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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1237 OF 2016

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

....

Mr.Tejveer Singh for the Petitioner.
None for the Respondents.

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

DATE : 21st JULY, 2016

P.C.:

1. This Petition under Article 226 of the Constitution of India challenges the order dated 12th January, 2015 passed by the Income Tax Settlement Commission (the Commission) under Section 245D(4) of the Income Tax Act, 1961.

2. This Petition from the final order dated 12th January, 2015 of the Commission under Section 245D(4) of the Act was filed only on 24th November, 2015. The Petition does not contain any averment with regard to the reason for the delayed filing of the Petition. Thereafter, the Petition continued to be on lodging number as the office objections were not

removed. On 16th April, 2016 this Court had passed a common order in respect of numerous pending Petitions (including this Petition) making it clear that if the office objections are not removed and regular number not allotted to the Petitions within four weeks from 16th April, 2016, the Petitions would stand rejected. It was only thereafter that the objections to the Petition were removed by the petitioner on 9th May, 2016 and the Petition came to be numbered. Thereafter the numbered Petition was on board on 7th July, 2016 and was adjourned to enable the petitioner to complete service. On 20th July, 2016 the Petition was again adjourned at the request of the petitioner to 21st July, 2016.

3. It is axiomatic that a Petition under Article 226 of the Constitution of India seeking the exercise of courts extraordinary writ jurisdiction should be filed with utmost expedition. This not only for the purpose of preventing the raising of old stale claims and more importantly the delay is evidence of the party waiving his right to challenge it. This leads the other party to act in a manner that the issue is settled. However, in case there is an explanation for the delay/laches, the Court if satisfied with the explanation, would consider the case on merits and if necessary, exercise its writ jurisdiction.

4. We find that after final order dated 12th January, 2015 of the

Commission under Section 245D(4) of the Act by which the dispute between the Assessee and the Revenue stood settled was not challenged by filing a Petition in this Court till November 2015. The Petition itself does not indicate the reason why the petitioner-Revenue took such a long time to file the present Petition. Thereafter the office objections to the Petition were also not removed. This non-removal of office objections led the Court to pass an order on 16th April, 2016 clarifying that the Petition would stand rejected, if the office objections were not removed within four weeks from 16th April, 2016. It is only thereafter the objections were removed. If the Revenue was serious about contesting a final order passed by the Settlement Commission under Section 245D(4) of the Act it would have expeditiously moved this Petition. At the hearing Mr. Tejveer Singh seeks to explain the delay by pointing out that there was a transfer of officers which led to the delay in filing this Petition. However, the working of the Income Tax Department cannot come to a halt in case of transfer of its officers. In any case there is not even whisper in the Petition seeking to explain the delay/laches in filing the Petition.

5. Mr. Tejveer Singh relied upon a decision of this Court in Writ Petition No.2135 of 2013 (CIT v/s. Income Tax Settlement Commission) rendered on 24th February, 2014 to contend that inspite of delay this Court has been entertaining Petition. In the above case the respondent-assessee

had taken an objection to the delay of four months in filing the Petition by the Revenue from an order passed under Section 245(2C) of the Act by the Commission on the ground that it was not bonafide. The delay it was submitted was only to obtain the confidential folders and annexures filed by the assessee before the Settlement Commission. This was negatived by the Court by recording the fact that the delay was not attributable to waiting to obtain confidential folders and annexures, as the same was made available to the Respondent-Revenue on the date when the respondent-assessee's application was allowed to be proceeded with under Section 245D(2C) of the Act. Thus the facts in the above case and this case are completely different. Further issue of laches has to be decided by the Court on the peculiar facts of each case and cannot be controlled by the law of precedence, although the principle if any laid down in an earlier decision would be binding.

6. We are of the view that in this case, there is laches on the part of the Revenue in filing the Petition and moving the Court for reliefs. Further no satisfactory explanation is forthcoming to explain the delay. In the above view, the Petition is dismissed. No order as to costs.

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

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