BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.08.2021**

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.23463 of 2018
and
W.M.P.(MD)Nos.21280 and 21281 of 2018

Mahalingam Chandrasekar ...Petitioner

-Vs-

1.The Chief Commissioner of Income Tax,
Central Revenue Buildings,
V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai-625 002.

2.The Income Tax Officer,
Non Corporate Ward-2(1)
Income Tax Buildings,
V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai-625 002. ...Respondents

Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records regarding the order dated 03.05.2018 passed by the first respondent under Section 279(2) of I.T. Act 1961 and set aside the same and also direct the first respondent to reconsider the compounding petition filed by the petitioner in the interest of justice.

For Petitioner : Mr.R.Ganesan
For Respondents : Mrs.S.Srimathy
Senior Standing Counsel

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus, to call for the records of the order dated 03.05.2018 passed by the first respondent under Section 279(2) of Income Tax Act, 1961 and set aside the same and also direct the first respondent to reconsider the compounding petition filed by the petitioner.

2.It is the case of the petitioner that, the petitioner is an income tax assessee with PAN No.AEFPC8443J. The petitioner claimed that he had been regularly filing the income tax returns. However, for the assessment years 2012-13 and 2013-14, there had been so many issues in the family of the petitioner, as a number of litigations had to be faced by the petitioner and his family members. Therefore, the petitioner could not file returns for the assessment years 2012-13 and 2013-14 in time. The returns had been filed for the said assessment year only in 2017 and 2018 and in respect of such belated filing, the respondent revenue thought of initiating prosecution against the petitioner. In this context, on 06.02.2017, the first respondent has issued a sanction order under Section 279 of Income Tax Act, 1961, [hereinafter referred to as "IT Act" for short] to prosecute the petitioner assessee before the competent Court of law. Pursuant to the said sanction order passed by the first respondent, a complaint had been filed on behalf of the respondent revenue before the First Additional Chief Judicial Magistrate, Madurai in C.C.No.5 of 2017, whereby the prosecution has been launched to try the alleged offence and to punish the petitioner asseeessee. Pursuant to the said complaint, which has become Calendar Case, the said Court had issued summons on 27.02.2017 to the petitioner to appear. At that juncture, the petitioner had given a representation on 18.09.2017 to the first respondent and on 26.09.2017 to the second respondent seeking compounding of the alleged offence under Section 279 (2) of the IT Act. Such plea raised by the petitioner having been considered was rejected by the first respondent through the order dated 03.05.2018. Aggrieved over the said rejection order passed by the first respondent under Section 279 (2) of the IT Act refusing to compound the alleged offence, the petitioner has moved this Court by filing the present writ petition with the aforesaid prayer.

3.Heard the learned counsel appearing for the petitioner, who by relying upon the reasons stated by the petitioner in the representations submitted to both the first and second respondents dated 18.09.2017 and 26.09.2017 has submitted that, there has been proceedings under SARFAESI Act against the family members of the petitioner and also proceedings under Section 138 of the Negotiable Instruments Act had been initiated against the petitioner and in view of these litigations and other allied actions, which were to be dealt with by the petitioner alone during the relevant point of time, he could not concentrate in the accounting matter especially in the context of income tax returns for the assessment years 2012-13 and 2013-14.

4.In this context, the learned counsel appearing for the petitioner submits that, it is not an intentional default of the petitioner assessee in filing return in time and therefore, he has filed returns ofcourse belatedly for both the assessment years 2012-13 and 2013-14. However, insofar as the assessment year 2012-13 is concerned, even though it was belatedly filed by the petitioner, it was accepted by the revenue. Insofar as the assessment year 2013-14 alone, the first respondent sanctioned the prosecution, pursuant to which, the prosecution has been launched against the petitioner, where summons have been issued against the petitioner by the concerned Court. Therefore, the learned counsel for the petitioner would submit that, these issues were raised before the first respondent for consideration to have a compounding as per the provisions under Section 279(2) of IT Act and the same has not been considered in proper perspective and only by a crisp and short order dated 03.05.2018, the plea of the petitioner has been rejected, hence the said order can be interfered with and one more chance for the petitioner to substantiate the claim to have compounding of the alleged offence be given to the petitioner, for which the matter can be remitted back to the respondents for re-consideration, he contended.

5.Per contra, Mrs.S.Srimathy, learned Standing Counsel appearing for the respondent revenue, on instructions, would submit that, the returns ought to have been filed on or before 31.07.2013, insofar as the assessment year 2013-14. However, the return was belatedly filed ie., after four years. For such four years long delay, no plausible reason has been given by the petitioner for invoking the provision of Section 279 (2) of IT Act. In this regard, after sanction order passed by the first respondent, the prosecution was launched, where the matter has been taken into cognizance by the concerned Court, where summons also was issued against the petitioner. Therefore, at this juncture, since the petitioner has come out with an application invoking Section 279(2) of the IT Act, for compounding the offence, that too without any acceptable or plausible reasons, the same has been rightly rejected by the first respondent through the impugned order dated 03.05.2018. Therefore, the said order cannot be said to be unjustifiable and unsustainable. Accordingly, the same may be sustained and the writ petition can be rejected, she contended.

6.I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

7.Insofar as the belated filing of return for the assessment year 2013-14 is concerned, it is not in dispute that it has been filed belatedly. It is also the case of the petitioner assessee that for the assessment years 2012-13 and 2013-14, simultaneously income tax returns had been filed ofcourse belatedly and insofar as the assessment year 2012-13, the return filed by the petitioner has been accepted by the revenue. However, only with regard to the assessment year 2013-14, the prosecution has been launched. Pointing out this, the learned counsel for the petitioner would contend that if the reason for such belated filing of return for the assessment year 2012-13 can be acceptable, the reason for such belated filing of return for the assessment year 2013-14 also should have been accepted. Nevertheless, since a prosecution has been launched, the petitioner has got every right to seek for compounding of the offence. This can be done either before or after the institution of the proceedings, where the power of compounding the offence has been given to the Principal Chief Commissioner/Chief Commissioner or Principal Deputy General/Deputy General, as the case may be. Therefore, in this context, the first respondent can very well entertain the plea of the petitioner for compounding the offence by exercising his power under Section 279(2) of the IT Act.

8.However, according to the learned counsel for the petitioner, the reasoning cited by the petitioner in his request for compounding the offence has not been considered in proper perspective and only a crisp order has been passed, where the plea of the petitioner since has been rejected, the same can be interfered with, he contended.

9.Insofar as the said plea raised by the petitioner is concerned, I have perused the order dated 03.05.2018, which reads thus:

> *"I, the Chief Commissioner of Income-tax, Madurai, in exercise of powers vested in me by virtue of the proisions of sub-section 2 of section 279 of the Income-tax Act, 1961, hereby decline the prayer to compound the offences(s) u/s 276CC of the Income-tax Act for the A.Y.2013-14, committed by Shri.Mahalingam Chandrasekar.*
>
> *The case was not found to be a fit case for compounding as the assessee failed to furnish any plausible reasons for not having filed the return for AY 2013-14 in time. It is also observed that, for this year as well as for later years, the assessee filed the returned of income in the year/s 2017 and 2018 and for which no justification has been adduced.*
>
> *The Statement of the facts of the case are enclosed as Annexure-A' (copy of the order dated 03.05.2018 enclosed)"*

10. In the said order, the first respondent has stated that, the case was not found to be a fit case for compounding, as the assessee failed to furnish any plausible reason for not having filed the returns for the assessment year 2013-14. It is also stated in the impugned order that, for this year as well as later years, the assessee filed returns of income tax in the year 2017 and 2018, for which, no justification has been adduced.

11. Since there has been belated filing of income tax return, which can attract the penal provisions, therefore, the prosecution in this regard can be launched. On perusal of the sanction order passed by the first respondent dated 06.02.2017 in this regard, it discloses that the return of income tax for the assessment year

2013-14 should have been filed on or before 31.07.2013 under Section 139(1) of the IT Act, since the same has not been filed, which was belatedly filed, it attracts the penal provisions under Section 276 CC (ii) of the IT Act and therefore, Sanction under Section 279 of the IT Act was given. Insofar as the belated filing of income tax return for other year, that is, assessment year 2012-13, no such prosecution was launched, it seems.

12. This has been exactly pointed out by the learned counsel for the petitioner that the reason for non-filing of return or belated filing of return for the two or three assessment years consecutively is because of the calamities, which he pointed out in his representation, taken place in his family, where there has been a lot of litigations, which had to be faced by the family of the petitioner, hence he could not concentrate on filing of returns.

13. Whether these reasons have been considered in a proper perspective before rejecting the said reason by analyzing the same, has to be looked into and in this context, when we read the impugned order, no such consideration seems to have been shown by the first respondent except the generalized comment as stated supra in the impugned order.

14. Therefore, in this context, this Court feels that, the reason cited by the petitioner, after giving him an opportunity, can once again be considered and accordingly, a fresh order can be passed by considering all these aspects in a proper perspective by the first respondent. For the said purpose, this Court feels that, the impugned order can be set aside and remanded back for fresh consideration.

15. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order:

> that the impugned order is set aside and the matter is remitted back to the first respondent for re-consideration. While reconsidering the same whatever the reasons cited by the petitioner in his representations to invoke Section 279 (2) of the IT Act for compounding the offence and also further inputs if any to be supplied in this regard, for which, an opportunity of being heard be given to the petitioner assessee, the first respondent can consider the said aspects objectively and pass a reasoned order to that effect. The said order as indicated shall be passed by the first respondent within a period of eight weeks from the date of receipt of a copy of this order.

16. With these directions, this Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

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NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

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+1 CC to M/s.S.SRIMATHY, Advocate (SR-26107[F] dated 12/08/2021)

W.P.(MD)No.23463 of 2018
11.08.2021

DJ(CO)
KB(01.10.2021) 6P 4C