

SetCom application couldn't be rejected if it was allowed for other group companies making similar disclosure

Summary – The High Court of Delhi in a recent case of Bindlas Duplux Ltd., (the Assessee) held that where manner of deriving undisclosed income was disclosed by all 10 group companies and Commissioner submitted consolidated report, Settlement Commission could not proceed with applications of 6 companies while denying same with 4 remaining companies

Facts

- The four petitioners belonged to the Bindal Group, which comprised of ten such companies. A search was undertaken on various premises of the Bindal Group. Proceedings under sections 153A and 143(3) were initiated. Returns were filed. While the assessments were pending, the petitioners filed application before the Settlement Commission under section 245C(1) seeking to settle these pending assessments. In its application, the petitioners disclosed an additional income for the relevant assessment years which was not disclosed before the Assessing Officer. It comprised of unsecured loans and sum and towards unaccounted stock. Enclosed with the applications was the full and true statement of facts.
- The Settlement Commission passed an order under section 245D(1) holding that the disclosures made by the applicants were full and true and that the applicants also explained the manner of deriving additional income not disclosed to the Assessing Officer, in their respective settlement applications. Accordingly it held that all the ten applications were fit to be allowed and proceeded with.
- Thereafter, the Commissioner filed its report under section 245D(2B) and objected that the main areas of undisclosed income declared in six companies were found as bogus share capital, unsecured loan, unaccounted stock found during the search and other expenses. It was stated that the assessee failed to establish the identity and genuineness of the share capital/unsecured loans transactions within the meaning of section 68 .
- The Settlement Commission held that no clinching and direct evidence has been placed on record by the Commissioner upto this stage to come to the conclusion that the applicants had not made true and full disclosure of its income in the settlement application. It was stated that most of the issues raised by the Commissioner in his report needed further verification which could be taken up in the later proceedings. Accordingly, six applications were allowed to be proceeded with further within the meaning of section 245D(2C).
- Further, as far as four petitioners before the instant court were concerned, by a separate order, it was observed that on a perusal of Commissioner's report, it was seen that no specific comments have been made with regard to the present four applicants under consideration; as to the manner of their deriving undisclosed income offered for taxation in the settlement applications. It also observed that other than the income from share dealings, the applicants had not explained the

manner of earning the income which has resulted into unexplained loans, credit balance, stock and transportation cost all being offered in the settlement applications. In view of this, the assessee was required to explain why the applications be not declared invalid since the basic requirement under section 245C for explaining the manner of deriving income offered in the settlement applications had not been satisfied. However, in the impugned order, the Settlement Commission was not satisfied with their submissions. Accordingly, it was held that the four petitioners had not satisfactorily explained the manner of deriving such additional income. Therefore, the mandatory requirement for a valid application under section 245C(1) was not complied with. The applications were said to be invalid and were not allowed to be proceeded with.

- In the instant writ, the petitioners argued that in the settlement applications filed by them and also six other companies of the Bindal Group, it was elaborately explained that unaccounted income generated by the group as a whole from the unaccounted business transactions and inflation of expenses were brought into a common pool and redeployed/introduced in the form of share capital and/or unsecured loans in various companies of the Group. It was also explained that there was intermingling of funds generated by the various companies in the group. These were redeployed and introduced in various group companies, depending upon business requirement. They accordingly submitted that the ITSC was required to examine all these applications as a whole and not individually for final settlement of the income of various entities in the group.

Held

- What the respondents are unable to deny is the fact that the applicants before the ITSC included six companies of Bindal Group whose applications were directed to be proceeded with by the ITSC. As far as the four petitioners were concerned, the ITSC held their applications to be invalid although they belonged to the same Bindal Group.
- The second fact is that in their applications the ten companies explained that the unaccounted income diverted/generated by the Group formed a common pool and was redeployed into all companies in the Group. The funds generated were introduced in the form of share capital or unsecured loans in various other companies of the Bindal Group. It was, therefore, not possible to examine the state of affairs of any one company of the group in isolation of the entire group.
- If indeed, as contended by the revenue, there was no full and true disclosure of facts by all ten companies, then the respondent ought to have challenged the order of the ITSC permitting the applications of the six other companies to be proceeded with. The revenue appears to have accepted a part of this order in regard to those six companies. Why it should allow the petitioners here to be treated differently is not clear. How it could prejudice the revenue if the petitioners' applications were allowed to be proceeded with is also not clear. As rightly pointed out on behalf of the petitioners, it will not be possible for the ITSC to appreciate the extent and manner of generating undisclosed income in the hands of the four companies/petitioners constituting a part of the Bindal Group without viewing it in the context of the activities of the other six companies.
- While indeed the scope of this Court under article 226 of the Constitution is limited, the Court finds that as far as the impugned order of the ITSC is concerned, it does not spell out any rational criteria

for distinguishing six companies of the Bindal Group from the four petitioners. Further, the ITSC proceeded to reject the settlement application of the four petitioners on a ground that was not urged by the revenue, viz., the failure to disclose the manner of earning undisclosed income. Merely because the consolidated cash flow was not in respect of four petitioners could not mean that they had not disclosed the manner of earned undisclosed income.

- Thus, the impugned order of the ITSC accords a different treatment to the four petitioners which does not appear to be justified in the facts and circumstances of the case. If allowed to stand, the impugned order might defeat the very purpose of the companies of the Bindal Group applying to the ITSC for an early settlement of disputes.
- For all the aforementioned reasons, the Court is unable to sustain the impugned order dated 13-5-2016 passed by the ITSC declining the prayers of the petitioners that their applications before the ITSC should be proceeded in accordance with law.
- While setting aside the impugned orders, the Court directs that the applications of the four petitioners would be entertained and proceeded with by the ITSC on the same basis as the six other companies in the Bindal Group. The petitioners' applications shall be permitted to be proceeded with.