

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 6136 of 2015

Date of Decision: 25.05.2015

Liz Batra

..Petitioner

versus

Central Board of Direct Taxes through its Chairman and another

..Respondents

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE G.S.SANDHAWALIA.

Present : Ms. Radhika Suri, Sr. Advocate with
Ms. Rajni Paul, Advocate, for the petitioner.
Ms. Urvashi Dugga, Advocate, for the respondents.

S.J.VAZIFDAR A.C.J. (Oral)

CM No. 6831 of 2015

Allowed subject to all just exceptions.

CWP No. 6136 of 2015

The petitioner has sought a writ of certiorari to quash a show-cause notice dated 09.02.2015 under sections 276C(1)/277 of the Income Tax Act, 1961 (for short 'the Act') for initiating prosecution proceedings in respect of the assessment year 2011-12.

2. The petitioner contends that respondent No.2-Commissioner of Income Tax-I, Chandigarh is the authority competent to decide whether or not to launch prosecution including for concealment of income under section 276C read with section 279 of the Act. Despite the same, according to the petitioner, Central Board of Direct Taxes has been issuing directions compelling the Commissioner of Income Tax to launch prosecution.

3. Section 279 of the Act reads as under:-

“279. Prosecution to be at the instance of Chief Commissioner or Commissioner.—[(1) A person shall not be proceeded against for an offence under Section 275-A, [Section 275-B], Section 276, Section 276-A, Section 276-B, Section 276-BB,

Section 276-C, Section 276-CC, Section 276-D, Section 277 [Section 277-A] or Section 278 except with the previous sanction of the Commissioner or Commissioner (Appeals) or the appropriate authority:

Provided that the Chief Commissioner or, as the case may be, Director-General may issue such instructions or directions to the aforesaid income tax authorities as he may deem fit for institution of proceedings under this sub-section.

Explanation.—For the purposes of this section, “appropriate authority” shall have the same meaning as in clause (c) of Section 269-UA.]

(1-A) A person shall not be proceeded against for an offence under Section 276-C or Section 277 in relation to the assessment for an assessment year in respect of which the penalty imposed or imposable on him under clause (iii) of sub-section (1) of Section 271 has been reduced or waived by an order under Section 273-A.

⁴[(2) Any offence under this Chapter may, either before or after the institution of proceedings, be compounded by the Chief Commissioner or Director-General.]

(3) Where any proceeding has been taken against any person under sub-section (1), any statement made or account or other document produced by such person before any of the income tax authorities specified in clauses (a) to (g) of Section 116 shall not be inadmissible as evidence for the purpose of such proceedings merely on the ground that such statement was made or such account or other document was produced in the belief that the penalty imposable would be reduced or waived under Section 273-A or that the offence in respect of which such proceeding was taken would be compounded.

⁵[*Explanation.*—For the removal of doubts, it is hereby declared that the power of the Board to issue orders, instructions or directions under this Act shall include and shall be deemed always to have included the power to issue instructions or directions (including instructions or directions to obtain the previous approval of the Board) to other income tax authorities for the proper composition of offences under this section.]”

4. A person, therefore, cannot be proceeded against for the offences mentioned therein except with the previous sanction of the Commissioner or Commissioner (Appeals) or the appropriate authority or where the Chief Commissioner or Director General issue instructions or directions to do so. The Central Board of Direct Taxes (CBDT) is not the appropriate authority to issue such directions. It is not necessary to deal with

Ms. Suri's contention in detail in this regard as Ms. Dugga did not contend otherwise.

5. Ms. Suri's apprehension is that in view of the correspondence that ensued between the CBDT and the concerned authorities, the latter are left with no option but to launch prosecution. For instance, she relied upon a letter dated 11.03.2013. The said letter addressed by the Member, CBDT, Special Secretary to the Government of India, to the member (L&C) CBDT, does not indicate a mandatory order or direction to launch prosecution. The letter only suggests prosecution proceedings under sections 276C and 277. The same is pending for consideration of CIT-I, Chandigarh i.e. respondent No.2. The letter concludes by stating that the Member (L&C) CBDT may like to issue suitable instructions to the CCIT and CIT concerned to consider and decide this issue expeditiously so that appropriate prosecution proceedings are initiated during this financial year. It further states that if the assessee is willing to compound the offence, the same may be considered as per the existing instructions. We do not read the letter, therefore, as an order directing respondent No.2 to launch prosecution. It merely suggests the other member to issue instructions to decide the issue expeditiously.

6. Ms. Suri also relied upon another letter dated 16.09.2014 addressed by the Deputy Commissioner of Income Tax informing the Under Secretary (Inv.V) CBDT that the CIT had been requested to get relevant assessment and penalty proceedings completed expeditiously and also to process the case for launching prosecution/compounding for the assessment years 2011-12 and 2012-13.

7. This letter also is not an order or direction instructing respondent No.2 to decide the matter in a particular manner. It is merely a direction to decide the same expeditiously as also to process the case for

launching prosecution. Advising respondent No.2 to decide the matter expeditiously and to process the matter is not the same as directing him to decide the matter in a particular manner. At the highest it can be said that the tone of the letter is such that respondent No.2 may consider it as an order/instruction directing him to decide the issue in a particular manner.

8. To leave no room for doubt, we direct that respondent No.2 shall decide whether or not to take action under section 279 of the Act on his own in accordance with law and without being influenced by the directions from any other source including from the CBDT including on the basis of the communications relied upon by the petitioner or otherwise. By our judgment dated 12.05.2015 in *M/s Kudos Chjemie Ltd. v. Assistant Commissioner of Income Tax (TDS), Chandigarh*, we have held that launching a prosecution is not mandatory in every case of failure provided in section 276B. The same would apply also in respect of failure under sections 276C and 277 which the petitioner is accused of in this case.

9. Further, in the event of respondent No.2 deciding to launch the prosecution, he shall do so only by a reasoned order on all the issues raised by the petitioner. In the event of the decision of respondent No.2 being adverse to the petitioner to any extent, the same shall not be implemented for a period of four weeks after service of the same upon the petitioner.

The writ petition stands disposed of with the aforesaid terms.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S.SANDHAWALIA)
JUDGE

25.05.2015
'ravinder'