IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.26599 of 2017
and W.M.P.Nos.28308 & 28309 of 2017

M/s.Tulip Clothing Pvt. Ltd.,
Rep. By its Director Smt.S.Kalavathi,
No.9, M.P.Nagar, Kongu Nadu Extension,
Tiruppur 641 602. ...Petitioner

Vs.

1.The Government of India,
Assistant Commissioner of Income Tax,
TDS Circle, Coimbatore,
1510, Mayflower Midcity,
Trichy Road, Coimbatore 641 018.

2.The Income Tax Officer,
TDS Ward, Tiruppur,
"Aadams Plaza" No.121, 60 Feet Road,
Tiruppur 641 602. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned proceedings of the 1st respondent pursuant to the impugned letter No.CMBT04254F/TDS CIRCLE/2016-17, dated 21.02.2017 and that of the impugned proceedings of the 2nd respondent pursuant to the impugned letter F.No.Compounding/CMBT04254F/2017-18, dated 21.08.2017 and quash both the proceedings dated 21.02.2017 and 21.08.2017 and consequently, forbear the respondents from in any way proceeding further in this regard so far as the petitioner and in particular, the deponent is concerned.

(Prayer amended as per the order of this Court dated 10.08.2018 in W.M.P.No.4927 of 2018 in W.P.No.26599 of 2017)

For Petitioner : Mr. M.N.Bharathi
for M/s.M.Sriram

For Respondents : Mr. S.Rajesh
(Junior Standing Counsel for IT)

ORDER

The relief sought for in the present Writ Petition is to call for the records relating to the impugned proceedings of the 1st respondent, pursuant to the impugned letter No.CMBT04254F/TDS CIRCLE/2016-17, dated 21.02.2017, and that of the impugned proceedings of the 2nd respondent, pursuant to the impugned letter F.No. Compounding/CMBT04254F/2017-18, dated 21.08.2017 and quash both the proceedings dated 21.02.2017 and 21.08.2017 and consequently, forbear the respondents from in any way proceeding further in this regard so far as the petitioner and in particular, the deponent is concerned.

2.The petitioner, an Income Tax Assessee, was carrying on business of manufacturing Hosiery garments for about 12 years. Due to various reasons, the petitioner could not carry on the business profitably and faced setbacks, which forced the petitioner to close the business from the year 2011. Accordingly, the petitioner-Company was closed and the assets were sold and adjusted to Bank loans and private loans.

3.As far as the present Writ Petition is concerned, it was related to the Assessment Year 2011-12 (Financial Year 2010-11) and concerns about the Tax Deducted at Source (TDS) for this and the 2nd Assessment Year. The petitioner states that the Company was in financial trouble and not in operation and therefore, the Company was not in a position to collect party bills and account them. They made delays in bill collection and bill entry, but they accounted the bill on the day the bill was raised by their suppliers and not on the date on which payment was made by them. With reference to the delayed payment, the petitioner had paid interest to the tune of Rs.3,08,870/-.

4.In this backdrop, the learned counsel appearing for the petitioner, strenuously contended that there was a reasonable cause for the petitioner for non-payment of compounding fees. There is a provision for exemption, contemplated under Section 278 AA of the Income Tax Act, 1994 (for brevity, 'the Act'), wherein punishment not to be imposed in certain cases when the assessee proves that there was reasonable cause for failure to pay the compounding fees. The learned counsel for the petitioner reiterated before this Court that the petitioner-Company was closed in the year 2011 and they have cleared tax arrears as well as the interests. However, compounding fees was not paid on account of the reason that the petitioner had no income during the relevant point of time and the notice itself was issued after a long delay and therefore, the petitioner has failed to pay the compounding fees. Thus, the petitioner is to be exempted by invoking Section 278 AA of the Act, as the case of the petitioner is falling under Section 276 B of the Act.

5.The learned counsel for the petitioner solicited the attention of this Court, with reference to the impugned order of rejection, dated 21.08.2017, wherein the failure of the writ petitioner to remit the compounding fees was cited as a ground and further, show cause notice was issued as to why an order treating the petitioner's director as a principal officer of the petitioner-Company should not be made by invoking Section 2(35) of the Act. Such an action initiated against the petitioner is not only improper, but not in consonance with the benefit granted to the assessee under Section 278 AA of the Act. When the petitioner could able to explain that the petitioner has got a reasonable cause for its failure to pay compounding fees, the said factors are to be considered by the respondents and in the present case, the Chief Commissioner of Income Tax, Chennai, has not considered any of these factors.

6.The learned Standing Counsel appearing on behalf of the respondents objected the said contentions of the petitioner, by stating that the petitioner-Company has given a letter of undertaking to pay the compounding fees on 13$^{th}$ January, 2014. The said letter of undertaking was not enclosed along with the Writ Petition. In the said letter of undertaking, the petitioner had undertook that they will pay the compounding fees as determined by the Chief Commissioner of Income Tax, Chennai, along with 10% of the compounding fees, subject to a minimum of Rs.10,000/- and maximum of Rs.50,000/-, towards prosecution establishment expenses and litigation expenses for each assessment year. Though the letter of undertaking was given on 13$^{th}$ January, 2014, and the application for compounding of the offences was filed by the petitioner on 13.01.2014, the petitioner had not cleared the out-standing demand. It is a pre-condition that the out-standing demand is to be cleared for the purpose of considering the application filed for compounding of offences on 13.01.2014. Thus, the delay occurred not at the instance of the department, but due to the conduct of the petitioner. Though the petitioner submitted the application on 13.01.2014, he cleared the demand out-standing on 29.12.2016 and thereafter, the application was considered and the same was rejected on the ground that the petitioner has not paid the compounding fee as per the letter of undertaking given on 13.01.2014. Thus, there was no delay on the part of the department.

7.Relying on the counter statement, the learned Standing Counsel for the respondents, reiterated that it is a mandatory and pre-requisite condition to process the application for compounding of offences, only after clearing of all the out-standing demands by way of payment/reduction. The petitioner, vide letter dated 29.12.2016, intimated that correction statements had filed to reduce the demand out-standing. After verification of the fact that the demand had been reduced to nil, the petitioner's application was taken up for consideration. The Chief Commissioner of Income Tax (TDS), Chennai, approved to compound the offence under Section 276 B of the Act on 13.02.2017, subject to the payment of compounding fee of Rs.11,40,692/- by the assessee within a period of 60 days from the date of receipt of the intimation. The said order was intimated to the petitioner-Company vide letter dated 21.02.2017 by RPAD and served on 23.02.2017. On the failure to pay the compounding fee even after prescribed time limit, the Chief Commissioner of Income Tax (TDS), Chennai, was left with no option, but to revoke the petitioner's plea for compounding of offence, which is in accordance with law.

8.The respondents cited the judgment of the Hon'ble Apex Court of India, in the case of Assistant Commissioner Vs. Velliappa Textiles Ltd., reported in [2003] (132 Taxman 165) (SC), wherein the Apex Court made an observation that compounding of offence is not a matter of right to the assessee and the relevant portion of the order is extracted hereunder:

> "The main reason given in P.V. Paiv.R.L.RinawmaILR 1993 Kar. 709 for holding that an opportunity of hearing should be given to an accused before grant of sanction is that under Section 279 (2) any offence under Chapter XXII may, either before or after the institution of proceedings be compounded by the Board, or a Chief Commissioner or a Director General authorised by the Board in this behalf and, therefore, if an opportunity is given to an assessee before grant of sanction, he may offer for composition in order to save himself from the "disgrace and ignominy of the prosecution". It is difficult to agree with the reasoning. If someone has committed an offence, he must be prosecuted and if found guilty, must be punished in accordance with law. Compounding of an offence is not a right of the accused nor it is his unilateral act. It can only be done with the consent of the authorities

enumerated in the provision. No additional right can be created in favour of an accused to enable him to save himself from the disgrace and ignominy of the prosecution. [para 6]"

9.Regarding the exemptions contemplated under Section 278 AA of the Act, the respondents contended that in the absence of any reasonable cause, as prescribed in the above Section, by making mere payment of interest of belated remittance of the Tax Deducted at Source, the petitioner cannot claim exemption from the prosecution proceedings under Section 276 B of the Act and a similar view was taken by the Hon'ble Apex Court in the case of M/s.Madhumilan Syntex Ltd. Vs. Union of India reported in 160 Taxman 71 (SC) and the relevant portion of the observations are extracted hereunder:

> "The next contention that since TDS had already been deposited to the account of the Central Government, there was no default and no prosecution can be ordered cannot be accepted. Mr. Ranjit Kumar invited our attention to a decision of the High Court of Calcutta in Vinar & Co. & Anr. v. Income Tax Officer & Ors., (1992) 193 ITR 300 (Cal). Interpreting the provisions of Section 276B, a Single Judge of the High Court observed that "there is no provision in the Income Tax Act imposing criminal liability for delay in deduction or for non-payment in time. Under Section 276B, delay in payment of income tax is not an offence". According to the learned Judge, such a provision is subject to penalty under Section 201(1) of the Act.
>
> We are unable to agree with the above view of the High Court. Once a statute requires to pay tax and stipulates period within which such payment is to be made, the payment must be made within that period. If the payment is not made within that period, there is default and an appropriate action can be taken under the Act. Interpretation canvassed by the learned counsel would make the provision relating to prosecution nugatory."

10.Section 201 of the Act clearly states the consequences of failure to deduct or pay the TDS within the prescribed time. In the present case, the petitioner has deducted the Tax Deducted at Source, but failed to pay the same into the Government account, within due time. Thus, it is an offence prosecutable under Section 276 B of the Act. In this regard, the Hon'ble Apex Court has clearly taken a view in the said case of M/s.MadhumilanSyntex Ltd. (cited supra) and the relevant paragraph was extracted above.

11.This Court is the considered opinion that the petitioner, in spite of its undertaking to pay the compounding fee on 13.01.2014, failed to honour the undertaking. The respondents approved the compounding of offence under Section 276 B of Act on 13.02.2017, subject to the payment of compounding fee by the assessee within 60 days from the date of receipt of the intimation. There was a delay of 3 years in disposing of the compounding fee application in view of the fact that mandatory pre-requisite condition to clear out-standing demand was made by the writ petitioner only on 29.12.2016.

12.This being the factum established, this Court is of an opinion that the grounds raised in the present Writ Petition deserves no merit consideration and consequently, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Government of India,
Assistant Commissioner of Income Tax,
TDS Circle, Coimbatore,
1510, Mayflower Midcity,
Trichy Road,
Coimbatore 641 018.

2.The Income Tax Officer,
TDS Ward, Tiruppur,
“Aadams Plaza” No.121,
60 Feet Road,
Tiruppur 641 602.

W.P.No.26599 of 2017

GPL[co]
NSK 29/07/2021