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

% **Judgment reserved on: 11 March 2024**
Judgment pronounced on: 10 April 2024

\+ W.P.(C) 8103/2015

PR. COMMISSIONER OF INCOME TAX (CENTRAL) 2, DELHI ..... Petitioner

Through: Mr. Shlok Chandra, Sr. Standing Counsel along with Ms. Priya Sarkar, Ms. Madhavi Shukla, Jr. Standing Counsels and Mr. Ujjawal Jain, Adv.

Versus

PANKAJ BUILDWELL LTD. & GROUP .... Respondent

Through: Mr. Salil Aggarwal, Sr. Adv. with Mr. Madhur Aggarwal and Mr. Uma Shankar, Advs.

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. In the facts of the present petition, we are called upon to examine the statutory requirement of "full and true disclosure" under Section 245C of the Income Tax Act, 1961 ["**Act**"], pre-conditions associated

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with an application under Chapter XIX-A of the Act and effect of violation of the said pre-conditions on the jurisdiction of the Income Tax Settlement Commission [**"ITSC"**] as well as the fate of the application.

2. The present petition filed by the Revenue seeks quashing of the order dated 09 June 2014, passed by the ITSC, under Section 245D (4) of the Act, for the Assessment Years [**"AY"**] 2001-02 to 2007-08.

FACTUAL MATRIX

3. The relevant facts for deciding the controversy at hand would reveal that the respondent-assessee group is engaged in real estate business in Delhi, and particularly in the development of commercial complexes. The business activities of the respondent-assessee group involve purchase of land from the Delhi Development Authority on auction, followed by development and sale of the same to various customers.

4. On 11 October 2006, a search and seizure operation was conducted at the business and residential premises of the respondent-assessee group under Section 132(1) of the Act. During the said operation, various incriminating documents including jewellery and cash were found and the same were accordingly seized. Subsequently, the case of the respondent-assessee group was centralized with the Assessing Officer ["**AO**"], Central Circle-08, New Delhi.

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5. During the pendency of the assessment proceedings, the respondent-assessee group, *vide* letter dated 30 May 2007, preferred settlement applications under Section 245C (1) of the Act before the ITSC for AYs 2001-02 to 2007-08, thereby, disclosing an additional income of INR 1,53,50,504/- *in toto*. Consequently, the Commissioner of Income Tax ["**CIT**"], Central-II, New Delhi, filed a report under Rule 9 of the Income Tax Settlement Commission Procedure Rules, 1997 ["**Rule 9**"] on 12 February 2008, raising various issues against the respondent-assessee group, *inter alia,* doubting the genuineness of the transactions with respect to share capital amounting to INR 23.69 crores.

6. On 09 June 2014, the ITSC admitted all the applications filed by different members of the respondent-assessee group, including business entities and individuals therein, to settle their income tax liability. While deciding the settlement applications, the ITSC passed the impugned order and declared the total additional income to the tune of INR 18 crores, which includes a voluntarily offered amount of INR 1 crore at the instance of the respondent-assessee group.

7. While passing the impugned order, the ITSC accepted the Revenue's contention that unaccounted money was introduced as bogus share capital by the respondent-assessee group and thus, it proceeded to make the aforesaid addition.

8. Out of the total addition of INR 18 crores in the case of the respondent-assessee group, additions amounting to INR 7.51 crores

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(includes voluntarily offered sum of INR 1 crore) and INR 10.49 crores were made in the case of Pankaj Buildwell Ltd. ["**Pankaj Ltd.**"] and Raghav Buildwell Ltd. ["**Raghav Ltd.**"], respectively, both of which form part of the respondent-assessee group.

9. However, as per the claim of the Revenue, an amount of INR 23.69 crores ought to have been added in the category of bogus share capital in the case of Pankaj Ltd. The Revenue's claim was based upon the summons issued to the alleged shareholders, which were returned undelivered and thereby, alluding to the non-existence of such shareholders. Furthermore, the respondent-assessee group is also stated to have bought back shares from the family members of the promoters, having a face value of INR 13.15 crores at a nominal cost of INR 13.15 lakhs.

10. Thus, being aggrieved by the underestimation of the additional income and failure upon the part of the respondent-assessee group to make full and true disclosure of the income before the ITSC, the Revenue has filed the instant writ petition.

REVENUE'S SUBMISSIONS

11. Mr. Shlok Chandra, learned counsel appearing on behalf of the Revenue, submitted that the respondent-assessee group has failed to fully and truly disclose the additional income before the ITSC, which was an elementary requirement for proceeding with any application made by an assessee in terms of Chapter XIX-A (Sections 245A to

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245L) of the Act. According to him, the scheme of Chapter XIX-A does not envisage revision of the application filed by the assessee under Section 245C (1) of the Act.

12. He contended that during the course of proceedings, the respondent-assessee group had offered certain additional amounts which clearly shows that full and true disclosure of income was not made in the application under Section 245C of the Act. He, therefore, submitted that the respondent-assessee group had not approached the ITSC with clean hands.

13. Learned counsel for the Revenue further argued that the CIT, in its Rule 9 report dated 12 February 2008, has calculated and quantified the undisclosed sum of INR 23.69 crores for AYs 2001-02 to 2007-08 as the total amount of bogus share capital. The said quantification is based on the summons issued to the shareholders, which had returned undelivered, thereby, indicating the non-existence of most of the alleged shareholders. He, therefore, contended that the ITSC has erroneously accepted the amount of INR 6.51 crores as bogus share capital and the impugned order does not contain the reasons based on which ITSC has ascertained the aforenoted amount.

14. Learned counsel for the Revenue also contended that the ITSC gave a contrary finding in its order, wherein, on one hand, it held that the explanation offered by the respondent-assessee group with respect to the face value of the share capital/premium was not genuine and on

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the other hand, the ITSC has allowed the revision application of the respondent-assessee group under Section 245C of the Act.

15. In addition, he placed reliance on the legislative mandate prescribed under Section 245H of the Act, which envisages a two-fold satisfaction namely, (i) full and true disclosure of income and the manner in which such income was derived and (ii) cooperation of the applicant in the proceedings before the ITSC. He, therefore, contended that the ITSC has mechanically recorded a finding that the respondent-assessee group has made full and true disclosure and fully cooperated in the proceedings before it. Thus, it granted immunity to the respondent-assessee group from penalty and prosecution.

16. He further contended that the respondent-assessee group bought back shares having a face value of INR 13.15 crores at a nominal cost of INR 13.15 lakhs from the family members of the promoters of respondent-assessee group in an unusual manner. According to him, the said transaction indicates a *malafide* transaction, which is highly unlikely to have taken place in a genuine manner.

17. He advocated that once it was accepted by the ITSC that the respondent-assessee group had not made full and true disclosure, the application under Section 245C (1) of the Act should have been rejected at the very outset. He, therefore, submitted that the ITSC has erred in accepting the application made by the respondent-assessee group.

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18. He contended that the ITSC had misinterpreted the judgment of the Hon'ble Supreme Court in the case of **Brij Lal & Others v. CIT**[1] while directing that the interest chargeable under Section 234B of the Act was to be charged upto the date of the order under Section 245D (1) of the Act in the present case.

19. In support of his contentions, learned counsel for the Revenue placed reliance on the decisions of the Hon'ble Supreme Court in the case of **CIT Jalpaiguri v. Om Prakash Mittal**[2] and **Ajmera Housing Corporation v. CIT**[3] and the decision of this Court in the case of **PCIT v. Om Prakash Jakhotia**[4] and **CIT v. ITSC**[5].

RESPONDENT'S SUBMISSIONS

20. *Per contra*, Mr. Salil Aggarwal, learned counsel appearing on behalf of the respondent-assessee group vehemently opposed the submissions made by learned counsel for the Revenue.

21. Learned counsel for the respondent-assessee group submitted that they had filed an application under Section 245C (1) of the Act for the AYs 2001-02 to 2007-08 by disclosing an additional income of INR 98,43,706/- *qua* Pankaj Ltd. He contended that replies dated 19 July 2012, 31 January 2014 and 20 February 2014 along with complete

[1] (2010) SCC OnLine SC 1192.
[2] (2005) SCC OnLine SC 376.
[3] (2010) SCC OnLine SC 918.
[4] (2019) SCC OnLine Del 8063.
[5] (2014) SCC OnLine Del 626.

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documentary evidences were filed before the ITSC to establish the identity and creditworthiness of the shareholder and the genuineness of the transaction, which was questioned by the Revenue in the CIT report.

22. Learned counsel further submitted that a sum of INR 1.60 crores was surrendered in respect of share capital for AY 2003-04 and assessment for the same was made under Section 143(3) of the Act. Similarly, assessment for AY 2004-05 was also made under Section 143(3) of the Act.

23. He contended that no incriminating material was found during the course of the search and despite the same, they voluntarily agreed to surrender an amount of the share capital which was in doubt. He further submitted that the ITSC, after a detailed discussion, had given reasons for arriving at its findings of additional income of INR 6.51 crores for AY 2002-03 and 2003-04 in the case of Pankaj Ltd.

24. Learned counsel for the respondent-assessee group submitted that after the settlement of the aforesaid sum, the CIT made a further assertion concerning an additional unaccounted income of INR 1.65 crores. He contended that the respondent-assessee group, without any material being found against it, further offered to surrender a sum of INR 1 crore, and in the spirit of settlement and cooperation, a total amount of INR 7.51 crores was offered before the ITSC despite the unaccounted amount being INR 6.51 crores.

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25. With regard to the undelivered summons on shareholders, learned counsel for the respondent-assessee group argued that the share capital was acquired during the AYs 2001-02, 2002-03, 2003-04 and 2006-07. He contended that significant time had elapsed before enquiries were initiated and furthermore, the absence of shareholders before the Revenue cannot be a basis for drawing adverse conclusions against the respondent-assessee group. He relied upon the decisions in the cases of **Commissioner of Income Tax v. Five Vision Promoters (P.) Ltd.**[6] **, PCIT v. Paradise Inland Shipping (P) Ltd**.[7], **CIT v. Oasis Hospitalities (P.) Ltd**.[8], **CIT v. Kamdhenu Steel & Alloys Ltd**.[9] and **CIT v. Anshika Consultants (P.) Ltd.**[10] to submit that merely because shareholders were not found at their addresses, the same cannot be a ground to make additions.

26. Further, it was submitted by the learned counsel for the respondent-assessee group that insofar as the prayer for waiver of interest under Sections 234A, 234B, and 234C of the Act is concerned, the ITSC has rightly held that interest under Sections 234A and 234C of the Act would be charged as per law till the date, order under Section 245D of the Act was passed.

27. Additionally, he contended that the subsequent sale of shares at a reduced price was irrelevant for determining the authenticity of the

[6] (2015) SCC OnLine Del 13635.
[7] (2017) SCC OnLine Bom 10192.
[8] (2011) SCC OnLine Del 506.
[9] (2011) SCC OnLine Del 5581.
[10] (2015) SCC OnLine Del 8860.

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investment in the share capital. He also submitted that the issue of tax avoidance in repurchasing shares from the promoters' family members at a nominal cost of INR 13.15 lakhs, compared to the face value of INR 13.15 crores, needs to be scrutinized in the hands of the purchaser of the shares. He, therefore, asserted that there is no reason to question the legitimacy of the share capital received by the respondent-assessee group.

28. Furthermore, learned counsel argued that the ITSC has offered well-founded justifications for granting immunity from prosecution and penalties, considering the facts and circumstances of the case. According to him, as a customary practice, the ITSC usually grants immunity from penalties and prosecution under the Act when an applicant exhibits full cooperation in resolving the case and provides a comprehensive and truthful disclosure of their income. In context of the present case, he contended that it is uncontested that the respondent-assessee group had duly cooperated and the same was acknowledged by the ITSC in the impugned order, wherein, a significant cooperation to the extent that the respondent-assessee group voluntarily offered a substantial amount was *ex-facie* evident.

29. Moreover, he asserted that the ITSC has issued the order following the procedure outlined in the Act and has meticulously adhered to it, both in its literal interpretation and its intended purpose. Consequently, he argued that there is no justification for any intervention.

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30. Lastly, while addressing the issue of revision, learned counsel for the respondent-assessee group relied upon the decision of the Gujarat High Court in the case of **Pr. CIT v. Income-tax Settlement Commission**[11] to advocate that there is no bar on revision being made before the ITSC.

31. We have heard the learned counsel appearing on behalf of the parties and perused the record.

DISCUSSION

32. It is pertinent to point out that the solitary issue for our consideration is– "Whether the ITSC was justified in considering the application filed under Section 245C of the Act despite recognizing the absence of a full and true disclosure of income?"

33. Before delving into the merits of the case, it would be beneficial to refer to the underlying legal framework concerning the issue at hand in the present petition.

Legislative mandate enshrined under Chapter XIX-A of the Act

34. The structure outlined in Chapter XIX-A of the Act was introduced by the Taxation Laws (Amendment) Act, 1975. This chapter aims to facilitate prompt and harmonious resolution of cases, ensuring the timely collection of taxes owed to the Income Tax Department.

[11] 2017 SCC OnLine Guj 2697.

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34.1 Further, Chapter XIX-A also allows an assessee to submit an application under Section 245C (1) of the Act, provided it includes full and true disclosure of its income, the method by which it was obtained, and the additional amount of income tax due on said income. The relevant extract of Section 245C of the Act is reproduced herein below:-

> "**245C.Application for settlement of cases**:(1) An assessee may, at any stage of a case relating to him, make an application in such form and in such manner as may be prescribed, and containing a full and true disclosure of his income which has not been disclosed before the Assessing Officer, the manner in which such income has been derived, the additional amount of income tax payable on such income and such other particulars as may be prescribed, to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided…."

34.2 The settlement application under the aforesaid Section necessitates a thorough declaration of any additional income by the applicant. Through Form No.34B, extensive details are requested and the applicant is required to sign a verification form affirming the completeness and accuracy of the provided information.

34.3 Section 245D of the Act delineates the procedure to be followed by the ITSC, upon receiving an application for settlement under Section 245C of the Act. Pursuant to sub-Section (1) of Section 245C of the Act, the ITSC is empowered to solicit a report from the CIT. Based on this report and considering the nature and circumstances of the case or the complexity of the investigation involved, the ITSC may, after

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conducting a preliminary enquiry, decide whether to allow the settlement application or reject it.

34.4 Furthermore, sub-Section (4) of Section 245D of the Act confers upon the ITSC an authority to issue an order, subsequent to examining the records and the report provided by the CIT. This occurs after hearing both the applicant and the CIT, or their authorized representatives, and after reviewing any additional evidence presented before it. The relevant part of Section 245D (4) of the Act is extracted herein below:

> **"245-D. Procedure on receipt of an application under Section 245-C**.
> ---
> 4. After examination of the records and the report of the [Principal Commissioner or Commissioner], if any, received under—
>
> (*i*) sub-section (2-B) or sub-section (3), or
>
> (*ii*) the provisions of sub-section (1) as they stood immediately before their amendment by the Finance Act, 2007,
>
> 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]."

34.5 Such orders may be issued by the ITSC upon arriving at the satisfaction that the applicant has cooperated in the proceedings and has provided a complete and accurate disclosure of its income along with the sources therein.

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34.5 Recently, in our decision rendered in **Pr. Commissioner Of I Tax (Central)-II v. M/S Trent East West LPG Bottling Ltd.**[12], we had an occasion to extensively deal with the exposition of law on the issue under consideration. The relevant paragraph of the said decision reads as under:-

> "18. The ITSC comes to be moved pursuant to an application being made by an assessee referable to Section 245C of the Act. The said application must contain a "full and true" disclosure of the income which was not disclosed before the AO as also the entire income which is sought to be made subject matter of consideration before the ITSC. Additionally, the applicant is obliged to disclose the means from which the income was so derived, the additional amount of tax which is payable and such other particulars as prescribed under the Rules. In terms of Section 245C(3) of the Act, once an application comes to be submitted before the ITSC, it cannot be withdrawn by the applicant. On receipt of such an application, the ITSC commences the process ofevaluating whether the application is liable to be proceeded with. In respect of an application which is allowed to be proceeded with, the ITSC stands empowered to call for a report from the CIT in terms of Section 245D(2B) of the Act. Taking proceedings further and in respect of applications which have not been declared to be invalid, the ITSC in terms of Section 245D(3) of the Act is enabled to call for the records and, if deemed necessary, to direct such further inquiry or investigation as may be necessary. Pursuant to the aforesaid power as conferred, the Principal Commissioner/Commissioner is obliged to undertake a further inquiry or investigation and submit a report in respect of all matters covered by the application as also any other matter relating to the case. Sub-Section (4) of Section 245D of the Act envisages the ITSC passing final orders upon the application taking into consideration the report submitted by the Principal Commissioner/Commissioner, an examination of all the evidence that may have been placed before it and proceed to pass a final order on matters covered by the application as well as any other matter relating to the case."

Analysis

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35. A perusal of the above position makes it incumbent upon the ITSC to arrive at an unequivocal finding of full and true disclosure in the application. If the ITSC is not satisfied as to the "full and true disclosure" of the income in the application, it shall refrain from advancing with it, thereby, lacking jurisdiction to issue any orders pertaining to the subject matter outlined in the application. The Hon'ble Supreme Court while dealing with the principle of "full and true disclosure" in *Ajmera Housing Corporation (supra)* has held as under:-

> "26. ……
> **A bare reading of the provision would reveal that besides such other particulars, as may be prescribed, in an application for settlement, the assessee is required to disclose:**
> **(i) a full and true disclosure of the income which has not been disclosed before the assessing officer;**
> **(ii) the manner in which such income has been derived; and**
> **(iii) the additional amount of income tax payable on such income.**
>
> 27. It is clear that disclosure of "full and true" particulars of undisclosed income and "the manner" in which such income had been derived are the prerequisites for a valid application under Section 245-C(1) of the Act. Additionally, the amount of income tax payable on such undisclosed income is to be computed and mentioned in the application. **It needs little emphasis that Section 245-C(1) of the Act mandates "full and true" disclosure of the particulars of undisclosed income and "the manner" in which such income was derived and, therefore, unless the Settlement Commission records its satisfaction on this aspect, it will not have the jurisdiction to pass any order on the matter covered by the application**."
>
> [Emphasis supplied]

36. Additionally, in the case of *Om Prakash Mittal (supra)*, the Hon'ble Supreme Court has held that the essential condition to proceed with the settlement through an application under Section 245C of the

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Act is the necessity for a complete and honest disclosure of income, including the method by which it was obtained. Following an enquiry into the authenticity of this disclosure, the ITSC may decide to either approve or dismiss the application. The relevant paragraph of the said decision is extracted hereinunder as:-

> "16. The foundation for settlement is an application which the assessee can file at any stage of a case relating to him in such form and in such manner as is prescribed. The statutory mandate is that the application shall contain "full and true disclosure" of the income which has not been disclosed before the assessing officer, the manner in which such income has been derived. The fundamental requirement of the application under Section 245-C is that full and true disclosure of the income has to be made, along with the manner in which such income was derived. **On receipt of the application, the Commission calls for report from the Commissioner and on the basis of the material contained in the report and having regard to the nature and circumstances of the case or complexity of the investigation involved therein, it can either reject the application or allow the application to be proceeded with as provided in Section 245-D(1)**."
>
> [Emphasis supplied]

37. Referring to the particulars of the present case, it is observed that according to the CIT report, the total share capital at the end of the Financial Year [**"FY"**] 2004-05 amounted to INR 13,76,53,500/-. Out of this sum, only INR 25,33,500/- originated from family or related members of the respondent-assessee group, while the remaining share capital of INR 13,52,20,000/- was sourced from external entities unaffiliated with the respondent-assessee group or their family. Consequently, it was determined that a significant portion of the

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remaining share capital was derived from the individuals who either do not exist or have been identified as accommodation entry operators, as acknowledged by certain individuals in their statements to the effect that they utilized their bank accounts to facilitate accommodation entries. Notably, regarding the remaining investors, the summons that were dispatched were returned undelivered. The relevant portion from the CIT report is extracted hereunder:-

> "A. The balance sheet of M/s Pankaj Buildwell for the year ending 31.3.2002 shows share capital of Rs 10,66,53,500/-. Further share capital was introduced in FY 2002-03 amounting to Rs 3,10,00,000/-. Thus the total share capital at end of FY 2004-05 was Rs 13,76,53,500/-. Out of this only Rs 22,33,500/- was from family/related members of the assessee and the balance share capital of Rs 13,51,20,000/- was from 753 external entities not connected/related to the assessee or his family. Thus the family had only nominal investment as share capital and a major part of the balance is from the entities/individuals which are non-existent or proved accommodation entry operators."

38. Further, the aforementioned report indicated that in the case of Pankaj Ltd., the respondent-assessee group repurchased the shares allotted to 753 entities and subsequently, transferred them to its family members at significantly reduced prices. For instance, shares with a nominal value of INR 10/- were transferred back at the price of 10 paise, a valuation lacking in rationality. As a result, the respondent-assessee group effectively regained ownership of all the shares at a nominal cost of INR 13.152 lakhs, meaning thereby that a total investment of INR 13.152 crores was transferred in the names of family members or to itself for a meagre sum of INR 13.152 lakhs.

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39. Accordingly, the CIT disclosed the amount to be added to the income of the respondent-assessee group in the case of Pankaj Ltd. equivalent to INR 23.69 crores for AYs 2001-02 to 2007-08. It is noteworthy that the report of the CIT recorded that the respondent-assessee group has not adverted to full and true disclosure in the application. The relevant paragraph of the CIT report is being extracted herein for reference:-

> "Looking at aforesaid facts, in M/s Pankaj Buildwell Ltd the assessee has routed Rs 23,69,70,000 as share capital/share application money in various previous years. The year wise bifurcation of addition of share capital/share application money is not readily available, therefore, if in excess of Rs.23,69,70,000/- is received by M/s Pankaj Buildwell, the detail of the same may be obtained by Hon'ble Settlement Commission from the assessee and added as unexplained cash credit in the year of receipt. **However, the amount of Rs.23,69.70.000/- is added as unexplained cash credit in the hands of assessee for A.Y. 2001-02 to A.Y. 2007-08. This aspect has not been disclosed at all by the assessee in its application before the Settlement Commission. Therefore, the disclosure of the assessee does not represent the correct undisclosed income and should be treated as incomplete disclosure.**"
>
> [Emphasis supplied]

40. Later on, during the course of proceedings, the ITSC took note of the said undisclosed income as highlighted by the CIT report and sought a reply from the respondent-assessee group to furnish an explanation on the aforesaid aspect.

41. The report of the CIT and reply of the respondent-assessee group on the main issues, as highlighted in the impugned order are reproduced herein below:-

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	As per CIT	As per applicant
a.	Cash of Rs. 10855000 and jewellery of Rs. 3069415 were found during the course of search and should be added in the hands of Shri M K Gupta.	Cash of Rs. 1.04 cr. was covered by offer and the balance has been standing In the books. Jewellery at Rs. 742340 has been offered and the balance is shown in wealth tax returns.
b.	The amount of Rs. 2100000 should be added in the hands of Shri M K Gupta for AY 2006-07 & 2007-08 on accounts of entries at page no. 28 to 36 of annexure A-3 found from the residence at E 301, East of Kailash, New Delhi.	The CIT has not given the benefit of expenses made in cash which is around 21.40 lakhs.
c.	An amount of Rs. 42527701 should be added in the hands of Shri M K Gupta for the AY 2007-08 on the basis of a diary namely annexure A-5 found from residence.	The CIT has not given benefit of expenses indicated in the said diary. However the applicant has considered the diary while working out the income at the time of filing of SOF.
d.	An amount of Rs. 103012105 should be added in the hands of Shri Pankaj Gupta for different years on the basis of laptop found as annexure A-7, from residence.	The CIT has not given benefit of expenses recorded in the said diary. However the applicant has considered the diary while working out the income at the time of filing of SOF.
e.	Addition of Rs. 236970000 should be made in the case of M/s Pankaj Buildwell for the AYs 2001-02 to 2007- 08 on account of introducing unexplained money through bogus share capital.	The share capital is genuine and the proof are attached.
f.	Addition of Rs. 10.49 cr. should be made in the hands of *M/s* Raghav Buildwell for the AYs 2003-04 and 2004-05 on account of introducing unexplained money through bogus share capital	The share capital is genuine and the proofs are attached.
g.	Introducing unaccounted money through sale of terrace rights at Rs. 28550000 cr. in the case of	The sale proceeds are duly entered in the

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	Pankaj Buildwell, Raghav Buildwell & Pankaj Enterprises for the AYs 2002-03 to 2005-06.	regular return of income of the applicant hence no question of accommodation entries rises.
h.	Bogus share capital gains at Rs. 69951880 for the AY 2006-07 in the case of Usha Gupta.	The transactions are genuine and all the proofs are attached.
i.	An amount of Rs. 63787700 should be added in the case of *M/s* Pankaj Buildwell for the AY 2003-04 to 2006-07 on the basis of page no. 1 of annexure A-2 found from residence.	The CIT has not given benefit of expenses recorded in the diary. However the applicant has considered the diary while working out the income at the time of filing of SOF.
j.	An addition of Rs. 98.67 lakhs in the case of Sh. Pankaj Gupta and Rs. 50 lakhs in case of Smt. Archana Gupta on account of various investments made as per annexure A-3 for the AY 2007-08.	All the investments are reflected in books of accounts and evidences are attached.
k.	Addition of Rs. 14190100 should be made in the hands of Shri M K Gupta for AY 2007-08 on the basis of annexure A-4 found from residence.	The transaction has been duly shown in books of accounts.

42. Further, the ITSC in its order noted that the aforesaid reply of the respondent-assessee group was not satisfactory. The relevant paragraph of the impugned order is culled out as under:-

> "4.2 The reply of the applicant was further confronted to the CIT for his comments. The applicant was also directed to cooperate with the assessing officer by furnishing explanation on the disputed issues. All issues raised by the CIT as discussed in preceding para's were discussed in the Court during several hearings. After hearing both the parties the Commission has identified the issues which require further explanation from the applicant.

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> 5. **As discussed, there were certain issues where the reply of the applicant was not found satisfactory.** These issues are being discussed in the subsequent paras as under:"

43. Interestingly, the ITSC in its order has succintly noted that the respondent-assessee group failed to provide a convincing explanation regarding repurchase of the share capital. It observed that the evidence submitted by the respondent-assessee group regarding the purported investors lacked credibility, as the shares of the companies had already been repurchased at an extremely unreasonable price. It further noted that the transaction involving the repurchase of shares having a face value of INR 10/-, at a nominal value of 10 paise per paid-up share, cannot be deemed to be authentic. Later, the respondent-assessee group voluntarily agreed to relinquish the amount in question, i.e., the value of the shares repurchased at an unreasonably low price, which was under scrutiny. The relevant paragraph from the ITSC order is extracted herein below:-

> "The observation of the CIT was confronted to the applicant and the applicant was asked to furnish the explanation on the issue of buying back the share capital at nominal rate from unknown so called investors. **The applicant has failed to give convincing reply on this issue. The Commission has observed that evidences furnished by the applicant with reference so called investors has no validity as the shares of the companies were already bought back at a highly unreasonable price. The transaction of buy back of shares @10 paise per paid up shares of Rs. 10/- i.e. @10% of the face value cannot be accepted as genuine. The observation of the Commission was communicated to the applicant. The applicant has agreed voluntarily to surrender the amount which was under doubt i.e. the amount of shares which were bought back at highly unreasonable price discussed above along with the margin**

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amount on estimated basis. The total amount of Rs. 17 cr. has been worked out in the case of M/s Pankaj Buildwell Ltd. and Raghav Buildwell Ltd."

[Emphasis supplied]

44. Accordingly, it is seen that the respondent-assessee group did not reveal the said additional income in the settlement application or before the ITSC at the very threshold. Rather, it only acknowledged the said additional income after the CIT report was submitted to the ITSC, thereby, raising doubts regarding the completeness and accuracy of the disclosure made by the respondent-assessee group in the settlement application preferred under Section 245C of the Act.

45. Hence, despite acknowledging the respondent-assessee group's inadequate disclosure regarding the share capital/premium and the absence of a satisfactory explanation from its side, the ITSC proceeded with the settlement application. Upon concluding the same, the ITSC made an an enormous addition of INR 17 crores to the respondent-assessee group's income. The relevant extract of the said order is reproduced herein:-

Sr. No.	Name of Applicant	A.Y.	Amount	Total
1.	M/s Pankaj Buildwell Ltd.	2002-03 2003-04	Rs. 5.01 cr. Rs. 1.50 cr.	Rs.6.51 cr.
2.	M/s Raghav Buildwell Ltd.	2003-04 2004-05	Rs. 5.26 cr. Rs. 5.23 cr.	Rs.10.49 cr.
				Rs.17.00 cr.

"The above said amount is held as undisclosed income of the above companies which was introduced in the shape of share application

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money/premium. The source of such income is from unaccounted business done by the applicant. Hence amount of Rs. 17 cr. is being incorporated in the income of the applicant as per the details in the succeeding paras."

46. Additionally, the ITSC noted that the respondent-assessee group failed to provide sufficient evidence to substantiate the authenticity of the share capital and consequently, it further increased the earlier addition of INR 17 crores by INR 1 crore, resulting in a total addition of INR 18 crores. The relevant paragraph is extracted herein below:-

"5.2 The Commission has gone through the submissions made by the rival parties. It is noticed that out of the total amount of Rs. 1.65 Crores the applicant has already returned Rs. 1.25 Crores in lieu of cancelation of booking of flats made by the respective parties, and amount of Rs. 50 lacs was received on account of share capital. The applicant has also submitted copy of account of the respective parties. The CIT (DR) on the other hand argued that these are not genuine transaction but are accommodation entries taken by the applicant. **The Commission after a careful consideration of the facts on record is of that since the major amount has been refunded back hence the contention of the Department is not valid on this ground. However, keeping in view the fact that the applicant has not been able to adduce complete evidence in support of the genuineness of share capital, (other than the share bought back at the one hundredth of the face value), the Commission considers it appropriate and tax to make further addition of Rs. 1 Crore on this account enhancing the earlier addition of Rs. 17 cr. to Rs. 18 cr. This observation of the Commission was conveyed to the applicant. The applicant on our suggestion voluntarily offered to surrender the same amount, hence an amount of Rs. 1 Crore(Rs. 40 lacs for AY 06-07 and Rs. 60 lacs for AY 07-08) is further being added in the Income of the applicant and the total addition is made at Rs. 18 Crore. Hence the amount of Rs. 18 crore is being incorporated in the income of the respective applicants for different AYs as mentioned in the paras below."**

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8. On the basis of the forgoing paras the income settled by the Commission inthe case of all the applicants for different years is given in the table below:

Sr. No.	**Name of the applicant**	**A.Y.**	**Incomer as per ROI (in Rs.)**	**Additional income offered in SOF (in Rs.)**	**Additional income settled-under 245D(4)**	**Total income (in Rs.)**
(A)	(B)	(C)	(D)	(E)	(F)	(G)
1. M/s. Pankaj Buildwell Ltd.		2001-02	2,94,310	30,000	-	3,24,310
		2002-03	6,24,649	40,000	5,01,00,000	5,07,64,649
		2003-04	1,69,08,990	55,000	1,50,00,000	3,19,63,990
		2004-05	33,23,910	74,587	-	33,98,497
		2005-06	9,51,120	58,145	-	10,09,265
		2006-07	31,79,250	19,54,968	40,00,000	91,34,218
		2007-08	49,02,917	76,31,006	60,00,000	1,85,33,923
2. M/s. Raghav Buildwell Ltd.		2001-02	N/A	N/A	-	N/A
		2002-03	N/A	N/A	-	N/A
		2003-04	7,781	1,00,800	5,26,00,000	5,27,08,581
		2004-05	6,71,970	85,013	5,23,00,000	5,30,56,983
		2005-06	7,48,910	52,355	-	8,01,265
		2006-07	16,89,110	7,28,034	-	24,17,144
		2007-08	1,85,32,520	16,21,596	-	2,01,54,116
3. M/s. Pankaj Enterprises		2001-02	Nil	10,000	-	10,000
		2002-03	1,11,140	15,000	-	1,26,140
		2003-04	5,82,490	20,000	-	6,02,490
		2004-05	7,16,940	25,000	-	7,41,940

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	2005-06	5,34,553	30,000	-	5,64,553
	2006-07	9,64,260	40,000	-	10,04,260
	2007-08	7,98,755	3,50,000	-	11,48,755
4. Shri Pankaj Gupta	2001-02	13,23,818	10,000	-	13,33,818
	2002-03	12,02,290	15,000	-	12,17,290
	2003-04	13,48,400	20,000	-	13,68,400
	2004-05	13,16,780	25,000	-	13,41,780
	2005-06	20,49,260	30,000	-	20,79,260
	2006-07	24,77,288	40,000	-	25,17,288
	2007-08	31,71,130	3,50,000	-	35,21,130
5. Shri Mahesh Kumar Gupta	2001-02	9,92,660	50,000	-	10,42,660
	2002-03	9,67,060	75,000	-	10,42,060
	2003-04	11,81,719	1,00,000	-	12,81,719
	2004-05	12,49,790	1,25,000	-	13,74,790
	2005-06	16,13,979	1,50,000	-	17,63,979
	2006-07	18,91,503	2,00,000	-	20,91,503
	2007-08	21,62,330	2,50,000	-	24,12,330
6. Smt. Usha Gupta	2001-02	9,12,800	10,000	-	9,22,800
	2002-03	11,78,600	15,000	-	11,93,680
	2003-04	8,00,100	20,000	-	8,20,700
	2004-05	2,41,869	25,000	-	2,66,869
	2005-06	17,16,695	30,000	-	17,46,695
	2006-07	15,68,369	35,000	-	16,03,369

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	2007-08	12,53,398	3,55,000	-	16,08,398
7. Smt. Archana Gupta	2001-02	12,23,700	12,000	-	12,35,700
	2002-03	10,90,570	17,000	-	11,07,570
	2003-04	10,75,350	22,000	-	10,97,350
	2004-05	8,30,570	25,000	-	8,55,570
	2005-06	13,03,884	28,000	-	13,31,884
	2006-07	2,99,490	35,000	-	3,34,490
	2007-08	16,60,660	3,60,000	-	20,20,660
Total		9,36,47,637	1,53,50,504	18,00,00,000	28,89,98,821

47. At this juncture, it is pertinent to refer to the decision of this Court in *Om Prakash Jakhotia (supra)*, wherein, while recognizing the onus on the part of the assessee to approach the ITSC with clean hands, the Court held as under:-

> "21. The second and equally important reason for this court to hold that the Income-tax Settlement Commission gravely erred in its approach is an utter disregard to the condition that **the assessee always has the duty to come clean and make full disclosure.**
>
> 23. In the present case, after noting and brushing aside the Revenue's objections with regard to the complete lack of explanation by the assessee with respect to credits claimed, the Income-tax Settlement Commission proceeded to compute the amounts offered and observed that the difference in the net asset and the income declared was Rs. 5.55 crores. Jakhotia accepted the difference as their undisclosed income computed in the manner given (in the order) and "in the spirit of settlement agreed to offer additional income of Rs. 5.55 crores. A letter was filed on November 10, 2014 offering additional income of Rs. 5.55 crores, which is placed on record". The Income-tax Settlement Commission thereafter recorded:

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> "9. As discussed in the foregoing paras, we have considered the submissions of the applicant and the Department. All the issues were discussed one by one during the course of hearing. After carefully considering the submissions of the Department and the applicant and the facts of the case, we are of the view that the offer made by the applicant in the statement of facts and the additional offer of Rs. 5.55 crores made during the course of proceedings under section 245D(4) before this Commission adequately cover all the issues. Therefore, the offer of additional income of Rs. 5.55 crores is accepted."

24. Clearly, the decision of the Income-tax Settlement Commission was untenable in law. **Once the assessee approached it with a certain amount, representing that it constituted full and true disclosure (and had maintained that to be the correct amount till the date of hearing) the question of "offering" another higher amount as a "full" disclosure is impermissible.** Ajmera Housing (supra) clearly held that (page 657 of 326 ITR):

> ".. . there is no stipulation for revision of an application filed under 245C(1) of the Act and thus the natural corollary is that determination of income by the Settlement Commission has necessarily to be with reference to the income disclosed in the application filed under the said section in the prescribed form."

25. The amount offered in this case, clearly could not have been considered or accepted. The Income-tax Settlement Commission, in this regard, fell into error as there was no full and true disclosure by the assessees. Consequently, the impugned order is hereby set aside and quashed. The Assessing Officer shall proceed hereafter, in accordance with law and complete the block assessments. The time taken during the pendency of proceedings before the Commission and the time during which the Commission's order was in force, shall be ignored for the purpose of limitation.

[Emphasis supplied]

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48. Further, addressing the respondent-assessee group's contention regarding the revision of the application, we are of the opinion that the statutory framework of Chapter XIX-A of the Act does not allow for any revision or amendment of an application under Section 245C of the Act, as this would essentially entail submitting a new application in the same case while withdrawing the previous one. Such a process would afford the respondent-assessee group an opportunity to retract their initial submission and make a fresh one. Therefore, permitting the revision of the application would indirectly provide the respondent-assessee group a chance to accomplish something that they could not achieve directly. Furthermore, it would also severely affect the importance of the requirement of full and true disclosure at the first instance. The very foundation of a settlement proceeding lies at the bedrock of good faith and therefore, revision or amendment, which has the effect of concealing a misrepresentation made in the application, would be impermissible and *de hors* the scheme of Chapter XIX-A under the Act.

49. In the case of **CIT v. ITSC**[13], this Court, while relying upon the decision of the Hon'ble Supreme Court in the case of *Ajmera Housing Corporation (supra)*, concluded that revising a disclosure made in a settlement application would clearly indicate that the original disclosure

[13][2013] SCC OnLine Del 2341

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was neither truthful nor comprehensive. The relevant paragraph no.31 is being reproduced herein for reference:-

> **"31.** In the context of the factual matrix of the case before it, the Supreme Court observed that a disclosure made in a settlement application cannot be permitted to be revised inasmuch as no such revision is contemplated under the scheme of the Act. In this context, the Supreme Court observed as under (pages 656, 657, 659):
>
> **It is plain from the language of sub-section (4) of section 245D 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 pre-condition for a valid application under section 245C(1) of the Act, the scheme of Chapter XIX-A does not contemplate revision of the income so disclosed in the application against item No. 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 245C(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 what he cannot otherwise achieve directly and in the process rendering the provision of sub-section (3) of section 245C of the Act otiose and meaningless. In our opinion, the scheme of said Chapter is clear and admits no ambiguity.. .
>
> **As aforestated, in the scheme of Chapter XIX-A, there is no stipulation for revision of an application filed under section 245C(1) of the Act and thus the natural corollary is that determination of income by the Settlement Commission has necessarily to be with reference to the income disclosed in the application filed under the said section in the prescribed form. ..**
>
> We are convinced that, in the instant case, the disclosure of Rs. 11.41 crores as additional undisclosed income in the revised annexure, filed on September 19, 1994, alone was sufficient to

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> establish that the application made by the assessee on September 30, 1993, under section 245C(1) of the Act could not be entertained as it did not contain a "true and full" disclosure of their undisclosed income and "the manner" in which such income had been derived. However, we say nothing more on this aspect of the matter as the Commissioner, for reasons best known to him, has chosen not to challenge this part of the impugned order."
>
> [Emphasis supplied]

50. It is, thus, safely concluded that in the given facts and circumstances, the ITSC ought not to have proceeded with passing of the order as the respondent-assessee had failed to make a true and full disclosure before the ITSC.

51. Furthermore, in order to address the issue of granting immunity from penalty and prosecution under Section 245H of the Act, it is important to note that the said Section empowers the ITSC to exercise discretion in granting immunity to assessee from prosecution for any offence under the Act or the Indian Penal Code, 1860 or from the imposition of any penalty under the Act, pertaining to the case covered by the settlement. The grant of such immunity is subject to conditions that the ITSC may deem appropriate to impose. A prerequisite for granting immunity is that the applicant must have cooperated in the proceedings before the ITSC and made a "full and true disclosure" of its income and the manner in which such income has been derived. For the sake of clarity, the relevant provision of Chapter XIX-A of the Act is extracted as under:-

> "245H. Power of Settlement Commission to grant immunity from prosecution and penalty.—(1) The Settlement Commission may, if it

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is satisfied that any person who made the application for settlement under section 245C has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived, grant to such person, subject to such conditions as it may think fit to impose for the reasons to be recorded in writing, immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1860) or under any other Central Act for the time being in force and also (either wholly or in part) from the imposition of any penalty under this Act, with respect to the case covered by the settlement :

Provided that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under section 245C :

Provided further that the Settlement Commission shall not grant immunity from prosecution for any offence under the Indian Penal Code (45 of 1860) or under any Central Act other than this Act and the Wealth-tax Act, 1957 (27 of 1957) to a person who makes an application under section 245C on or after the 1st day of June, 2007.

(1A) An immunity granted to a person under sub-section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of settlement passed under sub-section (4) of section 245D within the time specified in such order or within such further time as may be allowed by the Settlement Commission, or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.

(2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Settlement Commission, if it is satisfied that such person had, in the course of the settlement proceedings, concealed any particular material to the settlement or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the settlement and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

(3) On and from the 1st day of February, 2021, the power of the Settlement Commission under this section shall be exercised by the Interim Board and the provisions of this section shall mutatis

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mutandis apply to the Interim Board as they apply to the Settlement Commission."

52. The Hon'ble Supreme Court in the case of **Kotak Mahindra Bank Ltd. v. CIT**[14], examined the pertinent condition required to be fulfilled prior to the granting of immunity under Section 245H of the Act. The relevant paragraph has been reproduced herein below:-

> "6. On a close reading of the provisions extracted hereinabove, it emerges that under section 245H(1) if the Settlement Commission is satisfied that any assessee who makes the application for settlement under section 245C, has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of its income and the manner in which such income has been derived, may grant immunity from prosecution or from the imposition of penalty, either wholly or in part with respect to the case covered by the settlement. **The necessary ingredients for granting immunity from prosecution would be : (a) the assessee should have co-operated with the Settlement Commission in the proceedings before it ; and (b) the assessee should have made a full and true disclosure of its income and the manner in which such income has been derived, to the satisfaction of the Commission.**
> Therefore, what is of essence is that the assessee ought to have :
> (a) made full and true disclosure before the Commission, and
> (b) co-operated with the Commission in the proceedings before it.
> 6.1. Upon being satisfied as to the said ingredients, the Commission may grant immunity from prosecution or from the imposition of penalty, either wholly or in part with respect to the case covered by the settlement."
>
> [Emphasis supplied]

53. Hence, it is evident from the aforementioned discussion that the ITSC is entrusted with the power of granting immunity from penalty and prosecution. However, such power is exercised only in cases where

[14] 2023 SCC OnLine SC 1215

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the contingency of full and true disclosure is fulfilled and the assessee has cooperated in the settlement proceedings.

54. Taking into account the judicial precedents and discussions outlined hereinabove, it is imperative to highlight that the legal framework concerning applications under Section 245C (1) of the Act fundamentally requires a "full and true disclosure" of additional income. It must be noted that the procedure prescribed under Chapter XIX-A of the Act is a marked departure from the general procedure involving assessment by the AO and consequent action under the law. As briefly observed in the initial part of this judgment, this departure is meant to provide an opportunity for the assessee to come clean regarding the income and tax payable thereon.

55. However, the relief envisaged in Chapter XIX-A of the Act is wide in nature and apart from settlement and quantification of payable tax, it also protects the assessee from prosecution and penalties, if so ordered by the ITSC. At the root of this incentive, lies a commitment of the assessee to make a full, true and honest disclosure of the income, source of income and additional tax payable thereon. Once it is seen that the disclosure was not full and truthful, the ITSC loses its jurisdiction to entertain such an application as well as to provide any immunity to the applicant from prosecution and penalties.

56. Hence, in the present case, the ITSC has erred in law by approving the application of the respondent-assessee group under Section 245C of the Act. The ITSC further went on to grant immunity

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from the penalty and prosecution under Section 245H of the Act, which was contrary to the twin conditions stipulated herein above. Thus, the ITSC acted in excess of the jurisdiction conferred upon it under the Act.

57. In view of the aforesaid, the order dated 9 June 2014 is, hereby, set aside. The writ petition is, accordingly, allowed and disposed of alongwith pending applications, if any.

PURUSHAINDRA KUMAR KAURAV, J.

YASHWANT VARMA, J.

APRIL 10, 2024/p