IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1723 OF 2022

DHAVAL FOODS, JALGAON THROUGH DIRECTOR PRATISEHK V. KABRA
VERSUS
THE UNION OF INDIA THROUGH OFFICE OF CHIEF COMMISSIONER OF INCOME TAX, PUNE AND ANOTHER
...
Advocate for Petitioner : Mr. S. B. Deshpande, Senior Advocate
Advocate for Respondents :Mr. A. M. Sharma
...

CORAM : R.M. JOSHI, J

DATE : AUGUST 09, 2023

PER COURT :

1. This Petition is filed under Article 227 of the Constitution of India takes exception to the legality and validity of order dated 11.08.2022 passed by the Principal Chief Commissioner of Income Tax in connection with provisions of Sections 276(B) and 276(C)(1) read with Section 277 and 278-B of Income Tax Act, 1961 (for short '**the Act**').

2. Petitioner company is a private limited company registered under the Companies Act, 1957 engaged in the business of trading and import and export in various commodities. Petitioner company is

accessible to the income tax. It is the case of the Petitioner that on 12.07.2012 a sum of Rs. 1,98,145/- came to be deducted by the Petitioner company towards TDS in the first quarter of the financial year 2011-2012. The said amount was belatedly deposited in the Government account. Thereafter on 01.11.2013 income tax office called upon the Petitioner company to provide details of the TDS paid. The said letter was replied on 16.03.2015. Respondent No. 3 filed complaint being R.C.C. No. 208/2016 before Chief Judicial Magistrate, Jalgaon after obtaining the sanction from competent authority.

3. It is the case of the Petitioner that on 29.06.2019 the Petitioner company came to know about the filing of the said complaint after the communication in this regard was received by the then Director of the company, who later on died. It is also claimed that there were untimely deaths in the family of the Director of the Petitioner company. It is further case of the Petitioner that after death of previous Director, he search of the record. It came to his knowledge about pending of the criminal complaint.

Hence, an application dated 20.12.2021 was filed for compounding of the offences. Since, the said application was not responded, another application dated 12.07.2022 was filed in prescribed format. By passing impugned order dated 11.08.2022, Respondent No. 2 rejected the said application, which gave cause of action for the Petitioner to file present Petition.

4. Learned Senior Counsel appearing for the Petitioner has relied upon the judgment of the Division Bench of this Court in case of *Footcandles Film Pvt Ltd and Another Vs. Income Tax Officer and Others,(Writ Petition No.429/2022)*, which has dealt with the same guidelines which are covered by the present Petition. In the said judgment it is held that powers under Section 279(2) cannot be limited by issuance of guidelines as done in this case. He further submits that the application for compounding of the offences has been rejected solely on the ground that it is beyond limitation as per guidelines and said rejection is not on merits.

5. Learned Counsel for the Respondents opposed the said application mainly by relying upon the judgment of Hon'ble Apex Court in case of *Y. P.*

Chawala and Ors Vs. M. P. Tiwari and Anr. By relying on the said judgment it is contended that Hon'ble Apex Court has upheld the powers under Section 119(1) of the Income Tax Act to be provided in the guidelines and guidelines if so issued are binding in nature. Learned Counsel for the Respondents, however, unable to distinguish the judgment of the Hon'ble Apex Court and the Division Bench of this Court which has binding for this Court.

6. Issue involved in this case is squarely and directly covered by judgment of the Division bench in case of Footcandles Film Pvt Ltd and Anr. (supra). It deals with the issue as to whether the guidelines issued in exercise of powers under Section 119(1) of the Income Tax Act supersedes the powers under Section 279(2) for compounding of offenes. In the present Petition also the same guidelines are in question. This Court is bound by the said judgment, and there is no reason to take different view.

7. Perusal of the judgment of the Hon'ble Apex Court in case of Y. P. Chawala and Ors (supra) no doubt lays down that powers under Section 119(1) of the Act

provides for issuance of guidelines and such guidelines having binding effect. The said judgment, however, does not deal with the effect of said guidelines on the powers of the authority under Section 279(2) for compounding of the offences. The judgment in case of Footcandles Film Pvt Ltd and Anr (supra) cannot be distinguished on the facts of the case as it directly deals with the issue involved in the present case. Having regard to these facts, by following judgment of Division bench of this Court, the impugned order dated 11.08.2022 passed by Respondent No. 2 cannot be sustained and hence, same deserves to be set aside.

8. In view of above, discussion, Petition is allowed in terms of prayer clause 'C'. Parties are relegated back to the concerned authority for decision afresh on the application for compounding filed by the Petitioner company. Needless to say that the said decision shall be on the merits and without considering the delay caused in making the application.

(R.M. JOSHI, J.)

Malani