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

+ **WRIT PETITION (CIVIL) No. 3030/2017**

% Date of decision: 26th October, 2017

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Petitioner

Through Mr. Asheesh Jain, Sr. Standing
Counsel.

versus

M/S FRONTLINE BUSINESS SOLUTIONS PVT. LTD. &

ORS. Respondents

Through Mr. Saurabh Prakash & Mr. Kunal
Gosain, Advocates for respondent Nos. 1
and 3 to 6.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

SANJIV KHANNA, J. (ORAL):

This writ petition impugns the order dated 17th March, 2016 passed by the Income Tax Settlement Commission (ITSC, for short) on the miscellaneous application filed by the Principal CIT (Central - 2), New Delhi, seeking rectification of the rectification order dated 31st December 2015.



2. The impugned order dismisses the said miscellaneous application recording that the Principal Bench, ITSC had taken a conscious decision while passing the rectification order under Section 245D(6B) of the Income Tax Act, 1961 (Act, for short) in view of the amended provisions of Section 234B(2A) introduced with effect from 1st June, 2015.

3. The aforesaid observation and finding of the ITSC cannot be faulted for the reason that there cannot be rectification of the rectification order.

4. The respondent-assessee had approached the ITSC for settlement of its disputes by moving an application under Section 245C of the Act.

5. ITSC disposed of the settlement application vide order dated 29th June, 2015 under Section 245D(4) enhancing the undisclosed income as declared. It was also directed that the assessee would be liable to pay interest under Section 234B of the Act upto the date of passing of the order under Section 245D(4) of the Act.

6. The assessee had thereafter filed an application for rectification of the order dated 29th June, 2015 on account of correction of typographical errors and also direction to charge interest under Section 234B upto the date of order under Section 245D(4) as being against law as the same was chargeable only upto the date of order under Section 245D(1) of the Act.



7. For detailed reasons, the Principal Bench of the ITSC by majority of 2:1 allowed the rectification application holding that interest would be chargeable under Section 234B upto the date of order under Section 245D(1) only and not thereafter even on the enhanced undisclosed income as decided vide order under Section 245D(4) of the Act dated 29th June, 2015. This order examines the effect of insertion of sub-section 2A (b) of Section 234B of the Act introduced with effect from 1st June, 2015 and the majority opinion holds that the amended provision would be applicable to settlement applications filed under Section 245C on or after 1st June, 2015 only and not to orders of the ITSC passed on or after 1st June, 2015.

8. Revenue, in the present writ petition, has only challenged the order dated 17th March, 2016 and there is no challenge to the order of the ITSC dated 31st December, 2015 by which the rectification application of the assessee was allowed, accepting the contention of the assessee that interest under Section 234B should be charged only upto the date of order under Section 245D(1) and not upto the order under Section 245D(4) of the Act, as amendment made by enacting sub-section 2A(b) to Section 234B with effect from 1st June, 2015 was not retrospective and would not apply to pending applications.

9. The Revenue would have to challenge this order dated 31st December, 2015 passed by the Principal Bench of the ITSC by filing an appropriate writ petition. In the said petition, reference can be made to the subsequent order dated 17th March, 2016 passed by the ITSC, but as noticed above, this order dated 17th March, 2016 *per se*



cannot be held to be bad in law for the ITSC does not have power to rectify, review or re-examine the order passed in the rectification application.

10. With the aforesaid observations, the present writ petition is disposed of, clarifying that if and when Revenue prefers a fresh writ petition, we would examine the issue on merits. We have not expressed any opinion on merits.

SANJIV KHANNA, J.

PRATHIBA M. SINGH, J.

OCTOBER 26, 2017
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