017 in Writ Petition (C) No. 8101/2015. The petitioner relies on the observations made in these paragraphs. In particular, our attention was drawn to the observations in paragraph 11 of this order, which records “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”.

23. Having considered the said contention, we find that the petitioner is misreading the aforesaid observations out of context for it was never the case of the Revenue, i.e. the respondents, that the account opening forms with BSI Bank Limited, Singapore were signed by the petitioner Moin Akhtar Qureshi as the director of the said companies. The case set up and

pleaded by the respondents was that bank accounts of M/s Barro Holdings Limited and M/s Bulova Holdings Limited at Singapore were opened by M/s Arcas Holding Limited as a director of these companies. However, Moin Akhtar Qureshi, i.e., the petitioner, has been shown and declared as the beneficial owner of these companies. He has signed and made declaration on oath in this regard. Photocopy of his passport was also enclosed with confirmation in the Know Your Customer documentation.

24. On the said aspect, it would be appropriate to refer to the first order dated 24th February, 2015 passed by the ITSC, which had in paragraph 4.3 referred to the contention of the Revenue that M/s Bulova Holdings Limited, a company incorporated in British Virgin Island, had purchased the London property. However, the petitioner was a beneficial owner of M/s Bulova Holdings Limited and he had given instructions for furnishing of London property in his capacity as a beneficial owner. Similarly, order dated 4th June, 2015 records that the petitioner was beneficial owner of M/s Barro Holdings Limited and M/s Bulova Holdings Limited as well as the owner of the flat at London. ITSC had relied upon Know Your Customer (KYC) details in the account opening form. The petitioner had questioned the said details with reference to the two accounts alleging discrepancies, which contention was rejected in view of the fact that the details recorded in the KYC included personal details, etc. The ITSC had also recorded that M/s Barro Holdings Limited had executed a power of attorney in favour of the

petitioner, which was signed by the petitioner and his signatures on the documents with the BSI Bank Limited, Singapore were not disputed.

25. Therefore, it is clear that the stand of the Revenue, i.e. the respondents, was that the petitioner was a beneficial owner of the two bank accounts in Singapore and the London property though the bank accounts in the name of M/s Bulova Holdings Limited and M/s Barro Holdings Limited were opened by M/s Arcas Holding Limited. Further, the London property registered in the name of M/s Bulova Holdings Limited, was belonging to and was owned by the petitioner. However, there was a factual error made by the ITSC in paragraph 15.10 of the order dated 4th June, 2015 in recording that the account opening forms were signed by the petitioner and his address was mentioned as C-134, Defence Colony, New Delhi, whereas the factual position was that the petitioner had signed and affirmed that he was a beneficial owner of the accounts and given personal details though he had not signed the account opening forms on behalf of M/s Bulova Holdings Limited and M/s Barro Holdings Limited. Reference in paragraph 11, therefore, was limited and with reference to the aforesaid correction made vide order dated 26th June, 2015. We do not think that the aforesaid observation can be treated as a final and conclusive finding given by the High Court that the petitioner had made full and true disclosure in the settlement application before the ITSC with reference to the two accounts. There is no discussion in this order dated 13th April, 2017 on the said aspect.

26. In the *State of U.P. v. Synthetics and Chemicals Ltd.*, 1991 (3) SCR 64, the Supreme Court has held that any declaration or conclusion arrived without application of mind or preceded without any reason would not tantamount to a declaration of law which binds all Courts. The relevant paragraph of the aforesaid judgment is reproduced as under:

“41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. “A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind.” (Salmond on Jurisprudence 12th Edn., p. 153). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd. the Court did not feel bound by earlier decision as it was rendered ‘without any argument, without reference to the crucial words of the rule and without any citation of the authority’. It was approved by this Court in Municipal Corporation of Delhi v. Gurnam Kaur. The bench held that, ‘precedents sub-silentio and without arguments are of no moment’. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A

decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In B. Shama Rao v. Union Territory of Pondicherry it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

27. We would also like to reproduce a portion from the judgment of the Supreme Court in **Deepak Bajaj versus State of Maharashtra and Another**, (2008) 16 SCC 14, wherein it was held that decisions of the Court cannot be read as Euclid's theorem and the wording and the language used in the judgment has to be read with care and caution with reference to controversy/issue settled and decided. Relevant paragraphs in **Deepak Bajaj** (Supra) read as under:-

"7. It is well settled that the judgment of a court is not to be read mechanically as a Euclid's theorem nor as if it were a statute.

"14. On the subject of precedents Lord Halsbury, L.C., said in *Quinn v. Leathem* [1901 AC 495 : (1900-03) All ER Rep 1 (HL)] : (All ER p. 7 G-I)

‘[Now before] discussing *Allen v. Flood* [1898 AC 1 : (1895-99) All ER Rep 52 (HL)] and what was decided therein, there are two observations of a general character which I wish to make; and one is to repeat what I have very often said before—that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, *but are governed and qualified by the particular facts of the case* in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.’

(emphasis in original)

We entirely agree with the above observations.

15. In *Ambica Quarry Works v. State of Gujarat* [(1987) 1 SCC 213] (vide SCC p. 221, para 18) this Court observed:

‘18. ... The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.’

16. In *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.* [(2003) 2 SCC 111] (vide SCC p. 130, para 59) this Court observed:

‘59. ... It is also well settled that *a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.*’

(emphasis in original)

17. As held in *Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani* [(2004) 8 SCC 579 : AIR 2004 SC 4778] a decision cannot be relied on without disclosing the factual situation. In the same judgment this Court also observed: (SCC pp. 584-85, paras 9-12)

‘9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. *Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context.* (emphasis in original) These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as

statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; *their words are not to be interpreted as statutes.* (emphasis supplied) In *London Graving Dock Co. Ltd. v. Horton* [1951 AC 737 : (1951) 2 All ER 1 (HL)] (AC at p. 761), Lord MacDermott observed: (All ER p. 14 C-D)

“... The matter cannot, of course, be settled merely by treating the *ipsissima verba* of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge, ...”

10. In *Home Office v. Dorset Yacht Co. Ltd.* [1970 AC 1004 : (1970) 2 WLR 1140 : (1970) 2 All ER 294 (HL)] Lord Reid said:

“... Lord Atkin's speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances.”

Megarry, J. in *Shepherd Homes Ltd. v. Sandham (No. 2)* [(1971) 1 WLR 1062 : (1971) 2 All ER 1267] observed: (All ER p. 1274 d)

“... One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament;”

And, in *British Railways Board v. Herrington* [1972 AC 877 : (1972) 2 WLR 537 : (1972) 1 All ER 749 (HL)] Lord Morris said: (All ER p. 761 c)

“... There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.”

28. The controversy and issue in the Writ Petition (C) No. 8101/2015 in view of the reasoning quoted above was predicated on two aspects. Firstly, the correction to the order dated 4th June, 2015 was by an *ex parte* order passed by the ITSC dated 26th June, 2015 without notice, which was contrary to law for the reasons set out in paragraph 14 of the order dated 13th April, 2017. Secondly, the High Court felt that the ITSC had not considered the written submissions filed by the petitioner.

29. We would turn our attention to the second contention raised by the petitioner that the impugned order dated 12th May, 2017 is erroneous and wrong for it relies upon order dated 24th February, 2015, which was set aside vide order dated 18th May, 2015 in Writ Petition (C) No. 4900/2015. It is submitted that the ITSC has committed a grave procedural error in relying upon and stating that they had become *functus officio* after passing of the order dated 24th February, 2015, though this order had been set aside by the Court in Writ Petition (C) No. 4900/2015 vide order dated 18th May, 2015. It is also submitted that the ITSC had tried to justify its order dated 26th

June, 2015 in spite of the observations of the order dated 13th April, 2017 passed by the High Court in Writ Petition (C) No. 8101/2015.

30. In order to decide this controversy and contention, we would like to reproduce relevant portion of the impugned order dated 12th May, 2017 passed by the ITSC, which reads:-

“8. The Hon’ble High Court has now disposed of the above writ petition (WP (C) 8101/2015 and CM No. 16773/2015) by an order dated 13.4.2017 in which both the orders dated 4.6.2015 and 26.6.2015 passed by the Commission have been set aside. The Hon’ble High Court has observed in para 13 that submission dated 22.5.2015 filed by the applicant have not been discussed by the Commission in the order u/s 245D(2C) dated 4.6.2015 and that the said order could not be corrected without putting both the sides to notice. The Hon’ble High Court has accordingly directed as under:”

“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 04.06.2015 read with the order dated 26.06.2015 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 18.05.2015 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 an order uninfluenced by any of its earlier orders that have been set aside by this Court.”

9. The case of the applicant was fixed for the hearing on the 02.05.2017 to give effect to the above direction of the Hon’ble High Court. In response to the notice of hearing under section 245D(2C) of the Act, Sh. Niraj Jain CA, Sh. Hiren Mehta CA, Sh. Deepak Gupta CA, Sh. Ashwani Gupta CA, Sh. P.K. Mishra CA and Sh. Dinesh Kumar Accountants attended on behalf of the applicant. Sh. Vinay Kumar Karan, CIT(DR) appeared for the Department along with Ms. M.V. Bhanumati, DIT (Inv.), Sh. V.K. Jiwani JCIT, Sh. Gaurav Pundir, DDIT (Inv.) and Sh. Santosh Kumar ACIT, Central.

10. At the outset of the fresh proceedings u/s 245D(2C), Sh. Niraj Jain, A.R raised the issue whether the scope of proceedings before the Commission was limited only to the two issues viz. the foreign bank account and the London property of Sh. Moin Qureshi or all the issues involved in the original order u/s 245D(2C) dated 24.2.2015 need to be considered afresh. The A.R was of the view that the scope of the fresh proceedings was not restricted only to the two issues referred to above and that all the issues need to be reconsidered again. To support this contention he referred to paras 11 and 14 of the High Court’s order dated 13.4.2017. He stated that in para 11 the Hon’ble High Court has given a clear finding that in view of the correction made by the Commission in para 15.10 of its order dated 4.6.2015 there was no failure on the part of the applicant to make a full and true disclosure as far as the bank account was concerned. The A.R

further relied on the observation made by the Hon'ble High Court in para 14 that had the petitioner been given an opportunity at the stage of rectification order, it might have been able to persuade the Commission to the other 'errors which according to the applicant vitiate the order dated 4.6.2015. On the basis of these observations, the A.R contented that the Commission needs to examine all the issues that formed a subject of its order u/s 245D(2C) dated 24.2.2015.

10.2 Ms. Bhanumati who represented the Department (referred to hereafter as D.R) strongly objected to the above proposition made by the A.R. She stated that the Hon'ble had only set aside the order accepting with the applicant's plea that full opportunity was not given to him in as much as the submissions dated 22.5.2015 were not considered. She stated that the Hon'ble High Court did not go into the merits of the case as it was not the issue before it in the Writ Proceedings. She stated that the para 11 of the order cannot be taken to mean that the Hon'ble High Court had given a clear finding that in view of the rectification made in the order dated 4.6.2015 the discourse made by the applicant can be taken to be full and true. According to the D.R this should be read only as a reproduction of the contention made to that effect by the applicant during the Writ proceedings. She argued that if the Hon'ble High Court has given such a finding than there would be no need to set aside the order to give another opportunity to the applicant and to consider the submissions dated 22.5.2015 made by the applicant.

10.3 The submissions made by the A.R. and the D.R. were considered carefully by us. We have noted that in para 15 of the order the Hon'ble High Court has

directed that the Commission should again undertake the exercise that it was expected to undertake pursuant to the order dated 18.5.2015 in W.P. (C) No. 4900/2015. In the order dated 18.5.2015 the Hon'ble High Court had observed as under;

“We are of the view that the documents which were filed on 19.2.2015 constituted part of the report which the Commissioner had initially filed on 10.2.2015. We also note that the Settlement Commission had relied upon the documents which were filed on 19.2.2015. In this back drop, we are of the view that adequate opportunity was not given to the petitioner to respond to the said documents.

For this reason, we are setting aside the impugned order dated 24.2.2015. 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.”

Considering the fact that the primary prayer of the applicant in Writ Petition (C) No. 4900/2015 was that the Commission had not given adequate opportunity before taking cognisance of the documents running into 260 pages during the hearing on 19.2.2015 and before passing the order dated 4.2.2015 and the above directions were given by the Hon'ble High Court on the ground of denial of natural justice, it is abundantly clear that the scope of the present proceedings is to be limited only to the issue agitated by the applicant in the above Writ Petition. This concerns the 260 pages field(sic) on 19.2.2015, which in turn relate to the issue of foreign bank account and the property in London

owned by the applicant. The other issues dealt with by the Commission in its order dated 24.2.2017 are not to be considered by us, as that would tantamount to a review of the findings given by our predecessor which is not permitted under the law because the Commission becomes a *Functus Officio* after passing an order and it cannot sit in judgment over an order passed earlier by it. As regards the issue in the rectification order dated 26.6.2015, it is an admitted position that the relevant facts had been placed before the Commission by the Pr. CIT before the order dated 4.6.2015 and it was not as if in the rectification application the Pr. CIT had placed some fresh facts before the Commission. The error in the order had occurred due to inadvertence at the end of the Commission but that error had no bearing on the conclusion arrived at by the Commission as that decision was not solely or primarily dependent on it. The conclusion was based on a holistic appreciation of all the evidence contained in the documents running into 260 pages.

10.4 When apprised of our view on the above proposition, the learned AR prayed for an adjournment on the ground that the applicant would like to seek a clarification on this issue from the Hon'ble High Court. Considering that the order giving effect to the directions of the Hon'ble High Court is to be passed within the limited time period prescribed under the law an adjournment up to 9.5.2017 was granted to the applicant. On 9.5.2017, the A.R. informed that on the advice of their legal counsel they have not approached the Hon'ble High Court for a clarification and instead filed an opinion from the counsel, which has been duly considered by us. For the reasons stated above we are of the view that the scope of the present proceedings is

limited to the issues arising from the 260 pages filed on 19.2.2017. Further, in view of the directions of the Hon'ble High Court in para 15 of the order dated 13.4.2017, these issued (sic) need to be considered by us on the basis of the "existing documents" ie. submissions made by both the parties subsequent to the setting aside of the order dated 24.2.2017 on 18.5.2017 and passing of the fresh order on 4.6.2015.

11. Submissions made by the applicant and the Department : As directed by the Hon'ble High Court the submissions made by the applicant on 22.5.2015 and 28.5.2015 have been examined."

31. Paragraph 8 reproduces the order dated 13th April, 2017 passed in Writ Petition (C) No. 8101/2015 remanding the case to the ITSC for fresh adjudication. Paragraph 9 refers to the attendance of counsel, who had appeared for hearing on 2nd May, 2017 before the ITSC. Paragraphs 10 to 10.4 refer to the contentions that were raised by the parties on the scope and ambit of the proceedings, and observations and findings of the ITSC in that regard. In paragraph 10 of the order refers to the contention raised by the petitioner that paragraph 11 of the order dated 13th April, 2017 passed by the High Court had given a clear finding that there was no failure on the part of the petitioner to make full and true disclosure as far as bank accounts was concerned. Thereafter, reference was made to paragraph 14 of the order dated 13th April, 2017 that the petitioner should be given an opportunity at the stage of rectification order to enable the Commission, i.e. the ITSC, to examine other errors. We have already dealt with and examined the order

dated 13th April, 2017 and held that the said contention of the petitioner is wrong and fallacious. We may note that the case propounded by the petitioner, as set out in paragraph 10, was that on remand that the ITSC consideration and decision was not restricted the two issues, i.e., the two bank accounts in Singapore and London property, but all issues were to be considered afresh. Paragraph 10.2 records the submission of the Revenue, who had stated that the High Court had passed an order of remand as full hearing was not given inasmuch as submissions were not considered and paragraph 11 of the order passed by the High Court had not given a clear finding on the question of full and true disclosure with regard to the bank accounts. The sentence in the order of remand dated 13th April, 2017 passed by the High Court in Writ Petition(C) No. 8101/2015, relied upon by the petitioner was merely a reproduction of the contention raised by the petitioner, and not a conclusive opinion expressed by the High Court. If the High Court had reached and concluded that there was full and true disclosure, there was no reason to set aside the order with remand to the ITSC for a fresh hearing and decision. Paragraphs 10.3 and 10.4 refer to the order dated 18th May, 2015 passed in Writ Petition (C) No. 4900/2015 and that the remand was restricted to cognizance and examination of the documents running into 260 pages, which were filed by the respondents during the course of hearing on 19th February, 2015 and for which the petitioner was granted and given adequate opportunity to respond. The observation in paragraph 10.3 of the order were clearly with reference to the

order dated 18th May, 2015 passed in Writ Petition (C) No. 4900/2015, which had circumscribed and confined the scope of remand to the stage of consideration of Commissioner's report under Section 245D(2C) of the Act after giving hearing to the petitioner. The Revenue was entitled to refer to and rely upon the documents filed on 19th February, 2015, which was to be construed and deemed to be part of the original report dated 10th February, 2015 filed by the Commissioner, i.e., respondent No.1 before us.

32. While we would agree that the order dated 4th June, 2015 could have been better worded, but we would not hold that the failure to use better words or language would itself vitiate the final findings recorded by the ITSC with reference to full and true disclosure made by the petitioner with reference to the London property and the two bank accounts. The ITSC has complied with the directions of the High Court in the orders dated 18th May, 2015 passed in Writ Petition (C) No. 4900/2015 and the order dated 13th April, 2017 in the Writ Petition (C) No. 8101/2015. On examination and consideration afresh, the ITSC with reference to the two bank accounts and the London property has concluded that there was failure on the part of the petitioner to make full and true disclosure and the manner in which the undisclosed income was earned. This was the main and core issue that had become the subject matter of the order dated 4th June, 2015 and subsequent rectification order dated 26th June, 2015 passed by the ITSC. This was also the subject matter of the Writ Petition (C) No. 8101/2015 decided vide order dated 13th April, 2017. This fundamental issue was to be decided, for it is

accepted and admitted that every assessee invoking and filing an application for settlement must make full and true disclosure of undisclosed income and on this there is no *lis* or argument. Interestingly, the ITSC had granted adjournment and opportunity to the petitioner get a clarification from the High Court, whether the issue to be determined and decided by them was restricted and confined to whether the petitioner was the beneficial owner of the London property and the two bank accounts. As per the ITSC, these were the twin aspects to be considered, whereas the petitioner wanted and had argued that the scope was wider and broader.

33. Even otherwise, the contention raised by the petitioner would not matter and would be inconsequential, for the ITSC has recorded a firm and categorical finding that there was failure and lapse on the part of the petitioner to make full and true disclosure of undisclosed income. Till we set aside this finding, the argument raised is irrelevant and of no consequence.

34. On the question of the two bank accounts and the London property, the finding of the ITSC are to be found in paragraph 12, which are material and relevant and are reproduced below:-

“12. Decision: we have once again considered the submissions dated 22.5.2015 and 28.5.2015 filed by the applicant in pursuance of the directions of the Hon’ble High Court, even though these were duly taken into account by our predecessor Bench earlier while passing the order dated 4.6.2015. It is seen that in these submissions the applicant has raised various objections that are of technical or peripheral nature:

i. It is stated that on 23.6.2011 i.e. the date on which the Bank representative of BSI Bank is stated to have met Sh. Moin Queresh at his residence at New Delhi, Sh. Quereshi was not present there. We are not getting into the question whether this was on account of any mistake in mentioning the date by the bank employee or otherwise. What cannot be denied is that this kind of a discrepancy alone does not disprove the plethora of other KYC documents provided by the BSI Bank Ltd. Singapore which have been received by the Department through the Singapore's Competent Authority under the DTA Agreement between India and Singapore.

ii. another discrepancy pointed out by the applicant is that in the documents provided by the Bank, some fact about his business like its turnover, number of employees in the group and properties owned by him are overstated/inflated. We have considered this objection, but we tend to agree with the Department that these kinds of discrepancies do not have any bearing on the main issue at hand i.e. whether Sh. Moin Quereshi was the beneficial owner of the Bank account.

iii. with regard the issue of POA given by Sh. Yousuf Khan the brother in law of the applicant in the name of Sh. Moin Kureshi on 11.4.2011 the A.R stated that the POA proves that Sh. Moin Qureshi was only acting on behalf of Sh. Yousuf Khan and it was Sh. Khan who was the real beneficiary. However, a perusal of the document in question shows it is a very general and wide ranging power of attorney executed by Sh Mehboob Khan in the name of Sh. Moin Akhtar Quereshi to do a very

wide range of acts on his behalf in multifarious jurisdiction including various tax havens. This power of attorney does not refer to any specific transaction or to any specific bank account. In the context of the bank account in BSI Bank, the most important factor is that in the KYC documents provided by BSI Bank it is only Sh. Moin Akhtar Quereshi who figures as the beneficial owner. No mention whatsoever can be found of Sh. Yousuf Mehboob Khan in the KYC documents. The Bankers have categorically mentioned the name of Sh Moin Qureshi as the beneficial owner. Also we are in agreement with the contention of the DR that the balance sheets are nothing but private documents as they were never produced before any government authority anywhere in the world.

iv The applicant has also cast doubt on the veracity of the documents provided by the BSI Bank and stated that merely on the basis of a statement by the Bank it cannot be concluded that the applicant is the beneficial owner of the account. However, we note that the documents produced by the Department have been procured by the Department from the Competent Authority of Singapore under the Tax Treaty between the Indian and the Singapore government. We are unable to agree with the applicant that the veracity of these documents is doubtful and that the entire documentation regarding KYC is an imaginary creation of the officers of the Bank without any involvement of Moin Akhtar Quereshi.

v. The applicant has stated that the Department has not been able to provide the details of payment

towards the purchase or furnishing of the flat at London. While there may be some substance that the Department has not produced specific details it cannot be denied that the information provided by the Competent Authorities of British Virgin Island and Singapore and by BSI Bank contain enough information to show that the applicant was the beneficial owner of a bank account in which there were substantial transactions of funds. Further the information received from the Competent Authority of British Virgin Island corroborates the assertion of the Department about the nexus of the property at London with the applicant.

12.1 As pointed out earlier, the documents running into 260 pages on 19.2.2015 pertained to the ownership of a bank account and a property at London. These documents have been considered by us afresh during these proceedings, in the light of detailed submissions and contentions forwarded by both the parties. Specific question was asked by us at the end of the hearings from both the parties whether any fresh issue other than what arose from the documents already on record were raised by the other party. To this the A.R. as well as the D.R. replied in the negative. During the hearing held on 9.5.2017 as a part of the present proceedings, while responding to the objections raised by the A.R., the D.R. explained that the banking procedures in Swiss Banks are very different from those prevailing in India. In India only natural persons are allowed to open a bank account. The Swiss Banks allow even a company, the directors of which are in turn not natural persons but corporate or other artificial juridical entities, to open bank accounts on behalf of a natural person. In such a structure the identity of a natural person remains

hidden behind a layer of artificial juridical entities. It was pointed out by the D.R. that it was primarily to counter the abuse of these kind of bank accounts and check the menace of fund flows to terrorist, drug smugglers and money launderers that Financial Action Task Force (FATF) of which India is a signatory and Foreign Account Tax Compliance Act (FATCA) came into existence. Under these regulations the Banking Companies are obliged to observe strict 'Know Your Customer; (KYC) norms and identify the real or the beneficial owner before opening a bank account. The beneficial owner for the purpose of these regulations is defined as under:

“Beneficial owner refers to the natural person person(s) who ultimately* own or controls ** and /or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.

* Reference to “ultimately owns or controls” and “ultimately effective control” refer to situations in which ownership/control is exercised through a chain of ownership or means of control other than direct control.

** This definition should also apply to beneficial owner or a beneficiary under a life or other investment linked insurance policy.”

12.2 It is in the above context that the confirmation by the BSI Bank of 'beneficial ownership' of the account in BSI Bank by Sh. Moin Qureshi assumes great

importance. During the hearing before us the D.R. took us through the detailed facts and evidences to establish the beneficial ownership of the account in question by Sh Moin Qureshi. After the presentation of the D.R., keeping in view the directions of the Hon'ble High Court that no further document etc is to be filed by the either side, the A.R. was specifically asked to point out to us if the D.R. had brought any new fact on record. The A.R. in all due fairness admitted that it was not so and that these facts were already on record viz. in the submissions dated 25.5.2015 filed by the Department. As the submissions dated 25.5.2015 were filed by the Department in response to applicant's submissions dated 19.5.2015, they need to be considered even otherwise keeping in view the principle of natural justice. The relevant portion of these submissions, which are of importance to decide the issue at hand is therefore reproduced below for the sake of convenience:

“12.5. The Material evidence establishing Mr. Qureshi's involvement with Barro Holdings Ltd are in the form of Power of Attorney executed in favour of BSI Bank Ltd which was signed by Mr. Qureshi himself under his signature. And Mr. Qureshi has not disputed his signature on this document. The only objection raised by Mr. Qureshi in this regard was that on the date of signing of the document, he was physically not present in Singapore. However, the document doesn't indicate the place in which it was signed. It has been observed that it is a common practice for foreign banks to reach the client wherever he is and obtain his signature on the necessary documents.

12.6. Thus the two objections raised above are frivolous, immaterial and peripheral to the issue. The clinching evidence of the identity of the beneficial owner is the declaration by the company Barro through its director Arcas Holding Ltd as to who is its beneficial owner. In this declaration, name of Mr. Qureshi was mentioned along with his other details. It is to be understood that the bank account is a contract between BSI Ltd and the account holder Barro- the contracting partner.

12.7 The account holder is required by law of Singapore to give verification of the beneficial owner' identity. In this case, Arcas Holding Ltd - one of the directors and authorized signatory of Barro has verified that the B.O. vs Qureshi Moin Akhtar, 26.10.1958, India C-134, Defence Colony, New Delhi-110024 as the beneficial owner. Qureshi Moin Akhtar is none other than the applicant Mr. Qureshi. This declaration is in Form-A and on page – 24 of the additional documents provided by the Singapore tax authorities and produced before ITSC on 19/02/2015. The director of Barro i.e. Arcas Holdings Ltd, has given an undertaking to inform the bank on its own accord of any changes. It has also been notified to the Arcas Holding Ltd. that the bank is required to cooperate with the law enforcement agencies of Singapore and other agencies and this may required the bank to disclose the information provided by the contracting partner, in this Barro, to the relevant authorities, whenever required. Identity of Mr. Qureshi is further established by the verified copy of his passport kept in the record of the bank as part of the verification form. (pages 25-28 of the additional documents

provided by Singapore and presented on 19/02/2015 before ITSC). Mr. Qureshi cannot claim that the documentation has been done behind his back as copy of passport is accompanying the Form-A.

12.8 At various places in his averments, Mr. Qureshi has questioned the authenticity of the documents provided by the Singapore tax authorities. He has stated that the information has been provided by Orbis Advisory Pvt. Ltd, Singapore – a private company. This is a misleading statement by Mr. Qureshi. This confirms that Mr. Qureshi is not intending to come clean before ITSC. He is indulging in giving half-truths and misleading the ITSC into admitting his application. This is exposed by the fresh information received from Singapore and BVI authorities. By the above averment, Mr. Qureshi has implied ignorance about Orbis Advisory Pvt. Ltd and implied that Orbis has nothing to do with Bulova and Barro. A reference was made on 14/01/2015 to the Singapore authorities asking clarification about, inter-alia, who had engaged Orbis and under whose instructions payments were made to Orbis, on what basis payment etc.

12.9 The Singapore authorities have categorically stated through their letter dated 12/03/2015 addressed to J.S. (FT&TR), CBDT, Ministry of Finance, Delhi that Orbis was engaged by Mr. Qureshi only. The letter is enclosed as Annexure- B and most importantly, Singapore authority have also supplied a copy of the indemnity signed by Mr. Moin Akhtar Qureshi to the board of directors, Bulova Holdings Ltd. authorizing them to purchase

property in London at Flat#4, Chesterfield House, South Audley Street, London for GBP 3.85 million and the appoint Mischo de Raya as solicitor for purchase of the above property. He has indemnified the board of directors against losses, if any, arising in the transactions. This document fully and completely establishes that Mr. Qureshi is the owner of London property. The document is enclosed as Annexure-C. This indemnity was executed before date of purchase of property. This establishes culpability and mens rea of Mr. Qureshi because he was given opportunity many times by the revenue to explain the ownership of this London property.

12.10 Now the revenue is in the possession of new information/evidence regarding beneficial ownership of the bank account No. 61128131, 2002 current account USD Of Bulova Holding Ltd. in BSI bank Singapore by Mr. Qureshi. Independent information received from BVI dated 04/02/2015 received in the office DIT (Inv.2-), Delhi on 20/02/2015 provided Memorandum of association, registers of members, directors and shareholders of the legal persons, shareholding pattern, certificate of incorporation etc. copies of all the material received from BVI authorities is enclosed as Annexure – D. It contains, inter-alia of bank account, copy of account opening form of Bulova Holdings Ltd. held with BSI bank. Ltd. Singapore. The information was provided by the competent authorities of BVI under his signature.

12.11 Bulova was incorporated on 22/02/2012 in BVI. The register of members shows that Francantina Development Inc. holds 10,000

ordinary shares of 1 USD each. The documents show very clearly that the directors of Bulova are Arcas Holdings Ltd. and somas Group S.S., incorporated in BVI. As per the MOA of the company Bulova, the directors have, inter alia, all the powers necessary of managing and directing the business affairs of the company. The AOA of the company empowered the directors to issue and sign cheques and other financial instruments from time to time as determined by the directors. The shares of Somas Group S.A. and Arcas Holdings Ltd. and Francaina are all held by Orbis Consulting Trust Kirchstrasse 79 PO Box 5436, 9490 vaduz, Principality of Liechtenstein. The director of Francatina is Arcas Holding Ltd. All the three entities are ultimately held by Orbis Consulting Trust, Vaduz, Liechtenstein.

12.12 It has been established that Bulova holds bank account with BSI Ltd. Singapore. The documents obtained through BVI authorities also prove that Mr. Qureshi is the beneficial owner of account of Bulova with BSI ltd. Singapore. The account opening application was made by Arcas Holdings Ltd, BVI – the director of Bulova. Declaration of the identity of the beneficial owner in Form A has been provided by Arcas Holding Ltd. on 16/-7/2014 under its signature and seal indentifying the beneficial owner as Mr. Quershi. This declaration was the same as provided by the Singapore authorities earlier. This corroborates the declaration of identity of the beneficial owner as provided by the Singapore authorities earlier with regard to the bank account opened by Bulova. with BSI bank Ltd, Singapore. It can be seen that the

cancelled Form-A provided by the Singapore authorities as dated 08/03/2012. In this form, Mr. Qureshi's India address C-134, Defence Colony, Delhi-110024 was given. A change in address was effected on 16/09/2014 wherein Mr. Qureshi was changed to 9202, Princess Dubai Marina, Dubai UAE-225831. It has already been brought to the notice of ITSC in the Commissioner's report submitted on 10/02/2015 that Mr. Qureshi was the beneficial owner of the bank account of Bulova with BSI bank Ltd, Singapore. It was also pointed out that Form -A declaration of beneficial owner submitted at the time of opening of account mentioned Qureshi Moin Akhtar C-134, Defence Colony, Delhi-110024 and vide revised Form-A dated 16/09/2014 his address was changed to 9202 Princess Towers, Marina Dubai after the date of search with the intention of hoodwinking the revenue. When Mr. Qureshi was examined on oath on 09/04/2014, he had stated this address is that of the residence of his friend Mr. Himanshu Mehta who owns the property. This shows that the reference to Qureshi Moin Akhtar in the revised Form-A was again to the Mr. Qureshi only. This shows that he has given this address of Dubai to mislead and hoodwink the revenue. It is reiterated that the Singapore authorities have confirmed that orbis was engaged by Mr. Qureshi and if managed Bulova on fiduciary basis. Mr. Qureshi gave instructions for furnishing the London property in his capacity as beneficial owner of Bulova. This was based upon copy of the declaration of beneficial owner made by Bulova to BSI Ag. Another significant fact to be noted is that the documents obtained from BVI where Bulova and Francatina

are registered don't even tangentially mention about Mr. Yusuf Mehboob Khan."

12.3 From the above facts it is abundantly clear that Mr. Moin Qureshi was the beneficial owner of the bank account in question. This fact has come out clearly during the due diligence done by the BSI Bank under the KYC norm requirements before opening the account in question. It is common knowledge that Swiss Banks maintain strict confidentiality and are extremely reluctant to part with information about their clients. In the instant case it was only because the bank branch was situated in Singapore and governed by Singapore laws and because India has a Tax Treaty with Singapore under which the Competent Authority of Singapore is required to exchange information, that the Department was able to obtain these documents. A documents received under a Tax Treaty from the Competent Authority of a Contracting State have the force of an official document. We are not inclined to agree with the applicant that such a statement by a bank employee does not have any force of evidence.

12.4 From the facts discussed above it is further established that the applicant did not make a full and complete disclosure of all the material facts when it filed its application u/s 245C(1) before us. The applicant had denied owning any property or bank account outside India during the search and even later. Now that it is established that he is the beneficial owner of a bank account in Singapore through which substantial amount of funds had been transferred in and out of the above denial is disproved. It is thus clear that the applicant has not come out clean before us while making the application for settlement u/s

245C(1). It may be mentioned that the provisions of Settlement under the Income Tax Act, 1961 were introduced to allow an errant taxpayer who desires to follow the path of rectitude to make a clean breast of his affairs and file an application u/s 245C(1) for the settlement of its tax disputes before the Settlement Commission. However this once in a life time opportunity is available to an errant taxpayer only if he comes out clean. It cannot be allowed to a taxpayer who fails to disclose such a material fact as ownership of a foreign bank account. As Sh. Moin Qureshi is a 'resident' u/s 6, his worldwide income is taxable in India as laid down in sec 5(1) of the Income Tax Act, 1961. It is therefore necessary to examine the fund flow in the Singapore Bank account of the applicant to come to a conclusion whether income declared is full and true. Thus his full and true income cannot be determined unless he had disclosed the existence of the account in question and explained the source of amounts credited in it. Further, as the flow of funds from this account and the purchase of property in London are intricately linked on both the issues the disclosure is not full and true.

12.5 It is established law that the Settlement Commission has to examine the full and true nature of the disclosure of income at every stage of the settlement proceedings i.e. u/s 245D(1), 245D(2C) and 245D(4) and if at any stage it is found that the applicant has not made full and true disclosure, the Commission is required to reject the application at that stage and send the case back to the Assessing Officer. This view has been supported by a number of decisions including:

- (i) Ajmera Housing Corporation vs CIT (2010) 326 ITR 642 (S.C)
- (ii) CIT vs ITSC, (2014) 365 ITR 68 (Bombay)
- (iii) CIT vs ITSC (2014) 360 ITR 407 (Delhi)
- (iv) V.M. Shaik Mohammed Rowther vs ITSC (1999) 236 ITR 581 (Madras)

We are therefore of the view that it is not a fit case to be allowed to be proceeded with as the applicant has not made a full and true disclosure of all the material facts in absence of which it would not be possible for us to determine the income of the applicant. We therefore hold the settlement application filed by Sh. Moin Akhtar Qureshi as ‘invalid’ u/s 245D(2C).”

35. We have deliberately reproduced the entire decision and reasoning of the ITSC, to set at rest any argument of lack of application of mind on facts and documents. Indeed, there was a detailed and through examination of the factual aspects, including the contentions raised by the petitioner on the question of beneficial ownership. The petitioner had submitted that he was not a shareholder of the two companies and, therefore, he had no interest in the companies. The Singapore authorities had only made an observation that the petitioner was a beneficial owner, but this confirmation, the KYC documentations certifying that the petitioner was the beneficial owner, was imaginary or creation of the officers of the bank. The plea and contention that the petitioner's brother-in-law, Yusuf Mehboob Khan, citizen of Pakistan, was the beneficial owner of the property in London and also

beneficial owner of M/s Bulova Holdings Limited and M/s Barro Holdings Limited was resoundingly rejected for cogent and good reasons. Reliance was placed on the power of attorney executed by Yusuf Mehboob Khan in favour of the petitioner, Moin Akhtar Qureshi, and discrepancies relied by the petitioner with regard to the accounts was duly considered. The contention of the petitioner that the acts attributable to him were on behalf of Yusuf Mehboob Khan, it was observed was unacceptable in view of the overwhelming evidence and material available and produced before the ITSC.

36. The documents filed with the BSI Bank Limited, Singapore specifically and categorically mention that the petitioner was a beneficial owner. The veracity of these documents and the entire documentation regarding KYC cannot be ignored and treated as imaginary creation of the officers of the said bank and without knowledge and involvement of the petitioner. The ITSC has made reference to the banking procedures applicable, the strict KYC norms, the legal mandate and the requirement to identify and record details and particulars of the real or beneficial owner. It was noted that the petitioner had not disputed his signatures on the documents. The objection was with reference to date of signing. The identity of the petitioner was also established by verified copy of the passport.

37. We have also examined the documents, copies of which have been placed on record, including the power of attorney executed by M/s Arcas Holding Limited, the director of M/s Barro Holdings Limited in favour of

the petitioner. They had certified and identified the petitioner as the beneficial owner. M/s Barro Holdings Limited was registered in Republic of Seychelles. As per the documents received from the Government of Republic of Singapore under the Double Taxation Avoidance Agreement and prevention of fiscal evasion in respect of taxes, M/s Barro Holdings Limited had opened a bank account with BSI Bank Limited, Singapore on 22nd July, 2011, which account was closed on 19th April, 2013 and all assets and cash balance of USD 384747.13 was transferred to the account of M/s Barro Holdings Limited with the BSI Bank Limited, Hongkong. M/s Arcas Holding Limited and Somas Group, SA, companies registered in British Virgin Islands were authorized signatory of M/s Barro Holdings Limited. Somas Group, SA was also acting as Secretary of Barro Holdings Limited. Arcas Holdings Limited had executed a power of attorney dated 29th June, 2011 for management of assets of M/s Barro Holdings Limited in favour of the petitioner, Moin Akhtar Qureshi. The petitioner along with M/s Arcas Holdings Limited was a signatory to the said power of attorney. Moin Akhtar Qureshi had executed documents affirming and accepting that he was a beneficial owner of M/s Barro Holdings Limited vide form signed on 29th June, 2011, before and for opening the bank account with the BSI Bank Limited. Pertinently, this data and details regarding the beneficial owner were required to be maintained by BSI Bank Limited, Singapore, in terms of statute and law applicable. Noticeably, the said account does not refer to and acknowledge Yusuf Mehboob Khan, brother-in-law of the petitioner, as the

beneficial owner. BSI Bank Limited, Singapore had also conducted due diligence vide Know Your Customer information. This information pertained and was relating to the petitioner, Moin Akhtar Qureshi i.e. beneficial owner. The information states that Ajit Prasad, father –in-law of the daughter of the petitioner, was an existing client of the said bank and two employees of the bank had known Ajit Prasad for the last five years. Ajit Prasad had introduced the petitioner, Moin Aktar Qureshi. Importantly, in the Know Your Customer Report, on the question of expected volume and type of transactions/products, it was recorded as under:-

"The account will be used to capture money that he receives from off shore which will then be invested. The client is also keen to buy London property and may even invest on our third party fund structure at a later stage. It is an investment holding company and will have inwards and then smaller amounts in investments. 2-3 inward transactions and 2-3 inward payments in a month. All the transactions are for investments largely and not commercial."

38. Information with regard to M/s Bulova Holdings Limited was also received from the Government of Republic of Singapore under the Double Taxation Avoidance Agreement and the provisions relating to fiscal evasion in respect of taxes. M/s Bulova Holdings Limited had a bank account with BSI, AG in Switzerland.

39. Letters received from the Singapore Authority had stated that payments were received by M/s Bulova Holdings Limited from M/s Barro

Holdings Limited's Singapore and Hong Kong bank account with BSI Bank Limited. Lastly, and importantly, the petitioner i.e. Moin Akhtar Qureshi has declared himself as beneficial owner of the bank account of M/s Bulova Holdings Limited maintained with the BSI Bank, AG.

40. Moin Akhtar Qureshi, had executed and signed indemnity bond, indemnifying the board of directors of M/s Bulova Holdings Limited. He had authorized the board of directors of M/s Bulova Holdings Limited to purchase the London property, i.e. 4, Chesterfield House, South Audley, Mayfair, London, and appoint a solicitor. M/s Bulova Holdings Limited was / is the registered owner of the London property which was acquired in May, 2012. Details of the income, payments from M/s Barro Holdings Limited to M/s Bulova Holdings Limited were available.

41. The aforesaid evidence is compelling and conclusive. It cannot be ignored. It is in this context and in view of these documents specific factual findings have been recorded by the ITSC. It was also recorded that the petitioner had failed to adduce specific and clear evidence to show that he was not the beneficial owner of M/s Barro Holdings Limited etc. and the accounts and the London property were owned by his brother-in-law.

42. On the question of full and true disclosure and the statutory mandate, reference can be made to decision of this Court in ***Ajmera Housing Corporation and Another versus CIT, Commission of Income Tax versus Income Tax Settlement Commission and Others***, (2014) 360 ITR 407 (Del) and ***Commissioner of Income Tax versus Income Tax Settlement***

Commission and Others, (2010) 326 ITR 226 (Bom) and *Vishwa Nath Gupta versus Principal Commissioner of Income Tax Central and Others*, (2017) 395 ITR 165 (Del).

43. The last contention raised by the petitioner was in respect of violation of principles of natural justice and reference to the decision of the Supreme Court in *Union Carbide Corporation versus Union of India*, (1991) 4 SCC 584 was made. We fail to fathom relevance of the said contention in the context in question. There is no violation of the principle of *audi alteram partem* in the said case as hearing was given as the impugned order refers to the various contentions and issues raised by the petitioner and answers the same.

44. In view of the aforesaid discussions and the reasons, we do not find any merit in the present writ petition. Hence, the writ petition is dismissed. However, parties are left to bear their own costs.

(CHANDER SHEKHAR)
JUDGE

(SANJIV KHANNA)
JUDGE

AUGUST 28, 2018
VKR