IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2557 OF 2015

Principal Commissioner of Income Tax
(Central) – 4, Mumbai ..Petitioner
Versus
Income Tax Settlement Commissioner (ITSC),
Mumbai & Ors. ..Respondents

Mr.Kevic Setalwad with Mr.Girish Dave with Ms.Shushma Nagraj with Mr.N.C. Mohanty for Petitioner.
Ms.Prachi Dhanani with Mr.Shyam Gopal I/b. Veritas Legal for Respondent Nos.2 to 43.

AND

WRIT PETITION NO. 2860 OF 2015

The Commissioner of Income-tax, TDS-1, Mumbai ..Petitioner
Versus
Income-tax Settlement Commissioner & Anr. ..Respondents

Mr.P.C. Chhotrary for Petitioner.
Ms.Prachi Dhanani with Mr.Shyam Gopal I/b. Veritas Legal for Respondent Nos.2 to 43.

CORAM: M. S. SANKLECHA &
S.C. GUPTE, JJ.

DATE : 21 SEPTEMBER 2016

P.C. :

These two petitions had been filed by the Income Tax Department challenging the same impugned order dated 21 May 2015 passed by the Income Tax Settlement Commission under Section 245D(6)(B) of the Income-tax Act, 1961 (the Act). Therefore, on 2 September

2016, we passed a detailed order indicating that the Income Tax Department is one department as a whole and each Income Tax Officer cannot treat himself as an independent authority so as to separately canvass individual view points and not the department view point. We had recorded in our order dated 2 September 2016 that filing of multiple petitions leads to waste of public money as more than one Advocate is briefed to canvass / agitate the same issue. We had also pointed out that this is the first occasion we had come where the Revenue filing more than one petition challenging the same order. Therefore, we adjourned both these petitions to enable the Revenue to take a stand with regard to the two petitions filed. In the above circumstances, we directed Principal Chief Commissioner of Income-tax, Mumbai to file an affidavit explaining the circumstances which led to the filing of the two petitions on the same cause of action by two different officers of the Revenue.

3. Consequent to our directions, Mr.D.S. Saksena, Principal Chief Commissioner of Mumbai has filed an affidavit dated 20 September 2016. In the affidavit, he has stated that the department would endeavour to prevent this kind of situation recurring. *Inter alia* it records as follows :

> "(i) The Income Tax Department wishes to pursue the Writ Petition No.2557 of 2015 as amended by the proposed amendments in the said Chamber Summons; and
>
> (ii) The Income Tax Department seeks to withdraw Writ Petition No.2860 of 2015."

4. We are of the view that the withdrawal of a writ petition by

the Revenue cannot be conditional on the basis of the proposed amendment being allowed by this court in Writ Petition No.2557/2015. The chamber summons taken out by the Petitioner will be considered on its own merits.

5. At this stage, Mr.Setalwad, learned Senior Counsel, on instructions of Mr.K.K. Singh, the Principal Commissioner of Income-tax (Central-4), who is present in court, seeks to unconditionally withdraw Writ Petition No.2860/2015. Mr.Chhotrary, learned Counsel for the Petitioner in Writ Petition No.2860/2015 does not object to the unconditional withdrawal of Writ Petition No.2860/2015.

6. Writ petition No.2860/2015 is dismissed as unconditionally withdrawn.

(S.C. GUPTE, J.) **(M. S. SANKLECHA, J.)**