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

Reserved on: 24<sup>th</sup> July, 2019  
Decided on: 19<sup>th</sup> August, 2019

+ **W.P.(C) 6054/2017**

ROHIT KUMAR GUPTA ..... Petitioner  
Through: Mr. C.S. Aggarwal, Senior Advocate  
with Mr. Gautam Jain, Mr. Madhur  
Aggarwal, Mr. Uma Shankar and Mr.  
Prakash Kumar, Advocates.

versus

PRINCIPAL COMMISSIONER OF INCOME  
TAX CENTRAL -II, NEW DELHI & ANR. .... Respondents  
Through: Mr. Zoheb Hossain, Senior Standing  
Counsel with Mr. Piyush Goyal,  
Advocate.

+ **W.P.(C) 6060/2017**

PRG CONSULTANTS PRIVATE LIMITED ..... Petitioner  
Through: Mr. C. S. Aggarwal, Senior Advocate  
with Mr. Gautam Jain, Mr. Madhur  
Aggarwal, Mr. Uma Shankar and Mr.  
Prakash Kumar, Advocates.

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PRINCIPAL COMMISSIONER OF INCOME  
TAX, CENTRAL-II, NEW DELHI & ANR. .... Respondents  
Through: Mr. Zoheb Hossain, Senior Standing  
Counsel with Mr. Piyush Goyal,  
Advocate.

**CORAM:**  
**JUSTICE S. MURALIDHAR**  
**JUSTICE TALWANT SINGH**

**J U D G M E N T**

**Dr. S. Muralidhar, J.:**

1. An interesting question of law arises in the present petition concerning the interpretation of Sections 153, 153 B, 245 D and 245 HA of the Income Tax Act, 1961 ('Act').

2. The challenge in both these petitions is to the order dated 4<sup>th</sup> August, 2016 passed by the Income Tax Settlement Commission ('ITSC') under Section 245 D (4) of the Income Tax Act, 1961 (Act) as well as to the notices dated 6<sup>th</sup> April, 2017 in respect of assessment proceedings under Section 143(3) read with Section 153A of the Act for the Assessment Years (AYs) 2009-2010, 2010-2011 and 2011-2012 issued by the Assistant Commissioner of Income Tax, Central Circle-13, New Delhi (Respondent No.2). A further challenge is to the impugned letter and notice dated 4<sup>th</sup> July, 2017 issued by Respondent No.2 under Section 142(1) of the Act for the aforementioned AYs calling for further information from the two Assesseees.

***Background facts***

3. The background facts are that PRG Consultants Private Limited ('PRGCPL') the Petitioner in WP(C) No. 6060/2017 was incorporated on 9<sup>th</sup> September, 2008. Its entire share capital was held by Mr. Rohit Kumar Gupta, the Petitioner in WP (C) No. 6054/2017, along with his family members. PRGCPL was established with the main business object of

providing consultancy services and acting as an advisor and consultant to technical industries.

4. Mr Rohit Kumar Gupta was a full time Director with M/s BSBK Engineers Private Limited ('BSBK') and M/s. Macawber Beekay Private Limited ('MBPL'). Both BSBK and MBPL are related concerns and are referred to by the Petitioners as the BSBK group. It is stated that the primary source of income of Mr. Gupta was derived from the BSBK group. It is stated that PRGCPL is also a shareholder in the BSBK Group.

5. On 24<sup>th</sup> May, 2012 a search under Section 132 of the Act was conducted on the BSBK Group of Companies. Simultaneously a search was conducted at the premises of Mr. Gupta jointly with PRGCPL.

6. On 9<sup>th</sup> June, 2014 notices under Section 153A of the Act were issued by the Income Tax Department (Department) to Mr. Gupta as well as PRGCPL. In response thereto both Petitioners i.e. Mr. Gupta and PRGCPL filed respective returns of income for AYs 2009-2010 to 2011-2012.

7. The Assessing Officer (AO) (Respondent No.2) picked up their returns for scrutiny and on 25<sup>th</sup> September 2014 issued notices to each of the Petitioners under Section 143 (2) of the Act. One of the contentions of the Department was that PRGCPL had introduced bogus share capital of Rs.5.30 crores with hefty a premium from various fictitious concerns.

8. During the pendency of the above assessment proceedings both Mr. Gupta

and PRGCPL filed applications with the ITSC under Section 245C of the Act on 26<sup>th</sup> February, 2015 for settlement of their cases for the aforementioned AYs 2009-2010 to 2011-2012. Mr. Gupta stated in his application that he had received Rs.5.60 crores in cash from his employer i.e. BSBK Group and the said sum had been utilised in raising share capital of PRGCPL.

9. Mr. Gupta disclosed that incentives of Rs.2.40 crores in each of the AYs 2009-2010 and 2010-2011 and Rs.80 lacs in AYs 2011-2012 had been received. Mr. Gupta also stated that the above share capital transactions were arranged through accommodation entries arranged from fictitious companies. He disclosed before the ITSC the names of such companies for each of the aforementioned AYs.

10. On its part, the PRGCPL disclosed additional consultancy charges received by it in cash from BSBK group over and above the consultancy receipts offered for taxation in its income tax returns.

***Orders of the ITSC under Section 245 C (1) of the Act***

11. It is stated that on 5<sup>th</sup> March, 2015 the ITSC passed an order under Section 245D (1) of the Act dismissing the two applications filed under Section 245 C (1) of the Act by Mr. Gupta and PRGCPL. As regards Mr. Gupta, the ITSC held as under:

“3.2 It was observed by us that the applicant has disclosed additional income being the incentive received from M/s. Macawar Beekay (P) Ltd. of Rs.2.40 crore, Rs.2.40 crore and Rs.80 lakh in AY 2009-10, AY 2010-11 and AY 2011-12

respectively. Regarding the manner of deriving such income, the AR was required to explain whether such income was disclosed in the statement u/s. 132(4) by the applicant or any confirmation from M/s. Macawar Beekay (P) Ltd., the employer was available. The AR was also required to clarify whether during the course of search in the applicant's premises or at the premises of M/s. Macawar Beekay (P) Ltd. any evidence was found regarding the payment of incentive to the applicant, The AR was further required to explain whether there is any other basis to b, justify the payment of incentive by the employer to the applicant. The AR replied that providing reply to all the above queries would not only require substantial time but also would need examination of the entire seized material recovered in the search in the group cases. The AR accordingly submitted that he may not be able to provide this information in the short time and therefore may be permitted to withdraw the application with liberty to file it again along with the clarifications on the above points.

3.3 After considering the arguments of the AR that settlement application and the facts/materials therein, we are satisfied that the applicant has not brought any material on record to establish the manner of deriving additional income disclosed in the settlement application and has also not been able to bring the clarification on the queries raised. We are of the opinion that the essential condition of a valid application u/s. 245C (1) namely full and true disclosure of manner of deriving additional income has not been satisfied. We therefore reject the application of Sh. Rohit Kumar Gupta with liberty that he may file it again.”

12. As regards the PRGCPL application, it was held by the ITSC as under:

“4.3 After considering the arguments of the AR, the settlement application and the facts/materials therein, we are satisfied that the applicant has not paid the amount of tax and interest payable on the basis of income disclosed in the settlement application as required by section 245C (1) and therefore

essential condition of a valid application is not been satisfied. We therefore reject the application of M/s. PRG Consultants Pvt. Ltd. with liberty that it may file application again.”

13. Liberty was granted to the PRGCPL as well as Mr. Gupta to file fresh applications.

14. On 26<sup>th</sup> March, 2015 both Mr. Gupta and PRGCPL again filed fresh applications in the ITSC under Section 245 C (1) of the Act. It is stated that the technical discrepancy in the application of PRGCPL pointed out by the ITSC was rectified.

***Orders of the ITSC under Section 245 D (1) of the Act***

15. On 7<sup>th</sup> April, 2015 orders were passed in both applications by the ITSC on 26<sup>th</sup> March, 2015 under Section 245 D (1) of the Act allowing the applications to be proceeded with. As far as the application of Mr. Gupta was concerned the ITSC observed as under:

“3.3 The AR submitted that, after the filing of settlement application on 26.02.2015 and its subsequent rejection on 05.03.2015, the applicant approached his employer to obtain confirmation regarding the payment of incentive. The AR further submitted that the application also approached his employer i.e. M/s. Macawar Beekay (P) Ltd. to allow examination of the seized material so as to find out any reference or evidence in such seized material regarding the payment of incentive to the applicant. The AR stated that on account of souring of relations with the employer, neither M/s. Macawar Beekay (P) Ltd. has provided any certificate/confirmation regarding payment of incentive nor allowed access to the seized material to the applicant. Consequently the applicant has not been able to obtain any evidence in this

regard. The applicant has however been able to obtain balance sheet of M/s. Macawar Beekay (P) Ltd. for FYs 2006-07, 2007-08 and 2008-09 copy of which have been enclosed with the Statement of Fact filed by the applicant. The AR argued that because of the efforts put in by the applicant, profit of M/s. Macawar Beekay (P) Ltd. increased tremendously which was evidence from the following figures.

| FY         | Profit before tax |
|------------|-------------------|
| 31.03.2007 | Rs.6,57,61,851    |
| 31.03.2008 | Rs.12,39,56,948   |
| 31.03.2009 | Rs.24,21,57,466   |

The AR further mentioned that it is gathered that M/s. Macawar Beekay (P) Ltd. and M/s. BSBK Engineers Pvt. Ltd., the two main concerns of the group, have also filed settlement applications and have disclosed substantial unaccounted income. The AR argued that Sh. Rohit Kumar Gupta has been working with M/s. Macawar Beekay (P) Ltd. for the last 20 years and is the key personnel of the group. It is stated by the Assessee because of his efforts that his employer M/s. Macawar Beekay (P) Ltd. has progressed and has earned more and more income year after year. The AR argued that the applicant is deriving salary income and has disclosed the additional incentive income which is also derived from the same source even though it was not disclosed earlier. He argued that both the applicant and M/s. Macawar Beekay (P) Ltd. are before the Principal Bench of the Commission and therefore matter could be inquired in the settlement proceedings in these two cases to establish the correctness of incentive received by the applicant. He stated that in case source of income of the applicant was found to be false, immunity from penalty and prosecution may not be given to him. The AR argued that the applicant has made a full and true disclosure of his income and the manner of deriving such income. The AR stated that all facts have been disclosed correctly and nothing has been withheld. The AR urged that the application may be admitted.

3.4 We have considered the arguments of the AR, the settlement application and the material/record brought on record. We find that the applicant has disclosed additional income in the form of incentive received from the employer with whom he has been employed from the last 20 years. We also find that the substantial increase in the profits of M/s.Macawar Beekay (P) Ltd. has been demonstrated and claimed to be partly due to the efforts of the applicant. The application of M/s.Macawar Beekay (P) Ltd. has already been admitted u/s. 245D (1) and therefore the correctness of the receipt of incentive by Sh.Gupta from M/s.Macawar Beekay (P) Ltd. could be examined in the subsequent settlement proceeding of the two cases. We find that there is no evidence available, as of now, to hold that the disclosure made by the applicant is not full and true.

3.5 After considering the arguments of the AR, the settlement application and the facts/materials therein, we are of the opinion that the application of Sh.Rohit Kumar Gupta satisfied all the conditions of a valid application as mentioned in section 245C(1) and 245D(1). The tax and interest due on the basis of the additional income disclosed have been paid. The manner of deriving the additional income disclosed has been explained. There is no adverse information available on record, as of now, to prove that the disclosure of income in this case is not full and true. Accordingly, the settlement application of Sh. Rohit Kumar Gupta is admitted and allowed to be proceeded with u/s 245D(1).”

16. As regards the application of PRGCPL it was held by the ITSC in the same common order dated 7<sup>th</sup> April 2015 as under:

4.1 The AR stated that the deficiency of payment of tax and interest as noted in the order u/s. 245D (1) dated 05.03.2015 has been removed as the required amount of tax and interest has been paid. The AR further explained that m/s. PRG Consultants Pvt. Ltd. is related to Sh. Rohit Kumar Gupta as Sh. Gupta holds 40% voting power in the applicant company.

The AR stated that the applicant company has earned additional income from consultancy services which has been offered in the settlement application in the 3 assessment years. The AR stated that the application of the company satisfies all necessary conditions and should be admitted.

4.2 After considering the arguments of the AR, the settlement application and the facts and materials therein, we are of the opinion that the application of M/s. PRG Consultants Pvt. Ltd. satisfies all the conditions of a valid application as mentioned in Section 245C(1) and 245D(1). The tax and interest due on the basis of the additional income disclosed have been paid. The manner of deriving the additional income has been explained. There is no adverse information available on record as of now to prove that the disclosure of income in this case is not full and true. Accordingly, the settlement application of M/s. PRG Consultants Pvt. Ltd. is admitted and allowed to be proceeded with u/s 245D(1).”

17. In both cases reports were called for by the ITSC under Section 245 D (2B) of the Act from the Principal Commissioner of Income Tax (PCIT). The PCIT submitted reports on 7<sup>th</sup> May, 2015 objecting to the validity of both applications on the ground that full and true disclosure of undisclosed income had not been made by each of the Petitioners.

***Orders of the ITSC under Section 245 D (2C) of the Act***

18. On 20<sup>th</sup> May, 2015 the ITSC passed a further order under Section 245D (2C) holding as under:

“8.1 We have heard the arguments put before by both the Id. CIT (DR) and the Id. AR of the applicants. We observed that the CIT has raised mainly the issue of manner of earning of additional income. The applicant has spelt out the manner of earning being the cash incentives received from the employer;

however he expressed his inability to furnish the evidences due to the strained relationship with his employer. After examining the facts and circumstances of the case, the contentions of the AR regarding the manner of earning of additional income declared are found reasonable and tenable.

9. After careful consideration, we find that the above two applicants have fulfilled all the conditions prescribed u/s 245C (1) as there is no adverse material on record to suggest otherwise. Even otherwise the issues raised by the Ld. CIT in his reports dated 07.05.2015 shall be open for the Bench during the course of proceedings u/s 245D (4). The CIT will have opportunity to examine the same and offer further comments, if any, during the course of proceedings u/s 245D (4). The decision to hold these Settlement Applications “not invalid” is without prejudice to initiation of penalty and launching of prosecution proceedings, if required on facts available on the records at the relevant time in subsequent proceedings by the Commission. Accordingly, we hold that these Settlement Applications are prima-facie 'not invalid' and therefore, are allowed to be proceeded with further.”

19. Thereafter the ITSC called the PCIT to submit a report under Rule 9 of the Settlement Commission Procedure Rules, 1997. A report was submitted by PCIT dated 7<sup>th</sup> August, 2015 pointing out that the BSBK Group had itself filed petitions under Section 245(C) before the ITSC and neither the PRGCPL nor Mr. Gupta nor the BSBK have made a full and true disclosure of their incomes before the ITSC. Mr. Gupta, in reply to the Report submitted by the PCIT under Rule 9 filed a rejoinder clarifying that he had no other source of income other than salary from BSBK group.

20. On 16<sup>th</sup> March, 2016 the ITSC passed an order under Section 245D (3) of the Act allowing PCIT to conduct verification/investigation on the “issue

of incentive received by the applicant from BSBK Engineers Pvt. Ltd. and Macawar Beekay (P) Ltd. from the seized documents of these companies.” Thereafter, a notice dated 7<sup>th</sup> April, 2016 was issued by the AO directing each of the Petitioners to participate in the verification/investigation process as directed by the ITSC by order dated 16<sup>th</sup> March 2016. A reply was submitted by Mr. Gupta on 25<sup>th</sup> April, 2016 to the AO stating that he was unable to provide any confirmation from the BSBK group regarding payment of incentives on account of ‘strained relations’. It was also submitted by Mr. Gupta that, copies of applications and submissions filed by BSBK Group with ITSC had not been made available to him.

***Report of investigation of the PCIT***

21. Thereafter report of investigation conducted pursuant to the directions of the ITSC was submitted by the PCIT stating *inter alia* as under:

“8. As already mentioned earlier no evidence of cash incentive is available in the seized documents of WS BSBK Engineers P. Ltd. and was Macawar Beekay (P) Ltd. It may not be out of place to mention here that Macawar Beekay (P) Ltd. and other companies of BSBK group are also before Hon'ble Settlement Commission. It is found from their statement of facts that all these companies have nowhere shown any cash incentive paid to Mr. Rohit Kumar Gupta or to any other employee of their concern. It is highly unlikely that cash incentive will be paid only to single executive and not to others. The fact that no incentive .has been shown as paid by was Macawar Beekay (P) Ltd. and other companies of BSBK group to She Rohit Kumar Gupta has major ramifications in these cases because if we agree on the assertions made by Sh. Rohit Kumar Gupta then it automatically implies that the company i.e., was Macawar Beekay (P) Ltd. has not come up with true and full disclosure before the Hon'ble Settlement Commission. On the other hand

if we rely on statements of facts submitted by was Macawar Beekay (P) Ltd. before the Hon'ble Settlement Commission then it leads to a conclusion that Mr. Rohit Kumar Gupta has cooked up story of receiving incentive from was Macawar Beekay (P) Ltd. and accordingly not furnished true and full disclosure before the Hon'ble Settlement Commission. Thus, in any of the eventuality, application of one of the persons deserves to be rejected.

9. Further, it is submitted that if the assertion of Mr. Rohit Kumar Gupta of receiving incentive bonus is accepted by the Hon'ble Settlement Commission, then it has other ramifications also like if the cash incentive is paid to one person then it is highly probable that the similar cash incentive was also paid to other persons/ employees also, by Macawar Beekay (P) Ltd and other group companies of BSBK group. It is requested that Macawar Beekay (P) Ltd. and was BSBK Pvt. Ltd. may be asked by the Hon'ble Settlement Commission to furnish details in respect of cash incentive paid to Shri Rohit Kumar Gupta and other persons /employees and the decision on this issue may be taken on a holistic basis in all the concerned cases.”

22. The Petitioners thereafter submitted replies under Section 245D (3) of the Act. In the reply it was stated that the AO had exceeded the scope of investigation. It was also clarified by the Petitioners that as and when cash incentives were received from BSBK, they were injected in the form of share capital in PRGCPL within a day or two.

***Orders of the ITSC under Section 245 D (4) of the Act***

23. Thereafter by a common order dated 4<sup>th</sup> August, 2016 under Section 245D (4) of the Act, the ITSC rejected the settlement applications filed by Mr. Gupta and PRGCPL holding that the essential condition under Section 245 C (1) of the Act that the Petitioners should make a “full and true

disclosure” was not satisfied.

24. As far as the application of Mr. Gupta was concerned, it was held that in view of the denial from the employer about payment of cash incentives and the report of the PCIT which stated that in the seized material, there was no evidence in that regard and considering his other sources, including business income and capital gain from sale of immovable properties/shares, the said Applicant did not satisfy the twin requirement of “full and true disclosure of additional income declared in the settlement application.” It was further held that the detailed breakup of Rs.60 lacs cash stated to have been received as consultancy charges from the BSBK Group was not explained.

25. As far as PRGCPL was concerned, it was held by the ITSC as under:

The applicant company was incorporated in 2008 with the object of acting as consultants and advisors. Sh. Rohit Kumar Gupta and his family members are the only shareholders in this company. It has been stated that the so-called cash incentive received by Sh. Rohit Kumar Gupta from his employer company M/s. Macawber Beekay (Pvt.) Ltd. has been invested in this company as Share Capital.

10. The application of Sh. Rohit Kumar Gupta has been rejected, for the reasons cited above. Thus, the source of money which is stated to have been used for investing in the Share Capital of the company is not explained. Moreover in the application, the applicant company claims to have received consultancy charges of Rs. 60 lakhs in cash from BSBK Group. No detailed breakup of Rs. 60 lakhs as consultancy charges from BSBK Group are given. The two main companies of BSBK Group, also before the Settlement Commission, have denied having paid any such consultancy charges in cash to the applicant.

11. After careful consideration of the facts discussed above and for the same reasons as in the case of Sh. Rohit Kumar Gupta at paras 6 to 8 above we hold that the applicant company has not made a full and true disclosure of additional income in the Settlement application. The same is also rejected u/s 245C (1) read with section 245 D (4).”

26. According to the Petitioners, they filed writ petitions in this Court on 7<sup>th</sup> October, 2016 assailing the above order dated 4<sup>th</sup> August, 2016 of the ITSC. The writ petitions are stated to have been returned with defects. However, according to the Petitioners, they instructed their counsel not to pursue the writ petitions since time for framing the assessment under Section 153A of the Act for AYs 2009-10, 2010-11 and 2011-12 had expired on 10<sup>th</sup> October, 2016 and pursuing the writ petitions would have merely been of academic interest.

***Impugned notices under Section 143 (3) read with Section 153 A***

27. Thereafter on 6<sup>th</sup> April, 2017, the Respondent No. 2 issued notices under Section 143 (3) read with Section 153A of the Act for AYs 2009-10, 2010-11 and 2011-12. The Petitioner’s raised objections by the letter dated 24<sup>th</sup> April, 2017 stating that there were no valid assessment proceedings pending before the Respondent No. 2 after 10<sup>th</sup> October, 2016. This was rejected by the Respondent No. 2 by letters dated 4<sup>th</sup> July, 2017. On the same date, notices were issued under Section 142 (1) of the Act for the aforementioned AYs.

28. On 12<sup>th</sup> July 2017, the Petitioners again objected to the assessment

proceedings on the ground that they were time-barred. Thereafter the present petitions were filed on 15<sup>th</sup> July 2017.

29. On 19<sup>th</sup> July 2017, while directing notice to issue in these petitions, this Court stayed further proceedings pursuant to the impugned notices issued by Respondent No.2 under Sections 143 (3) read with Section 153 A of the Act. The interim order was made absolute on the next date i.e. 5<sup>th</sup> September 2017. Thereafter counter affidavits of the Respondents were filed on 14<sup>th</sup> September 2017 to which rejoinders were filed on 15<sup>th</sup> January 2018.

30. Counsel for the Petitioners filed two written notes of argument on 10<sup>th</sup> July 2018 and 4<sup>th</sup> September 2018. Rejoinder written submissions were filed on 24<sup>th</sup> July 2019.

31. Counsel for the Respondents filed two written notes of arguments on 23<sup>rd</sup> and 26<sup>th</sup> July 2019.

***Submissions on behalf of the Petitioners***

32. Mr C.S. Aggarwal, learned senior counsel for the Petitioners submitted as under:

(i) In terms of Section 153B (b) of the Act, the time limit for completion of assessment under Section 153A of the Act was within two years from the end of the financial year in which last of the authorization of the search under Section 132 (1) of the Act was executed. The assessment in the present case had to be completed before 31<sup>st</sup> March, 2015.

(ii) In computing the period of limitation, the period commencing from the date on which they had made applications before the ITSC ending with the date on which order under Section 245D (1) of the Act was received by the PCIT in terms of Section 245D (2) of the Act, had to be excluded. With the remaining period, after exclusion of the aforementioned period, being extended to 60 days in terms of the proviso below Explanation to Section 153B (1) of the Act, the time to frame assessment got extended till 10<sup>th</sup> October, 2016.

(iii) There was no other provision under Section 153B which further extended the time for completion of assessment. In particular resort could not be had to Section 153 of the Act, since the present proceedings were pursuant to a search and Section 153 B was a complete code as far as the limitation for such proceedings was concerned.

(iv) The order passed by the ITSC although stated to be under Section 245D (4) of the Act is in fact an order under Section 245D (1) of the Act since it is an order rejecting the application of the Petitioner on the ground that the Petitioner's application had failed to satisfy the mandatory twin conditions that there had to be a full and true disclosure and the manner in which the undisclosed income had been earned.

(v) Reliance was placed on the decision *CIT v. Om Prakash Mittal (2005) 2 SCC 751* in support of the contention that unless an order under Section 245D (6) of the Act provides the terms of settlement, it cannot be an order

under Section 245D (4) of the Act. This was also what was held in *Ajmera Housing Corporation v. Commissioner of Income Tax (2010) 8 SCC 739*.

(vi) The legislature has specifically provided time limit under Section 153B for framing assessment in cases where search had been initiated. As such Section 153 of the Act cannot be applied since it is of general nature. Inasmuch as Section 153B begins with the *non obstante* clause, it overrides all other provisions providing time limits in the Act. Even in terms of the the proviso to Section 153B(3) as inserted by the Finance Act, 2017 with effect from 1<sup>st</sup> June 2016 it is plain that it requires assessment to be completed in accordance with the provisions of ‘this’ Section i.e. Section 153B as it stood immediately before its substitution by the Finance Act, 2016.’ Thus it is plain that the time limit as provided under Section 153B has to be applied and not the time limit which is provided under Section 153.

(vii) The 1 year time limit under Section 153B was inserted only with effect from 1<sup>st</sup> April 2017. Prior thereto there was no such period of 1 year available to the Revenue. In other words, the legislative intent that is expressed is that where notices under Section 153A have been issued prior to 1<sup>st</sup> June 2016 it is only the unamended Section 153B that would apply. This is also stated in the memorandum explaining the provisions of the Finance Bill, 2017 as provided in **391 ITR 201 (ST)**. It is only by the said amendment that the reference to Section 153B in the second proviso below the Explanation (1) to Section 153 has been omitted. This further strengthens the argument that Section 153 has no application at all to assessments to be made under Section 153A. Further, having provided

extension of the period of 60 days in the main provision of Section 153B, the further proviso in Section 153 cannot be invoked for the purpose of Section 153A of the Act. It is Clause (v) of the Explanation 1 below Section 153 as it stood at the relevant time that alone would apply. Section 153(8) and Section 245HA (4) would have no application whatsoever.

(viii) According to Section 245HA(4) the period commencing from the date of application to the ITSC under Section 245C and ending with the 'specified date' shall be excluded for the purposes of determining the time limit for framing assessments under Section 153, 153B of the Act. The specified date in terms of 245HA (1) (i) is the date on which the application is rejected under Section 245D (1) of the Act. Since in the case of the Petitioner it is Section 153B that applies, there is no occasion for invoking Section 245 HA (4) read with Section 153 of the Act.

### ***Submissions on behalf of the Revenue***

33. Replying to the above contentions it is submitted by Mr. Zoheb Hossain, learned Senior Standing counsel for the Revenue as under:

(i) There is a fundamental flaw in the above submissions inasmuch as Clause (iv) of the Explanation below Section 153B of the Act only refers to an order passed by the ITSC under Section 245D (1) of the Act. However, in the present case the order of the ITSC dated 4<sup>th</sup> August 2016 is not an order under Section 245D(1) of the Act but expressly stated to be an order under Section 245D(4).

(ii) The ITSC is not denuded of the power of passing a final order under Section 245D (4) rejecting a settlement application. This has been conclusively settled by the Supreme Court in *Ajmera Housing Corporation v. CIT* (*supra*), the Gujarat High Court in *PCIT v. Settlement Commission [2016] 386 ITR 660 (Guj)*, this Court in *CIT v. ITSC [2014] 360 ITR 407* and order dated 15<sup>th</sup> May 2017 in WP(C) 5185 of 2016 (*Viswanath Gupta v. Pr. Commissioner of Income Tax*).

(iii) Section 245HA (iiia) too anticipates a final order by the ITSC rejecting a settlement application being passed under Section 245 D (4) of the Act. In such situations the proceedings before the ITSC abates.

(iv) At the relevant time the only provision which directly dealt with the limitation in such case of abatement was the further proviso to Section 153 inserted by the Finance Act, 2007 and applicable from 1<sup>st</sup> June 2007. The legislative intent was clear from the explanatory notes to the above provision since it expressly mentions Section 153B while extending the period of limitation to 1 year where such period is less than 1 year from the date of abatement of settlement proceedings.

(v) The fact that by the Finance Act, 2017 the above proviso was amended to delete the reference to Section 153B while simultaneously amending Section 153B to insert it strengthens the argument of the Revenue that in the present case it is the further proviso to Section 153 of the Act that would have applied.

(vi) If in terms of the above provision the limitation for completing the assessment could be extended by 1 year from 4<sup>th</sup> August 2016, the date of the order of the ITSC under Section 245D (4) of the Act rejecting the application of the Assessee, the impugned notice dated 6<sup>th</sup> April 2017 cannot be said to be time barred.

(vii) Section 245D (6) was, as explained in ***CIT Mumbai v. Anjum Ghaswala (2001) 252 ITR 1 (SC)*** merely procedural in nature. It is Section 245D (4) which is a substantive portion and empowers the ITSC to reject a settlement application thereunder and at even the final stage.

(viii) The mere fact that Section 153B opens with the *non obstante* clause cannot *ipso facto* mean that the present case is governed only by that provision. As explained in ***Vishin N.Khanchandani v. Vidya Lachmandas Khanchandani AIR 2000 SC 2747*** a *non obstante* clause is a device for giving overriding effect to provisions that are inconsistent with other provisions of the Act. Here there was no inconsistency between Explanation 5 below Section 153B and the further proviso below Section 153 since the former contemplated an order under Section 245D (1) of the Act whereas the latter spoke of the abatement of proceedings under Section 245HA that resulted from the rejection of the settlement application by an order under Section 245D (4) of the Act as in the present case. The contention of the Petitioner that the order under Section 245D (4) of the Act should be treated as one under Section 245D (1) is untenable.

***Analysis and reasons***

34. The above submissions have been considered. There is no dispute about the facts in the present case namely that a search was initiated on the BSBK Group of on 24<sup>th</sup> May 2012 and that notices under Section 153A were issued to the Petitioners on 9<sup>th</sup> June 2014 for the aforementioned 3 AYs i.e. 2009-10, 2010-11 and 2011-12. It is also not in dispute that on 25<sup>th</sup> September 2014 notices under Section 143(2) of the Act were issued after the Petitioners filed their respective returns.

35. Before the assessments could be completed both Petitioners filed applications before the ITSC on 26<sup>th</sup> February 2015 under Section 245C (1) of the Act. On technical grounds that the tax on the admitted sum was not paid at the time of filing of the applications the ITSC rejected their applications on 5<sup>th</sup> March 2015 giving them liberty to file fresh applications.

36. Pursuant thereto on 26<sup>th</sup> March 2015 fresh applications were filed.

37. On 7<sup>th</sup> April 2015 the ITSC passed an order under Section 245D (1) and allowed the application to be proceeded with. This is a crucial stage of the proceedings before the ITSC. In order to appreciate the nature of the order passed at this stage it is necessary to refer to the provisions that governed the filing and processing of applications before the ITSC.

38. Section 245C (1) of the Act states that an Assessee, at any stage making an application has to fulfil the essential condition of the section, 'containing a full and true disclosure of his income which has not been disclosed before

the AO'. In addition to making the full and true disclosure the Assessee has to also indicate 'the manner in which such income has been derived.' These are, therefore, the two requirements which have to be mandatorily complied with if such application is to be entertained by the ITSC.

39. Section 245C (1) of the Act also states that along with the application, the Applicant has to remit the additional amount of income tax payable on such income. As rightly pointed out by the Revenue, Section 245C (1) does not contemplate any order being passed by the ITSC. However, a reading of the Section 245D (1) indicates that it is under that provision that the ITSC is required to pass an order in writing either rejecting the application or allowing the application to be proceeded with. The proviso to Section 245 D (1) further states that where no order has been passed within a period of 14 days from the date of application by the ITSC, such application 'shall be deemed to have been allowed to be proceeded with.'

40. Therefore, the scheme appears to be that once an application is filed complying with the requirements spelt out in Section 245C (1) of the Act, then the ITSC considers it and passes an order within 14 days failing which the application shall be deemed to have been allowed to be proceeded with. If the ITSC decides not to allow the application to be proceeded with then it rejects the application for the reasons to be stated in the order. In the present case by an order dated 7<sup>th</sup> April 2015 the ITSC passed the aforementioned order and allowed the applications to be proceeded with.

41. At the next stage of the applications filed by the Petitioners, the ITSC

passed further orders under 245D (2C) of the Act, after receiving the report of the PCIT further allowing the applications to be proceeded with and observing that the applications filed were *prima facie* not invalid. At that stage the ITSC called for a report under Rule 9 of the Income Tax Settlement Commission (Procedure) Rules, 1997.

42. At the third stage on 16<sup>th</sup> March 2016 an order was passed by the ITSC under Section 245D (3) of the Act by the ITSC calling for records and asking the Respondents to undertake a verification/investigation on the issue of incentives received by the Petitioners from the BSBK Group of cases. It is after this report was submitted by the Respondents on 23<sup>rd</sup> May 2016 that the final order came to be passed on 4<sup>th</sup> August 2016. A perusal of the order indicates that it is very expressly stated to be under Section 245D (4) of the Act. The final para of the order clearly states “we are, therefore, of the view that the application filed by the Applicant Sh. Rohit Kumar Gupta does not fulfil the conditions prescribed under Section 245C (1) read with 245D (4) of the Income Tax Act, 1961 and is hereby rejected.’ In the case of PRG Consultants Pvt. Ltd. again the order in para 11 clearly states that the said application “is also rejected under 245C (1) read with 245D (4) of the Act.”

43. It is the contention of both the Petitioners that although this final order dated 4<sup>th</sup> August 2016 states the orders to be under Section 245D (4) of the Act they are in fact to be treated as orders under Section 245D (1) of the Act. This is because according to the Petitioners the only order that can be passed under Section 245D (4) of the Act is an order ‘on the matters covered by the application and any other matter relating to a case not covered by the

application, but to refer to with the report of the Commissioner'. Further, according to them, under Section 245D (6) every order under sub-Section 4 'shall provide for the terms of settlement including any demand by way of tax penalty or interest, the manner in which any sum due under the settlement shall be paid and all other matters to make a settlement effective and also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of the facts.' The contention, therefore, is that the collective reading of Section 245D(4) and (6) makes it apparent that the order passed under Section 245D(4) of the ITSC cannot be an order that rejects the settlement application for failure to make a full and true disclosure or to disclose the manner in which the undisclosed income was earned. This is, therefore, one of the crucial questions that required to be decided in the present petitions.

44.1 In *CIT Mumbai v. Anjum Ghaswala* (*supra*) the Supreme Court had the occasion to interpret some of the relevant provisions concerning the scope of the powers of the ITSC. One of the questions that the Supreme Court was engaged with was whether the ITSC was empowered to pass orders under Section 245 D (4) of the Act waiving or reducing the interest payable by the Assessee? The ITSC in that case answered the question in the affirmative on the basis that Section 245D (6) was a substantive provision.

44.2 The Supreme Court disagreed with this view of the ITSC and held that Section 245D (6) was only procedural in nature and that it was not a provision which empowered the ITSC either to waive or reduce the interest.

The Supreme Court observed:

“The substantive provision in regard to settlement in Chapter XIX-A, in our opinion, is sub-section (4) of Section 245D. It is under this provision of the Act that the Commission will have to pass orders as it thinks fit on the matters covered by the application. In our opinion, sub-section (6) of Section 245D is only procedural in nature. It provides for fixing the terms by which the amount settled in sub-section (4) will have to be paid. It is not a Section which empowers the Commission either to waive or reduce the interest. At the cost of repetition, we must point out that apart from the fact that there is no specific empowerment of waiver or reduction of tax in Chapter XIX-A, it is also clear from the use of the expression in accordance with the provisions of this Act found in sub-section (4) of Section 245D, the settlement will have to be in conformity with the Act and not contrary to or in conflict with it.”

44.3 The Supreme Court further clarified:

“It is no doubt true that the terminology settlement has a very wide dictionary meaning and in the absence of a statutory definition generally the word settlement in sub-section (4) of Section 245D would give the Commission sufficient power to arrive at a settlement which it deems fit, but when the statute qualifies such expression like settlement with mandatory words like in accordance with the provisions of this Act the width of the term settlement becomes subject to the mandate found in that Section, which would mean that while a Commission has sufficient elbow-room in assessing the income of the applicant under Section 245D(4) it cannot make any order with a term of the settlement which would be in conflict with the mandatory provisions of the Section like in the quantum and payment of tax and/or interest.”

45. The above decision interprets Section 245D (4) as a substantive provision from where the powers of the ITSC to pass ‘such order as if it

thinks fit' arises. The next question that arises is whether the expression 'such orders if it thinks fit' would include the power to pass an order rejecting an application. If the interpretation placed by the Petitioners on this provision is accepted it would mean that after having allowed the applications to be proceeded with in terms of its order passed under Section 245D (1) of the Act, the ITSC cannot at this stage, after the report of the Commissioner has been submitted to it pursuant to an order under Section 245D (2C) of the Act, dismiss the application at all and that it would necessarily have to pass an order providing for the terms of settlement. However, this does not appear to be a correct understanding of the ambit of the expression 'such orders it deems fit.'

46.1 In support of the above contention reliance was placed by Mr. Aggarwal on the decision in *CIT v. Om Prakash Mittal* (*supra*). The facts in *Om Prakash Mittal* (*supra*) were that after the ITSC had passed an order under Section 245D (4) of the Act accepting the application of the Assessee. In that case for settlement, the department came across information obtained as a result of inquiries by the CBI that the lenders from whom the Assessee claimed to have received Rs.1.50 crores in cash had no means of financial capacity to advance such huge loans. The Revenue accordingly made an application under Section 245D (6) of the Act for declaring the settlement order to be void and for withdrawing the benefits granted. That application was rejected by the ITSC *inter alia* on the grounds that it would amount to reappraisal of evidence and sitting in judgment over the findings of the earlier bench. The ITSC held that it could not review its own decision.

46.2. The Revenue then filed an appeal contending that the ITSC had not kept the scope and ambit of its power exercisable under Section 245D (6) in proper perspective. It is in the above context that the Supreme Court directed the ITSC to rehear the matter after coming to the conclusion that merely because Section 245 I states that the order of the ITSC is conclusive, 'it does not take away the power of the Commissioner to decide whether the settlement order had been obtained by fraud or misrepresentation of facts.' It was also in that context that it was observed that the ITSC's power of settlement had to be exercised in accordance with the provisions of the Act.

47. The Court is unable to understand how the above decision helps the Petitioners in support of their contention that the ITSC cannot at the stage of passing of final order under Section 245D(4) of the Act, reject an application for failure of the Applicant to make a full and true disclosure and the manner in which the undisclosed income was derived.

48.1 On the contrary in *Ajmera Housing Corporation v. Commissioner of Income Tax* (*supra*) this question squarely arose for determination. In that case, consequent upon the search and seizure conducted in the premises of the group of firms, which comprised the Appellant, orders were passed determining the total concealed income of the group for AYs 1989-90 to 1991-92 and 1993-94. Thereafter, the Assessee filed an application before the ITSC.

48.2 Before the ITSC could decide whether or not to proceed with the application, the Assessee filed a revised settlement application disclosing

confidential annexure and related papers. The ITSC then decided by an order under Section 245D (1) to proceed with the application and called for a report. Ultimately, the ITSC passed an order determining the total income of Assessee @ Rs.42.58 crores and imposed a token penalty. The High Court annulled the ITSC's order in a writ petition filed by the department.

48.3 The Supreme Court set aside the order of the High Court on the ground that the High Court did not take into account a second report filed by the CIT. On remand the High Court again set aside the ITSC's order and remitted the matter to the ITSC for a fresh adjudication. The Assessee then filed an appeal before the Supreme Court contending *inter alia* that the order made by the ITSC under Section 245D (4) was conclusive as to matters stated therein and no matter covered by such order could be reopened in any proceedings.

48.4 The Supreme Court dismissed the appeal of the Assessee and held as under:

“34. In our opinion, even when the Settlement Commission decides to proceed with the application, it will not be denuded of its power to examine as to whether in his application under Section 245-C(1) of the Act, the assessee has made a full and true disclosure of his undisclosed income. We feel that the report(s) of the Commissioner and other documents coming on record at different stages of the consideration of the case, before or after the Settlement Commission has decided to proceed with the application would be most germane to the determination of the said question.

35. It is plain from the language of sub-section (4) of Section 245-D of the Act that the jurisdiction of the Settlement

Commission to pass such orders as it may think fit is confined to the matters covered by the application and it can extend only to such matters which are referred to in the report of the Commissioner under sub-section (1) or sub-section (3) of the said section. A "full and true" disclosure of income, which had not been previously disclosed by the assessee, being a precondition for a valid application under Section 245-C(1) of the Act, the scheme of Chapter XIX-A does not contemplate revision of the income so disclosed in the application against Item 11 of the form. Moreover, if an assessee is permitted to revise his disclosure, in essence, he would be making a fresh application in relation to the same case by withdrawing the earlier application. In this regard, Section 245-C(3) of the Act which prohibits the withdrawal of an application once made under sub-section (1) of the said section is instructive inasmuch as it manifests that an assessee cannot be permitted to resile from his stand at any stage during the proceedings. Therefore, by revising the application, the applicant would be achieving something indirectly which he cannot otherwise achieve directly and in the process rendering the provision of sub-section (3) of Section 245-C of the Act otiose and meaningless. In our opinion, the scheme of said Chapter is clear and admits no ambiguity."

49. This Court too has held likewise in ***Commissioner of Income Tax v. Income Tax Settlement Commissioner*** (*supra*) where *inter alia* it was observed as under:

"In fact, the Settlement Commission may, at any stage till it passes a final order under Section 245 D (4), examine the issues and if there is sufficient material on record, determine the question of full and true disclosure and the manner in which the undisclosed income was derived conclusively and, depending on such a decision, the applications may be thrown out or they may be proceeded with further."

50. In ***Viswanath Gupta v. Pr. Commissioner of Income Tax*** (*supra*) it was

held likewise. Consequently, this Court is unable to agree with the contention of Mr. Aggarwal that in the present case the order passed on 4<sup>th</sup> August 2016 by the ITSC rejecting the Petitioners' applications on the ground of failure to make a full and true disclosure should be construed as orders passed not under Section 245D (4) of the Act but under Section 245D (1) of the Act.

51. That brings us to the next question of whether the notices issued on 6<sup>th</sup> April 2017 to both Petitioners under Section 143(3) of the Act are barred by limitation. Here the case of the two Petitioners is that excluding the time during which the settlement applications of the two Petitioners were pending before the ITSC, the assessment should have been completed in terms of the proviso to Section 153B of the Act by 10<sup>th</sup> October 2016. The Revenue, on the other hand, refers to Section 153 of the Act and the proviso and Explanations thereto as providing the complete answer to the question.

52. The title to Section 153 reads: 'Time limit for completion of assessments and re-assessments'. Clause (v) of Explanation 1 below Section 153 deals with the title of which reads as under:

“Explanation 1- In computing the period of limitation for the purposes of this section-

(i) to (iva) ....

(v) in a case where an application made before the Settlement Commission under section 245C is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which such application is made and ending with the date on which the order under sub-section (1) of

section 245D is received by the Principal Commissioner or Commissioner under sub-section (2) of that section.”

53. A plain reading of the above provision indicates that it applies only when there is a rejection by the ITSC of the application by not allowing it to be proceeded with by passing an order under Section 245D (1) of the Act. It cannot possibly apply in the case where the orders have been passed not under Section 245D (1) but under Section 245D (4) of the Act. It will be recalled that the order dated 4<sup>th</sup> August 2016 of the ITSC in the present case is passed under Section 245D (4) of the Act.

54. As a result of the said order dated 4<sup>th</sup> August 2016 of the ITSC the proceeding before it stood abated. Section 245 HA of the Act deals with situations where proceedings before the ITSC abate. Section 245HA reads as under:

“**245HA.** (1) Where—

(i) an application made under section 245C on or after the 1st day of June, 2007 has been rejected under sub-section (1) of section 245D; or

(ii) an application made under section 245C has not been allowed to be proceeded with under sub-section (2A) or further proceeded with under sub-section (2D) of section 245D; or

(iii) an application made under section 245C has been declared as invalid under sub-section (2C) of section 245D; or

(iiia) in respect of any application made under section 245 C, an order under sub-section (4) of section 245 D has been passed not providing for the terms of settlement; or

(iv) in respect of any other application made under section 245C, an order under sub-section (4) of section 245D has not been passed within the time or period specified under sub-section (4A) of section 245D,

the proceedings before the Settlement Commission shall abate on the specified date.

Explanation.—For the purposes of this sub-section, "specified date" means—

(a) in respect of an application referred to in clause (i), the day on which the application was rejected;

(b) in respect of an application referred to in clause (ii), the 31st day of July, 2007;

(c) in respect of an application referred to in clause (iii), the last day of the month in which the application was declared invalid;

(d) in respect of an application referred to in clause (iv), on the date on which the time or period specified in sub-section (4A) of section 245D expires.

(2) Where a proceeding before the Settlement Commission abates, the Assessing Officer, or, as the case may be, any other income-tax authority before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance with the provisions of this Act as if no application under section 245C had been made.

(3) For the purposes of sub-section (2), the Assessing Officer, or, as the case may be, other income-tax authority, shall be entitled to use all the material and other information produced by the assessee before the Settlement Commission or the results of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings

before it, as if such material, information, inquiry and evidence had been produced before the Assessing Officer or other income-tax authority or held or recorded by him in the course of the proceedings before him.

(4) For the purposes of the time-limit under sections 149, 153, 153B, 154, 155, 158BE and 231 and for the purposes of payment of interest under section 243 or 244 or, as the case may be, section 244A, for making the assessment or reassessment under sub-section (2), the period commencing on and from the date of the application to the Settlement Commission under section 245C and ending with "specified date" referred to in sub-section (1) shall be excluded; and where the assessee is a firm, for the purposes of the time-limit for cancellation of registration of the firm under sub-section (1) of section 186, the period aforesaid shall, likewise, be excluded."

55. It requires to be noted that clause (iii a) to Section 245 HA (1) was inserted with effect from 1<sup>st</sup> June, 2015. It envisages abatement on the 'specified date' as a result of an order under Section 245D (4) being passed, in respect of an application under Section 245C, "not providing for the terms of settlement." This makes therefore two things clear. One is that it legislatively recognises that under Section 245D (4) an order could be passed by the ITSC "not providing for the terms of settlement". This is consistent with the judicial verdict in *Ajmera Housing Corporation v. Commissioner of Income Tax* (*supra*) of the scope and ambit of the expression "such other order" appearing in Section 245D (4) as including an order of rejecting an application for settlement. The second is that such an order would result in abatement of the proceedings before the ITSC. What this abatement does to the limitation period under Section 153B has been

spelt out, not by the provisions as it stands after 1<sup>st</sup> January, 2016 but the provision as it stood prior thereto which takes it back to Section 153 itself and in particular the second proviso below the Explanation 1.

56. The second proviso to Section 153 of the Act was inserted by the Finance Act 2008 with retrospective effect from 1<sup>st</sup> June 2007 and it reads as under:

**“Provided also** that where a proceeding before the Settlement Commission abates under section 245HA, the period of limitation available under this section to the Assessing officer for making an order of assessment or reassessment, as the case may be, shall, after the exclusion of the period under sub-section (4) of section 245HA, be not less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year; and for the purposes of determining the period of limitation under sections 149, 153B, 154, 155, 158BE and 231 and for the purposes of payment of interest under section 243 or section 244 or, as the case may be, section 244A, this proviso shall also apply accordingly.”

57. The submission of learned counsel for the Revenue drawing attention to the fact that this further proviso was inserted by the Finance Act, 2008 was part of legislative scheme as is evident from the explanatory notes thereto is again well founded. That explanatory note in para 37.1 states as under:

“37.1 The Finance Act, 2007 carried out a comprehensive amendment to the scheme of settlement of cases. This scheme provides for abatement of proceedings before the Settlement Commission under various circumstances. In order to deal with the various issues that may arise in the event of abatement of proceedings before the Settlement Commission, an amendment has been carried out to empower the Commissioner of Income

tax to grant immunity from penalty and prosecution in cases which abate.”

58. The position that emerges in the context of the case in hand is as under:

(i) The search in the present case took place on 24<sup>th</sup> May 2012 and notices to the two Petitioners under Section 153 A of the Act for AYs 2009-10, 2010-11 and 2011-12 were issued on 2<sup>nd</sup> June 2014.

(iii) The proceedings in the ITSC at the instance of the two Petitioners were pending from 26<sup>th</sup> February 2015 till 4<sup>th</sup> August 2016.

(iii) While in the normal course the assessments under Section 153 A of the Act would have had to be completed by 31<sup>st</sup> March 2015, in view of the Petitioners having approached the ITSC the period during which they were there awaiting the decision of the ITSC has to be excluded.

(iv) After excluding the above period, the period remaining to complete the assessments was obviously less than one year. In terms of the second proviso to Section 153 of the Act the period of extension for completing the assessment was ‘deemed’ to be extended to one year. In the present case there was time till 16<sup>th</sup> August 2017 for the AO to complete the assessments. Consequently, the notices issued to the Petitioners on 6<sup>th</sup> April 2017 under Section 143 (3) read with Section 153 A of the Act, were not invalid as the limitation period for completing the assessments had not expired by then.

59. The case of the Petitioners is, however, built entirely around Section 153 B of the Act as it stood prior to its amendment with effect from 1<sup>st</sup> April 2017 by the Finance Act 2017. It reads thus:

“153 B Time limit for completion of assessment under Section 153 A

(1) Notwithstanding anything contained in section 153, the Assessing Officer shall make an order of assessment or reassessment,—

(a) in respect of each assessment year falling within six assessment years and for the relevant assessment year or years referred to in clause (b) of sub-section (1) of section 153A, within a period of twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed;

(b) in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A, within a period of twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed’.

Explanation.-In computing the period of limitation for the purposes of this section,-

(i) the period during which the assessment proceeding is stayed by an order or injunction of any court; or

.....

(iv) in a case where an application made before the Settlement Commission under section 245C is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which such application is

made and ending with the date on which the order under sub-section (1) of section 245D is received by the Principal Commissioner or Commissioner under sub-section (2) of that section; or

.....

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in clause (a) or clause (b) of this sub-section available to the Assessing Officer for making an order of assessment or reassessment, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.”

60. The submission that Clause (iv) of the Explanation to Section 153 B of the Act applies is premised on the order passed by the ITSC on 4<sup>th</sup> August 2016 being an order under Section 245 D (1) of the Act. For the reasons already noted hereinbefore, that submission is inconsistent with the plain reading of the provisions discussed, and in particular Section 245 D (4) as explained in *Ajmera Housing Corporation v. Commissioner of Income Tax* (*supra*).

61. It must be noted here that by the Finance Act 2017, with effect from 1<sup>st</sup> April 2017, the following further proviso was added to Section 153 B:

“Provided also that where a proceeding before the Settlement Commission abates under section 245HA, the period of limitation available under this section to the Assessing Officer for making an order of assessment or reassessment, as the case may be, shall, after the exclusion of the period under sub-section (4) of section 245HA, be not less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year.”

62. Correspondingly with effect from the same date, Clause (v) to Explanation 1 to Section 153 of the Act got amended to delete the reference therein to Section 153 B of the Act. Till this change was made, the provision that was required to be referred to for determining the limitation for completing the assessment under Section 153 A, where there had been an abatement of the proceedings before the ITSC, was Clause (v) to Explanation 1 to Section 153 of the Act and not Section 153 B of the Act which made no reference to abatement of the proceedings before the ITSC by virtue of an order passed under Section 245 D (4) of the Act. The change brought about by the Finance Act 2017 does not apply to the case on hand where the proceedings under Section 153 A of the Act commenced long prior to the said amendment.

63. The submission that for determining the limitation for completion of an assessment under Section 153 A, the only provision that can be examined is Section 153 B of the Act and that no other provision of the Act can be referred to is based on a restricted understanding of the scope of a non-obstante clause. A *non obstante* clause is meant to give an overriding effect to certain provisions or others in the same statute or some other statute which are inconsistent. In ***Vishin N.Khanchandani. v. Vidya Lachmandas Khanchandani*** (*supra*), the Supreme Court observed as under:

“There is no doubt that by non-obstinate clause the Legislature devices means which are usually applied to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other statute. In other words such a clause is used to avoid the

operation and effect of all contrary provisions. The phrase is equivalent to showing that the Act shall be no impediment to measure intended. To attract the applicability of the phrase, the whole of the section, the scheme of the Act and the objects and reasons for which such an enactment is made has to be kept in mind.”

64. Indeed there is no inconsistency between Clause (v) of Explanation 1 below Section 153 read with the second proviso thereto as they stood prior to 1<sup>st</sup> April 2017 and Section 153 B read with Clause (iv) below the Explanation thereto read with the first proviso which only dealt with the abatement of proceedings before the ITSC as a result of an order under Section 245 D (1) of the Act and not, as in the present case, an order under Section 245 D (4) of the Act.

65. Inasmuch as in the instant case the order passed by the ITSC on 4<sup>th</sup> August, 2016 is an order under Section 245D (4) of the Act it enlarges the period of extension of limitation by one year in terms of further proviso to Section 153 below Explanation 1 that would apply. In terms thereof the notices issued to the Petitioners on 6<sup>th</sup> April, 2017 cannot be said to be time barred. Consequently, the objection raised by the Petitioners to the said notice was rightly rejected by the Respondent No.2 by the second impugned order dated 4<sup>th</sup> July, 2017.

66. The ground on which the impugned orders dated 4<sup>th</sup> August 2016 of the ITSC are assailed are that they did not account for the numerous interlocutory orders earlier passed by the ITSC in the same matter that *prima facie* found in favour of the Petitioners.

67. As already discussed earlier, the impugned final order dated 4<sup>th</sup> August 2016 of the ITSC under Section 245 D (4) of the Act was passed after a detailed report was received from the PCIT. This was a comprehensive report which provided more than adequate justification for the decision of the ITSC to conclude that there had not been a full and true disclosure by the Petitioners of all relevant facts. The impugned order dated 4<sup>th</sup> August 2016 of the ITSC calls for no interference.

68. The period during which the present petitions were pending in this Court shall stand excluded for calculating the period within which the impugned assessments have to be completed.

69. The writ petitions are accordingly dismissed but in the circumstances no order as to costs. The interim orders are hereby vacated.

**S. MURALIDHAR, J.**

**TALWANT SINGH, J.**

**AUGUST 19, 2019**

*mw/rd/tr*