



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	01.02.2022
Pronounced on	13.04.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.23800 of 2021
and
W.M.P.Nos.25068 and 25289 of 2021

(Through Video Conferencing)

K.M.Mammen ... Petitioner

Vs

1.The Principal Commissioner of Income Tax,
Central - I,
No.46, Old No.108, M.G.Road,
Nungambakkam, Chennai - 600 034.

2.The Additional Commissioner of Income Tax,
Central Range - I,
No.46, Old No.108, M.G.Road,
Nungambakkam, Chennai - 600 034.

3.The Deputy Commissioner of Income Tax,
Central Circle - I (1),
Income Tax New Building,
Room No.112, 1st Floor,
No.46, Old No.108, M.G.Road,
Nungambakkam, Chennai - 600 034.

4. The Director General of Income Tax,
(Investigation)
No.46, Old No.108, M.G.Road,
Nungambakkam,
Chennai - 600 034.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus calling for the records of the fourth respondent in F.No.2009(37)/2010-2011 to 2021-2022 dated 30.08.2021 and set aside the same as illegal and manifestly arbitrary and against the judgement passed by the



WEB COPY

Hon'ble High Court in W.P.No.3929 of 2014 dated 28.08.2019 and the judgement of Hon'ble Division Bench in W.A.No.967 of 2020 dated 11.02.2021.

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

For Respondents : Mr.A.P.Srinivas,
Senior Standing Counsel
Mr.A.N.R.Jayaprathap,
Junior Standing Counsel.

ORDER

Mr.A.P.Srinivas, learned Senior Standing Counsel and Mr.A.N.R.Jayaprathap, Junior Standing Counsel takes notice on behalf of the respondents.

2. This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to call for the records of the fourth respondent in F.No.2009(37)/2010-11 to 2021-22 dated 30.08.2021 and to set aside the same as illegal and manifestly arbitrary and against the Judgment passed by this Court in W.P.No.3929 of 2014, dated 28.08.2019 and the Judgment of the Division Bench of this Court in W.A.No.967 of 2020 dated 11.02.2021.

3. By the impugned order dated 30.08.2021, the fourth respondent has rejected the Compounding Application filed by the petitioner pursuant to the order dated 11.02.2021 of the Division Bench of this Court in W.A.No.967 of 2020. The Relevant portion of the impugned order reads as under:-

22.6. In view of the above, the Committee recommended that since the assessee's petition filed on 25.03.2011 was disposed off, the present petition filed on 09.03.2021 was to be construed as a new petition. Having thus recommended that the compounding application filed by the assessee on 09.03.2021 was a fresh petition, the Committee held that the same was to be dealt with in accordance to the guidelines issued by the Board in F.No.285/08/2014-IT(IN.V)/147 dated 14.06.2019 which is applicable to all petitions filed on or after 17.06.2019.



WEB COPY

22.7. The Committee noted the provisions of Para 8 of the guidelines dated 14.06.2019 relating to offences normally not to be compounded which are reproduced as under for ease of reference.

8. Offence 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, in exceptional circumstances compounding requested in more than three occasions can be considered only on the approval of the Committee 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 enables 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 277A 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/CCIT/Pr.DGIT/DGIT concerned, has been found involved, in any manner, in anti-national / terrorist activity.



WEB COPY

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 Pr.CCIT/CCIT/Pr.DGIT/DGIT concerned, have a bearing on a case under investigation (at any 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/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."



WEB COPY

23. Recommendations of the Committee as per guidelines dated 14.06.2019:-

23.1. On examination of the facts of the case of the assessee, the committee noted that:

- i. The assessee has cross border transactions. But for the information received from a foreign Government, the Revenue would have been put to a great loss.
- ii. The evidence gathered in the instance case establishes major frauds in so far as funds have gone out of the country and if not for the information obtained, would have remained untaxed.
- iii. Keeping funds abroad, that too, in countries wherein banking secrecy laws shield the investment, is also to be regarded as anti-national activity.
- iv. The Hon'ble ITAT has upheld the orders of the revenue vide its order dated 15.02.2013.
- v. The Hon'ble ITAT has upheld the levy of penalty, though justified the order of the CIT(A) in restricting the penalty amount to 100% of the tax sought to be evaded from 300% of the tax sought to be evaded.
- vi. The assessee has neither produced the documents nor the account copy to disprove the contentions of the Department.

23.2. Upon due deliberations, the Committee thus observed the following:

- i. The offence of the assessee was his first offence.
- ii. The assessee's case fell within the ambit of clause (x) of para 8 of the guidelines dated 14.6.2019, which excludes cases involving any offence which has a bearing on an offence relating to undisclosed foreign bank accounts. In the instant case, since the



4. The facts of the case are that the petitioner is being 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, pursuant to proceedings initiated under Section 148 of the Income Tax Act, 1961 against the petitioner. In the said proceeding, 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.

5. The petitioner had earlier filed Crl.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, a learned Single Judge of this Court dismissed the aforesaid Crl.O.P.No.9065 of 2011.

6. The petitioner has filed S.L.P against the order passed in the aforesaid Crl.O.P. The said S.L.P. filed by the petitioner is stated to be pending as on date.

7. Meanwhile, the petitioner therefore 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) 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 16 th 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



WEB COPY

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 to 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 entries, 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.



WEB COPY

- 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 crossborder 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.

8. Since the compounding application was dismissed by then the Director General of Income-tax (Investigation) fourth



respondent herein, the petitioner filed W.P.No.3929 of 2014 to quash the said order dated 15.01.2014 of the fourth respondent and to direct the respondents fourth respondent herein and Chief Commissioner of Income Tax and Chief Commissioner of Income Tax / Director General of Income Tax to compound the offence in accordance with law.

9. A learned Single Judge of this Court, by an order dated 28.08.2019, disposed the writ petition with the following operation:-

"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."

10. 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 on 10.09.2019 for the second time.

11. The Compounding Committee once again rejected the application filed for compounding of offences on 06.11.2019 based on the CBDT Circular dated 16.05.2008 issued 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



WEB COPY

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



WEB COPY

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.



WEB COPY

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."

12. 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.

13. Under these circumstances, the petitioner has filed Contempt Petition No.2079 of 2019 to punish the respondents therein for the wilful, intentional disobedience and failure to comply with the order of this Court dated 28.08.2019 in W.P.No.1929 of 2014.

14. This Court, by an order dated 31.01.2020, dismissed Contempt Petition No.2079 of 2019 filed by the petitioner with the following observations:-

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





listed for maintainability in W.A.SR.No.84101 of 2020.

17. Both appeals filed against the order dated 31.01.2020 in Cont.P.No.2079 of 2019, were considered. By separate orders dated 11.02.2021, the Hon'ble Division Bench of this Court dismissed the appeal filed by the petitioner in W.A.SR.No.84101 of 2020 at the S.R. stage as the Writ Appeal was not maintainable.

18. The Division Bench of this Court vide separate order dated 11.02.2022 disposed W.A.No.967 of 2020 appeal filed by the Department with a liberty to the petitioner to file a fresh petition under Section 279 of the Income Tax Act, 1961 before the fourth respondent within a period of 30 days from the date of receipt of a copy of the order and direction to the fourth respondent to consider the said petition and pass order within a reasonable time not later than 90 days from the date on which the petition is presented in full form.

19. Pursuant to the order dated 11.02.2021 in W.A.No.967 of 2020, the petitioner filed 3rd compounding application under Section 279 of the Income Tax Act, 1961 before the fourth respondent on 05.03.2021. The fourth respondent vide impugned order dated 30.08.2021 has now rejected the said compounding application filed by the petitioner.

20. The question that arises for consideration in this writ petition is whether the fourth respondent was justified in dismissing the compounding application filed by the petitioner under Section 279 of the Income Tax Act, 1962 particularly after order dated 28.08.2019 passed by the learned Single Judge in W.P No.3929 of 2014 was not appealed by the respondents.

21. In paragraph 8.4 to 8.8 the learned single judge in his order dated 28.08.2019 has observed as under:-

"8.4. Section 279 of the Income Tax Act, in explicit terms, is self-explanatory to the effect that when the penalty imposed on the assessee is reduced under Section 273A, such an assessee cannot be proceeded against for offences under Sections 276C or 277. The term used in the Section is 'shall' and hence is required to be considered as mandatory in nature and would therefore imply that when the penalty



WEB COPY

imposed has been reduced or waived, the Assessee cannot be proceeded against for the alleged offences.

8.5. The Hon'ble Supreme Court, in Prem Dass's case (supra) has reiterated this proposition as seen from the above extract. The Commissioner of Appeals, in his order dated 25.03.2014 in ITA, had taken note of the fact that in the penalty order, the Assessing Officer has not accorded any justification or reasons for levying the maximum penalty of 300% of the tax sought to be evaded and thereby was of the opinion that a minimum amount of penalty at 100% can be imposed.

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.

8.7. The learned Standing counsel for the respondents made a faint attempt by placing reliance on paragraph 19 of the dismissal order dated 28.02.2019 passed in Crl.O.P.No.9065 of 2011 and submitted that Prem Dass's case (supra) has been distinguished and held to be not applicable to the present case. Hence the learned Standing counsel would submit that, since the order of reduction of penalty was not passed under Section 273B of the Act, Section 279 (1A) of the Act is not applicable to the



WEB COPY

petitioner.

8.8. As observed earlier, Section 279 (1A) is self-explanatory and the Hon'ble Supreme Court in Prem Dass's case (supra) has further clarified that the assessee cannot be proceeded against for an offence when the penalty imposed on him has been reduced. Under Article 141 of the Constitution of India, the law declared by the Hon'ble Supreme Court shall be binding on all Courts, which includes the High Courts. As such, the decision in Prem Dass's case (supra) would be binding on this Court and as such, with due respects to the observations made in this regard in paragraph 19 of the order passed by the learned Judge in Crl.O.P.No.9065 of 2011 dated 28.02.2019, is per incuriam and the observation made therein is not the proper appraisal and cannot be relied upon."

22. Facts on record indicate that the against order dated 25.03.2014 in ITA No.12 of 2012-13 two appeals were filed. ITA No.1882 of 2014 was filed by the respondents and ITA No.1382 of 2014 was filed by the petitioner.

23. Both the appeals were also dismissed by the Income Tax Appellate Tribunal by its common order dated 27.9.2017. The Tribunal in its order has held as under:-

9. "Mere addition made in the quantum of assessment proceeding would not result in levy of penalty under Section 279(1)(c) of the Act automatically. In other words, every addition made in the assessment proceeding, cannot be construed to be concealment of income or furnishing of inaccurate particulars. However, in this case, assessee claims that the money was not deposited during the year under consideration. The assessee has not provided the details of deposit of money in the account. In absence of any detail with regard to deposit or investment of money in the bank account, we do not find any reason to find fault with the authorities below that the balance as on 31.12.2001 is the money belonging to the asseesee for the



WEB COPY

year under consideration.

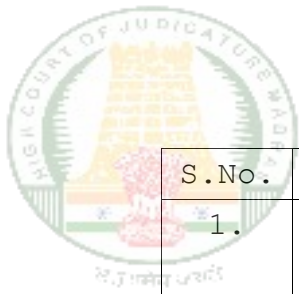
10. Now coming to the quantum of penalty, the Assessing officer levied penalty at 300%. However, the CIT (Appeals) restricted the same to 100%. This Tribunal is of the considered opinion that levy of penalty is the discretion of the Assessing Officer. The CIT (Appeals) has also power coterminous as that of the Assessing Officer. Therefore, when the lower authority exercised his discretion in restricting the penalty to 100% instead of 300% levied by the Assessing Officer, this Tribunal do not find any reason to interfere with the discretion exercised by the Lower Authority. Therefore, we do not find fault with the CIT (Appeals) in restricting the penalty to 100%.

24. Both the department and petitioner are in appeal before the division Bench of this High Court in TCA No. 216 of 2018 and TCA No. 875 of 2017 respectively. These appeals are pending on this date.

25. Prior to the Order dated 25.03.2014 in ITA No. 12 of 2012-13 of CIT (Appeals), the prosecution commenced in E.O.C.C. No. 121 of 2011 before the Additional Chief Metropolitan Magistrate, Egmore pursuant to a complaint filed on 28.3.2011.

26. The petitioner was being prosecuted under Section 279 of the Income Tax Act, 1961 for offences punishable under Section 276C & 277 of the Income Tax Act, 1961.

27. Sub-Section (1-A) to section 279 of the Income Tax Act, 1961, makes it clear that no person shall be proceeded 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 Section 270A or sub-clause (iii) of sub-Section 271 has been reduced or waived by an order under Section 273A. Relevant portions from these provisions read as under:-



WEB COPY

S.No.	Sections
1.	Section 279 (1-A): 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 [Section 270A or] clause (iii) of sub-section (1) of Section 271 has been reduced or waived by an order under Section 273A.
2.	Section 276-C(1): If a person wilfully 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,–
3.	Section 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,–

28. Section 276(1) of the Income Tax Act, 1961 deals with a situation where a person willfully attempts to evade tax. Section 277 of the Income Tax Act, 1961 deals with False Statement in verification, etc.

29. Sub-Section 2 to Section 279 further makes it clear that any offence under this chapter may either before or after the institution of proceedings be compounded by the Principal Chief Commissioner or the Chief Commissioner or a Principal Director General or Director General. Sub Section 2 to Section 279 of the Income Tax Act, 1961 reads as under:-

“(2). Any offence under this Chapter may, either before or after the institution of proceedings, be compounded by the [Principal Chief Commissioner or chief Commissioner or a [Principal Director General or] Director General.”

30. An explanation to Section 279 reads as under:

“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.”

Thus, there is no bar for compounding the offences on payment of compounding fee on a plain reading of Sub -Section 2 to Section 279 of the Income Tax Act, 1961.

31. Guidelines for compounding offences have been issued in the form of Circulars under Section 119(1) of the Income Tax Act, 1961. At the time when the first application for compounding the offence was filed, Circular No.F.No.285/90/2008-IT(Inv.)/12 dated 16.5.2008 was in force. By the time, when W.P.No.3729 of 2014 and Contempt petition were disposed on 28.08.2019 and on 31.01.2020, respectively Circular bearing reference No.F.No.285/08/2014-IT (Inv-V)/147 dated 14.6.2019 was in force with effect from 17.6.2019. It was to apply for fresh application filed after the said date.

32. The Division Bench by its order dated 11.2.2021 in W.A.No.967 Of 2020 in its discussion has impliedly held that Circular No.F.No.285/08/2014-IT (Inv-V)/147 dated 14.6.2019 which was in force with effect from 17.6.2019 and therefore cannot be applied to the facts of the case. However, in the impugned order, the fourth respondent has relied on the same.

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 undertakes 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.

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



WEB COPY

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.

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

jen/rgm



To

1.The Principal Commissioner of Income Tax,
Central - I,

No.46, Old No.108, M.G.Road,
Nungambakkam, Chennai - 600 034.

2.The Additional Commissioner of Income Tax,
Central Range - I,
No.46, Old No.108, M.G.Road,
Nungambakkam, Chennai - 600 034.

3.The Deputy Commissioner of Income Tax,
Central Circle - I (1),
Income Tax New Building,
Room No.112, 1st Floor,
No.46, Old No.108, M.G.Road,
Nungambakkam, Chennai - 600 034.

4.The Director General of Income Tax,
(Investigation)
No.46, Old No.108, M.G.Road,
Nungambakkam,
Chennai - 600 034.

+2 ccs to Mr.S.Ashok kumar Advocate sr25960

+1 cc to Mr.A.P.Srinivas Advocate sr25796

W.P.No.23800 of 2021

and

W.M.P.Nos.25068 and 25289 of 2021

spb(co)
aa02/06/2022