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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 1069/2018, CM Nos.4455-4456/2018**

Date of decision: 5th February, 2018.

SIDDHARTH RASTOGI ..... Petitioner

Through: Mr. Sanat Kapoor, Ms.Ananya Kapoor, Mr.Sumit, Advocates

versus

CENTRAL BOARD OF DIRECT TAXES, UNION OF INDIA, MINISTRY OF FINANCE, DEPARTMENT OF REVENUE & ANR. ..... Respondents

Through: Mr. Ruchir Bhatia, Advocate

\+ **W.P.(C) 1070/2018, CM Nos.4457-4458/2018**

DAL CHANDRA RASTOGI ..... Petitioner

Through: Mr. Sanat Kapoor, Ms.Ananya Kapoor, Mr.Sumit, Advocates

versus

CENTRAL BOARD OF DIRECT TAXES & ANR. …Respondents

Through: Mr. Ruchir Bhatia, Advocate

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

The writ petitioners, namely, Siddharth Rastogi and Dal Chandra Rastogi, had filed declarations of undisclosed income of

Rs.44,57,940/- and Rs.40,11,000/- respectively under the Income Declaration Scheme, 2016 in terms of the Finance Act, 2016.

2. The total amount payable towards tax, surcharge and penalty on the aforesaid declaration, in the case of Siddharth Rastogi and Dal Chandra Rastogi was Rs.20,06,074/- and Rs.18,04,950/- respectively.

3. The petitioners paid first two installments of 25% each of the total tax, surcharge and penalty. In other words, the petitioners had paid 50% of the amount payable.

4. The petitioners did not pay the third installment of the remaining 50% of the tax, surcharge and penalty which was due and payable on or before 30th September, 2017, i.e. Rs.10,03,036/- in the case of Siddharth Rastogi and Rs.9,02,474/- in the case of Dal Chandra Rastogi.

5. The petitioners vide letters dated 9th October, 2017 to the Chairman, Central Board of Direct Taxes had sought and prayed extension of time for making payment of the third installment. Relevant portion of the letter dated 9th October, 2017 in the case of Siddharth Rastogi reads:-

> "I Siddharth Rastogi S/o Sh D.C. Rastogi R/o B-53, Sarvodaya Enclave, New Delhi having PAN No. AAAPR1329R submitted the declaration under Section 183 of The Finance Act 2016. The declaration was duly acknowledged vide Form 2 dated 27.09.2016 showing undisclosed income of Rs.4457970/- (copy enclosed). The total tax,

surcharge and penalty due on this income payable in three instalments was as under:

Tax	:	1337382/-
Surcharge	:	334346/-
Penalty	:	334346/-

I paid the following first two instalment as under:

On 30.11.22016	:	501519/-
On 29.03.17	:	505119/-

The third instalment of Rs.1003036/- was payable on or before 30.09.2016. This instalment could not be paid due to the reason that I was pre-occupied with the various office activities. I am a director in 2-3 companies and was involved in implementation of GST and ERP software. Besides this, I also look after marketing activities of the company which keeps me always on travelling domestic and abroad. Since, there was a gap of 6-months between 2nd and 3rd instalment to deposit the tax, it slipped from my mind to deposit the same. I have already paid 50% tax and my declaration may please be accepted."

6. Letter by Dal Chandra Rastogi was identical. In addition, Dal Chandra Rastogi had pleaded that he was a senior citizen being 71 years of age and had been paying income tax for the last 35 years.

7. These two letters it is stated were followed by reminders dated 3rd November, 2017.

8. By letter dated 3rd November, 2017 in the case of Siddharth Rastogi and 9th November, 2017 in the case of Dal Chandra Rastogi, request for extension of time for payment/deposit of third installment of tax, surcharge and penalty under the Income Tax Declaration Scheme, 2016 has been rejected. As the language of the two letters is identical, we would quote the letter dated 3rd November, 2017 in the case of Siddharth Rastogi, which reads:

> "Subject: Your request dated 09.10.2017 for allowing to deposit third instalment of tax payable under IDS-2016 beyond the due date – reg.
>
> Kindly refer to your application dated 09.10.2017 on the above mentioned subject.
>
> 2. In this regard, your request for granting permission to deposit the third instalment of tax/surcharge/penalty payable under IDS-2015, beyond the due date has been considered by the Board. It is pertinent to mention that declarants while filing declaration under IDS-2016 were well aware of the instalment schedule for payments of corresponding dues. Further, the payment schedule, being staggered, provided them sufficient time to plan their affairs accordingly so as to ensure compliance in a timely manner. Hence, failure to pay the third instalment for a reason which is solely attributable to you does not justify grant of any relaxation in the payment after due date.
>
> 3. In view of the above, your request dated 09.10.2017 to grant permission to deposit third instalment of IDS-2016, beyond due date is hereby

> rejected. This is consistent with the order under Section 119 of CBDT dated 28.03.2017 vide F.No. 225/86/2017-ITA-II wherein delay due to any reason attributable to the declarant while making payment of first instalment was not considered fit for condonation.
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> 4. This issues with the approval of Member (IT&C)."

9. We have considered and examined the grounds and reasons given by the two petitioners in their letters seeking extension of time. The reasons given do not make out a case to interfere with the impugned order and grant extension of time. Mere involvement in office work and marketing activities cannot be a good justification and ground to seek and ask for extension of time. Assertion that the petitioners just forget to pay the third installment is unbelievable and a lame excuse. Such declarations are unique and made after due deliberation and thought. Amount payable towards the third installment was substantial. Clearly the petitioners were unable to pay the amount and thereafter have pleaded and attributed it to loss of memory. The time period fixed were mandatory and had to be adhered to. The petitioners have not made out an extraordinary case which would have justified invoking writ jurisdiction and grant of further time beyond the time, even assuming that the time stipulated under the Scheme could be extended by the Board under Section 119(2) of the Income Tax Act, 1961. If such excuses are to be

accepted, then as a routine, extension of time would have to be granted.

10. Accordingly, we do not find any good ground and reason to issue notice in the present writ petitions.

11. Learned counsel for the petitioners submits that the writ petitioners would like to file a separate writ petition seeking adjustment or refund of the amounts paid. They would like to challenge the provision which stipulates that no refund can be claimed. We clarify that we have not commented on the question of refund or adjustment of the amount paid. Dismissal of the present writ petitions would not operate as constructive *res judicata* and bar in filing of fresh writ petitions on these aspects.

12. With the aforesaid observations, the writ petitions are dismissed.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

FEBRUARY 05, 2018
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