IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.867 of 2015
Date of decision: 13.05.2015

Commissioner of Income Tax-II Ludhiana

....Petitioner

Versus

M/s Patiala Carriers & another

......Respondents

CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Rajesh Katoch, Advocate, for the petitioner.

None for the respondents.

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S.J.Vazifdar, Acting Chief Justice (Oral):

1. Rule. Rule returnable and heard finally.

2. Vide order dated 19.01.2015, notice of motion was issued for 17.03.2015. Though the respondents were duly served, they were not present on 17.03.2015. They are not present today also. We, accordingly, proceed to decide the writ petition.

3. The petitioner has challenged the order of the Income Tax Settlement Commission, New Delhi (for short, the 'ITSC'), calculating the total income at ₹30,96,000/- and directing the Assessing Authority to calculate the tax with interest, accordingly. Certain other directions were also issued by the ITSC.

4. The hearing before the ITSC were held between 12.09.2000 to 10.01.2014. Thereafter, the ITSC addressed a letter dated 25.04.2014 (wrongly typed as 25.04.2013). However, the contents of the letter itself indicate the typographical error. The letter reads as under:

> "I am directed to refer to the subject mentioned above and to draw your attention to the Hon'ble Punjab and Haryana High Court's order dated 03/02/1997 in C.W.P. No.19303 of 1996 in which the

Hon'ble Court had given certain direction to the Income Tax Authorities which is reproduced below:

"We direct the respondent No.2 to send complete information of the payments made by M/s Patiala Carriers (Regd.) to the concerned Income Tax Authorities and we hope that appropriate steps will be taken by the Income Tax Department for making a thorough investigation regarding the source from which M/s Patiala Carriers has made payment of amount of penalty."

2. In view of the Hon'ble Punjab & Haryana High Court's order, you are directed to make an investigation regarding the source from which M/s Patiala Carriers has made payments of amount of penalty and also to ascertain the capacity/status of the parties who actually made payments of the penalties vide the copies of Sales Tax Department's penalty/detention orders as forwarded by the Assessing Officer to ITSC vide letter dated 10/14/2014. In this regard your report should reach this office by 15.5.2014 positively."

5. The petitioner's grievance is that it was not granted adequate time to furnish the necessary information. The grievance is justified, for more than one reason. Firstly, it is pursuant to the orders of this Court that the information was directed to be sent to the Income Tax authorities. The Division Bench expressed the hope that appropriate steps would be taken by the Income Tax Department for conducting thorough enquiry regarding the source from which the assessee/respondents, had paid the penalty. The impugned order was passed on 28.05.2014 (Annexure P15).

In the facts and circumstances of the case, the ITSC ought to have granted the petitioner adequate time to furnish the information.

6. Reliance upon Section 245D(3) of the Income Tax Act, 1961, is also well founded. The petitioner is entitled to at least 90 days to produce the information. Therefore, the observations of the ITSC, especially in paragraphs No.16 & 17 of the impugned order were not justified.

7. Accordingly, the impugned order dated 28.05.2014 (Annexure P15), passed by the ITSC, is quashed and set aside. The matter is remanded to the

ITSC, to pass a fresh order, after affording both the parties an opportunity of being heard. The information sought vide the said letter dated 25.04.2014, shall be furnished, latest by 13.08.2015. The writ petition is, accordingly, disposed of.

(S.J.Vazifdar)
Acting Chief Justice

13.05.2015 **(G.S.Sandhawalia)**
sailesh **Judge**