IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11997 of 2015

Date of decision: 26.11.2015

Sandeep Singh

…Petitioner

Union of India and others

….Respondents

CORAM: HON’BLE MR. JUSTICE AJAY KUMAR MITTAL
HON’BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Baljinder Singh Sra, Advocate for the petitioner.
Mr. Rajesh Katoch, Advocate for the respondents.

Ajay Kumar Mittal,J.

1. The petitioner prays for quashing/modifying the order dated 23.4.2015, Annexure P.14 passed by respondent No.2 vide which his application dated 30.3.2015, Annexure P.13 seeking 14 months of extension of time for deposit of the arrears of tax has been partly allowed granting time only upto 31.7.2015.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is a dealer in real estate. He is dealing in sale and purchase of immovable

property/land at Amritsar. A search was conducted on 21.8.2009 at the business and residential premises of the petitioner under section 132(1) of the Income Tax Act, 1961 (in short, "the Act"). During the search, records including account books, computer and stock in trade of the petitioner were seized by the officers. The petitioner made a declaration to surrender income amounting to ₹ 2.65 crores for the assessment years 2009-10 and 2010-11 under Section 132(4) of the Act subject to no penalty and prosecution. The Deputy Commissioner of Income Tax, Amritsar issued a notice for the assessment year 2007-08 to the petitioner under Section 142 (1) of the Act asking him to produce his books of account. The petitioner filed reply to the notice and submitted that all assessment proceedings pending against him stood abated in view of second proviso to section 153A of the Act. The respondents issued notice under section 153A(1) of the Act to the petitioner to prepare true and correct return of income for the assessment years 2004-05 to 2010-2011. Notices under Section 142(1) of the Act were also issued to the petitioner. Thereafter, the petitioner filed application under Section 245C(1) of the Act before the Income Tax Settlement Commission in the prescribed form which was registered on 28.9.2011. The petitioner also deposited the entire tax to the tune of ₹ 1,01,44,839/- to the department on the income disclosed. The case was settled before the Income Tax Settlement Commission vide order dated 12.12.2014 and direction was issued to the Assessing Officer to compute tax alongwith interest in accordance with the order passed by it. Thereafter, respondent No.2 issued demand notice under Section 156 of the Act for assessment years 2004-05 to 2010-11. The petitioner had already paid the tax with respect to the assessment years 2004-05 to 2008-09 and there were refunds for the said assessment years which were adjusted against arrears of tax. The total demand raised for the assessment years 2004-05 to 2012-13 came to ₹ 70,12,607/-. At the time of search, jewellery weighing 514.860 gms of the petitioner was also taken into possession worth more than ₹ 13 lacs. The petitioner vide letter dated 9.2.2015 also made a prayer for selling the said jewellery and realize the part of tax amount due. Respondent No.2 issued notice for sale in the newspaper to realise the tax amount. The petitioner is working as a director in the company. The company had already agreed to take loan for the discharge of tax liability of the petitioner. The petitioner being in financial crunch was unable to pay the due amount by the stipulated date. Therefore he filed representation before respondent No.2 dated 24.3.2015 for extending the period by 14 months to clear the entire amount in instalments. He even met respondent No.2 personally but no action was taken. Vide order dated 23.4.2015, the time was granted by the Settlement Commission only upto 31.7.2015 to pay the whole of the outstanding amount. Vide order dated 30.7.2012, the petitioner was granted the concession of deposit of the arrears of tax in 18 equal instalments. According to the petitioner, on account of non intimation of the impugned order, he could neither approach respondent No.2 to seek further concession of time or deposit the first instalment by 10.5.2015. Hence the instant writ petition.

3. A written statement has been filed by respondent No.4 on behalf of respondent Nos. 1, 3 and 4 wherein it has been inter alia stated that the petitioner had filed applications before the Income Tax Settlement

Commission on 28.3.2015 and 31.3.2015 seeking further extension of time of 14 months for payment of taxes. By that time, the petitioner had already defaulted three instalments. Vide order dated 23.4.2015, the Settlement Commission disposed of the applications directing the petitioner to pay the amount of ₹ 32,03,808/- on or before 10.5.2015 and to pay the final instalment of ₹ 21,08,799/- by 31.7.2015. The petitioner instead of making payments of the tax as per the revised time schedule, filed the present writ petition.

4. We have heard learned counsel for the parties.

5. Undisputedly, order under Section 245D(4) of the Act was passed by the Income Tax Settlement Commission on 12.12.2014 asking the petitioner to pay the amount of tax together with interest in four monthly equal instalments with the last instalment payable by 31.3.2015. It was also directed that in case of failure to make the payment within the prescribed period, the immunity granted under the provisions of Section 245H(1) of the Act shall be withdrawn. The petitioner had made a request vide letters dated 28.3.2015 and 31.3.2015 before the Settlement Commission for further extension of time of 14 months for payment of tax. However, by that time, he had already defaulted the three instalments. Vide order dated 23.4.2015, the Settlement Commission disposed of the said applications directing the petitioner to pay the amount on or before 10.5.2015 and to pay the final instalment by 31.7.2015. The petitioner could not make the payment by the due date. Instead he filed the present petition in this Court. The petitioner has already been given sufficient opportunity to deposit the amount. Even some part of the amount has been realised from the sale of the

jewellery of the petitioner. The impugned order has been passed by the Settlement Commission after considering the overall facts and circumstances of the case. Learned counsel for the petitioner has not been able to show any error in the said order, warranting interference by this Court. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

November 26, 2015 **(Ramendra Jain)**
'gs' **Judge**