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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1328 OF 2016

Hemendra R. Merchant ..Petitioner
Versus
Income Tax Settlement Commission
Additional Branch-II & Ors. ..Respondents

....
Mr. Mihir Naniwadekar a/w Neelabh Shreesh for the Petitioner.
Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the Respondents.
....

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

DATE : 10th AUGUST, 2016

P.C.:

This petition under Article 226 of the Constitution of India challenges the order dated 11th March, 2015 passed by the Income Tax Settlement Commission (Commission) under Section 245D(4) of the Income Tax Act, 1961 (the Act). The impugned order dated 11th March, 2015 of the Commission rejected the petitioner's application for settlement. Consequent to the impugned order of the Commission, the Assessing Officer has on 26th February, 2016 also passed an Assessment Order under Section 143(3) read with Section 153A of the Act.

2. This petition has been filed on 5th May, 2016. The reason for this delay on the part of the petitioner in moving the Writ Court is set out in

paragraph 10 of the petition. The primary reasons set out therein is that it was only at the time of filing an appeal against the assessment order passed in February 2016 that the petitioner sought legal advice and was informed that the order passed by the Commission was without jurisdiction as it was passed beyond the statutory period provided under the Act. It was at that stage that he was informed that challenge to the issue of jurisdiction of the Commission to pass the impugned order could not be raised before the authorities under the Act but only before this Court. It is in these circumstances, the present present petition came to be filed and the delay is sought to be explained.

3. We note that there is an undue delay on the part of the petitioner in moving this Court. The petitioner impugns the order dated 15th March, 2015 after over a year. Further the fact that the impugned order was accepted by him is also evident from the fact that consequent to the impugned order he had participated in the assessment proceedings before the Assessing Officer leading to the order dated 26th February, 2016 passed under Section 143(3) of the Act read with Section 153A of the Act. Further the petitioner has also preferred an appeal from the order dated 26th February, 2016 of the Assessing Officer to the Commissioner of Income Tax (Appeals) and the same is awaiting disposal. Thus there is gross delay on the part of the petitioner in moving this petition and the

explanation offered is not satisfactory. Therefore we see no reason to entertain the present petition.

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

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

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