2024:DHC:2216-DB

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

% **Judgment reserved on: 01 March 2024**
Judgment pronounced on: 19 March 2024

\+ W.P. (C) 16524/2023 & CM APPL. 66626/2023

ORCHID INFRASTRUCTURE DEVELOPERS PVT LTD .... Petitioner

Through: Mr. Sameer Rohatgi, Mr. Akshit Pradhan & Mr. Kartikey Singh, Advocates.

versus

PR. COMMISSIONER OF INCOME TAX , CENTRAL CIRCLE-3, NEW DELHI ..... Respondent

Through: Mr. Abhishek Maratha, SSC with Ms. Nupur Sharma & Mr. Parth Semwal, Advocates.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J.

1. The present writ petition has been filed by the assessee under Article 226 and 227 of the Constitution of India against the impugned order dated 30.11.2023 passed by the respondent under Section

148A(d) of the Income Tax Act, 1961 [**"Act"**] for the Assessment Year [**"AY"**] 2007-08. The petitioner also prays for quashing of the corrigendum and notice dated 30.11.2023 issued by the respondent under Section 148 of the Act. In the factual backdrop of this case, this petition involves determination of the scope of interference in the order of Income Tax Settlement Commission ["**ITSC**"] in light of the interplay between Section 245-I and Section 150 of the Act.

2. The facts necessary for adjudication of the present case would reveal that on 31.10.2007, the petitioner filed its Income Tax Return [**"ITR"**], declaring the income to the tune of Rs.12,41,50,220/- for the concerned AY. It was followed by an assessment order passed under Section 143(3) of the Act on 30.12.2008, whereby, the said disclosure was duly accepted. However, pursuant to a search conducted on the premises of Shri Hari Ram Group, a notice under Section 153A of the Act was issued to the petitioner with a direction to file its ITR within a period of three weeks therein.

3. In furtherance of the said notice, the petitioner filed another ITR declaring the same income as was disclosed in the original ITR dated 31.10.2007. Thereafter, another assessment order was passed on 30.12.2010, wherein, the Assessing Officer [**"AO"**] had made the following additions:-

i. Rs.2,69,48,770/- was disallowed on account of interest expenses.

ii. Rs.3,42,79,320/- was added for being difference amount in valuation of closing Work in Progress [**"WIP"**] of a project of the petitioner.

4. Being aggrieved by the said additions, the petitioner filed an appeal before the Commissioner of Income Tax (Appeals) [**"CIT (A)"**], which, in turn, deleted the addition of Rs.2,69,48,770/- *vide* order dated 27.08.2013 towards disallowance of interest expenses. However, the addition of Rs.3,42,79,320/- was affirmed by the CIT (A). The petitioner, thereafter, filed a settlement application under Chapter XIX-A of the Act for AYs 2007-08 to 2014-15.

5. In the meantime, the petitioner as well as the respondent filed cross appeals against the order dated 27.08.2013 before the Income Tax Appellate Tribunal [**"ITAT"**], whereby, the respondent's appeal came to be dismissed *vide* order dated 09.09.2016.

6. Subsequently, on 16.09.2016, the ITSC passed the final order under Section 245D(4) of the Act on the settlement application dated 30.04.2015 preferred by the petitioner upon an offer made by the petitioner to pay an additional sum of Rs.5,00,000/- for the concerned AY. In compliance of the said settlement, an order dated 14.11.2016 was passed by the Income Tax Department giving effect to the settlement order dated 16.09.2016.

7. On 27.02.2017, the appeal preferred by the respondent against the aforesaid order of the ITAT dated 09.09.2016 was also dismissed by this Court. However, the order of the ITSC was assailed by the

respondent before this Court in W.P. (C) No.7836/2017 on the grounds of *firstly,* grant of immunity under Section 245H and *secondly,* grant of waiver of interest under Section 234A of the Act, but the same was dismissed by this Court on 05.09.2017.

8. The order of this Court dated 27.02.2017 was challenged before the Hon'ble Supreme Court by way of a Special Leave Petition being SLP (C) No.29496 of 2017, whereby, the matter was tagged with a batch of similar pending matters. The said batch of matters was subsequently decided *vide* judgment in the case of **CIT v. Abhisar Buildwell P. Ltd.** [2023 SCC OnLine SC 481].

9. Thereafter, in the light of the judgment passed in *Abhisar Buildwell P. Ltd. (supra)* and consequent instructions issued by the Central Board of Direct Taxes [**"CBDT"**], the respondent initiated proceedings against the petitioner *vide* issuance of notice dated 29.09.2023 under Section 148A(b) of the Act. While rejecting the reply dated 23.10.2023 submitted by the petitioner to the said notice, the respondent passed the impugned order dated 30.11.2023 under Section 148A(d) of the Act. Contemporaneously, upon approval being accorded to the respondent by the prescribed authority, it also issued the impugned notice under Section 148 of the Act and the corrigendum thereto, both dated 30.11.2023. The respondent has also relied upon Section 150(1) of the Act to issue the impugned notice.

10. It is in the aforesaid backdrop that the petitioner has preferred the instant writ petition assailing the impugned order and other consequential proceedings.

11. Learned counsel appearing on behalf of the petitioner confined his submissions to the extent that both the issues on which the respondent seeks to reopen the assessment proceedings are already settled by the order of the ITSC dated 16.09.2016. According to him, once the ITSC is seized of the assessment of a particular AY, it can only be reopened as per the procedure mentioned in Section 245 of the Act and not in the form of separate proceedings under Section 148 of the Act.

12. While drawing the attention of this Court towards the final order of the ITSC dated 16.09.2016, learned counsel submitted that both the issues were duly considered by the ITSC for the concerned AY and it was only after a thoughtful consideration to the said aspects that the ITSC had reached its findings. He has also indicated a chart showing sales consideration for bookings made between 01.04.2006 to 04.05.2011 and 05.05.2011 to 03.03.2014, annexed in the ITSC order, to submit that the project for which the issues in question are considered i.e., Orchid Petals, was duly taken into account, and it cannot be said that any relevant aspect was left undisclosed before the ITSC which could have prejudiced the interest of the respondent. He contended that in the parallel proceedings, since the order of the ITSC *qua* the concerned AY and issues was never challenged on merits, it has

attained finality. He, therefore, submitted that the respondent does not have any authority to reopen the assessment proceedings for the relevant AY in question.

13. He further submitted that the CIT (A) order was passed in the year 2013 itself and therefore, at the time of the proceedings before the ITSC, the respondent was aware of both the issues well in advance and despite the said knowledge, the settlement was reached between the parties. He contended that there is no allegation of fraud or misrepresentation on the part of the petitioner before the ITSC, which would warrant interference with the order of the ITSC by this Court. He, therefore, submitted that the entire reliance of the respondent for reopening the proceedings on CBDT instructions in light of the judgment rendered by the Hon'ble Supreme Court in *Abhisar Buildwell P. Ltd. (supra)* is misplaced and bad in the eyes of law.

14. *Per contra*, learned counsel appearing on behalf of the respondent vehemently opposed the submissions advanced by the learned counsel for the petitioner to submit that the reassessment proceedings are carried out in accordance with the provisions of the Act itself and the same cannot be termed as being illegal or void.

15. Learned counsel submitted that the issues involved in the case at hand was never put forth before the ITSC and therefore, the ITSC did not have an occasion to consider the income which is stated to have escaped assessment. He also submitted that in the absence of requisite consideration by the ITSC to the issues in question, the order of the

ITSC *qua* the said issues could neither be said to have attained finality nor held to be conclusive in respect of matters for which the assessment is sought to be reopened. He, therefore, contended that there is no cogent reason to proscribe the respondent from proceeding with the reopening of the assessment of the petitioner with regard to the issues in question for the concerned AY.

16. We have heard the learned counsels appearing on behalf of the parties and perused the record.

17. The limited aspect which requires our consideration in the present *lis* is whether the order of the ITSC dated 16.09.2016 is final in all respects for the concerned AY and consequently, whether the issues raised by the respondent stood subsumed in the said decision.

18. Before delving into a detailed analysis of the nature and ambit of Section 245D and 245-I of the Act, it is significant to examine whether the two aspects which form the basis of reopening assessment proceedings were brought to the knowledge of the ITSC at the time of the proceedings before the ITSC. The details of the case mentioned in the ITSC order dated 16.09.2016, which is annexed as *Annexure P-8,* at the very threshold, would show that the settlement application was preferred for the AY in question i.e., 2007-08 and the entry regarding the returned income of the petitioner, for the said AY, is seen to reflect the ITR originally filed by the petitioner i.e., Rs.12,41,50,220/-. The conclusions of the ITSC in this regard find mention in paragraph no.5.4.3 of its final order, which reads as under:-

> "5.4.3 Commission's Finding :

> We have heard both CIT(DR) and AR. As regards loan receipt from bogus parties are concerned, the applicants have satisfactorily explained that the cash has been paid against the receipts in cheques and similarly whenever the same is repaid, cash is received back. The impact is duly explained in the cash flow statement on the dates of respective cheque transaction. The total out flow of cash on account of loan receipt was Rs. 119.00 Cr. and the total receipt of cash on account of money repayment with interest is Rs. 119 Cr.+ 16.89 Cr. =135.89 Cr. i.e. the loan of Rs. 119.00 Cr. and interest element of Rs. 16.89 Cr. The applicants have explained this in SOFs. **The entire Rs. 16.89 Cr of interest has not been charged to profit and loss account because, a part of it is still in work in progress. The amount charged to profit and loss account has been offered for taxation i.e. Rs. 14.27 Cr. and the balance of Rs. 2.61 Cr. has been reduced from WIP as is evident from the balance sheet. We find that applicants have duly considered the loans and the interest in the cash flow statement and the department has not found any fault with the cash flow statement. No further action is required to be taken on this issue."**

19. Also, the order dated 05.09.2017 passed in the challenge laid to the aforesaid order of the ITSC *vide* W.P. (C) No.7836/2017 reads as under:-

> "2. The challenge in this petition by Revenue is to an order dated 16th September, 2016 passed by the Income Tax Settlement Commission ('ITSC') to the extent of (i) granting immunity from penalty and prosecution under Section 245H of the Income Tax Act, 1961 ('the Act') and (ii) granting waiver of interest under Section 234A of the Act to the Respondent No.1.
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> 3. As regards the first issue, it is submitted that in terms of the provisions of Section 245H of the Act, no immunity from penalty and prosecution can be granted by the ITSC since the complaint under Section 200 Cr.P.C. for offences punishable under Section 276 CC of the Act, was instituted before the receipt of the application under Section 245C.

2024:DHC:2216-DB

> 4. It is clarified by Mr. Sameer Rohatgi, learned counsel for the Respondent No.1 that in fact, the Respondent No.1 never sought any immunity from prosecution. He pointed out that the said complaint by the Income Tax Department against the Respondent No.1 is still pending.
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> 5. In view of that matter, the question of granting Respondent No.1 immunity from penalty and prosecution under Section 245H of the Act, does not arise.
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> 6. As regards the second issue, learned counsel for the Respondent No.1 submits that all the documents were not supplied by the Department in the first instance. Two reminders had to be sent. In the circumstances, the Court finds that no error has been committed by the ITSC in granting waiver of interest to Respondent No.1.
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> 7. The petition is accordingly dismissed."

20. It is thus palpably observed that the issues pertaining to the valuation of WIP as well as disallowance of interest were considered at the stage of proceedings before the ITSC, particularly in issue nos.1 and 3 therein, respectively, which is recorded in the findings of the ITSC in its final order dated 16.09.2016. Therefore, the contention raised by the respondent that the alleged escapement of income was not brought to the notice of the ITSC, does not hold any water. Additionally, it is seen that both the issues did not form the subject matter of the challenge against the final order of the ITSC as the same were concerned with (i) granting immunity from penalty and prosecution under Section 245H of the Act and (ii) granting waiver of interest under Section 234A of the Act.

21. Notably, the finality of the order of the ITSC emanates from Section 245-I of the Act which envisages that every order of settlement

passed under sub-Section 4 of Section 245D shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in Chapter XIX-A of the Act, be reopened in any proceeding under this Act or under any other law for the time being in force.

22. For the sake of clarity, Section 254D(4) of the Act is reproduced as under:-

> "(4) After examination of the records and the report of the [Principal Commissioner or Commissioner], if any, received under—
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> (*i*) sub-section (2-B) or sub-section (3), or
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> (*ii*) the provisions of sub-section (1) as they stood immediately before their amendment by the Finance Act, 2007,
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> and after giving an opportunity to the applicant and to the [Principal Commissioner or Commissioner] to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the [Principal Commissioner or Commissioner]."

23. The Hon'ble Supreme Court in the case of **Brij Lal v. CIT** [(2011) 1 SCC 1], while striking a distinction between the assessment in law and the assessment by way of settlement, has discussed the scope of the order passed under Section 254D(4) of the Act. The Court drew an equivalence between the computation of total income as per the self-contained code contemplated under Chapter XIX-A of the Act for the

purpose of settlement and assessment, as they both tend to operate exclusively but for fulfilment of the same objective. The relevant paragraphs of the said decision read as under:-

> "23. Descriptively, it can be stated that assessment in law is different from assessment by way of settlement. If one reads Section 245-D(6) with Section 245-I, it becomes clear that every order of settlement passed under Section 245-D(4) shall be final and conclusive as to the matters contained therein and that the same shall not be reopened except in the case of fraud and misrepresentation. Under Section 245-F(1), in addition to the powers conferred on the Settlement Commission under Chapter XIX-A, it shall also have all the powers which are vested in the Income Tax Authority under the Act. In this connection, however, we need to keep in mind the difference between "procedure for assessment" under Chapter XIV and "procedure for settlement" under Chapter XIX-A (see Section 245-D). Under Section 245-F(4), it is clarified that nothing in Chapter XIX-A shall affect the operation of any other provision of the Act requiring the applicant to pay tax on the basis of self-assessment in relation to matters before the Settlement Commission.
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> 25. Our detailed analysis shows that though Chapter XIX-A is a self-contained code, the procedure to be followed by the Settlement Commission under Sections 245-C and 245-D in the matter of computation of undisclosed income; in the matter of computation of additional income tax payable on such income with interest thereon; the filing of settlement application indicating the amount of income returned in the return of income and the additional income tax payable on the undisclosed income to be aggregated as total income shows that Chapter XIX-A indicates aggregation of incomes so as to constitute total income which indicates that the special procedure under Chapter XIX-A has an in-built mechanism of computing total income which is nothing but assessment (computation of total income)."

24. While dealing with a similar factual scenario in the case of **Omaxe Ltd. v. Asst. CIT** [2012 SCC OnLine Del 3611], this Court took a view that if two different orders determining the total income of an assessee would be permitted to stand concurrently for a particular AY, the same would give rise to administrative uncertainty and therefore, the order of the ITSC can only be reopened in the cases of fraud or misrepresentation. Paragraph nos.12 and 13 of the said decision read as under:-

> "12. A conjoint reading of the aforesaid provisions indicates that the ITSC is a high powered body vested with powers to settle the case of an assessee. The order of settlement is conclusive as expressly stated in section 245-I but the argument of the Revenue is that it is conclusive only with regard to matters stated in the order of settlement and in respect of matters not stated therein, the Assessing Officer has the power to reopen the assessment. It is further submitted that the assessee did not approach the ITSC with regard to settlement of its claim for deduction under section 80-IB(10) of the Act and there was no adjudication of the said claim in the order of the ITSC. It is, therefore, submitted that the issue relating to deduction under section 80-IB(10) is not a matter covered by the order of the ITSC, and can be reopened by the Assessing Officer.
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> 13. We are afraid that the submission of the Revenue overlooks the fact that in the return the assessee had claimed deduction of Rs. 78,99,00,509 under section 80-IB(10) and it was only after claiming such deduction that the net taxable income was declared at Rs. 89,20,76,630. The Assessing Officer issued notices under section 143(2) and section 142(1) on July 12, 2007, but even before the questionnaire was issued the petitioner had approached the Settlement Commission by an application filed on May 31, 2007. Under section 245F(1), the ITSC, in addition to the powers conferred on it under Chapter XIX-A, shall have all the powers which are vested in an income- tax authority under the Act. By virtue of the provisions of section 245F(2) once the application for settlement was filed and an order was passed allowing the application to be

proceeded with, it was the ITSC which has the exclusive jurisdiction to exercise the powers and perform the functions of an Income-tax authority under the Act relating to the case, till the final order of settlement is passed under section 245D(4). **Thus, the moment the application of the assessee was allowed to be proceeded with by the ITSC till the final order of the settlement is passed on March 17, 2008, it was the ITSC which had exclusive jurisdiction in relation to the assessee's case. Therefore, all matters which could be examined by the Assessing Officer could be examined by the ITSC in these proceedings, including the assessee's claim for deduction under section 80-IB(10).** The total income of the assessee for the assessment year 2006-07 has been computed by the ITSC at Rs. 89,38,76,630 which is Rs. 18,00,000 more than the income of Rs. 89,20,76,630 declared by the petitioner, which figure is after the petitioner claimed deduction of Rs. 78,99,00,509 under section 80-IB(10). It is irrelevant that no undisclosed income was offered by the petitioner in regard to the housing project. **Again, a harmonious reading of the provisions of the statute would show that it does not postulate the existence of two orders, each of a different Income-tax authority, determining the total income of an assessee for the same assessment year. If the contention of the Revenue is accepted, not only will the finality of the order of settlement be disturbed, but it will also result in different orders relating to the same assessment year and relating to the same assessee being allowed to stand. We have grave doubts whether such a result, which is likely to create chaos and confusion in the tax administration could have been intended. The order of the ITSC can be reopened only in cases of fraud and misrepresentation and in no other case."**

[Emphasis supplied]

25. Further, in case where the Income Tax Department had contended that the non-disclosure of materials seized during the search proceedings of other person which have an effect on the concerned AY did not form the subject matter of the ITSC and consequently, the total

income is open to reassessment, this Court has held that the only recourse available to the Department would be to take shelter under Section 245D(6) of the Act and not elsewhere. Reliance can be placed on the decision in the case of **Omaxe Ltd. v. Deputy CIT** [2014 SCC OnLine Del 2649], wherein, it was held as under:-

> "14. A facial consideration of the above provisions would reveal that the finality which attaches itself to the Settlement Commission's order is in respect of the matters referred to it. The Revenue's contention appears to be that the non-disclosure of materials which have a bearing on assessment year 2006-07, discovered or seized in search proceedings concerning Shri Modi, were not the subject matter of the Commission's deliberations and, consequently, the subject matter of its order. Attractive though this aspect appears to be, the ruling in Omaxe (supra) precludes the exercise of authority by the Revenue. **Whilst from the Revenue's perspective, every non-disclosure or a fresh discovery of facts which might have a bearing on the assessee's returns, prima facie, stands excluded from what is referred to a Settlement Commission, the fallacy in that argument is the Commission has a full weight and the jurisdiction of all the authorities under the Income-tax Act when it is seized of a matter.** Concededly in this case, the subject matter before the Commission was the submission of the assessee to its jurisdiction with respect to the assessment year 2006-07. Of course, the Revenue contends that the recovery of material in a third party's premises were not a subject matter of the settlement proceedings, which got concluded on March 17, 2008. However, equally its case can proceed only on the assumption that the assessee was guilty of non-disclosure or suppression of material facts which ought to have been primarily revealed to the Settlement Commission when the application was moved under section 245D in the first place. The fallacy in the Revenue's argument is that it overlooks the remedy available for the Revenue, i.e., to approach the Settlement Commission under section 245D(6) contending that its previous order of March 17, 2008, ought to be reopened because the non-disclosure

amounted to a fraud or misrepresentation. The observations in Brij Lal (supra) cited earlier are extremely pertinent in this context. Likewise, in Express Newspapers Ltd. (supra), the Supreme Court had earlier stated as follows (page 451 of 206 ITR):

> **"It is equally evident that once an application made under section 245C is admitted for consideration (after giving notice to and considering the report of the Commissioner of Income-tax as provided by section 245D) the Commission shall have to withdraw the case relating to that assessment year (or years, as the case may be) from the assessing/appellate/revising authority and deal with the case, as a whole, by itself.** In other words, the proceedings before the Commission are not confined to the income disclosed before it alone. Once the application is allowed to be proceeded with by the Commission, the proceedings pending before any authority under the Act relating to that assessment year have to be transferred to the Commission and the entire case for that assessment year will be dealt with by the Commission itself. The words 'at any stage of a case relating to him' only make it clear that the pendency of proceedings relating to that assessment year, whether before the Assessing Officer or before the appellate or revisional authority, is no bar to the filing of an application under section 245C so long as the application complies with the requirements of section 245C.
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> (emphasis supplied)."
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> The judgments in R. B. Shreeram Durga Prasad and Fatechand Nursing Das v. Settlement Commission (I. T. and W.T.) (1989) 176 ITR 169 (SC) ; Jyotendrasinhji v. S. I. Tripathi (1993) 201 ITR 611 (SC) ; Shriyans Prasad Jain v. ITO (1993) 204 ITR 616 (SC) and Kuldeep Industrial Corporation v. ITO (1997) 223 ITR 840 (SC) are equally conclusive about the plenitude of the powers conferred upon the Settlement Commission."

26. The High Court of Gujarat in the case of **Komalkant Faikirchand Sharma v. Deputy CIT** [2019 SCC OnLine Guj 6963], while relying upon the decisions in the cases of *Brij Lal (supra)* and *Omaxe Ltd. v. Asst. CIT (supra)*, has held that the AO does not have any jurisdiction to reopen the assessment when an order under section 245D(4) of the Act in relation to the AY in respect of which the assessment is sought to be reopened has already been passed by the ITSC. The relevant paragraphs of the said decision are reproduced as under:-

> "7.10 The upshot of the above discussion is that once an order has been made by the Settlement Commission under section 245D(4) of the Act, the same is conclusive and final in respect of the assessment for the assessment year in relation to which such order was passed and the Assessing Officer has no jurisdiction under section 147 of the Act to reopen an assessment made under section 245D(4) of the Act. That, however, does not mean that the Revenue is without remedy if at a subsequent stage it is noticed that the assessee had suppressed its actual income before the Settlement Commission. In view of the provisions of sub-section (6) of section 245D of the Act, an order made by the Settlement Commission under section 245D(4) of the Act shall provide for the terms of settlement, which should, inter alia, 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. Section 245D(7) of the Act provides that where the settlement becomes void, as provided in sub-section (6) of section 245D, the proceedings in respect of the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission. The remedy, therefore, is not under section 147 of the Act, but under section 245D(6) read with section 245D(7) of the Act.
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> 9. Thus, though on the reasons recorded for reopening the assessment, the Assessing Officer could have formed the belief that income chargeable to tax has escaped assessment, in this case, as discussed earlier, since there is an order of the Settlement Commission under section 245D(4) of the Act in relation to the assessment year in respect of which the assessment is sought to be reopened, the Assessing Officer has no jurisdiction to reopen the assessment. The impugned notice under section 148 of the Act, therefore, cannot be sustained."

27. Recently, the Hon'ble Supreme Court in the case of **Kotak Mahindra Bank Ltd. v. CIT** [2023 SCC OnLine SC 1215] has cautioned against the frequent intermeddling with the decisions of the ITSC as it may lead to a deficit of confidence amongst the *bonafide* assesses. The relevant extract of the said judgment reads as under:-

> "43. Before parting with the record, we may add that having regard to the legislative intent, frequent interference with the orders or proceedings of the Settlement Commission should be avoided. We have already indicated the limited grounds on which an order or proceeding of the Settlement Commission can be judicially reviewed. The High Court should not scrutinize an order or proceeding of a Settlement Commission as an appellate court. Unsettling reasoned orders of the Settlement Commission may erode the confidence of the bonafide assessees, thereby leading to multiplicity of litigation where settlement is possible. This larger picture has to be borne in mind."

28. Thus, considering the foregoing discussion, it is seen that the order of the ITSC is deemed to be conclusive for all the matters pertaining the concerned AY for which the settlement application has been accepted and processed by the ITSC. In case, the Income Tax Department is not satisfied with the computation of income by the ITSC for the relevant AY, the same could only be assailed in accordance

with the provisions contemplated under Section 245D(6) read with Section 245D(7) of the Act. The legislative scheme envisaged for ITSC is self-contained in nature and the intent appears to be to facilitate a mutually satisfactory arrangement which could not be reopened, unless explicitly covered under the textual exceptions of fraud or misrepresentation.

29. In the instant case, the application of the petitioner was accepted and the proceedings were initiated therein by the ITSC after the second search and seizure operation was conducted by the respondent on 05.03.2013. Thus, undoubtedly, since the ITSC was already held up with the concerned AY, including the aspects raised by the respondent in the present petition, the AO cannot be allowed to exercise jurisdiction to reopen the proceedings under the guise of Section 147/148 of the Act for the relevant AY in consideration. As already settled by the catena of judgments, some of which are already discussed above, allowing the AO to proceed with the impugned notices and order for reopening assessment for the concerned AY would create a situation of downright chaos and vagueness. Put otherwise, it would tantamount to simultaneous existence of two concomitant and materially different assessment orders for the same AY, which is completely impermissible as per the provisions of the Act and the aforementioned judicial pronouncements.

30. The issue regarding the impermissibility of two assessment orders for a particular AY was also highlighted in the case of *Abhisar*

Buildwell Pvt. Ltd. (supra), wherein, in paragraph no.34, it was held as under:-

> **"34. If the submission on behalf of the Revenue that in case of search even where no incriminating material is found during the course of search, even in case of unabated/completed assessment, the AO can assess or reassess the income/total income taking into consideration the other material is accepted, in that case, there will be two assessment orders, which shall not be permissible under the law**. At the cost of repetition, it is observed that the assessment under Section 153-A of the Act is linked with the search and requisition under Sections 132 and 132-A of the Act. The object of Section 153-A is to bring under tax the undisclosed income which is found during the course of search or pursuant to search or requisition. Therefore, only in a case where the undisclosed income is found on the basis of incriminating material, the AO would assume the jurisdiction to assess or reassess the total income for the entire six years block assessment period even in case of completed/unabated assessment. As per the second proviso to Section 153-A, only pending assessment/reassessment shall stand abated and the AO would assume the jurisdiction with respect to such abated assessments. It does not provide that all completed/unabated assessments shall abate. If the submission on behalf of the Revenue is accepted, in that case, the second proviso to Section 153-A and sub-section (2) of Section 153-A would be redundant and/or re-writing the said provisions, which is not permissible under the law."
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> [Emphasis supplied]

31. Therefore, if the respondent was apprehensive of the fact that the petitioner had suppressed its income before the ITSC, it ought to have resorted to the remedy contained in Chapter XIX-A of the Act itself on the grounds of fraud or misrepresentation. The concept of fraud has been jurisprudentially recognized as a concept of wide import, and thus, availability of a challenge on the ground of fraud could have provided an effective remedy to the respondent, if so justified. Evidently, the

respondent has failed to seek recourse to such a remedy and rather, preferred an appeal before this Court on altogether different aspects as compared to the ones raised in the present petition. In any case, the same was also dismissed *vide* order dated 05.09.2017.

32. Further, the respondent has strenuously relied upon sub-Section (1) to Section 150 of the Act in juxtaposition with the decision in *Abhisar Buildwell P. Ltd. (supra),* to contend that the same confers an authority on the respondent to issue the impugned notices and reopen the completed assessments under Section 147/148 of the Act. At this juncture, it is significant to extract Section 150 of the Act, which reads as under:-

> **"150. Provision for cases where assessment is in pursuance of an order on appeal, etc.**—(1) Notwithstanding anything contained in Section 149, the notice under Section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law.
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> (2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken."

33. The aforesaid Section 150(1) of the Act, which begins with a *non-obstante* clause to outweigh the mandate of Section 149 of the Act, stipulates that a notice under Section 148 of the Act may be issued at

any time to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law. Reliance has been placed by the respondent on paragraph no.14(iv) in *Abhisar Buildwell P. Ltd. (supra)* to consider it as a direction or finding of the Court to issue the impugned notices. The relevant extract of the said decision is culled out as under:-

> "(iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. **However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved."**
>
> [Emphasis supplied]

34. A plain reading of the aforesaid extract of the judgment does not lead us to satisfactorily concur with the contention raised by the respondent, that the said paragraph be construed as a 'direction' for reopening the assessment under Section 147/148 of the Act in the case at hand. Even otherwise, the prayer with respect to reopening the assessment taking recourse to Section 150 of the Act akin to the instant case, was sought by the Revenue in a Miscellaneous Application titled as **PCIT v. Abhisar Buildwell P. Ltd.** [2023 SCC OnLine SC 618] in the case of *Abhisar Buildwell P. Ltd. (supra).* The Hon'ble Supreme

Court refused to entertain the said clarification application *qua* the prayers sought therein and held as under:-

> "1. Present Miscellaneous Application has been preferred by the Revenue seeking following prayers:
>
> "(a) This Hon'ble Court may clarify that the waiver of limitation as stipulated in section 150(2) is to be read in respect of the date of issue of notice for reassessment under section 148 (i.e.) if as on the date the assessment under section 153A or section 153C was passed, a notice under section 148 could have been issued as per the law then in force, then fresh proceedings for reassessment of such income not arising from the incriminating material found in search can now be initiated pursuant to the findings of this Hon'ble Court in the present appeals/application and may further clarify as follows:
>
> (i) That the findings in para 11 and 14 would apply to all the proceedings pending in all the forums including before this Hon'ble Court.
>
> **(ii) That even though the appeals of the Revenue are dismissed in respect of assessments passed under 153A and 153C, in the absence of incriminating material found during the search, in respect of such income which was found to have escaped assessment other than through incriminating material, the assessing officers would be entitled to reassess such income in terms of Section 147/148 read with section 150.**
>
> (iii) That the Assessing Officer, may if found necessary initiate fresh proceedings within 60 days from date of disposal of this application following the procedure stipulated in section 147-151 of the Act as is in force now."
>
> **2. Having gone through the averments made in the application and the prayers, we are of the opinion that the prayers sought can be said to be in the form of review which requires detail consideration at length looking into the importance of the matter. Therefore, the present application in the form of clarification is not entertained and we relegate the Revenue to file an appropriate review application for the relief sought in the present application and as and when such review application is filed the same can be heard in the open court.**

> 3. In view of the above and without further entering into the merits of the application and/or expressing anything on merits on the prayers sought in the present application, the present application is not entertained and we relegate the Revenue to file an appropriate review application seeking the reliefs which are sought in the present application and as and when such review application is filed the same be heard and decided and disposed of in the open court.
>
> 4. At the cost of repetition, we observe that as we have not entered into the merits of the present application and we relegate the Revenue to file an appropriate review application, the review application be decided and disposed of in accordance with law and on its own merits.
>
> 5. With this present application stands disposed of."
>
> [Emphasis supplied]

35. Thus, so far as the decision relied upon by the respondent in the case of *Abhisar Buildwell P. Ltd. (supra)* is concerned, in the given facts and circumstances, the same cannot be construed to be an authority to override the mandate of Section 245-I of the Act. Sections 150 and 245-I of the Act are provisions of equal standing and a conflict between the two must be resolved by resorting to the principle of harmonious construction. One of the foremost considerations of harmonious construction is to preserve the essence and meaning of both the provisions, and to not let either provision fall at the expense of the other. If the settlement arrived at by ITSC is allowed to be reopened on grounds, other than those expressly provided for, it would effectively render the entire mandate of the ITSC as vulnerable and the commitment of the finality of a settlement would stand compromised. It is this legislative sanctity of ITSC that provides it a special status under the Act. Since the decision of the ITSC *qua* the issues in the present

petition has already attained finality, therefore, taking a cue from the decision of the Constitution Bench of the Hon'ble Supreme Court in the case of *Brij Lal (supra)*, the reliance placed by the respondent on *Abhisar Buildwell P. Ltd. (supra)* to proceed with the reassessment proceedings, is completely unjustifiable and unsustainable, in the given factual matrix of the petition.

36. In view of the aforesaid, we quash the impugned notice alongwith corrigendum dated 30.11.2023 and the impugned order of even date. The writ petition is, accordingly, allowed and disposed of alongwith the pending application.

PURUSHAINDRA KUMAR KAURAV, J.

YASHWANT VARMA, J.

MARCH 19, 2024/MJ