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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1302 OF 2016

Principal Commissioner of Income
Tax (Central)-1,Mumbai ..Petitioner
Versus
Income Tax Settlement Commission
(ITSC) and Ors. ..Respondents

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Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the petitioner.
Dr. K. Shivram, Senior Counsel, a/w K. Gopal and Jitendra Singh for the respondents.

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CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 28th JULY, 2016

P.C.:

1. This petition under Article 226 challenges the order dated 22nd April, 2015 passed by the Income Tax Settlement Commission (the Commission) under Section 245D(2C) of the Income Tax Act, 1961 (the Act). The impugned order is in respect of 11 applicants before the Commission (being a part of one group). At Section 245(2C) stage the impugned order found that the applications are not invalid and allowed the applications to be proceeded with further before the Commission.

2. This petition was filed in this Court on 3rd February, 2016. Thereafter as the petitioner had not removed the objections of the Registry, this Court to passed an order on 16th April, 2016 clarifying that in case the office objections are not removed within a period of four weeks from 16th April, 2016 to enable allotment of regular numbers to the petition, the petition itself would stand rejected without reference to the Court. As the petitioner was delayed in carrying out the office objections, on 13th May, 2016 the petitioner sought extension of one week from 13th May, 2016 onwards from the Vacation Court to remove the objections of the Registry. Thereafter the petitioner removed the objections on 18th May, 2016 and the petition was allotted its regular number. Inspite of all this delay in filing the petition only on 3rd February, 2016, the petition was served upon the respondent-assessee only on 13th July, 2016. This petition came up on board on 20th July, 2016 at which time it was adjourned at the request of the Revenue to 22nd July, 2016. On 22nd July, 2016 also the petition was again adjourned to enable Mr. Suresh Kumar to obtain instructions to today.

3. An order passed under Section 245D(2C) of the Act is an interim order recording the satisfaction of the Commission that the application for settlement is not invalid and allowing the application to be proceeded

with further. We are informed that consequent to the impugned order, the proceedings before the Commission have not only proceeded with the final hearing of the petitioner's application for settlement under Section 245D(4) of the Act but the same is now complete. In fact now the application for settlement after final hearing has been kept for final orders on 2nd August, 2016 under Section 245D(4) of the Act.

4. The petition itself does not set out any reason for the delay in moving this Court from an order passed in April 2015 by the Commission under Section 245D(2C) of the Act. Even after this petition was filed, the conduct of the Revenue was most casual as is evident from the fact that the objections of the Registry were not removed till April 2016 which led to this Court directing the petitioner to remove the office objections within a period of four weeks failing which the petition would stand rejected without any further reference to the Court. The petitioner has thereafter removed the objections only on 18th May, 2016. The petitioner did not at any stage apply for an early hearing of this petition as the proceedings before the Commission were being continued nor did it make any request to the Commission to await the disposal of the Petition before this Court. On the contrary it proceeded with the final hearing of the application before Commission in effect waiving its challenge to the impugned order

under Section 245D(2C) of the Act.

5. In fact this is not the first time that the Revenue has shown laxity in filing petition to this Court from the interim orders of the Commission. In fact on 10th March, 2016 in Writ Petition No.3090 of 2015 filed by the Revenue against the interim order of this Commission we had, interalia, observed as under:-

> *"In the view we have taken on merits, the other contentions of the respondents viz. delay on the part of the petitioner is not being considered. However, we only wish to point out that if and when any party is aggrieved by the order of the Commission (particularly interim orders) and it is sought to be challenged, it must be done expeditiously, particularly, bearing in mind that the Commission is under an obligation to pass an order within 18 months from the date of filing of application under Section 245(D)(4) (a)(iii) of the Act."*

Inspite of the above order dated 10th March, 2016 of this Court the petitioner took no steps of moving this petition expeditiously. In fact the casual attitude is further compounded by its delaying removal of objections to the petitioner. Thus the above conduct of the Revenue disentitles it for any relief in our extraordinary jurisdiction.

6. Accordingly, the petition is dismissed. No order as to costs.

(A. K. MENON, J.) **(M. S. SANKLECHA, J.)**