

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	22.01.2020
Pronounced On	31.01.2020

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

Cont.P.No.2079 of 2019
and
Sub Application Nos.576 & 577 of 2019

K.M.Mammen ... Petitioner in
Contempt petition/Sub Application

VS

1.Mr.D.C.Patwari, IRS,
The Director General of Income Tax,
(Investigation)
No.46, Old No.108, M.G.Road,
Nungambakkam,
Chennai – 600 034.

2.Mr.Rajiv Jain,
Deputy Commissioner of Income Tax,
Central Circle IV(1),
Income Tax New Building,
Room No.112, 1st Floor,
No.46, Old No.108, M.G.Road,
Nungambakkam,
Chennai – 600 034.

3.Mr.Arvind Kumar,
Chief Commissioner of Income Tax,
Director General of Income Tax,
No.121, Old No.108, M.G.Road,
Nungambakkam,
Chennai – 600 034.

... Respondents in
Contempt petition/Sub Application

Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971, to punish the respondents for the willful, intentional disobedience and failure to comply with the order of this Hon'ble Court dated 28.08.2019 made in W.P.No.3929 of 2014.

Sub Application No.576/19

To stay the impugned order dated 06-11-2019 passed by the respondent in compounding petition of the petitioner in F.No.2009(37)/2010-11 to 2019-20 pending disposal of this contempt.

Sub Application No.577/19

To allow the compounding petition of the petitioner filed before the respondents to compound the offence on 19-09-2019 as a consequential relief of this contempt petition.

For Petitioner : Mr.N.L.Rajah, Senior Counsel for
Mr.S.Ashok Kumar

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

The petitioner has filed the present Contempt Petition under Section 11 of the Contempt of Courts Act, 1971 r/w. Article 215 of the Constitution of India.

2.The petitioner has been prosecuted under Sections 276C and 277 of the Income Tax Act, 1961 in E.O.C.C.No.121 of 2011 before the Additional Chief Metropolitan Magistrate (Economic Offences – 1), Egmore, Chennai. This prosecution was pursuant to proceedings initiated under Section 148 of the Income Tax Act, 1961, wherein it was held that the petitioner had willfully and deliberately failed to file returns of income of Rs.2,71,87,222/- without reflecting the investment in the form of bank balance in a foreign bank account, thereby, attempted to evade tax.

3.The petitioner had earlier filed CrI.O.P.No.9065 of 2011 before this Court under Section 482 of the Criminal Procedure Code, 1973 to quash the said complaint. By an order dated 28.02.2019, the learned Single Judge of this Court dismissed the aforesaid CrI.O.P.No.9065 of 2011. The petitioner has filed S.L.P against the dismissal order passed in the aforesaid CrI.O.P. filed by the petitioner and is stated to be pending.

4.The petitioner had also filed an application for compounding the offence under Section 279 of the Income Tax Act, 1961 before the respondents. The said application for compounding the offence came to be rejected by then the Director General of Income-tax (Investigation) 1st respondent herein vide order dated 15.01.2014 with the following observations:-

I have given my anxious consideration to the case of the assessee. This case was not found to be a fit case for compounding as per the guidelines of the Board, according to the circular in F.No.285/90/2008-IT (Inv.)/12 dated 16th May, 2008 issued by the Board. Paras 3 and 4 of this circular read 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. Eligibility conditions for consideration of a case for compounding

The following conditions should be satisfied before considering a case for compounding:-

4.1 XXXXX

4.2 XXXXX

4.3 XXXXX

4.4.Cases not be compounded:- Notwithstanding anything contained in the guidelines, the following cases should normally not be compounded:-

- a) In case of a non-technical offence, offences other than the first offence as defined in para 8 below.
- b) Offences involving major fraud or scam or misappropriation of government funds or public property.
- c) Offences committed by an assessee linked to any Anti-national/ terrorist activity and cases being investigated by CBI, police, enforcement directorate or any other Central Govt. agencies, as per information available with the Income tax department.
- d) Offences committed by an assessee who has enabled others in large scale concealment of income in a systematic and planned way over a number of years like hawala entriles, bogus trusts, bogus remittance etc.
- e) Offences committed by an assessee whose application for 'plea- bargaining' under Chapter XXI-A of 'Code of Criminal Procedure' is pending in a Court or a Court has recorded that a 'mutually satisfactory disposition' of such an application is not worked out.
- f) Where conviction order has been passed by a Court.
- 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.

From the above, it is clear that assessee cannot claim as a matter of right that his offence should be compounded. Clause (g) of para 4.4 clearly states that the DGIT/CCIT may consider any other relevant ground for not accepting the compounding petition. The facts as obtained in the case of the assessee shows that he has cross- border transactions and if not for the information received from a foreign Government, the Revenue would have been put to a great loss. No doubt, the assessee may claim certain infirmity in the nature of the evidence on which the Department is relying. But the fact is that the signature of the assessee is tallying with the signature in the document. It is my considered opinion that this evidence establishes major fraud in so far as funds have gone out of the country and if not for the information obtained, the moneys would have remained untaxed. Keeping funds abroad, that too, in countries wherein banking secrecy law shield the investment is also to be regarded as anti- national activity. It is also seen that the Hon'ble ITAT has upheld the orders of the Revenue vide its order dated 25.02.2013. The matter is also under investigation before the Enforcement Directorate. Assessee cannot take advantage of the fact that the nature of the documents is not foolproof and accordingly, there is a case for compounding. The assessee has not produced the documents nor the account copy to disprove the contentions of the Department. Considering the nature of the offence and the quantum of income involved, it is my considered opinion that this is not a fit case for compounding the offences committed. Thus, under para 3 and 4.4 (b), (c) and (g) of the impugned Circular, the petition deserves to be rejected.

5.Since the compounding application was dismissed by then the Director General of Income-tax (Investigation) 1st respondent herein, the petitioner filed W.P.No.3929 of 2014 to quash the said order dated

15.01.2014 of the 1st respondent and to direct the respondents 1, 4 and 5 therein who are the respondents herein to compound the offence in accordance with law.

6.By an order dated 28.08.2019, the learned Single Judge of this Court has passed the aforesaid writ petition with the following observations:-

10. In the light of the above observations, the impugned order passed by the first respondent herein under Section 279 (2) of the Income Tax Act, 1961 dated 15.01.2014 is set aside and the matter is remanded back to the Committee prescribed under the CBDT Guideline No.7.1 (c) dated 16.05.2008. The petitioner is granted liberty to place a copy of this order along with afresh compounding petition under Section 279 of the Income Tax Act, before the Committee, within a period of 30 days from the date of receipt of a copy of this order. On receipt of the aforesaid application along with a copy of this order, the Committee shall consider the same, in the light of the observations made in this order and pass appropriate orders in accordance with law, within a period of 60 days there from. The Writ Petition stands allowed accordingly. Consequently, connected Miscellaneous Petition is closed. No costs.

7.Pursuant to the direction of this Court in W.P.No.3929 of 2014, the petitioner had filed a fresh application for compounding the offences before the Compounding Committee presided by the three respondents herein on 09.09.2019.

8.The Compounding Committee consisting of the three respondents herein have rejected the application filed for compounding of offences on 06.11.2019 based on the CBDT circular dated 16.05.2008 under Section 279(2) of the Income Tax Act, 1961. The reason given for not compounding of offences of the petitioner reads as under:-

5.2. The RCC considered all the material and records before it, in detail. The Assessing Officer reopened the case under section 147 after receiving information on moneys deposited in a foreign bank account and the assessee remained non-cooperative during the course of the assessment proceedings. While replying to the issue of notice under section 148, assessee submitted.

“On the basis of the reasons provided by you your letter dated 24.04.2009. I have written to LGT Bank, Lichtenstein on 14.05.2009 requesting them to verify the details of the Trust purported to have an account with LGT Bank and beneficiaries in the said Trust. The Bank has replied by their letter dated 08.07.2009 copy of which is enclosed (Original Bank letter is produced for your perusal). The Bank’s letter will show that they have no information of any such Trust or the stated beneficiaries in the Trust.

In view of the Bank’s confirmation, the reassessment is without merits and therefore, the proceedings may be dropped.”

Whereas, the Assessing Officer found that the bank has actually replied as under found that the bank has actually replied as under:-

“Due to the Liechtenstein banking Act, the bank Act, the bank can disclose information about any possible business relation between a bank client and the bank only to authorized person(s) and none else. We, therefore regret our inability to give you the information called for by you”

Secondly, a sworn statement u/s 131 of the IT Act, 1961 was recorded from the assessee by the Assessing Officer on 10.11.2009. Some of the intercepts are reproduced here under:

Q.17 There is a Trust by name M/s. Webster Foundation. Are you reminded of anything when you hear it.

Ans: I am not aware of such Trust or Foundation. Nothin comes to my mind.

Further in the sworn statement, assessee also stated that

Ans-18: The signature appears to be mine but I have never signed any such document.

Ans-21: I am not aware of the existence of Webster Foundation.

5.3 The above replies by the assessee clearly show that the assessee gave false statement under oath before the Assessing Officer. The information about the foreign bank account of the assessee was authentic since the same was received from the Govt. of Germany. Thus it is clear that the assessee was hindering the course of investigation and gave false information.

5.4 The mens rea being the offence, committed by the assessee, is clear and this stand is supported by the fact that the CIT (A) confirmed the penalty order under section 271(1)(c) of the Income Tax Act, though the penalty was

restricted to 100% instead of 300% of the tax sought to be evaded. Further, the ITAT has also confirmed the CIT(A) order.

5.5 The Regional Compounding Committee also took into consideration the fact that a large sum was deposited in the foreign bank accounts and the period in which the offence was committed. The Indian rupee equivalent of the Euro currency at the time of deposit in foreign bank account was Rs.2,26,38,372/- in Asst. year 2002-03. This was a high amount at that point of time.

5.6 Moreover, the RCC deliberated on the following points:

- a) the assessee has cross border transactions, but for the information received from a foreign Government, the Revenue would have been put to loss.
- b) the evidence gathered in the instant case establishes major frauds in so far as funds have gone out of the country and if not for the information obtained, the monies would have remained untaxed.
- c) The assessee has neither produced the documents nor the account copy to disprove the contentions of the department. The attitude of the assessee was of total non-cooperation in the entire proceedings before Assessing Officer on the issue.

5.7 Considering the above fact and circumstances, the RCC recommended that the Compounding Petition of the assessee deserve to **be rejected according to the guidelines prescribed in the Para 4.4(g) considering the nature and magnitude of offence as non compoundable.**

III. In the result, the application of the assessee Shri K M Mammen, (AAEPM0314R) for the Asst. Year 2002-03 u/s.279(2) of the Income Tax Act, 1961 dated 10/09/2019 has been rejected.

9. There it has been clarified that the order has been passed in terms of the Board's revised guidelines for compounding of offences in F.No.285/90/2008-IT (Inv.V)/12, dated 16.05.2008.

10. It is the contention of the Mr.N.L.Rajesh, learned Senior Counsel, instructed by Mr.S.Ashok Kumar, learned counsel for the petitioner that in para 8.6 of order dated 28.08.2019 in W.P.No.3929 of 2014, the learned Single Judge of this Court has categorically made it clear that the petitioner was to be entitled to benefit of Section 279 (1A) of the Act and the mere challenge to the order reducing the penalty may not suffice to deny such a benefit. Meanwhile, the department appeal before the ITAT has also been dismissed. He submits that in view of these subsequent developments, there cannot now be any impediment on the part of the Department to compound the offences under Sections 276C and 277 of the Act.

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11. The learned Single Judge of this Court while passing the order, has relied on the decision of the Hon'ble Supreme Court in **Prem Dass Vs. Income Tax Officer**, 1999 (5) SCC 241, wherein, the Hon'ble Supreme Court has held as follows:-

5.To attract the provisions of Section 277 the prosecution is required to establish that the accused made a statement in any verification under the Act which he either knows or believes to be false, or does not believe to be true. The relevant part of Sections 276-C and 277 are extracted hereunder for better appreciation of the point in issue:

“276-C. (1) If a person willfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable,—

277. If a person makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable,—

8. Wilful attempt to evade any tax, penalty or interest chargeable or imposable under the Act under Section 276-C is a positive act on the part of the accused which is required to be proved to bring home the charge against the accused. Similarly a statement made by a person in any verification under the Act can be an offence under Section 277 if the person making the same either knew or believed the same to be false or did not believe to be true. Necessary mens rea, therefore, is required to be established by the prosecution to attract the provisions of Section 277. We see nothing in Section 132(4-A) which would establish the ingredients of the aforesaid two criminal offences contemplated under Sections 276-C and 277 of the Indian Income Tax Act. It may be noticed at this point of time that the Tribunal,

while interfering with the penalty imposed under Section 271(1-C) of the Act came to a positive finding that there is no act of concealment on the part of the assessee and he had returned the income on estimate basis. The Tribunal further found that it is a case purely on difference of opinion as to the estimates and not a case of concealment of income or even furnishing of inaccurate particulars of income.

12.The learned Senior Counsel for the petitioner submits that the respondents have failed to follow the orders of the learned Single Judge in letter and spirit while dismissing the application filed for compounding of offence and as officers of the Income Tax Department who constituted the Compounding Committee, in terms of the said CBDT circular ought not to have violated the order of the learned Single Judge in W.P.No.3929 of 2014.

13.The learned Senior Counsel for the petitioner submits that under Article 215 of the Constitution of India, every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. He further submits that under Article 226 of Constitution of India, High court can enforce fundamental rights. Under Article 227 of the Constitution of India, every High Courts have jurisdiction over all court and tribunals throughout the territories in relation to which it

exercise jurisdiction. He further submits that it would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by this court and pass order in direct violation of its order. In this Connection, the learned Senior Counsel placed reliance on the decision of the Hon'ble Supreme Court in **East India Commercial Company Limited, Calcutta and Another Vs. Collector of Customs, Calcutta**, AIR 1962 SC 1893.

14.The learned Senior Counsel for the petitioner further submitted that there is willful disobedience of a specific order of this Court and it undermines the authority, majesty and dignity of this court. In this case, there is deliberate and mala fide deviations by the respondent while rejecting the compounding application of the petitioner despite the following observations in para 8.6 of the order of the learned Single Judge in W.P.No.3929 of 2014. He therefore submits that the respondents are liable to be punished for violating the order no undermining the majesty and dignity of this court for not complying with the order dated 28.08.2019 in

W.P.No.3929 of 2014. In this connection, he relies on the decision of the Hon'ble Supreme Court in **Shri Baradakanta Mishra Ex-Commissioner of Endowments Vs. Shri Bhimsen Dixit**, 1973 1 SCC 446.

15.The learned Senior Counsel for the petitioner also placed reliance on the decision of the High court of Andhra Pradesh at Hyderabad in **K.Narasima Murthy and Others Vs. K.V.Ramana Chary and Others**, MANU/AP/0320/2011, wherein, the Court found in there the respondents therein interdicted with its order and therefore held that it is not open for the tribunal to make comments in the order, which would be slighting and belittling the orders of the Court, which had attained finality and it was no business of the learned Vice Chairman to the Tribunal concerned to sit in appeal over the judgment of the High Court and that he was duty bound to implement every interim order or final order of the Court in the scheme of Constitutional hierarchy of the judicial forms.

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16.The learned Senior Counsel for the petitioner further submits that a special reference was made in the decision of the Hon'ble Supreme Court in **Atma Ram Builders Pvt. Ltd., Vs. A.K.Tuli and Others**, in Contempt Petition (C) Nos.140 to 144 of 2011 in SLP (C) Nos.27755 to 27759 of

2010 dated 10.05.2011, wherein the Hon'ble Supreme court held that when orders passed by it were flouted by a subordinate judicial officer they are liable to be departmentally enquired to take disciplinary action.

17.The learned Senior Counsel for the petitioner also referred to Section 16(1) of the Contempt of Courts Act, 1971. In this connection, he referred the decision of the Bombay High Court in **Magna Graphics Ltd Vs. Prakash Sabde**, 2004 SCC OnLine Bom 143, to state that the respondents therein were bound by declaration given by the Court in the Writ Petition. The Court there followed the decision of the Hon'ble Supreme Court in **East India Commercial Company Limited, Calcutta and Another Vs. Collector of Customs, Calcutta**, AIR 1962 SC 1893.

18.Finally, the learned Senior Counsel for the petitioner also referred to the decision of the Hon'ble Supreme Court in **Commissioner of Wealth Tax Vs. Dr.Karan Singh and Others and etc.**, 1993 Supp (4) SCC 500 to buttress the point that the “ basic rules of interpreting Court judgments are the same as those of construing other documents. **The only difference is that the judges are presumed to know the tendency of parties concerned to interpret the language in the judgments differently to suit**

their purposes and the consequent importance that the words have to be chosen very carefully so as not to give room for controversy. The principle is that if the language in a judgment is plain and unambiguous and can be reasonably interpreted in only one way it has to be understood in that sense, and any involved principle of artificial construction has to be avoided. Further, if there be any doubt about the decision, the entire judgment has to be considered, and a stray sentence or a casual remark cannot be treated as a decision.”

19. Opposing the contempt petitioner and issue of statutory notice, Mr.A.P.Srinivas, the learned Senior Standing Counsel for the respondents vehemently defends the impugned order. He submits that the order of the learned Single Judge of this Court in W.P.No.3929 of 2014 dated 28.08.2019 has been fully complied with the passing of impugned order. He further submits that as per the decision of the Hon’ble Supreme Court in **J.S.Parihar Vs. Ganpat Duggar and Others**, (1996) 6 SCC 291, once the order has been complied, it is not open to the petitioner to move an application for contempt.

20.The learned Senior Standing Counsel for the respondents further submits that as per the decision of the Hon'ble Supreme Court in **J.S.Parihar**'s case referred supra, once the directions issued by this Court culminates in a fresh order, it gives rise to a fresh cause of action to seek fresh redressal in an appropriate forum. He therefore submits that the present Contempt Petition is misconceived and is liable to be dismissed with cost as it was done in the aforesaid case. He submits that the respondents are the Senior Officers of the Income Tax Department and the present attempt of the petitioner to haul them contempt is liable to be dismissed with exemplary cost as they have no personal interest in the matter.

21.He further submits that the respondents are bound by the CBDT circular dated 16.05.2008 while disposing the application filed for compounding of offence under Section 279 of the Income Tax Act, 1961 and there are governed by the guidelines of the CBDT issued under Section 119(1) of the Act. In this connection, he referred the decision of the Hon'ble Supreme Court in **Y.P.Chawla and Others Vs. M.P.Tiwari and Another**, (1992) 2 SCC 672, wherein the court observed as under:-

10. The Explanation is in the nature of a proviso to Section 279(2) of the Act with the result that the exercise of power by the Commissioner under the said section has to be subject to the instructions issued by the Board from time to time. The Explanation empowers the Board to issue orders, instructions or directions for the proper composition of the offences under Section 279(2) of the Act and further specifically provides that directions for obtaining previous approval of the Board can also be issued. Reading Section 279(2) along with the Explanation, there is no manner of doubt that the Commissioner has to exercise the discretion under Section 279(2) of the Act in conformity with the instructions issued by the Board from time to time.

22. The learned Senior Standing Counsel for the respondents further relied on the following decisions:-

- i. **Ashok Kumar Singh and Others Vs. State of Bihar and Others**, (1992) 1 SCC 152.
- ii. **Indian Airports Employees' Union Vs. Ranjan Chatterjee and Another**, (1999) 2 SCC 537.
- iii. **Mrityunjay Das and Another Vs. Sayed Hasibur Rahaman and Others**, (2001) 3 SCC 739.
- iv. **Jhareswar Prasad Paul and Another Vs. Tarak Nath Ganguly and Others**, (2002) 5 SCC 352.
- v. **Vasantha Meena Enterprises Vs. Baskaran and Others**, order dated 06.06.2011 passed by this Court in Cont.P.No.1563 of 2010.
- vi. **N.Ramadas and etc. Vs. Dr.C.A.Mohamed Abdul**

Huq and Another, order dated 12.01.2015 passed by this Court in Cont.A.Nos.1 and 3 of 2013.

vii. **Ashok Kumar and Others Vs. Depinder Singh Dhesi and Others**, (2019) 8 SCC 280.

23. The learned Senior Standing Counsel for the respondents further submits that even otherwise to invoke the contempt jurisdiction, there should be willful disobedience of the orders of this Court and since the order of the learned Single Judge itself has directed the respondent to pass appropriate orders keeping in mind the observations contained therein, it follows that the respondent had to pass appropriate order.

24. I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

25. There are no disputes in the facts of the present case. The petitioner an income tax assessee had suffered adverse orders pursuant to the proceedings initiated under Section 148 read with Section 147 of the Income Tax Act, 1961, which culminated in order against the petitioner.

However, at the appellate stage, the penalty was reduced to 25%.

26.The purpose of compounding the offences is to allow the Department also to settle the case apart from giving peace to a person who is accused and prosecuted before a criminal court. Though, an accused has no right to get case of every description to be compounded under the Act, yet the purpose of allowing an accused to compound the offence complained of under the Act should not be lost. Order rejecting application for compounding the offence should not be passed in a mechanical and pedantic manner. The guidelines of the Central Board of Indirect Taxes are intended to serve as a guide to the officers and not to defeat the objective of Act.

27.Meanwhile, a decision was taken by the Income Tax Department to prosecute the petitioner and a sanction was accorded and accordingly, E.O.C.C.No.121 of 2011 came to be filed before Additional Chief Metropolitan Magistrate (Economic Offences – 1), Egmore, Chennai. The petitioner's attempt to quash the same vide CrI.O.P.No.9065 of 2011 proved unsuccessful as it was dismissed by learned Single Judge by an order dated 28.02.2019. The petitioner has filed the SLP before the Hon'ble Supreme court against the said order and the same is pending.

28.Meanwhile, the Writ Petitioner filed an application for compounding the offence during the month of march 2011 before the Director General of Income-tax (Investigation) 1st respondent, who by an order dated 15.01.2014 rejected the application. The petitioner thus filed W.P.No.3929 of 2014. The said Writ Petition was disposed by an order dated 28.08.2019.

29.Though the learned Single Judge has given categorical findings that there was no impediment on the part of the Department to compound offence under Section 279(1A) of the Income Tax Act, 1961, yet, in the operative portion of the order, the learned Single Judge has directed the the respondent to pass appropriate orders in accordance with law. The relevant portion of Section 279(1A) of the Income Tax Act, 1961 reads as under:-

Section 279. Prosecution to be at the instance of Chief Commissioner or Commissioner:-

1.....

(1A) A person shall not be proceeded against for an offence under section 276C 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 273A.]*

2.....
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30.In the light of the said direction, the petitioner filed a fresh compounding application on 09.09.2019 before the respondents, which was disposed by the respondents vide impugned order dated 06.11.2019.

31.In my view, though the learned Single Judge has clarified the portion yet he has directed the respondents to pass order keeping in mind the observations made in the order. There is no positive direction in the said order. In case, the learned Single Judge had taken a view that application for compounding the offences was to be allowed, the learned Single Judge would have quashed the order dated 15.01.2014 and allowed the Writ Petition as prayed. The learned Single Judge has merely made passing comment in para 8.6, which is reproduced below:-

8.6. The only objection to such a proposition from the Department is that the order passed by the Tribunal, reducing the penalty, has been challenged in Tax Case Appeal before this Court. It is not the case of the Department that this Court had stayed the order of the Commissioner of Appeals, as well as the Tribunal in the Tax Case Appeals. Just because the order reducing the penalty has been put under challenge in the Tax Case

Appeals, it cannot be said that the order reducing the penalty itself has been kept under abeyance. In this background, it can only be said that the petitioner would be entitled to the benefit of Section 279 (1A) of the Act and the mere challenge to the order reducing the penalty may not suffice to deny such a benefit. In view of these subsequent developments, there cannot now be any impediment on the part of the Department to compound the offences under Sections 276C and 277 of the Act.

32. Therefore, I do not find any merits in the present Contempt Petition. At the same, it is noticed that when the above Writ Petition was disposed on 28.08.2019. Further, new guidelines issued by the Central Board of Direct Taxes on 14.06.2019 became effective from 17.06.2019. When the petitioner filed the second compounding application on 09.09.2019, the CBDT Circular dated 14.06.2019, bearing reference F.No.285/08/2014-IT (Inv.V)/147 had already been replaced with the fresh Circular dated 14.06.2019, wherein the Central Board of Direct Taxes, in paragraphs 6.1 & 6.2 has classified the offence into two categories. The two categories are as under:-

Category 'A':

S.No	Section	Description / Heading of Section
i	276	(Prior to 01104/1976) - Failure to make payment or deliver returns or

		statements or allow inspection
ii	276B	(Prior to 01/04/1989) - Failure to deduct or pay tax
iii	276B	(w.e.f. 01/04/1989 and up-to 30/5/1997)- Failure to pay tax deducted at source under Chapter XVII-B
iv	276B	Failure to pay tax deducted at source under chapter XVII-B or tax payable under section 115 - O or 2 nd proviso the section 194B to the credit of the Central Government (w.e.f. 01/06/1997)
v	276BB	Failure to pay the tax collected at source
vi	276CC	Failure to furnish Return of Income
vii	276CCC	Failure to furnish returns of income in search cases in block assessment scheme
viii	276DD	(Prior to 1.04.1989) - Failure to comply with the provisions of section 269SS
ix	276E	(Prior to 1.04.1989) - Failure to comply with the provisions of section 269 T
x	277	False statement III verification etc. with reference to Category 'A' offences
xi	278	Abetment of false return etc. with reference to Category 'A' offences

6.2 Category 'B'

Offences punishable under the following sections are included III Category'B':

S.No	Section	Description / Heading of Section
i	276A	Failure to comply with the provision of sections 178(1) and 178(3)
ii	276AA	(prior to 01/10/1986)- Failure to comply with the provisions of section 269 AB or section 269 I.
iii	276AB	Failure to comply with the provisions of sections 269UC, 269UE and 269UL
iv	276C(1)	Willful attempt to evade tax, etc
v	276C(2)	Willful attempt to evade payment of taxes, etc.
vi	276D	Failure to produce accounts and documents
vii	277	False statement In verification etc. with reference to Category 'B' offences
viii	277A	Falsification of books of account or documents, etc.
ix	278	Abetment of false return, etc. with reference to Category 'B' offences.

6.3. Offences under Sections 275 A, 275B and 276 of the Act will not be compounded.

33.From the reading of the above, the offences for which the petitioner is being prosecuted before the Additional Chief Metropolitan Magistrate (Economic Offences – 1), Egmore, Chennai in E.O.C.C.No.121 of 2011 falls

in category B vide Sl.Nos. iv & vii. Only offences under Section 275A, 275B, 276 cannot be compounded as per the above guidelines. For compounding such offences, the compounding fee has been prescribed in paragraph 13.2 and 13.8.2. This classification is also applicable to compounding the offences under the other Direct Tax Laws as well. When the learned single judge took up the case for hearing and reserved the case for passing orders on 09.08.2019, the new guideline was already force.

34.It may be useful to refer to paragraph No.8 of the said Circular, which is reproduced below:-

8. Offences normally not to be compounded

8.1 The following offences are generally not to be compounded:

- i. Category 'A' offence on more than three occasions. However, 111 exceptional circumstances compounding requested in more than three occasions can be considered only on the approval of the Committee 5 referred to in Para 10 of these Guidelines. The 'occasion' is defined in Para 8.2.
- ii. Category 'B' offence other than the first offence(s) as defined in Para 8.2 for the purpose of these Guidelines.
- iii. Offences committed by a person for which he was convicted by a court of law under Direct Taxes Laws.
- iv. Any offence in respect of which, the

compounding application has already been rejected, except in the cases where benefit of rectification is available in these Guidelines.

- v. The cases of a person as main accused where it is proved that he has enabled others in tax evasion such as, through entities used to launder money or generate bogus invoices of sale/purchase without actual business, or by providing accommodation entries in any other manner as prescribed in section 277 A of the Act.
- vi. Offences committed by a person who, as a result of investigation conducted by any Central or State Agency and as per information available with the Pr. CCIT/CCITIPr. DGITIDGIT concerned, has been found involved, in any manner, in anti-national/terrorist activity.
- vii. Offences committed by a person who was convicted by a court of law for an offence under any law, other than the Direct Taxes Laws, for which the prescribed punishment was imprisonment for two years or more, with or without fine and which has a bearing on the offence sought to be compounded.
- viii. Offences committed by a person which, as per information available with the Pr. CCIT/CCITIPr. DGITIDGIT concerned, have a bearing on a case under investigation (at any stage including enquiry, filing of FIR/complaint) by Enforcement Directorate, CBI, Lokpal, Lokayukta or any other Central or State Agency.
- ix. Offences committed by a person whose application for 'plea-bargaining' under Chapter XXI-A of 'Code of Criminal Procedure' in respect of any offence is pending in a Court or where a Court has recorded that a 'mutually satisfactory disposition of such an application is not worked out' and such offence has bearing on offence sought to be compounded.
- x. Any offence which has bearing on an offence

relating to undisclosed foreign bank account/assets in any manner.

- xi. Any offence which has bearing on any offence under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.
- xii. Any offence which has bearing on any offence under the Benami Transactions (Prohibition) Act, 1988.
- xiii. Any other offence, which the Pr. CCIT/CCITIPr. DGIT/DGIT concerned considers not fit for compounding in view of factors such as conduct of the person, nature and magnitude of the offence.

8.2 Meaning of terms "occasion" and "first offence" for the purpose of these Guidelines will be as under-

8.2.1 If in one instance the assessee files multiple applications for one or more than one Assessment Year (A Y s), all of these applications shall be treated as one "occasion".

8.2.2 First offence means, offence(s) under any of the Direct Tax Laws:

(a) Offences committed prior to any of the following-

- i. the date of issue of any letter/notice in relation to the prosecution, or
- ii. Any intimation relating to filing of prosecution complaint sent by the Department to the person concerned, or
- iii. Launching of any prosecution, whichever is earlier.

Or

(b) Offence(s) not detected by the department but voluntarily disclosed by a person prior to the filing of application for Compounding of Offence(s) in the case under any Direct Tax Acts for one assessment year or more.

For this purpose, the offence is relevant if it is

committed by the same person/entity. Further, the first offence is to be determined separately with reference to each section of the Act under which it is committed.

8.3 Notwithstanding anything contained in these Guidelines, the Finance Minister may relax restrictions in Para 8.1 above for compounding of an offence in a deserving case, on consideration of a report from the Board on the petition of an applicant.

35. Though, the above guideline was to apply for fresh applications filed after 17.06.2019, nevertheless the guidelines reflect the policy of the Central Board of Direct Taxes. It would be unfair to discriminate between the applicants whose applications were already pending and those applicants whose applications were filed thereafter. Even on 20.12.2019 & 20.01.2020 when the case was argued before this Court, there was no mention made about the latest CBDT Circular dated 14.06.2019. The new guideline appears to be more liberal. Indeed, it was also incumbent on the part of the petitioner and the respondent to have brought it to the attention of this Court when W.P.No.3929 of 2014 was taken up for hearing.

36. As per Section 279(1A) of the Income Tax Act, 1961, a person shall not be proceeded against for an offence under Section 276C and 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 273A. This aspect ought to have been kept in mind. In this case, the penalty was reduced by Commissioner of Income Tax (Appeals). These factors should also kept in mind by the respondents.

37.The respondents shall also consider the age of the petitioner and his status in society while deciding the case of the petitioner. The fact that petitioner has been subjected to the prosecution from 2011 is itself also an adequate punishment. This factor also should be kept in mind by the respondents while disposing the case. If the petitioner has no other cases against him, the respondents shall consider compounding application for compounding the offence favourably in favour of the petitioner subject to payment of appropriate compounding fees by the petitioner. I am therefore of the view that the impugned order is liable to be quashed and the application filed by the petitioner should be re-examined by the respondents in the light of the liberalised policy of Central Board of Direct Taxes in its clarification dated 14.06.2019, Section 279(1A) and other facts mentioned herein.

38.In my view, the petitioner's case deserves to be considered by the

respondents in the light of the liberalised policy since the petitioner's application was entertained after the new guideline came into force. Also for the same reason, it cannot be construed that the respondents committed contempt of this court since the order did not specify the same.

39.The respondents shall pass appropriate orders within a period of three months from the date of receipt of a copy of this order in the light of the observation contained herein. Needless to state, petitioner shall also be heard in person or through authorised representatives/legal representatives.

40.The present Contempt Petition is dismissed with the above observations. No cost. Consequently, connected Sub Applications are also closed.

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

jen

//Certified to be true copy//

Dated at Madras this the day of 2020.

COURT OFFICER(O.S.)

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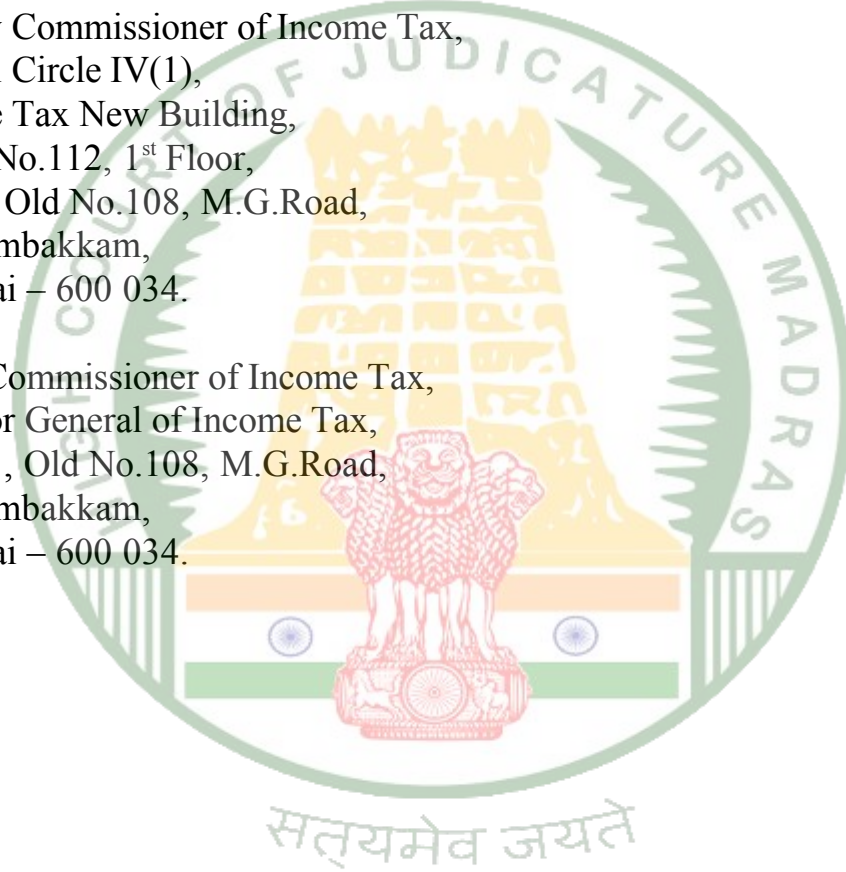
SMI/10.03.2020

To

1.The Director General of Income Tax,
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2.Deputy Commissioner of Income Tax,
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3.Chief Commissioner of Income Tax,
Director General of Income Tax,
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