2024:DHC:4938-DB

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

% **Judgment reserved on: 20 May 2024**
Judgment pronounced on: 03 July 2024

\+ ITA 721/2023

PR. COMMISSIONER OF INCOME TAX -CENTRAL -1
..... Appellant

Through: Mr. Ruchir Bhatia, Sr.SC with Mr. Anant Mann, Jr.SC.

versus

MAHARAJI EDUCATION TRUST .... Respondent

Through: None.

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 present appeal, the Revenue impugns the order of the Income Tax Appellate Tribunal [**"ITAT"**] dated 13 October 2021, whereby, *inter alia*, the reassessment proceedings under Section 148 of the Income Tax Act, 1961 [**"Act"**] have been declared to be invalid for the Assessment Year [**"AY"**] 2007-08.

2. The facts would exhibit that the assessee is a charitable trust performing activities in the field of education and forms a part of the Santosh Group, which is engaged in conducting medical courses. The assessee filed its Income Tax Return [**"ITR"**] on 30 October 2007 showing an excess expenditure of ₹2,69,34,371/- and declaring its income as nil. Subsequently, the case of the assessee was processed under Section 143(1) of the Act and the same was picked up for scrutiny assessment. Accordingly, on 31 July 2008, a notice under Section 143(2) was issued to the assessee.

3. Thereafter, an assessment order dated 31 December 2009 under Section 143(3) of the Act was passed by the Assessing Officer [**"AO"**], thereby, determining the total income of the assessee to be ₹15,03,47,006/-, after making the following additions:-

i. Exemption to the tune of ₹10,80,98,671/- under Section 11 of the Act was denied.

ii. A sum amounting to ₹2,50,74,146/- was added on account of unexplained expenditure under Section 69C of the Act.

iii. An amount of ₹1,70,23,219 was added on account of unexplained receipts under Section 68 of the Act.

iv. Addition of ₹1,50,970/- was made on account of unexplained expenditure under Section 69 of the Act.

4. Being aggrieved by the aforesaid additions, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) ["**CIT(A)**"], who *vide* order dated 14 January 2011 partly allowed the appeal of the assessee and deleted the addition of ₹4,22,48,335/-. It is stated that the order of the CIT(A) was upheld by the ITAT in appeal and the appeal against the ITAT order has been admitted by this Court. The said

appeals being ITA 696/2016 to 699/2016 are stated to be pending before this Court.

5. It appears that on 27 June 2013, a search under Section 132 of the Act was conducted in the case of Santosh Group, including the case of the assessee. During the course of search, it was found that the said group charged capitation fee for admission in the concerned courses and such fee did not find any mention in the ITR. Consequently, the reassessment proceedings were initiated by the AO under Section 147/148 of the Act and a notice pursuant thereto under Section 148 was served upon the assessee after recording reasons to believe.

6. The assessee filed a reply to the aforesaid notice submitting that the ITR which was originally filed on 31 October 2007 may be treated as ITR filed in response to the notice under Section 148 of the Act. Resultantly, a notice dated 10 October 2014 was issued under Section 143(2) of the Act. *Vide* letter dated 24 November 2014, the assessee raised objections against the said notice, however, the same came to be disposed of as rejected on 2 February 2015.

7. Thereafter, an assessment order under Section 143(3) read with Section 148 of the Act was framed by the AO on 19 March 2015. It was observed therein that a sum of ₹1,17,85,000/- pertained to AY 2005-06 and the sum amounting to ₹7,46,51,210/- was already included by the assessee in the income and expenditure account as fees. Thus, while rejecting other contentions raised by the assessee, the AO held that the amount of fees which was left undeclared in the ITR amounted to ₹10,38,30,790/-. In pursuance of the aforesaid, while disallowing the exemption under Section 11 of the Act and assessing the income of the assesssee in the status of Association of Persons, the total income was computed to be ₹21,19,29,461/-.

8. Being aggrieved by the aforenoted order, the assessee filed an appeal before the CIT(A), whereby, *vide* order dated 29 July 2016, the appeal of the assessee was partly allowed in the terms outlined as under:-

i. The exemption under Section 11 of the Act was allowed, however, an amount of ₹21,66,000/- was sustained out of ₹10,80,98,671/-, applying Section 115 BBC of the Act.

ii. The unaccounted receipt of ₹10,38,30,790/- was deleted. The CIT(A) relied on the order passed by the Income Tax Settlement Commission ["**ITSC**"] for AYs 2008-09 and 2009-10, wherein, the ITSC had taken a view that undisclosed surplus is to be taken as 22% of the expenditure. Accordingly, bearing in mind the total expenditure of ₹24.86 crores for AY 2007-08, the total taxable amount was computed at ₹5,46,92,000/-. It was further held that this amount was required to be set off by the excess of expenditure over receipts disclosed in the accounts, amounting to ₹2,69,34,371/-. The CIT(A) arrived at an undisclosed income of ₹2,77,57,629/- which was thereafter held to be set off against ₹3,00,00,000/- offered to tax by the settlor.

9. Against the order passed by the CIT(A), the Revenue preferred an appeal before the ITAT, which came to be dismissed *vide* order dated 13 October 2021 and the reopening of assessment proceedings under Section 148 of the Act was also quashed by the ITAT. The ITAT, while dismissing the appeal, has held as under:-

i. The AO did not apply its mind at the time of recording the reasons for reopening the assessment proceedings and hence, the said proceedings are invalid.

ii. The assessee is registered under Section 12A and Section 10(23C)(iv) of the Act, which completely exists for the purpose of imparting education and is doing a charitable activity.

iii. The CIT(A) had rightly applied the ratio of the ITSC to set off the amount of ₹3,00,00,000/-.

10. It is in the aforesaid factual backdrop that the Revenue seeks to ventilate its grievance against the order of the ITAT.

11. The record would reflect that the notice was issued to the assessee on the first date of hearing i.e., 8 December 2023. On the following date of hearing i.e., 5 March 2024, since the assessee remained unrepresented, Mr. Ruchir Bhatia, learned senior standing counsel appearing on behalf of the Revenue was directed to file an affidavit of service. Pursuant to the said order, the affidavit of service was duly placed before us on 13 May 2024 and consequently, the appeal was formally admitted by this Court. The relevant extract of the order dated 13 May 2024 is reproduced as under:-

> "3. Having heard Mr. Bhatia, learned counsel appearing in support of the appeal, we formally admit this appeal on the following questions of law:
>
> "2.1 Whether the Income Tax Appellate Tribunal ["ITAT"] erred in law in quashing the notice under section 148 of the Income Tax Act, 1961 ["Act"] on ground of difference in quantum of income escapement as per notice under section 148 of the Act and the assessment order?
> 2.2 Whether the ITAT erred in law in quashing the notice under section 148 of the Act by terming the difference in quantum of income escapement as per notice under Section 148 of the Act and the assessment order as non-application of mind by the Assessing Officer ["AO"] while drafting reasons to believe?
> 2.2A Whether the exemption under Sections 11 of the Act is allowable to an assessee registered as Charitable Trust under Section 12A for the purpose of education who is otherwise indulged in the commercial activity by receiving the capitation fee/project fee out of the books of account and thus violated the objects for which it was created?
> 2.3 Whether the ITAT was correct in applying the rate of 22% as adopted by the Hon'ble Settlement Commission for computing the excess of income over the expenditure in other assessment years of the

> assessee's own case which are not covered by the Settlement Commission order?
> 2.3A Whether the ITAT was justified in upholding the deletion of the addition of Rs.10,38,30,790/- disregarding the actual workings made by the AO from the impounded materials and books of accounts of the assessee after verifying and considering the submissions made by the assessee?"

12. However, despite service being effected on the assessee, nobody had entered appearance on behalf of the assessee when the matter was taken up for final hearing and thus, this Court was constrained to proceed *ex-parte* in the matter.

13. Mr. Bhatia submitted that the ITAT has erroneously invalidated the reassessment proceedings and unjustifiably deleted the additions made by the AO and thus, the impugned order deserves to be set aside. He contended that at the time of recording of reasons, only a *prima facie* view is required to be formed about the escapement of income and in the instant case, the reasons recorded by the AO are sufficient to manifest that the unaccounted capitation fee was received by the assessee. Taking a cue from the decision of the Supreme Court in the case of **Srikrishna (P) Ltd. v. ITO** [(1996) 9 SCC 534], he asserted that the reopening proceedings under Section 147/148 of the Act do not suffer from any legal infirmity as the AO had acted on the basis of a subsequent relevant, reliable and specific information. He, therefore, submitted that since the sufficiency of material is not to be considered at the stage of reopening assessment proceedings, the jurisdiction assumed by the AO is valid and proper. He placed reliance on the decision of the Supreme Court in the cases of **Phool Chand Bajrang Lal v. ITO** [(1993) 4 SCC 77] and **Raymond Woollen Mills Ltd. v. ITO** [(1999) 236 ITR 34].

14. On the aspect of exemption under Section 11 of the Act, Mr. Bhatia placed reliance on the judgment rendered by the Supreme Court in the case of **T.M.A. Pai Foundation v. State of Karnataka** [(2002) 8 SCC 481] to submit that the collection of capitation fee in lieu of admission cannot be considered to be a charitable function. He asserted that any institution which violates law prohibiting collection of capitation fees is not charitable in nature and thus, it is not entitled for exemption under Section 11 of the Act.

15. He contended that since the assessee is charging capitation fee, the said reason alone is sufficient to reach the conclusion that the activities of the assessee are not genuine and the assessee is not entitled to claim any benefit envisaged in Sections 11 and 12 of the Act. He also relied upon the decisions in the cases of **P.A. Inamdar v. State of Maharashtra** [(2005) 6 SCC 537] and **CIT v. Mac Public Charitable Trust** [450 ITR 468] to substantiate his arguments.

16. He further submitted that the CIT(A) and the ITAT has erroneously relied upon the decision of the ITSC for AYs 2008-09 and 2009-10 and the document *Annexure A-21* therein, to apply an identical rate of 22% and rather, the incriminating documents for the relevant AY were marked as *Annexures A-58* to *A-64*. While relying upon the decision rendered by us in W.P. (C) 16524/2023 titled as **Orchid Infrastructure Developers (P.) Ltd. v. PCIT,** he contended that the order of the ITSC is deemed to be conclusive for all the matters pertaining to the concerned AY for which the settlement application has been decided by the ITSC. He, therefore, submitted that the facts relating to the relevant AY were never brought into the knowledge of the ITSC and the CIT(A) and the ITAT has erred in setting off amount of ₹3,00,00,000/- declared by P. Mahalingam, Managing Trustee of the

assessee in his personal capacity before the ITSC, with the unaccounted capitation fee for the concerned AY.

17. We have heard the learned counsel appearing on behalf of the Revenue and perused the record.

18. A perusal of the reasons recorded for reopening assessment, which is reproduced in the order of the ITAT, would indicate that pursuant to a search and seizure operation which was conducted under Section 132 of the Act in Santosh Group of cases, various unaccounted receipts in view of capitation fee were found in the seized documents. As per the reasons extracted in the impugned order, the total unaccounted receipts for the relevant AY in the case of assessee was computed to be ₹19,64,97,500/-. It was further noted that P. Mahalingam, in his statement recorded under Section 132(4) of the Act, had unequivocally admitted that the receipts appearing in the seized documents were not recorded in the regular books of accounts of the assessee and the source of such receipts which were in addition to the regular fees was in the form of unaccounted fees.

19. It is, thus, discernible from the impugned order that the ITAT has invalidated the reassessment proceedings on the basis of difference in quantum of capitation fee collected by the assessee. The fact which remained undisputed was that the assessee had not denied the factum of charging capitation fee, which was reflected in the seized documents. The ITAT has seemingly relied upon the correctness and sufficiency of the material based upon which the reassessment proceedings have been initiated against the assessee. However, in our considered opinion, the said position is not countenanced in law.

20. Reliance may be placed upon the decision of the Supreme Court in the case of *Sri Krishna Pvt. Ltd. (supra),* whereby, it has been held

that the establishment of escapement of income is not a condition precedent for reopening assessment. Rather, what needs to be reckoned at the stage of issuing notice under Section 148 of the Act is whether there exist any reason to believe that income has escaped assessment. The relevant extract of the said decision is reproduced hereunder as:-

> "9.---
> It is necessary to reiterate that we are now at the stage of the validity of the notice under Sections 148/147. The enquiry at this stage is only to see whether there are reasonable grounds for the Income Tax Officer to believe and not whether the omission/failure and the escapement of income is established. It is necessary to keep this distinction in mind."

21. A similar view was taken by the Supreme Court in the case of *Raymond Woollen (supra)*, whereby, it has been held that in the scenario of reopening of an assessment, the Court has to consider the factum of some material which could *prima facie* suggest the reason to reassess and Court does not need to delve into the sufficiency or correctness of the material at that stage.

22. In the case of **New Delhi Television Ltd. v. Deputy CIT** [(2020) 424 ITR 607], the unambiguous position of law with respect to the requirement at the stage of issuing notice for reassessment proceedings was enunciated by the Supreme Court in the following words:-

> **"18. The main issue is whether there was sufficient material before the Assessing Officer to take a prima facie view that income of the assessee had escaped assessment.** The original order of assessment was passed on August 3, 2012. It was thereafter on December 31, 2013 that the DRP in the case of the assessment year 2009-10 raised doubts with regard to the corporate structure of the assessee and its subsidiaries. It was noted in the order of the DRP that certain shares of NNPLC had been acquired by Universal Studios International B.V., Netherlands, indirectly by subscribing to the shares of NNIH. As already noted above it was recorded in the reasons communicated on August 4, 2015 that NNPLC was not having any business activity in London. It had no fixed assets and

> was not even paying rent. Other than the fact that NNPLC was incorporated in the U.K., it had no other commercial business there. NNPLC had declared a loss of Rs. 8.34 crores for the relevant year. It was also noticed from the order of the Assessing Officer that the assessee is the parent company of NNPLC and it is the dictates of the assessee which are important for running NNPLC.
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> **23. The material disclosed in the assessment proceedings for the subsequent years as well as the material placed on record by the minority shareholders form the basis for taking action under section 147 of the Act. At the stage of issuance of notice, the Assessing Officer is to only form a prima facie view.** In our opinion the material disclosed in assessment proceedings for subsequent years was sufficient to form such a view. We accordingly hold that there were reasons to believe that income had escaped assessment in this case. Question No. 1 is answered accordingly."

23. A conspectus of the above discussion would indicate that in the case at hand, the AO had sufficient cogent reasons to initiate reassessment proceedings and the ITAT has erred in holding that the said proceedings were bad in law. It cannot be gainsaid that the difference in the quantum of capitation fee could not be a valid reason for setting aside the reassessment proceedings at the juncture of issuance of notice under Section 148 of the Act. Undeniably, the material seized by the Revenue and the admission made by P. Mahalingam, as already noted above, would constitute fresh tangible material which would warrant reassessment of the income of the assessee. Thus, the reopening of assessment ought not to have been interdicted by the ITAT *vide* the impugned order.

24. Further, the ITAT, on merits, has held that since the assessee is duly registered under Section 12A read with Section 10(23C)(iv) of the Act and the registration is still valid, the assessee is entitled for claiming benefits as per the provisions of Section 11 of the Act. Paragraph no. 56 of the order of the ITAT is culled out as under:-

> "56. Even otherwise on the merits of the case, it respect to the allowing the exemption u/s 11 of the income tax act we find that the assessee is registered u/s 12 A of the act as well as u/s 10 (23C) (IV) of the act also. This registration certificate is still valid and not withdrawn. Assessee is also held to wholly exist for the purpose of education. The addition of the donation is not been made in the hence of the assessee u/s 68 of the income tax act but as income of the charitable trust denying the exemption u/s 11 of the act. We find that there is no reason to deny assessee benefit of Section 11 of the act when the assessee is registered u/s 12 A as well as u/s 10 (23C)(iv) of the act. It is the case of the revenue that assessee is not utilizing the sum so received towards educational activities. In view of this, we do not fjnd any reason that assessee should not be allowed exemption u/s 11 is and 12 of the income tax act as assessee is doing a charitable activity. Therefore we dismiss ground number 2 and 3 of the appeal of the learned assessing officer and uphold the order of the learned CIT - A that extent."

25. A bare reading of Section 11 of the Act would suggest that the said provision provides for an exemption from tax for income arising out of property held by charitable trusts and institutions. For claiming such exemption, the income must be derived from properties that are operating solely for religious or charitable purposes and the entities must obtain a registration certificate under Section 12A or Section 12AA of the Act.

26. A salient aspect which emanates from Section 11 of the Act is that the usage of the phrase 'wholly' relates to the purposes and not to the property of the trust. The word 'wholly' is strikingly different from the word 'mainly'. Rather, the former should be understood to be closely akin to the phrase 'solely'. Put otherwise, there is no scope for the purposes being partially public or religious in nature. It would not be sufficient if some of the objects are charitable or religious in nature. The Supreme Court in **East India Industries (Madras) (P.) Ltd. v. CIT** [(1967) 65 ITR 611] while referring to the case of **Mohammad**

Ibrahim Riza Malak v. CIT, Nagpur [1930 SCC OnLine PC 43] has held as under:-

> "6. The view that we have expressed is borne out by the decision of the Judicial Committee in *Mohammad Ibrahim Riza* v. *CIT* [57 IA 260] in which it was held that **if there are several objects of the trust, some of which are charitable and some non-charitable, and the trustees have unfettered discretion to apply the income to any of the object, the whole trust would fail and no part of the income would be exempt from tax.** The same view has been expressed by the Court of Appeal in *Oxford Group* v. *Inland Revenue Commissioners* [(1949) 2 All ER 537] .

27. In the landmark decision of *TMA Pai Foundation (supra)*, the Supreme Court took a view that charging of capitation fee must be forbidden and the object of education is mandatorily charitable in nature. Paragraph no. 57 of the said decision is reproduced hereunder for reference:-

> "57. We, however, wish to emphasize one point, and that is that inasmuch as the occupation of education is, in a sense, regarded as charitable, the Government can provide regulations that will ensure excellence in education, while forbidding the charging of capitation fee and profiteering by the institution. Since the object of setting up an educational institution is by definition "charitable", it is clear that an educational institution cannot charge such a fee as is not required for the purpose of fulfilling that object. To put it differently, in the establishment of an educational institution, the object should not be to make a profit, inasmuch as education is essentially charitable in nature. There can, however, be a reasonable revenue surplus, which may be generated by the educational institution for the purpose of development of education and expansion of the institution."

28. In the case of *P.A. Inamdar (supra)*, the Supreme Court has held as under:-

> "140. Capitation fee cannot be permitted to be charged and no seat can be permitted to be appropriated by payment of capitation fee. "Profession" has to be distinguished from "business" or a mere "occupation". While in business, and to a certain extent in occupation, there is a profit motive, profession is primarily a service to society wherein earning is secondary or

> incidental. A student who gets a professional degree by payment of capitation fee, once qualified as a professional, is likely to aim more at earning rather than serving and that becomes a bane to society. The charging of capitation fee by unaided minority and non-minority institutions for professional courses is just not permissible. Similarly, profiteering is also not permissible. Despite the legal position, this Court cannot shut its eyes to the hard realities of commercialisation of education and evil practices being adopted by many institutions to earn large amounts for their private or selfish ends. If capitation fee and profiteering is to be checked, the method of admission has to be regulated so that the admissions are based on merit and transparency and the students are not exploited. It is permissible to regulate admission and fee structure for achieving the purpose just stated."

29. With regards to the entitlement of benefits encapsulated in Section 11 and 12 of the Act, the High Court of Madras in the case of *Mac Public Charitable Trust (supra)* has held that collection of amount in excess of what has been prescribed as fee would render the objective of 'charity' a farce and the same shall disentitle the assessee from claiming benefits under the said provisions. The relevant paragraphs of the said decision are reproduced as under:-

> "38. Upon a conjoint reading of the above legal provisions, it is manifest that charitable purpose, as contemplated under the Act though would include education, would not include the advancement of any other object of general public utility, if the object involved is the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity. Thus, it is clear that section 10(23C) and section 11 deal with income that are not to be treated as part of total income. Section 10(23C) exempts the income received by the institution existing solely for educational purposes provided that it is registered and applies its income, wholly and exclusively to the objects for which it is established. However, incidental profit if any received in the course of its educational activities shall not deprive the institution of its exemption. The provisions are explicit as the primary condition is that an institution must solely exist for educational purposes. Whereas, under section

11, though the object is same, it deals with income from property held by charitable or religious trusts. Section 11 of the Act states that income from property held for religious or charitable purposes shall not be included in the total income of the previous year. Section 12 deals with income of trusts or institutions from contributions. Any voluntary contribution received by such trust created wholly for charitable or religious purposes or by an institution established for such purpose, with such contribution not forming part of the corpus, shall be treated as income derived from the property, thereby section 11(1)(a) and (b) would apply to such contributions. Further, as per section 12(2), the value of any services to any person referred in section 13(3) shall not be eligible for deduction. Section 12A deals with making application for registration of the trust/association so that the said institution will have the benefit of exemption under section 11 and section 12 of the Act. It is mandatory for every institution claiming exemption to register themselves. The procedures for registration and cancellation are contemplated in section 12AA. As per section 12AA(1)(b) of the Income-tax Act, 1961, the Commissioner before granting the registration is to be satisfied about the objects of the trust and the genuineness of its activities. However, the Commissioner is vested with the power under 12AA(3) to cancel the registration if the activities are not genuine. The objects are irrelevant, when the activities are not genuine. The application of the funds is also subject to scrutiny by the Commissioner. Further, similar to section 10(23C), **the requirement under section 12 is that the trust must be "wholly" for charitable purpose. If it turns out that the activities are not genuine or are not being carried out in accordance with the objects of the trust, not only is the registration liable to be cancelled, the claim of exemption under section 11 is also liable to be rejected. The word "genuine" must be read as in compliance with all the laws of the land. If the institution or trust is used as a cloak to violate law, irrespective of whether any benefit is achieved or not, the benefit of registration cannot be permitted to accrue to the assessee.** Section 12AA(3) is an independent provision as the right to cancel the registration is not restricted just towards the fulfilment or not of the objects of the trust or association.

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41. Juxtaposing the provisions of both the Acts, viz., Income-tax Act, 1961 and the Tamil Nadu Educational Institutions (Prohibition of Collection of Capitation Fee) Act, 1992, with each other, it is explicit that collection of any amount in excess of what has been prescribed

> as fee or in the nature of donation or voluntary contribution either directly or indirectly to the institution or through some other person or institution or trust, as quid pro quo for the seat in any educational institution, would render the activity of both the entities ungenuine. **Such actions would render the object of "charity" a farce and the transaction will have to be treated as a commercial activity, depriving the assessees of the benefits of sections 11 and 12 of the Act."**

30. Reverting to the facts of the present case, undisputedly, the assessee has engaged itself in charging capitation fee which is *dehors* the objective of the charitable trust. Therefore, the claim of the assessee for exemption as per Section 11 and 12 of the Act does not hold any water. In view of the aforenoted pronouncements of law, the ITAT has wrongly sustained the exemption claimed by the assessee.

31. Lastly, it is seen that the ITAT has placed reliance on the decision of the ITSC in the assessee's own case for the other AYs for computing the excess of income over the expenditure. It is however trite that the order of the ITSC is final and conclusive for a particular AY for which the application has been filed. The said position is reinforced from a decision recently rendered by us in the case of *Orchid Infrastructure (supra),* wherein, it has been held as under:-

> "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.
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> 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."

32. Thus, in light of the aforesaid judgment, it is seen that the ITAT has wrongly placed reliance on the decision of the ITSC for subsequent years and the same is liable to be quashed.

33. Accordingly, in view of the aforesaid, the impugned order passed by the ITAT is hereby set aside. The substantial questions of law raised in the instant appeal are answered in favour of the Revenue.

34. Consequently, the appeal stands allowed and disposed of alongwith pending application(s), if any.

PURUSHAINDRA KUMAR KAURAV, J.

YASHWANT VARMA, J.

03 JULY, 2024/p