* HON’BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON’BLE Ms. JUSTICE J.UMA DEVI

+ <u>Writ Petition No.14702 of 2018</u>

% 01-5-2018

1. M/s Sagar Asia Pvt. Ltd., 201, “Mayfair’,
Sardar Patel Road, Secunderabad-500 003,
Telangana, Rep. by its Vice President –
Commercial Operations & Corporate Affairs,
Ms. T.Anitha Prasad, W/o Mr. T.V.N. Prasad

2. Mr. V.Vidyasagar, S/o Mr. V.Ayodhya Ramulu,
Aged: 59 years, H.No.7, Canton Park,
Opp. Chandini Dhaba, Kompally, Secunderabad-14

… Petitioners

Vs.

$ 1. The Prl. Chief Commissioner of Income Tax,
A.P. & Telangana, Hyderabad, 9th Floor, ‘C’ Block,
IT Towers, 10-2-3, A.C. Guards, Hyderabad-04;
and 3 others

... Respondents

! Counsel for the Petitioners: Mr. A.V.A. Siva Kartikeya

Counsel for Respondents 1 to 4: Ms. K.Mamata,
Senior Standing Counsel

< Gist:

> Head Note:

? Cases referred:
1. AIR 1957 SC 540

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
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Writ Petition No.14702 of 2018

Order:

The petitioners have come up with the above writ petition challenging an order rejecting the application for compounding under Section 279(2) of the Income Tax Act, 1961.

2. Heard Mr. A.V.A. Siva Kartikeya, learned counsel for the petitioners and Ms. K.Mamata, learned Senior Standing Counsel for the Department.

3. The petitioners were issued with a show cause notice dated 05-8-2013 calling upon them to show cause as to why prosecution proceedings should not be initiated against them for their failure to remit the taxes deducted by them to the Government account within the stipulated time as required under the provisions of Chapter XVIIB of the Income Tax Act, 1961. In response, the petitioners filed an application for compounding, on 26-8-2014.

4. Vide letter dated 08-3-2016, the petitioners' application for compounding was accepted, subject to payment of compounding fee of Rs.20,21,793/-. The fee was to be paid within 60 days of the receipt of the intimation.

5. Though the time limit for making payment expired on 10-5-2016, the petitioners did not remit the amount. On the

contrary, they sought rectification of the amount indicated as compounding fee, through their letter dated 21-3-2016.

6. But the petitioners were informed by a letter dated 29-3-2016 that the calculation was correctly made and that the petitioners should pay the compounding fee before the due date.

7. However, the petitioners remitted only Rs.4,96,916/- on 05-4-2016. Therefore, a letter dated 04-11-2016 was issued giving the petitioners an opportunity of being heard on 18-11-2016. The attention of the petitioners was drawn to the Board Guidelines dated 16-5-2008 to the effect that the fees for compounding of the offence under Section 276B was to be charged at 5% per month or part of the month of default. Though the said letter for personal hearing was served on the petitioners, the petitioners did not respond nor did they take part in the personal hearing. The petitioners merely sought an adjournment.

8. Therefore, left with no alternative, the Principal Commissioner of Income Tax passed an order dated 22-11-2016 under Section 279(2) of the Act rejecting the compounding application.

9. Thereafter, the Commissioner of Income Tax (TDS) sanctioned prosecution under Section 279(1) of the Act, by the proceedings dated 25-11-2016. Pursuant to the same, a complaint was filed and the Special Judge for Economic

Offences took cognizance and issued summons in C.C.No.151 of 2017.

10. Thereafter, the petitioners filed an application before the Principal Chief Commissioner on 21-02-2018, requesting for an opportunity to explain as to how they contest the calculation of the compounding fee. But the said request was turned down on 07-3-2018. Again, the petitioners made a fresh request on 21-3-2018. But the same was also turned down by order dated 26-3-2018.

11. Thereafter, the petitioners have come up with the above writ petition challenging the rejection of the compounding application.

12. The main grievance of the petitioners is that when there is a genuine dispute about the quantum of compounding fee payable by them, it was not open to the respondents to reject the application for compounding, without first resolving the dispute.

13. But the above contention of the petitioners is liable to be rejected outright. In the narration of facts, we have indicated that the compounding application was filed on 26-8-2014 and the amount of compounding fee payable, was indicated by the letter dated 08-3-2016. When the petitioners questioned the calculation, the 1st respondent issued a clarification as to how the compounding fee was arrived at. Despite the fact that the last date for payment of the compounding fee expired on 10-5-2016, the 1st respondent

was fair enough to grant an opportunity of personal hearing on 18-11-2016. Instead of availing the said opportunity, the petitioners sought time. Therefore, the 1st respondent, realising the futility of granting opportuniy, rejected the application for compounding.

14. Even after the rejection of the application for compounding, by order dated 22-11-2016, the petitioners have successfully dragged on the matter by making repeated representations. Therefore, we are of the considered view that the petitioners cannot raise the contention that without resolving the dispute regarding the quantum of compounding fee, the 1st respondent could not have rejected the application for compounding.

15. The amount of compounding fee is statutorily fixed. The question of raising any dispute on the same does not arise. Actually, the dispute with regard to the quantum raised by the petitioners was on the basis of a CBDT Circular bearing F.No.285/35/2013 (Inv.V)/108, dated 23-12-2014. But these guidelines are applicable only to compounding applications filed after 01-01-2015. The application of the petitioners in this case was filed on 26-8-2014. Therefore, the compounding fee was liable to be calculated at the rate of 5%, as per the guidelines existing as on the date of filing of the compounding application.

16. It appears that the compounding fee was stipulated at 5% at the time when the petitioners filed their application

for compounding. It was reduced to 3%, after 01-01-2015. Today, the petitioners want to apply the CBDT guidelines to their case, taking the date of acceptance of the application for compounding as the basis.

17. But the above claim of the petitioners is an argument of convenience. Let us take a hypothetical case where the compounding fee was to be calculated at 3% before the issue of the CBDT guidelines and the same had been increased to 5% after 01-01-2015. In such cases, the argument of the assessee would be that the guidelines in existence as on the date of his application for compounding alone should be taken into consideration.

18. In fact, several cases have come up where the assesses invoke the ratio laid down by the Constitution Bench of the Supreme Court in ***Garikapatti Veeraya v. N.Subbia Choudhury***[1], where the Supreme Court held that the law prevailing at the time of commencement of the proceedings shall be the governing law and that a vested right conferred by the law that was existing at the time of commencement of the proceedings cannot be taken away by a subsequent enactment. If this proposition of law goes in favour of the assessees in some cases, they cannot avoid the opposite consequences in some other cases. Every proposition of law could prove to be a double edged weapon, but it can never be invoked or condemned depending upon convenience or

[1] AIR 1957 SC 540

consequences. Therefore, the 1st respondent was right in applying the guidelines that were in existence as on the date of the filing of the compounding application and the petitioners cannot question the correctness of the same.

19. Having settled the only dispute that was raised by the petitioners as a shield to ward off the payment, we shall now take up for consideration the request made by the learned counsel for the petitioners. The learned counsel for the petitioners submitted that at least now the petitioners may be given an opportunity, to make payment of the compounding fee, if the Court was not in agreement with him on the first point. The learned counsel for the petitioners contended that by prosecuting the Directors of the petitioners, the Department can only send them to prison and that by accepting the compounding fee, the petitioners can be saved without any detriment to the Department.

20. The said argument, in our considered view, merits acceptance. Section 279(2) of the Act enables the Principal Chief Commissioner to compound any offence under Chapter XXII, either before or after the institution of the proceedings. Therefore, it is not too late for the petitioners to mend their ways. The Statute does not stipulate an inviolable period of limitation for payment of the compounding fee. The date for payment of the compounding fee is stipulated by the Principal Commissioner ordering the application for compounding.

21. Therefore, we are of the considered view that the petitioners could be permitted to pay the compounding fee and get the offence compounded.

22. In view of the same, the writ petition is disposed of, directing the 1st respondent to permit the petitioners to compound the offences, if the petitioners pay the compounding fee of Rs.20,21,793/- (Rupees twenty lakhs, twenty one thousand, seven hundred and ninety three only), within a period of 4 (four) weeks from the date of receipt of a copy of this order. The amount of Rs.4,96,916/- (Rupees four lakhs, ninety six thousand, nine hundred and sixteen only) already paid by the petitioners on 05-4-2016 shall be given credit to and it is enough if the petitioners make the payment of the balance amount alone within the period stipulated above. Once this payment is made, the criminal proceedings initiated against the petitioners shall stand withdrawn. The interlocutory applications, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

01st May, 2018.
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