

ORDER SHEET

WPO 235 of 2020
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SHRI BHAGWAN DASS BANSAL AND ANR.
VS
CHIEF COMMISSIONER OF INCOME TAX-1, KOLKATA AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 3rd February, 2023.

Ms. Anupa Banerjee, Adv.
...for the petitioner
Mr. Soumen Bhattacharjee, Adv.
...for the respondents

The Court: Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned order dated 13th January, 2020, rejecting the application of the petitioner for compounding of offence, under Section 276CC of the Income Tax Act, 1961, relating to assessment years 2012-13, 2013-14, 2014-15 and 2015-16. Grounds of challenge of order of rejection of the aforesaid application for compounding of offence is that the Chief Commissioner of Income Tax /respondent concerned has included some alleged dues pertaining to some other assessment years against which petitioners themselves have not prayed for compounding of offence, if any, in the aforesaid application. Petitioners submit that the Chief Commissioner concerned has enlarged the scope and ambit of the circular of the Board dated 14th June, 2019, relating to offence under Section 276CC particularly Clause 7(iii) of the said circular which is hereunder :

“7.....

(iii) The person has paid the outstanding tax, interest (including interest u/s, 220 of the Act), penalty and any other sum due, relating to the offence for which

compounding has been sought before making the application. However, if any related demand is found outstanding on verification by the department, the same should be intimated to the applicant and if such demand including interest u/s 220 is paid within 30 days of the intimation by the Department, then the compounding application would be deemed to be valid.”

It appears from plain reading of the aforesaid clause of the circular in question that the eligibility criteria under Section 276CC is that before making such application for compounding of the aforesaid offence, an assessee will have to pay outstanding tax, interest (including interest u/s, 220 of the Act), penalty and any other sum due, “relating to the offence for which compounding has been sought” and it further appears from the aforesaid clause of the circular in question that if any “related demand” is found outstanding on verification by the department, the same should be intimated to the assessee. Here legal question which arises is with regard to the expression of “related demand” that it can be enlarged to what extent? Can it include demand relating any year or every assessment year which is not the part of the application against which compounding of the offence has been prayed for by the assessee petitioner in this application. To my reading the scope of expression “related demand found outstanding” cannot be enlarged to the extent that the revenue can include any or every assessment year which is not the part of the assessment years for which application for compounding of offence under Section 276CC of the Income Tax Act, 1961 has been made by an assessee/petitioner, for the reason that when the revenue itself has not treated any outstanding due in respect of any other assessment year other than the years involved in the application for compounding of offence and it has not initiated any proceedings by treating the same as an offence and the assessee himself also has not prayed for compounding of the offence if any relating to those other unrelated assessment years. Moreso, the aforesaid circular of the Board itself has used the

expression 'relating to offence' and there is a specific column in serial nos. 9 and 10 in annexure I of the aforesaid circular which are quoted hereunder :

“9. Whether the applicant has paid the amount of tax, interest, penalty and any other sum due 'relating to the offence'.

10. Whether the applicant undertakes to pay further tax, interest, penalty and any other amount as is found to be payable on verification of the record.”

On reading the contents of both the aforesaid serial numbers it appears to me that that the Board itself has asked the assessee to pay the tax, interest, penalty and any other sum due “relating to the offence” and serial no. 10 which has used expression “other amount” cannot be read in isolation of serial no. 9.

Considering the facts and circumstances of the case and ambit and scope of the aforesaid circular of the Board, dated 14th June, 2019, in my considered view the respondent Chief Commissioner concerned was not justified in rejecting the aforesaid application of the petitioner under Section 276CC of the Income Tax Act, 1961, by enlarging the scope of the aforesaid circular by including other assessment years against which petitioner himself has not asked for compounding of the same, if any, particularly when the revenue itself has also not initiated any penal proceeding relating to the assessment year which it intends to include in the aforesaid application for compounding of offence.

Accordingly in view of the discussion made above, the aforesaid impugned order dated 13th January, 2020 rejecting the applications of the petitioner for compounding of the offence under Section 276CC of the Income Tax Act, 1961 relating to the assessment years referred in the said application, is not justifiable in law and the same is set aside and the matter is remanded back to the Chief Commissioner of Income Tax/ respondent concerned to reconsider the applications in question filed by the petitioner by passing a reasoned and speaking order after taking into consideration the discussion and

observation made in this order, within a period of eight weeks from the date of communication of this order.

Needless to mention that before passing any order on the aforesaid application of the petitioners, opportunity of hearing should be afforded to them.

With these observations and directions, this writ petition being WPO235 of 2020 stands disposed of.

(MD. NIZAMUDDIN, J.)

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