IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.A.No.1750 of 2022 and
C.M.P.No.12594 of 2022

M/s.C.R.N. Investments Private Limited,
A Private Limited Company,
Represented by its Managing Director
Ms.Surekha Raghavendran
10, Karpagambal Nagar
Mylapore, Chennai- 600 004. ... Appellant

-vs-

1. The Chief Commissioner of Income Tax-1,
Aayakar Bhavan, Main Building
1st Floor, 121, Mahatma GAndhi Salai
Nungambakkam, Chennai- 600 034.

2. The Deputy Commissioner of Income Tax
Corporate Circle I (2)
Aayakar Bhavan, Main Building,
1st Floor, 121, Mahatma Gandhi Salai,
Nungambakkam, Chennai- 600 034. ... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order passed in W.P.No.906 of 2018 dated 24.01.2020 on the file of this Court.

For Appellant : Mr. R.Sivaraman
For Respondents : Mr.Prabhu Mukunth Arunkumar
Senior Standing Counsel

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J U D G M E N T

S.VAIDYANATHAN.,J
and
C.SARAVANAN.,J

This Appeal has been filed against the order dated 24.01.2020 passed by the learned Single Judge in W.P.No.906 of 2018. By the Impugned Order, the learned Single Judge has dismissed the Writ Petition filed by the Appellant seeking to quash the order of the Respondents dated 03.03.2016 in F.No. Compounding/ 2015-2016.

2.The dispute pertains to the assessment year 1995-1996 in respect of which the Appellant is currently facing prosecution in E.O.C.No.206/2016 before the learned Additional Chief Metropolitan Magistrate Economic Offences-1, Egmore, Chennai. It is the case of the Appellant that the order passed by the Respondent is contrary to the guide lines issued by the Central Board of Direct Taxes in F.No.285/90/2008IT (Inv.)/12 dated 16.05.2008. It is further stated that the learned Judge failed to consider the fact that the order of the 1st Respondent is also liable to be set aside for the reason that the impugned order has been passed by the said authority without constituting a proper quorum to adjudicate compounding application and as per the above guidelines of the CBDT stated above, all the applications for compounding of non-technical offences[which includes 276C(1) should be decided by the Committee consisting of (i)

CCIT (CCA), (ii) DGIT (Inv.) and CCIT/DGIT having jurisdiction over the case.

3. The learned counsel appearing for the Appellant submitted that the Survey was conducted on 01.06.2006 in the premises of Bellary Steel & Alloys Limited and that later it was found that the Company by name C.R.N Investments Private Limited represented by its Managing Director Ms.Surekha Raghavendran who is approximately aged about 74 years as on date had filed regular return under Section 143 (3) read with Section 147 claiming 30% depreciation during the Assessment Year 1995-96 and 1996-1997. It is further submitted that on coming to know about the survey, the Company filed revised return and thereby gave up depreciation claim for the aforesaid Assessment years and paid the tax and penalty. It is further submitted that as far as assessment years 1995-1996 is concerned, the matter went up to the Tribunal and the Tribunal had confirmed the imposition of penalty under Section 271 (1)(c) Act. It is his further contention that the Appeal filed by way of T.C.A.No.126/2007 also affirmed the imposition of penalty. The learned counsel appearing for the Appellant would submit that this is a fit case for compounding the offence committed by the Company represented by its Managing Director in the light of the subsequent liberalisation of policy of the Central Board of Direct Taxes. A particular reference has been made to press release dated 17.09.2022. The contents of which reads as under:

"CBDT issues Revised Guidelines for compounding of offences under the Income-tax Act, 1961

In conformity with the Government's policy of facilitating Ease of Doing Business and decriminalisation of offences, CBDT has taken steps in this direction and issued revised Guidelines for Compounding of offences under the Income-tax Act, 1961(the 'Act') dated 16.09.2022 with reference to various offences covered under the prosecution provisions of the Act.

Some of the major changes made for the benefit of taxpayers include making offence punishable under Section 276 of the Act as compoundable. Further, the scope of eligibility for compounding of cases has been relaxed whereby case of an applicant who has been convicted with imprisonment for less than 2 years being previously non-compoundable, has now been made compoundable.The discretion available with the competent authority has also been suitably restricted.

The time limit for acceptance of compounding applications has been relaxed from the earlier limit of 24 months to 36 months now, from the date of filing of complaint. Procedural complexities have also been reduced/simplified.

Specific upper limits have been introduced for the compounding fee covering defaults across several provisions of the Act. Additional compounding charges in the nature of penal interest @ 2% per month up to 3 months and 3% per month beyond 3 months have been reduced to 1% and 2% respectively."

4. It is further submitted that as far as Assessment Year 1996-1997 is concerned, the matter came up to this High Court in T.C.A.No.155 of 2007 and the Division Bench of this Court by order dated 13.02.2014, has remitted the matter back to the Tribunal, in respect of imposition of penalty is concerned. It is submitted that the Tribunal, by its order dated 28.02.2017 dropped the penalty. The learned counsel for the Appellant submitted that this Court vide order dated 28.08.2019 in W.P.No.3929 of 2014 in the case of K.M.Mammen Vs. The Director General of Income Tax (Investigation) has

remitted the case back to the Committee prescribed under the CBDT Guidelines No.7.1 (c) dated 16.05.2008 and the Petitioner therein was granted liberty to place the copy of the aforesaid order along with afresh compounding petitioner 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 the order and on receipt of the same, the Committee was directed to consider the same in the light of the observation made therein and to pass appropriate orders in accordance with law, within a period of 60 days there from and in respect of same assessee, this Court in the case of ***K.M.Mammen Vs. Principal Commissioner of Income Tax*** reported in ***2022 445 ITR 266*** has given the positive direction to compound the offence. It is the further submitted that it cannot be said that there was a major fraud, scam or misappropriation as is contemplated under Clause 4.4 (b) of the Circular of the Board and therefore this is a fit case for compounding the offence. It is further submitted that exceptions under Circular dated 16.05.2008 is not attracted.

5. The impugned decision of the 1st Respondent is defended by the learned counsel for the Revenue stating that as far as jurisdiction is concerned, the petitioner has not raised any objections before the Respondents. It is further stated that the learned Single Judge while dismissing the Writ Petition has considered all the issues and has rightly dismissed the Writ Petition and therefore it does not require interference. That apart it is submitted that notice for initiating prosecution under Section 279 of the

Income Tax Act was issued as early as on 26.02.2014 and it is the Appellant who is guilty of dragging the proceedings because the issue for the subsequent assessment year 1998-1997 was remanded back to the Tribunal. It is further submitted that if the prosecution in EOCC No.206 of 2016 was allowed to be continued then and there perhaps the Appellant would have been also found guilty of the offence in EOCC No.206 of 2016. It is therefore submitted that the benefit of subsequent guide lines would not inure to the Appellant and therefore prays for the dismissal of the present Writ Appeal.

6.We have considered the arguments advanced on behalf of the learned counsel appearing for the Appellant as well as the learned counsel for the Revenue. We have also perused the records.

7. A reading of the guidelines stated supra indicates that there is a liberalisation over a period of time. Infact, as per the latest press release dated 17.09.2022, the scope of eligibility for compounding of cases has been relaxed whereby case of an applicant who has been convicted with imprisonment for less than 2 years being previously non-compoundable, has now been made compoundable and discretion has been vested with the competent authority to compound offence. The Appellant is now aged about 76 years. Though the Appellant has shown complicity in evading tax and also been

subjected to penalty, no useful purpose would be served by prosecuting the Appellant at this distant of time because she took advantage of the legal remedy available under law. This Court in the case of ***K.M.Mammen Vs. Principal Commissioner of Income Tax*** reported in ***2022 445 ITR 266*** referred to supra as examined also and answered the point as follows.

> *"33. As per 2019 guidelines in Circular bearing reference F.No.285/08/2014-IT (Inv-V)/147 dated 14.06.2019, cases involving any offence which has a bearing on an offence relating to undisclosed foreign bank account / assets in any manner are not to be normally compounded.*
>
> *34. Similarly, as per Clause (xiii) of the same Circular, any other offence, which the Pr.CCIT/CCIT/Pr.DGIT/DGIT concerned considers not fit for compounding in view of factors such as conduct of the person, nature and magnitude of the offence.", are not be normally compounded.*
>
> *35. As per para 4.2 of Circular in F.No.285/90/2008-IT (Inv.)/12 dated 16th May 2008, application can be considered if tax, interest, penalties or any other sum payable relating to default is paid and the applicant under takes to pay the compounding fee as per para 9.5.*
>
> *36. As per para 9.5 of F.No.285/90/2008-IT (Inv.)/12 dated 16th May 2008, 50% of the tax sought to be evaded is to be paid as compounding fee for the offence under Section 276(1) of the Income Tax Act. Similarly, para 9 also deals with offence under Section 277 of the Income Tax Act, 1961. Therefore, the petitioner can be directed to pay the amount as may be determined by a Competent Officer.*
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> *37. As per para 4.4 (g) of Circular in*

F.No.285/90/2008-IT (Inv.)/12 dated 16 th May, 2008, cases are not to be compounded if CCIT/DGIT considers any other ground relevant for not accepting the compounding petition, in view of the nature and magnitude of the offence. It is clear that discretion can be exercised for compounding the offence. Normally, offences involving serious cross-border transaction are not to be compounded. However, discretion can be exercised.

38. Both 2015 or 2019 guidelines are strictly binding on the authorities. They are intended to guide officers to bring a closure of cases where there are extenuating circumstance for compounding offence on application filed under Section 279(2) of the Act.

*39. In **Y.P.Chawla and others** Vs. **M.P.Tiwari and another**, (1992) 2 SCC 672, the Hon'ble Supreme Court observed as under:*

***9.** This Court in **Navnitlal C. Javeri v. K.K. Sen, Appellant Assistant** C.I.T.[(1965) 1 SCR 909 : AIR 1965 SC 1375 : (1965) 56 ITR 198] , **Ellerman Lines Ltd. v. C.I.T.** [(1972) 4 SCC 474 : 1974 SCC (Tax) 304] and in **K.P. Varghese v. ITO** [(1981) 4 SCC 173 : 1981 SCC (Tax) 293] has held that circulars issued by the Central Board of Direct Taxes under Section 119(1) of the Act are binding on all officers and persons employed in the execution of the Act even if they deviate from the provisions of the Act. The High Court has discussed these judgments in detail and has distinguished them on plausible grounds. It is not necessary for us to go into this question because the legal position has altered to the advantage of the Revenue by the introduction of an Explanation to Section 279 of the Act by the Finance Act (2 of 1991) which has been made operative with effect from April 1, 1962. The Explanation is as under:—*

"Explanation.— For the removal of doubts, it is hereby declared that the power of the Board to issue orders,

instructions, or directions under this Act shall include and shall be deemed always to have included the power to issue instructions or directions (including instructions or directions to obtain the previous approval of the Board) to other Income Tax authorities for the proper composition of offences under this section."

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.*

11. *We allow the appeals, set aside the High Court judgments dated November 30, 1990 in both the cases and dismiss the writ petitions filed by Tiwari and Passi. No costs.*

40. The petitioner is now over 70 years and has been facing prosecution for over a period of last one decade for an offence allegedly committed by him during 2001-2002 for the relevant assessment year 2002-2003.

41. Earlier, the petitioner faced, adjudication proceeding both under Section 148 and penalty proceeding under Section 279(2) of the Income Tax Act, 1961. The petitioner has paid the tax interest and the penalty imposed on him. Though, the petitioner has paid the penalty, the petitioner has filed an appeal against order of CIT (Appeals) confirming imposition of penalty to the extent of

100% of the tax. The Department is also in appeal as mentioned above.

*42. The 2019 Circular which has been pressed against the petitioner in the impugned order makes it clear that there is a fair amount of discretion vested with the fourth respondent. Even in the case covered by para 8, the phrase used is "**offence normally not to be compounded**". Thus, even these cases can be compounded.*

*43. In **Prem Dass** Vs. **ITO,** (1999) 5 SCC 241**,** the Hon'ble Supreme Court accepted the contention of the assessee that legislative intent of Section 279(1A) of the Income Tax Act, 1961 has to be kept in mind where there is a reduction of penalty. This aspect has also not been kept in mind by the fourth respondent while passing the impugned order.*

44. Further by prosecuting a septuagenarian, who is also an industrialist will serve no purpose. The petitioner entitled for buying a peace subject to his agreeing to pay the compounding fee that may be imposed by the fourth respondent. The petitioner has been sufficiently dealt for his past dalliances by the respondent.

45. In my view, this was a fit case for compounding the offence considering the age of the petitioner and considering the fact that the petitioner has paid the tax interest and penalty.

46. Therefore, I am inclined to set aside the impugned order passed by the fourth respondent and remit the case back to the fourth respondent to compound the case by fixing the compounding fee to be paid by the petitioner, if it has not been already paid by the petitioner.

47. Compounding fee, if it has not been already paid, shall be calculated by the fourth respondent and intimated to *the petitioner within a period of sixty days from the date of receipt of a copy of this order. The petitioner shall thereafter pay the afore said amount. Subject to such payment within such time as may be prescribed, the case against the petitioner shall be treated as having compounded and settled.*

48. This Writ Petition is allowed with consequential relief to the petitioner. No costs."

8. The above observation are applicable to the facts of the case. The press release dated 17.09.2022 of the Government and the revised guide lines for compounding of offence dated 16.09.2022 allows scope for compounding of offences. There is liberalisation. We are therefore inclined to interfere by setting aside the Impugned Order of the learned Single Judge in W.P.No.906 of 2018 dated 24.01.2020 and allow the case of the Appellant for compounding of the offences.

9. Accordingly, this Writ Appeal is allowed by setting aside the order of the learned Single Judge dated 24.01.2020 made in W.P.No.906 of 2018 and the matter is remanded back to the Respondents to suitably demand the compounding fee payable by the Appellant in terms of revised guidelines for compounding of offence dated 16.09.2022 read with press release dated 17.09.2022. The above exercise shall be carried out within a period of ***six weeks*** from the date of receipt of a copy of this order and on such demand being made, the Appellant shall pay the amount to the Revenue. No costs. Consequently, connected Miscellaneous Petition is closed.

[S.V.N., J.,] [C.S.N., J]
28.09.2022

Index: Yes / No
Internet: Yes / No
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To

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S.VAIDYANATHAN, J.
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C.SARAVANAN,J.

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