IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 35826 of 2016

V.K. Lohia
Managing Trustee: Visharada Charitable Trust
No. 1732, 21st Main Road,
Anna Nagar, Chennai - 600 040. ...Petitioner

-vs-

Chief Commissioner of Income Tax
Aayakar Bhavan, Main Building,
121, Mahathma Gandhi Salai,
Chennai - 600 034. ...Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondent in F.No. Compounding V.K.Lohia/2015-16 dated 29.06.2015 and quash the said order and consequently direct the Respondent to compound the said offence under Section 279 AB read with Sections 278 B, 269 UC and 269 UL (2) of the Income Tax Act.

For Petitioner : Mr. R.Sivaraman
For Respondent : Mrs. Hema Murali Krishnan
Senior Standing Counsel

O R D E R
(through video conference)

Heard Mr. R.Sivaraman, Learned Counsel for the Petitioner and Mrs. Hema Muralikrishnan, Learned Standing Counsel appearing for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition has been filed challenging the Order in F. No. Compounding/V.K. Lohia/2015-16 dated 29.06.2015 passed by the Respondent under Section 279(2) of the Income Tax Act. 1961 (hereinafter referred to as the 'Act' for short) rejecting the request for compounding that had been made by the Petitioner in the application dated 11.07.2013 made in that regard. The facts leading to the passing of the impugned order have been captured therein, which is extracted below:-

“3. The applicant is the Managing Trustee of M/s. Visharada Charitable Trust, Chennai which purchased a property for an aggregate sale consideration of Rs.40 lakhs situated in Door No AH151, 3rd Street, Anna Nagar, Chennai-40, from one M/s. Soffia Software Ltd. (now renames as Quintegra Solutions P. Ltd.) represented by its Managing Director, Shri R. Venkata Subramani who was in turn represented by a power agent, viz. Shri S.C. Agarwal. As the full value of consideration exceeded Rs.25 lakhs, in terms of provisions contained in Chapter XXC of the Income Tax Act, 1961, (now repealed), both the vendor and the vendee were under the statutory obligation to furnish Form No.37-I seeking 'no objection' from the Appropriate Authority. Based on the information available in the office of the DIT (Exemptions), Chennai, it was detected that single property was sold by two split-up sale deeds dated 25.1.2001 and 27.3.2001 of Rs.20 lakhs each by contravening the provisions of Chapter XXC of the Act. Therefore, the Member, Appropriate Authority, Chennai, filed a criminal complaint against all the aforesaid four persons for the offences under sec. of sec.269UC/269UL (2) of the I.T.Act, before the Addl. CMM, EO-I, Chennai, hereinafter referred to as the trial court in EOCC No.594 of 2002. M/s. Soffia Software Ltd., Shri K. Venkataramani, M/s. Visharada Charitable Trust and Shri V.K. Lohia were arrayed as Accused No.1 to 4, respectively. The trial court by an order dated 29-04-2010 convicted and sentenced all the four accused with the sentences of imprisonment and fine as tabulated herein below:

Sl.No.	Name of the accused	Sentence of fine and imprisonment awarded by the trial court
a)	M/s Soffia Software Ltd	Fine of Rs.2,50,000 for offence u/s 269UC and Rs.2,50,000 for offence u/s 269UL(2) r.w.s.276AB of the IT Act 1961.
b)	Shri.R.Venkata Subramani	Fine of Rs.10,000 for offence u/s 269UC and Rs.10,000 for offence u/s 269UL(2) r.w.s. 276AB of the IT Act 1961, with one year RI.

c)	M/s Visharada Charitable Trust	Fine of Rs.2,50,000 for offence u/s 269UC and Rs.2,50,000 for offence u/s 269 UL(2) r.w.s.276AB of the IT Act 1961.
d)	Shri.V.K.Lohia, Managing Trustee	Fine of Rs.10,000 for offence u/s 269UC and Rs.10,000 for offence u/s 269UL(2) r.w.s. 276AB of the IT Act 1961, with one year RI.

4. Since the A-2. R.Venkatasubramani had resigned by then from the post of Managing Director of A-1 company, Soffia Software Ltd, the present Directors of the Vendor company were directed by the Trial Court to pay the fine imposed on the Company and in default they shall undergo simple imprisonment of one year. Further, the A4 namely Shri.V.K.Lohia was directed to pay the fine imposed on A-3, Visharada Charitable Trust and in default shall undergo simple for 1 year.
5. Aggrieved by the conviction order of the Trial Court, both the applicant trust and its Managing Trustee have preferred appeal against the conviction order before the Principle Session Court, Chennai, in C.A. No. 231 of 2 and the same are pending. After the conviction and during the pendency appeal proceedings, the applicant trust and its Managing Trustee have filed their compounding petitions independently on 11.7.2013."

3. The application made by the Petitioner for compounding was refused mainly on the ground that it had been made on 11.07.2013 after the order of conviction dated 29.04.2010 in EOCC No. 594 of 2002 has been passed by the Additional Chief Metropolitan Magistrar (EO-I), Chennai (hereinafter referred to as the 'Criminal Court' for short). In support thereof, reliance had been placed on guideline 4.4(f) in Circular in F. No. 285/90/2008-IT(Inv.)/12 dated 16.05.2008 issued by the Central Board of Direct Taxes (hereinafter referred to as the 'CBDT' for short). Yet another reason assigned by the Respondent for such rejection was that the Petitioner was totally non-cooperative in getting the property valued, which falls within the purview of guidelines 3 and 4.4(g) of the aforesaid circular issued by the CBDT, which reads as follows:-

"3. Offences under Direct Tax Laws may be compounded subject to the conditions prescribed in these guidelines. An assessee cannot claim, as a matter of right, that his offence has to be compounded. Factors,

such as conduct of the assessee, nature and magnitude of the offence and facts and circumstances of each offence need to be considered while dealing with such a request. Offences under Indian Penal Code cannot be compounded. They can, however, be withdrawn.
4.4. Cases not to be compounded:- Notwithstanding anything contained in the guidelines, the following cases should normally not be compounded:-
....

(g) Any other ground, which the CCIT/DGIT may consider relevant for not accepting the compounding petition, in view of the nature and magnitude of the offence."

The correctness of the aforesaid order is challenged in this Writ Petition.

4. It is vehemently contended by the Learned Counsel for the Petitioner:

(i) that the Petitioner could not be denied relief in the compounding application for the reason that it had been filed after the conviction order has been passed by the Criminal Court inasmuch as appeal against the said order had been preferred in time, which is still pending, and as such, has not attained finality;

(ii) that the reason stated that the Petitioner did not co-operate with the valuation of the property at the initial stage when action was taken under the relevant statutory provision, is unjustified;
(iii) that the Petitioner, who is a Managing Trustee of M/s. Visharada Chritable Trust, which is the purchaser of the aforesaid property, in respect of whom the compounding application had been rejected while relief in that regard was granted in respect of the vendor of the aforesaid property by Order in EOCC No. 594.2002 dated 23.07.2015 passed by the Respondent, meting out a discriminatory treatment to him; and
(iv) that the provisions of Chapter XX-C of the Act under which action has been taken shall not apply to, or in relation to the transfer of any immovable property effected on or after 01.07.2002, has been repealed in the Act.
Reliance has been placed on the decisions of the Division Bench of this Court in Chairman, Central Board of Direct Taxes -vs- Umayal Ramananthan (Order dated 06.04.2009 in W.A. No. 439 of 2003) and Government of India -vs- R.Inbavalli (Order dated 05.07.2017 in W.A. Nos. 132 and 455 of 2017) in support of the said contentions.

5. Learned Standing Counsel appearing for the Respondent, refuting the said contentions, points out that the ruling of the Division Bench of this Court relied by the Learned Counsel for the Petitioner cannot be applicable to the case of the Petitioner and that his conduct has been taken note for disentitling him to the relief to which no exception could be taken. It was emphasized relying on the decision of this Court in K.M.Mammen -vs- Director General of Income Tax (Order dated 28.08.2019 in W.P. No. 3929 of 2014) that the circular issued by the Central Board of Direct Taxes could not be deviated by the Respondents in deciding the compounding application and when the Petitioner did not satisfy the essential conditions, the impugned order of rejection does not require interference by this Court.

6. Having regard to the aforesaid rival submissions made, the points that arise for consideration are whether the Respondents is justified in rejecting the compounding application for the reasons:

(i) that it had been made after the order of conviction has been passed by the Criminal Court; and
(ii) that the conduct of the Petitioner by non-cooperation at the initial stage disentitles him to any relief.

7. Insofar as point no. (i) is concerned, reference must, at once, be made to the ruling of the Division Bench of this Court in Chairman, Central Board of Direct Taxes -vs- Umayal Ramananthan (Order dated 06.04.2009 in W.A. No. 439 of 2003), where it has been held as follows:-

> "5. This court carefully considered the submission of counsel for both the 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 the 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.
> 6. 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.—… (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."

7. 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 com-pounded by the Chief Commissioner or a Director General.

8. 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- Hazari Lal Kishori Lal [(1982) 1 SCC 525], 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 pre-scribed mode in which judicial business is conducted. The word 'proceeding' in section 22 includes execution proceedings also."

(ii) P.L. Kantha Rao -vs- State of Andhra Pradesh [(1995) 2 SCC 471], wherein in paragraph 3, it was held thus (page 809):

> "3…. Therefore, the term 'proceeding' in section 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 con-ducted. The execution is a step in the judicial process. It seeks to enforce the final order to realise the result of the adjudication."

9. The term proceeding shall also include the proceedings at the appellate stage. In Lachhman Dass -vs- Santokh Singh [(1995) 4 SCC 201] in paragraph 7, it was held by the honourable Supreme Court thus (page 205):

> "7….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., (AIR 1965 SC 1585)."

10. 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.

11. 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 the 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 abovesaid 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.”

The said view has been followed by another Division Bench of this Court in Government of India -vs- R.Inbavalli (Order dated 05.07.2017 in W.A.Nos. 132 and 455 of 2017). As the fact situation that has arisen in the present case squarely falls within the ratio laid down in the aforesaid binding decisions of the Division Benches of this Court, there does not appear to be any justification to take any different view of the matter. The Respondent appears to have taken a very curious way to distinguish the binding decisions of the Division Benches of this Court by expressing that the Court had merely directed to consider and dispose the compounding application, but had not issued any direction to compound. The legal position does not require any explication that in the exercise of powers of judicial review under Article 226 of the Constitution, the High Court has to confine only to the examination of the decision-making process and such power does not exist as a cloak in disguise of appeal against the decision itself, meaning thereby that when the Court arrives at the conclusion that the impugned decision could not sustained, it would set aside the flawed decision, but would not substitute its own view and straightaway grant relief, and would instead remit the matter to the concerned authority to re-consider the matter and decide afresh in accordance with law. That would not by any stretch of imagination dilute the binding nature of the principles laid down in that pronouncement which would govern subsequent cases where the same fact situation arises. In other words, guideline 4.4(f) of the Circular in F. No. 285/90/2008-IT(Inv.)/12 dated 16.05.2008 issued by the CBDT directing that compounding should not be permitted when conviction order has been passed by the Criminal Court, has to be construed that it would not stand in the way for considering a compounding application when appeal against conviction by the Criminal Court is pending, as in this case. Though the Respondent has made a distinction for granting the benefit of compounding to others while denying the same to the Petitioner for the reason that their compounding applications have been made before conviction by the Criminal Court, such distinction cannot be of any avail in view of the binding decisions of the Division Benches of this Court, as referred earlier.

8. Coming to point no. (ii) that the non-cooperation of the Petitioner at the initial stage of the proceedings would disentitle him for relief in terms of guidelines 3 read with 4.4 (g) of the aforesaid circular issued by CBDT, it would have to be examined with reference to the well known canons of the principles of natural justice that no material could be relied against a person without affording him an opportunity to explain his position before taking any decision entailing adverse civil consequence to him. In the fact situation that has arisen in this case, it was incumbent upon the Respondent to have informed the Petitioner before passing the impugned order that it was proposed to deny relief on account of such non-cooperation at the initial stage of the proceedings by bringing the same to his notice and supplying copies of the materials relied in support of the same, and calling upon him to submit explanation and also afford an opportunity of personal hearing, in that regard. The explanation of the Petitioner, if submitted, ought to be then considered before taking the final decision in the matter. Such exercise apparently has not taken place in the instant case as seen in the impugned order.

9. The result of the foregoing discussion is that the impugned Order in F. No. Compounding/V.K. Lohia/2015-16 dated 29.06.2015 passed by the Respondent cannot be sustained and it is set aside and the matter is remitted to the Respondent for fresh determination of the matter. It is incumbent upon the Respondent to take into account the aforesaid conclusions arrived by this Court, conduct enquiry affording opportunity of personal hearing to the Petitioner following the prescribed procedure in consonance with the principles of natural justice, deal with each of the contentions raised by the Petitioner and pass reasoned orders on merits and in accordance with law and communicate the decision taken to the Petitioner under written acknowledgment and file a report of such compliance by 31.03.2021 before the Registrar (Judicial) of this Court.

The Writ Petition is disposed on the aforesaid terms. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vjt/kv

To

The Chief Commissioner of Income Tax
Aayakar Bhavan, Main Building,
121, Mahathma Gandhi Salai,
Chennai - 600 034.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai – 600 104.

W.P. No. 35826 of 2016

KKV/23/12/2020