IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1062 OF 2018

Pr. CIT (Central)-4, Mumbai ...Petitioner
V/s.
ITSC Additional Bench-1 ....Respondent

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Mr. N.C. Mohanty, Advocate for the petitioner.

Mr. Percy Pardiwala, Senior Counsel a/w. Ms. Vasanti Patel, Advocate for the respondent.

CORAM :- **M.S. SANKLECHA, &**
SANDEEP K. SHINDE, JJ.

DATE : **3RD AUGUST, 2018.**

P.C. :-

1. This petition under Article 226 of the Constitution of India, challenges the order dated 23rd April, 2015 passed by the Income-Tax Settlement Commission (the Commission). The impugned order dated 23rd April, 2015 has been passed under Section 245(D)(4) of the Income-Tax Act, 1961 (the Act).

2. The challenge to the impugned order dated 23rd April, 2015 which was received by the petitioners on 20th May, 2015 was made by way of this petition on 16th November, 2016. The petitioners seek an exercise of our extra-ordinary jurisdiction under Article 226 of the Constitution of India, to set aside the order passed by the Commission over a year and a half before moving this Court.

3. A challenge to an order under Article 226 of the Constitution of India to be entertained, is not a matter of right in the party but a discretion to be exercised by the Court and one of the grounds to not exercise discretion is where a party has grossly delayed in moving the Court for this extra-ordinary remedy. However, where there are adequate reasons for the delay and the Court is satisfied that there is no negligence or omission on the part of the party, the Court may entertain a writ petition . However, the same is inter-alia to be examined in the context of the

legislation under which the order is passed. Therefore, keeping the above broad parameters in mind, we shall examine the reason for the delay.

4. Mr. Mohanty, Learned Counsel appearing in support of the petition, submits that, this delay on the part of the petitioners was essentially in view of the fact that the persons responsible to challenge the order were transferred and/or were engaged in time barring assessments. Further, it is submitted that, on 13th April, 2016 the Departmental Representative before the Commission, informed the petitioner that the impugned order could be subject matter of challenge in a writ petition in this Court. From the chronology set out in the petition, it appears thereafter, that the petitioner moved to engage an Advocate and finally filed a petition only on 16th November, 2016.

5. The explanation for the laches/delay by the petitioners in moving the Court does not inspire any

confidence. The fact that the officers were busy with time barring assessments does not absolve them from taking proper action to challenge the orders of the Commission, which according to them, is without jurisdiction and/or contrary to the Statute. This not taking action is evidence of negligence or caring less about this issue. The extra-ordinary writ jurisdiction is to be exercised only in case of parties whose conduct would evidence that the party was serious about the challenge and acted expeditiously to set right an injustice perceived by him. The extra-ordinary jurisdiction cannot be exercised in case of a party who takes his own time to approach the Court and sets out reasons only to explain the delay without any particulars to support the same. Infact, the letter dated 13th April, 2016 by the Departmental Representative before the Commission, to the Assessing Officer/Petitioner is not annexed. There is no explanation as what triggered this letter from him almost an year after the impugned order was passed.

All the above facts have to be seen in the context that, the Assessing Officer gave effect to the impugned order dated 23rd April, 2015 of the Commission by an order dated 29th May, 2015.

6. The reliance by Mr. Mohanty, in support of the petition upon the decisions of the Supreme Court in (i) **G. Ramegowda, Major and Others V/s. Special Land Acquisition Officer, Bangalore, (1988) 2 Supreme Court Cases 142**, (ii) **State of U.P. and Others Versus. Harish Chandra and Others, (1996) 9 Supreme Court Cases 309** and (iii) **State of Haryana Versus. Chandra Mani and Others, (1996) 3 Supreme Court Cases 132** will not apply to the present facts. In all the above cases, the Parliament/Legislature had provided for Appeals under the Statute and/or period of limitation either under the Act or in terms of the Limitation Act. In this case, the Parliament has not provided for any Appeal from orders of the Commission. This with the hope that the order of the Commission would finally bring an end to a dispute between a party who has approached the Commission

and the Revenue Department. It is in these circumstances that a party who seeks to approach the Court to challenge the orders of the Commission, must act expeditiously and ensure that the other party is not put to any prejudice because of the delay. Entertaining petition after almost over a period of one and half year would upset the settled positions and re-open matters without any explanation for the delay.

7. In the above view, we see no reason to exercise our extra-ordinary jurisdiction under Article 226 of the Constitution of India.

8. Petition dismissed. No order as to costs.

(SANDEEP K. SHINDE, J) **(M.S. SANKLECHA, J)**

Neeta Shailesh Sawant

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