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

\+ **<u>W.P.(C) 1219/2018, CM Nos.5050-5051/2018</u>**

Date of decision: 9th February, 2018.

MEENA RASTOGI ..... Petitioner

Through Ms. Ananya Kapoor, Adv.

versus

CENTRAL BOARD OF DIRECT TAXES,
& ANR. ..... Respondents

Through Ms. Ruchir Bhatia, Adv.

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

<u>SANJIV KHANNA, J</u>. (ORAL)

Writ petitioner Meena Rastogi is wife of Dal Chandra Rastogi and mother of Siddharth Rastogi.

2. Dal Chandra Rastogi and Siddharth Rastogi had filed Writ Petitions for identical and similar relief, i.e., for extension of time for payment of third or last installment on the undisclosed income under the Income Declaration Scheme Rules, 2016, introduced vide Finance Act, 2016. By common order dated 5th February, 2018, we have dismissed W.P.(C) 1069/2018 filed by Siddharth Rastogi and W.P.(C) 1070/2018 filed by Dal Chandra Rastogi. The present writ petition would also meet the same fate.

3. Meena Rastogi had filed declaration of undisclosed income of Rs.2,98,04,595/- under the Income Declaration Scheme Rules, 2016 in terms of the Finance Act, 2016.

4. Total amount payable by the petitioner towards tax, surcharge and penalty on the aforesaid declaration was Rs.1,34,12,069/-.

5. The petitioner paid the first two installments of Rs.33,53,018/- each, at the rate of 25% of the total tax, surcharge and penalty payable. In other words, the petitioner had paid 50% of the total amount payable.

6. The petitioner did not pay the third installment, which was the remaining 50% of the liability, amounting to Rs.67,06,033/-, due and payable on or before 30th September, 2017.

7. The petitioner, vide letter dated 9th October, 2017 to the Chairman, Central Board of Direct Taxes, had sought and prayed for extension of time to pay the third installment. Relevant portion of the said letter reads:-

> "I Meena Rastogi W/o Sh D.C. Rastogi R/o B-53, Sarvodaya Enclave, New Delhi (senior citizen) having PAN No. AACPR2387K submitted the declaration under Section 183 of The Finance Act 2016. The declaration was duly acknowledged vide Form 2 dated 29.09.2016 showing undisclosed income of Rs.2,98,04,595/- (copy enclosed). The total tax, surcharge and penalty due on this income payable in three instalments was as under:

Tax	:	8941379/-
Surcharge	:	2235345/-
Penalty	:	2235345/-

I paid the following first two installments as under:

On 30.11.2016	:	3353018/-
On 29.03.17	:	3353018/-

The third installment of Rs. 67060331/- was payable on or before 30.09.2016. This installment could not be paid due to the reason that I am 70 years old lady having ill health which became hurdle in my day-to-day work. Since, there was a gap of 6-months between 2nd and 3rd installment to deposit the tax, it slipped from my mind to deposit the same. I have already paid 50% of total tax due in time and would have deposited the same, had I remember. Under these circumstances, I request you that I may be allowed to deposit the balance 50% tax and my declaration may please be accepted.

8. The letter, it is stated, was followed by a reminder dated 3rd November, 2017. The reasons given by Meena Rastogi in the aforesaid letter were similar to the reasons given by Dal Chandra Rastogi and Siddharth Rastogi.

9. By letter dated 29th November, 2017, request for extension of time for payment/deposit of third installment of tax, surcharge and penalty payable under the Income Tax Declaration Scheme, 2016 was rejected. We would quote the letter dated 29th November, 2017 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 installment of IDS-2016, beyond the due date on ground of inadvertence 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-I1 wherein delay due to any reason attributable to the declarant while making payment of first installment was not considered fit for condonation.

4. This issues with the approval of Member (IT&C)."

10. We have considered and examined the grounds and reasons given by the petitioner in her letters seeking extension of time. The reasons given by the petitioner do not make out a case to interfere with the impugned order and grant extension of time. The ground taken by the petitioner, that she is 70 years of age and suffering from ill health which had become a hurdle in her day-to-day work, cannot be a ground to seek an extension of time. Assertion that the petitioner merely forgot 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 petitioner was unable to pay the amount, and thereafter has pleaded and attributed it to loss of memory. The time period fixed was mandatory and had to be adhered to. The petitioner has not made out an extraordinary case which would have justified invoking writ jurisdiction and grant of extension beyond the stipulated time, even assuming that the fixed period of time stipulated under the Scheme could be extended by the Board under Section 119(2) of the Income Tax Act, 1961. If such excuses were to be accepted, then extension of time would have to be granted as a routine in other cases as well.

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

12. Learned counsel for the petitioner submits that the petitioner would like to file a separate writ petition seeking adjustment or refund of the amounts paid. She 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 the filing of fresh writ petition on these aspects.

13. With the aforesaid observations, the writ petition is dismissed. No order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

FEBRUARY 09, 2018
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