

## Proceedings before AO would be of no avail once SetCom proceeded with settlement application: Delhi HC

**Summary – The High Court of Delhi in a recent case of Radico NV Distilleries Maharashtra Ltd., (the Assessee) held that where once Income Tax Settlement Commission proceeds with settlement application, as per section 245D(4), proceedings before Assessing Officer come to a standstill**

### Facts

- A search was conducted at the business premises of the assessee under section 132. Pursuant to the search, proceedings were initiated under section 153A for the assessment years 2005-06 to 2010-11. At that time, the assessment proceedings for assessment year 2011-12 were also pending before the Assessing Authority.
- During the pendency of the proceedings under section 153A, the assessee approached the ITSC under chapter XIX-A. In its applications before the ITSC, the assessee made a disclosure of additional income of Rs.11.61 crores and paid additional tax and interest payable thereon aggregating to Rs. 97.29 lakhs. The applications also contained the confidential portion which provided the details relating to the mode and manner of earning such additional income. The assessee also apprised the Assessing Officer of the factum of filing of settlement applications on 30-1-2013.
- Apart from the assessee's application, applications were also filed by the group companies and individuals on whom searches were carried out. In total the said applicants declared a sum of Rs.104.10 crores. The ITSC passed a consolidated order stating that since the applicants had *prima facie* fulfilled the conditions prescribed under section 245C(1), the applications were allowed to be proceeded with.
- The ITSC had simultaneously called for a report from the Commissioner. In this report, the Commissioner averred that the assessee had received substantial amount of share capital from bogus/non-existent companies. The report further stated that the assessee had received share capital from EV which in turn had received the entire shareholding from bogus/non-existent/paper/briefcase companies.
- According to the Commissioner, the total of the undisclosed income under different heads as per seized documents was Rs.105.57 crores. Thus, the Commissioner reported that there was a failure by the assessee to make a full and true disclosure of its income before the ITSC as also a failure to disclose the manner in which the income was derived and the additional amount of income tax payable on such income.
- Pursuant to this report, the ITSC passed the impugned common order rejecting the applications of the assessee.
- On appeal to the High Court:

### Held

- The reasons given by the ITSC for rejection of the application are primarily threefold. First that the questionnaire issued by the Assessing Officer was not answered. Secondly, there was a failure to make a full and true disclosure and thirdly that the assessee was taking contradictory stands.
- Insofar as the first reason is concerned, once the ITSC proceeds with the settlement application, as per section 245D(4), the proceedings before the Assessing Officer comes to a standstill. This is clear from a reading of section 245F(2). Thus, no adverse inference can be drawn from the fact that the questionnaire issued by the Assessing Officer was not answered.
- Insofar as the second reason *i.e.* full and true disclosure is concerned, even the report of the Commissioner does not point to a great variance in the income disclosed. The difference between the two amounts as disclosed by the assessee and as deduced by the Commissioner from the documents seized constitutes less than 1.5 per cent difference in the amount disclosed and the amount computed by the Commissioner. It is possible that the said amount can be reconciled before the ITSC if the application is proceeded with and heard finally. The difference is too minimal when compared to the total amount disclosed, to constitute a failure to make full and true disclosure of the income.
- There is no doubt that S is an earlier avatar of the assessee. The Joint Venture Agreement clearly shows that 100 per cent of shareholding of S was owned by RS and that was intended to be diluted with investments from the other companies including EV. The application of EV is pending before the ITSC. The primary ground for rejection is that EV is a conduit and that it has received the substantial amount of share capital from bogus/non-existent companies. If this is so, it would have consequences for EV as well. The dismissal of the assessee's applications by the ITSC would result in a failure to examine the matter comprehensively and in entirety. Even if what is contained in the report is indeed true which would become clear after the proceedings at the ITSC are concluded, appropriate orders can be passed by the ITSC in accordance with law in respect of such bogus companies, if any. The rejection of the applications of the assessee cannot be done on this sole ground and in fact it would be appropriate if the assessee's case is heard and decided along with case of EV.
- Finally, it is not in dispute that the assessee company was undergoing restructuring. The restructuring of the shareholding is different from a company being newly setting up. The term 'process of setup' is merely a misdescription by the assessee of the restructuring process, in its response dated 1-4-2013, to the notice of the ITSC dated 8-2-2013. The ITSC appears to have borrowed this terminology from the said document and has non-suited the assessee on that ground. What indeed is clear from the facts is that the shareholding pattern of the assessee company was being restructured/changed and it was not an establishment of a new company. While the shareholding of any company is being changed, there is no bar on depreciation being claimed as permissible in law. Thus, this could not be a ground for rejection of the assessee's applications.

- Thus, the impugned order of the ITSC is set aside. The merits of the dispute shall be examined by the ITSC in accordance with law. The applications filed by the assessee shall be proceeded with and considered by the ITSC along with the application filed by EV.
- The writ petition is allowed in the above terms.