IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.24588 of 2016

R.Inbavalli .. Petitioner

Versus

1.The Government of India,
Ministry of Finance,
Department of Revenue,
(Central Board of Direct Taxes)
E2, ARA Centre, Jhandewalan Extension,
Income Tax (OSD)
(Inv.V), CBDT.

2.The Income Tax Officer,
Business Ward-X (1),
CHennai - 600 006. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for records on the file of the 1st respondent pertaining to the non-speaking impugned one word order dated 03.05.2016 made in File no.285/08/2015-IT (Inv.)/57 and quash the same and consequentially direct the Respondents to permit the petitioner to compound the office u/s.279 (2) of the Income Tax Act.

For Petitioner : Mr.G.Jayachandran

For Respondents : Mr.T.Ravikumar,
Senior Standing Counsel
assisted by M/s.Hema Muralikrishnan

O R D E R

Heard Mr.G.Jayachandran, learned counsel appearing for the petitioner and Mr.T.Ravikumar, learned Senior Standing counsel assisted by M/s.Hema Muralikrishnan, learned counsel appearing for the respondents.

2.The petitioner is a 71 years old widow who has recently lost her son, has been left in quandary and for belated filing of the returns, she had been penalised departmentally as well as prosecuted criminally. The criminal prosecution ended in a conviction by imposing rigorous imprisonment for a period of 6 months and a fine of Rs.10,000/- for each of the assessment years. This sentence imposed on the petitioner has been suspended in Criminal Appeal No.227 of 2010 by the learned Principal Sessions Judge and the appeal is pending before the Sessions Court. The petitioner setting out the peculiar facts and circumstance of the case and that the petitioner having already paid the entire tax in terms of the order passed by the Hon'ble Division Bench of this Court Tax Cases (Appeal)No.761 to 764 of 2004 approached the Principal Chief Commissioner, Income Tax, Chennai by filing the compounding petition under Section 279(2) of the Income Tax Act. This application dated 15.12.2014 was pending and a show cause notice was issued to the petitioner on 26.03.2015 calling upon the petitioner to show cause as to why her compounding application should not be rejected. The petitioner submitted her reply on 07.04.2015. However, no orders have been passed by the Principal Chief Commissioner.

3.While the matter pending consideration before the Principal Chief Commissioner, it appears that based on certain advice given to the old lady, she sent a representation to the Honourable Finance Minister, Government of India requesting for exercising his powers and compounding the petitioner's case. This has been rejected and intimated to the petitioner by the first respondent by the impugned proceedings stating that the petitioner case is not a deserving case as per the parameters of para 7.2 of the guidelines dated 16.05.2008 for compounding of offences. The reasons for holding that the petitioner's case is not a deserving case are not mentioned in the impugned order not furnished to the petitioner. From the counter affidavit filed on behalf of the respondents, it is clear as to what weighed in the mind of the authority is the conviction of the petitioner by the criminal court.

4.The learned Senior Standing Counsel appearing for the respondents pointed out that Clause 4 of the guidelines dated 16.05.2008 stipulates the eligibility conditions for consideration of a case for compounding and in terms of Clause 4.4 (f), if the order of conviction has been passed by the court, then the case cannot be compounded.

5.The issue as to how the the power of compounding of offences should be exercised had come up for consideration before the Hon'ble Division Bench of this court in an appeal filed by the Revenue in the case of Chairman, Central Board of Direct Taxes and others vs. Umayal Ramanathan reported in (2009) 313 ITR 59 (Mad). In the said case also there was a conviction of the assessee by the Criminal Court and revision petition challenging the conviction was pending. The counsel for the assessee therein pointed out that section 279 (2) of the Act is provided to facilitate Compounding of offence, either before or after institution of the proceedings and in another case where the trial court has convicted a similarly placed assessee whose appeal was also dismissed and pending revision, the said assessee had filed a petition for compounding the offence invoking section 279 (2) of the Act and in that case, the Revenue accepted the plea of the said assessee and went to the extent of filing a petition before the court to permit them to entertain the application under Section 279 (2) and ultimately compounded the offence. Thus a plea of discrimination was raised before the Honble Division Bench. The Court after considering the factual matrix and taking note of the decision in the case of Babu Lal vs. Hazari Lal Kishori Lal reported in AIR 1982 SC 818 and P.L. Kantha Rao vs. State of Andhra Pradesh reported in AIR 1995 SC 807, dismissed the appeal filed by the Revenue. At this stage it would be beneficial to quote the relevant paragraphs of the judgement of the Hon'ble Division Bench, which reads as follows:

> "This Court carefully considered the submission of counsel for both sides. The plea of the respondent is that Section 279 (2) of the Act permits the appellants to compound the offence either before or after institution of the proceedings, which power is not exercised without any valid reasons; that when similarly placed person was convicted and whose conviction was confirmed by the appellate court and pending revision before this Court in Crl.R.C. No. 588 of 1996, the assessee has filed similar petition for compounding the offence, which was entertained by the appellants after obtaining leave by filing Crl.M.P. No. 984 of 2000 in Crl.R.C. No. 588 of 1996, while so, refusing the same relief to the respondent, where the trial court alone convicted her and the appeal is pending, is discriminatory.
>
> Now we look into Section 279 (2) of the Act, which reads as under:-
>
> "279.Prosecution to be at instance of Chief Commissioner or Commissioner.
>
> (1) ....
> (2) Any offence under this Chapter may either before or after the institution of proceedings, be compounded by the Chief Commissioner or a Director General...."
>
> It is evident from Section 279 (2) of the Act that any offence under this Chapter may either

before or after the institution of proceedings, be compounded by the Chief Commissioner or a Director General.

The term 'proceedings' is not defined in the Income Tax Act, 1961. The term 'proceedings' is a term of wide amplitude and comprehensive and generally speaking means a prescribed course of action for enforcing a legal right. It is not a technical expression with a definite meaning attached to it, but one the ambit of whose meaning would be governed by statute. In this context, it is useful to refer to the below mentioned decisions of the Honourable Supreme Court.

i) Babu Lal vs. M/s. Hazari Lal Kishori Lal and others, AIR 1982 SC 818, 824, wherein in Paragraph 17, it was held thus:-

> "17.The word 'proceeding' is not defined in the Act. Shorter Oxford Dictionary defines it as carrying of an action at law, a legal action or process; any act done by authority of a Court of law; any step taken in a cause by either party. The term 'proceeding' is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right. It is not a technical expression with a definite meaning attached to it , but one the ambit of whose meaning would be governed by statute. It indicates a prescribed mode in which judicial business is conducted. The word 'proceeding' in S.22 includes execution proceedings also.

ii) P.L. Kantha Rao and others vs. State of Andhra Pradesh and others, AIR 1995 SC 807 wherein in Paragraph 3, it was held thus (page 809):-

> ".....Therefore, the term 'proceeding' in S.29 is a very wide term to mean a prescribed course of action to enforce the legal right. It indicates the prescribed mode in which the judicial business is conducted. The execution is a step in the judicial process. It seeks to enforce the final order to realise the result of the adjudication."

The term proceeding shall also include the proceedings at the appellate stage. In (Lachhman Dass Vs. Santokh Singh) (1995) 4 SCC 201 in para-7, it was held by the Honourable Supreme Curt thus:-

> ".....Precisely stated, an appeal is a continuation of a suit or proceedings wherein the entire proceedings are again left open for consideration by the appellate authorities

which has the power to review the entire evidence subject, of course, to the prescribed statutory limitations. But in the case of revision whatever powers the revisional authority may have, it has no power to reassess and reappreciate the evidence unless the statute expressly confers on it that power. That limitation is implicit in the concept of revision. In this view of the matter we are supported by a decision of this Court in State of Kerala vs. K.M. Charia Abdullah and Co."

In the case on hand, against the conviction and sentence passed by the trial court, on the complaint preferred by the appellants, the respondent has filed an appeal and the same is pending, which is a prescribed course of action for enforcing a legal right. The said appeal is also a proceeding as contemplated under Section 279 (2) of the Act.

For the discussions above, this Court is of the considered view that pending appeal, the appellants can very well compound the offence sought for by the respondent, which they failed. It is not out of context to mention that in earlier occasion, the appellants have allowed the application for compounding of offence filed by similarly placed assessee, who was convicted by trial court, his appeal was also dismissed, he filed revision and in the said revision, the appellants have filed Crl.M.P. No. 984 of 2000 in Crl.R.C. No. 588 of 1996 and obtained leave from the Court to consider it. While so, the appellants have refused to exercise such power in the case on hand by misinterpreting Section 279 (2) of the Act, which is unfair. The learned single Judge considered the above said facts and rightly set aside the order passed by the third appellant, hence, the writ appeal is dismissed. No Costs. Consequently, connected W.A.M.P. No. 540 of 2003 is closed.

In view of the fact that the respondent is aged about 83 years, who has filed the petition for compounding as early as on 09.04.2001, which was rejected by the third appellant on 02.08.2002, to meet the ends of justice, it is warranted to direct the parties as follows:-

i) The respondent is permitted to pay the amount demanded by the appellants for compounding of the offence within a period of four weeks from the date of receipt of a copy of this judgment

ii) On such payment, the appellants are directed to receive it, compound the offence and inform the same to the Principal Sessions Judge, Chennai where the appeal in C.A. No. 250 of 1998 preferred by the respondent is pending, within a period of six weeks thereafter."

6.Thus, in the light of the above decision, the power of compounding is exercisable when proceedings are pending. In the case on hand, the sentence imposed on the petitioner has been suspended by the Appellate Court and the appeal is still pending. Therefore, it has to be seen as to whether that conviction by the Criminal Court should be the only reason for rejecting the petitioner's application for compounding the offence. Clause 4.4 of the guidelines states that cases not to be compounded. It commences with a non obstante clause stating that notwithstanding anything contained in the guidelines, the category of cases mentioned in clauses (a) to (g) should normally not be compounded. Thus, the guidelines does not specifically place an embargo on the competent authority to consider the application for compounding merely on the ground when the assessee has been convicted by a court of law.

7.The expression used in the guidelines "should normally not be compounded", as pointed out earlier Clause 4.4 commences with a non obstante Clause. Therefore, the competent authority is entitled to examine the merits of each matter and to take a decision as to whether the facts make out a case for compounding even in cases where there is a conviction by a Court of law. Thus the guidelines did not place any fetters on the power of the competent authority to examine cases for compounding. However, this cannot be an universal yardstick and these observations are made by this court considering the peculiar facts and circumstances of the case as pointed out earlier.

8.The petitioner is a senior citizen aged more than 70 years, she has lost her husband and she lost her son and she is the sole proprietrix of the small firm dealing in Electrical and Electronic Appliances. She has paid the entire tax after the decision was rendered by the Honble Division Bench in Tax Cases (Appeal)No.761 to 764 of 2004 dated 20.02.2004 and apart from that, the order of conviction passed against the petitioner has been suspended by the Sessions Court and the appeal is still pending. Thus considering the overall factual position, the competent authority, namely, the Chief Commissioner, Income Tax Department, Chennai should consider the petitioners case taking note of the peculiar facts and take a decision on merits uninfluenced by any observations or findings rendered by the authorities on an application moved by the petitioner before the Hon'ble Finance Minister. The above direction shall be complied with within a reasonable time and the petitioner may be permitted to appear for personal hearing through her authorised representative as it appears that she is not very illiterate.

9.With the above direction, the writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.Ministry of Finance,
Department of Revenue,
(Central Board of Direct Taxes)
E2, ARA Centre, Jhandewalan Extension,
Income Tax (OSD)
(Inv.V), CBDT.

2.The Income Tax Officer,
Business Ward-X (1),
CHennai - 600 006.

+1cc to M/S.G.Jayachandran, Advocate Sr.47450
+1cc to M/S.T.Ravikumar, Advocate Sr.47181

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srg 12/09/2016