THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION NO.16289 of 2017

ORDER: (per SK,J)

The petitioner-Educational Society is aggrieved by the proceedings dated 22.02.2017 issued by the Joint Commissioner of Income-tax (Head Quarters) (Technical and Prosecution), office of the Principal Chief Commissioner of Income-tax, AP & TS, Hyderabad, rejecting its request for compounding of the offence under Section 276B of the Income-tax Act, 1961 (for short, 'the Act of 1961'), for the Assessment Years 2009-10, 2010-11 and 2011-12, on the ground that the same could not be considered as it had been filed after a lapse of twelve months from the date of filing of the complaints before the Economic Offences Court at Nampally, Hyderabad, in C.C.Nos.55, 58 and 59 of 2016. The authority further informed the petitioner-Educational Society that as per the compounding guidelines issued by the Central Board of Direct Taxes on 23.12.2014, the Hon'ble Finance Minister is the competent authority for relaxing the restrictions imposed for compounding of the offences.

By order dated 28.04.2017, this Court granted interim stay of further proceedings in C.C.Nos.55, 58 and 59 of 2016 on the file of the Economic Offences Court at Nampally, Hyderabad.

W.V.M.P.No.3598 of 2017 was filed by the respondent authorities to vacate the aforestated interim order.

Comprehensive arguments having been advanced by Ms.Niyatha, learned counsel for the petitioner-Educational Society, and Ms.K.Mamata, learned senior standing counsel for the Revenue, the matter is amenable to disposal at the admission stage.

Section 279 of the Act of 1961 deals with prosecution at the instance of various income tax authorities in relation to offences under the provisions stipulated in Clause (1) thereof, which also includes Section 276B of the Act of 1961. Section 279(2) of the Act of 1961 provides that any offence under Chapter XXII relating to offences and prosecutions may, either before or after the institution of proceedings, be compounded by the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General.

While so, the Central Board of Direct Taxes, Government of India, issued guidelines for 'Compounding of Offences under Direct Tax Laws, 2014', *vide* Circular dated 23.12.2014. Therein, para 8 sets out the offences generally not to be compounded. Sub-clause (vii) thereunder reads as follows:

> 'Offences committed by a person for which complaint was filed with the competent court 12 months prior to receipt of the application for compounding.'

In the light of the fact that Section 279(2) of the Act of 1961 specifically states that an application for compounding can also be made even after the institution of proceedings, the question of imposing a limitation for the making of such an application by circular instructions of the CBDT would not arise. That apart, this very clause fell for consideration before the Delhi High Court in VIKRAM SINGH V/s. UNION OF INDIA[1]. The Delhi High Court observed that what is set out in para 8 of the Circular dated 23.12.2014 is 'offences generally not to be compounded' and one such offence is where the complaint was filed with the competent Court twelve months prior to receipt of the application for compounding. The Delhi High Court held that the said clause does not

[1] W.P.(C) 6825 decided on 11.04.2017

prescribe a period of limitation for filing an application for compounding and merely gives discretion to the competent authority to reject an application for compounding if sufficient grounds are made out. It was pointed out that this would not mean that every application which involves an offence committed by a person for which the complaint was filed before the competent Court twelve months prior to the receipt of the application for compounding, would without anything further, be rejected. In other words, per the Delhi High Court, resort could not be taken to para 8 of the Circular to prescribe a period of limitation for filing an application for compounding.

We respectfully agree with the aforestated view expressed by the Delhi High Court. As already pointed out supra, the circular instructions, being subordinate, cannot override the statutory provisions contained in Section 279(2) of the Act of 1961. It is for the Principal Chief Commissioner of Income Tax or such other authority to whom an application for compounding is made to exercise its discretion on a case to case basis and allow compounding of the offence or reject the same.

On the above analysis, we find that the rejection of the petitioner's letter requesting compounding of the offence on the short ground that it was filed after a lapse of twelve months from the date of filing of the complaint before the competent Court cannot be countenanced. Notwithstanding the same, the authority would continue to have the discretion and power to entertain and consider such an application on its own merits.

The writ petition is accordingly allowed setting aside the proceedings dated 22.02.2017. The matter is remitted to the Principal Chief Commissioner of Income-tax, Hyderabad, for consideration afresh of the petitioner's letter dated 13.02.2017 on its own merits and in accordance with law. Pending such consideration, the proceedings in C.C.Nos.55, 58 and 59 of 2016 on the file of the Economic Offences Court, Nampally, Hyderabad, shall stand stayed. In the event any notice is issued to the petitioner in the context of the aforestated compounding application, the petitioner shall cooperate and furnish all such information as may be called for by the authority concerned without undue delay.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

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SANJAY KUMAR,J

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P.KESHAVA RAO,J

Date:07.02.2018

GJ