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W.P.Nos.4855 and 4857 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	22.08.2023
Pronounced On	13.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.Nos.4855 and 4857 of 2023

and

W.M.P.Nos.4888 and 4890 of 2023

1.M/s.Jak Communications Private Limited,
Represented by its Managing Director
J.Kamalesh

2.M/s.Jak Communications Private Limited,
Represented by its Director
J.Aruna Kalaiselvi

... Petitioners
in both W.Ps

Vs.

1.The Chief Commissioner of Income Tax (TDS),
Office of the Chief Commissioner of Income Tax,
Aayakar Bhavan,
Main Building, 3rd Floor,
No.121, Mahatma Gandhi Salai,
Chennai - 600 034.

2.The Commissioner of Income Tax (TDS),
BSNL Building, Tower-1, 1st Floor,
Greens Road,
Chennai - 600 006.



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3.Income Tax Officer,
TDS Ward 2(2), Tower-1, BSNL Building,
No.16, First Floor, Greams Road,
Chennai - 600 006.

... Respondents
in both W.Ps

Prayer in W.P.No.4855 of 2023: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent impugned order proceedings No.Compounding/CHEJ032226G/2022-2023 dated 19.01.2023 passed by the first respondent and quash the same and further direct the first respondent to process the petitioners application for compounding the offence for the Financial Year 2013-2014 relevant to the Assessment Year 2014-2015 in the light of the provision and powers conferred under Sub-Section 2 of Section 279 of the Income Tax Act, 1961.

Prayer in W.P.No.4857 of 2023: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent impugned order proceedings No.Compounding/CHEJ032226G/2022-2023 dated 19.01.2023 passed by the first respondent and quash the same and further direct the first respondent to process the petitioners application for compounding the offence for the Financial Year 2014-2015 relevant to the Assessment Year 2015-2016 in the light of the provision and powers conferred under Sub-Section 2 of Section 279 of the Income Tax Act, 1961.



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For Petitioner : Mr.V.Prashanth Kiran
(In both W.Ps)

For Respondents : Dr.B.Ramaswamy
(In both W.Ps) Senior Standing Counsel

COMMON ORDER

The petitioner is aggrieved by the impugned Common Order dated 19.01.2023 bearing Ref.F.No.Compounding/CHEJ03226G/2022-2023 passed by the first respondent under Section 279(2) of the Income Tax Act, 1961. (hereinafter referred to as the IT Act, 1961).

2. By the impugned Common Order, applications filed by the petitioner and its Directors on 25.11.2022 to compound the offence committed by them for failure to pay the Tax Deducted at Source (TDS) for the Assessment Year 2014-2015 and the Assessment Year 2015-2016 respectively has been rejected by the first respondent. Operative Portion of the impugned Common Order reads as under:-

"5.1 An assessee is required to file application for compounding before the Competent Authority as per Para 7(ii) and 9.1 of the Board's guidelines for compounding of offence in F.No.285/08/2014-IT(Inv.V)/196 dated 16.09.2022, which is reproduced as under:-

Para.7.(ii) The compounding application may be filed suo-moto at any time after the offence(s) is committed irrespective of whether it comes to the notice of the Department or not. However, in a case in which



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prosecution complaint has already been filed in a court of law it should be filed not later than 12 months from the end of month of filing of complaint in Court. Further, application of compounding filed after the end of 12 months from the end of the month in which prosecution complaint, if any, has been filed in the court of law, but within 24 months, will be subject to increased compounding charges at the rate of 1.25 times of the normal compounding charges as applicable to the offence.

Para 9.1 The restrictions imposed in para7(ii) of these Guidelines for compounding of an offence in a deserving case may be relaxed with the approval of the Pr.Chief Commissioner of Income Tax of the Region wherein lies the jurisdiction of the case, for application filed beyond 24 months but before 36 months from the end of month in which complaint was filed in a court.

Para 9.2 However, in all such cases where relaxation has been provided in this Para, the compounding charges would be @ 1.5 times of the normal compounding charges as applicable to the offence on the date of filing of the original compounding application."

5.2 In view of the above, since the assessee has filed application for compounding the offence under Section 276B after a delay of 4 years 6 months and 2 days from the date of filing of complaint in the Court, the compounding petition of the assessee for the Assessment Years 2014-2015 and 2015-2016, is hereby rejected invoking provisions of Section 279(2) of the Act."

3. The petitioner and its Directors were prosecuted before the

Additional Chief Metropolitan Magistrate, Economic Offences-I, Egmore,



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Chennai in E.O.C.C.Nos.193 and 194 of 2018 for the Assessment Years 2014-2015 and 2015-2016 for failure to pay the TDS amounting to Rs.24,87,814/- and Rs.10,64,768/- respectively for the Assessment Years 2014-2015 and 2015-2016 as per Chapter XVII B of the IT Act, 1961.

4. Earlier, notices were issued to the petitioner and its Directors by the third respondent to prosecute the petitioner for failure to pay the TDS. The third respondent therefore issued Show Cause Notice dated 18.11.2016 to the petitioner for the offence punishable under Section 276B read with Section 278B of the IT Act, 1961 for belated payment of interest and late fee on TDS. The petitioner replied to the Show Cause Notice dated 09.12.2016 stating that the petitioner was not able to pay TDS amount within the stipulated time due to financial circumstances.

5. Thereafter, the third respondent issued notice to the Director of the petitioner to be treated as Principal Officers. The petitioner replied to the notices on 08.03.2017 and stated that a sum of Rs.12,00,000/- was paid on 07.03.2017 and sought permission to pay the balance amount in installments.



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6. The second respondent thereafter invoked the provisions of Section 276B of the IT Act, 1961 to prosecute the petitioner and its Directors. The case for personal hearing was fixed on 14.04.2017.

7. In support, the learned counsel for the petitioner has placed reliance on the following decisions:-

- I. **C.R.N.Investments (P.) Limited Vs. Chief Commissioner of Income Tax**, (2023) 146 Taxmann.com.
- II. **K.M.Mammen Vs. Principal Commissioner of Income Tax**, (2022) 445 ITR 226.
- III. **Foot candles Film (P.) Vs. Income Tax Officer**, (2023) 453 ITR 402.
- IV. **Vikram Singh Vs. Union of India**, (2017) 394 ITR 746.
- V. **G.P.Engineering Works Kachhwa Vs. Union of India**, (2022) 446 ITR 563.
- VI. **Ramesh Jain Vs. Union of India**, (2023) 146 Taxmann.Com 320.
- VII. **V.A.Hasseb & Co. Vs. Chief Commissioner of Income Tax, TDS**, (2017) 245 Taxman.
- VIII. **Chairman, CBDT Vs. Smt.Umayal Ramanathan**, (2009) 313 ITR 59.



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IX. Viraj Exports (P.) Ltd., Vs. Chief Commissioner of Income

WEB COPY Tax, (2022) 289 Taxman 430.

8. It is submitted that the guidelines of Central Board of Direct Taxes (CBDT) issued on 16.09.2022 under Section 119 of the IT Act cannot override Section 279(2) of the IT Act. 1961.

9. The learned Senior Standing Counsel for the respondents would submit that the petitioner was having high income and had deliberately failed to pay tax that was deducted for the respective Assessment Years 2014-2015 and 2015-2016.

10. It is submitted that the petitioner was issued with Show Cause Notices dated 18.11.2016 and 28.02.2017 by the third respondent respectively and thereafter the petitioner was also called for hearing. However, the petitioner failed to appear and therefore it is in the background, the decision was taken to obtain sanction for prosecuting the petitioner.

11. It is submitted that the impugned Common Order does not call



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for any interference, as the petitioner was negligent and had not paid TDS and also did not attend the personal hearing. It is further submitted that the petitioner was also given a prior notice regarding the proposal to obtain sanction for prosecuting the petitioner by letter dated 27.03.2017 wherein, the following allegation was levelled against the petitioner:

"It is seen from our database that for the financial year(s) 2014-2015 relevant to the assessment year(s) 2015-2016 TDS have been effected by your company on various heads aggregating to Rs.10,64,768/-. Further, the same has been deposited in the Central Government Account after considerable delay and beyond the time limit prescribed.

2. In this regard, your attention is drawn to the provisions of Section 200 read with Rule 30 of the Income Tax Act, 1961 which mandates that the tax deducted be deposited into the Central Government account within the stipulated time. Hence, the provisions of Section 276B provides for a punishment with rigorous imprisonment of a term not less than three months but which may extend to seven years with fine in case of such failure.

3. Your attention is also invited to the provisions of 278B(1) which provides for prosecuting every person, who at the time of commitment of offence, was in charge of or was responsible for the conduct of its business. You are therefore requested to confirm the names and address of such persons.

4. Before the grant of prior sanction under Section 279(1) of the Income Tax Act, 1961. You are hereby accorded an opportunity of being heard by posting your case for hearing on 14.04.2017 at 3.00 p.m. at my above given address. Kindly note that any failure to avail this opportunity either in person or in writing would be construed as enough there is no objection on your part to proceed with the prosecution proceedings initiated, subject to the relevant provisions of the income-tax Act, 1961.

5. An option to get the offence compounded is available



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for your benefit."

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12. It is submitted that despite notice being given to the petitioner, the petitioner failed to approach the authority for compounding offence in time.

13. The learned Senior Standing Counsel for the respondents has placed reliance on the following decisions:-

- i. **U.P.Chawla Vs. M.P.Tiwari**, (1992) 63 taxmann 538 (SC)
- ii. **M.V.Jawali Vs. Mahanjan Borewall & Co.**, (1997) 95 taxmann.com 306 (SC).
- iii. **Vikram Singh Vs. Union of India**, (2018) 89 taxmann.com 327 (Delhi).
- iv. **Viraj Exports (P.) Limited Vs. Chief Commissioner of Income Tax (TDS)**, (2022) 142 taxmann.com 285 (Delhi)
- v. **Sangeetha Exports (P.) Ltd., Vs. Union of India**, (2008) 173 taxmann 21 (Delhi)
- vi. **Anil Batra Vs. Chief Commissioner of Income Tax**, (2011) 15 taxmann.com 121 (Delhi)



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vii. **Dr.K.Jagadeesan Vs. Central Board of Direct Taxes**, (1998)

231 ITR 755 (Delhi)

viii. **Shree Sonal Gum Industries Vs. Income Tax Officer**, (2000)

112 Taxman 509 (Guj.)

ix. **Rayala Corporation P.Ltd. and others Vs.**

V.M.Muthuramalingam, (1981) 129 ITR 675 Mad.

x. **Ramesh Jain Vs. Union of India** (2023) 146 Taxmann.com 320

(Madhya Pradesh)

xi. **Laxmandas Pranchand Vs. Union of India**, (1998) 98 Taxman

203 (Madhya Pradesh).

14. A specific reference was made to the decision of the Hon'ble Supreme Court in **M.V.Jawali Vs. Mahanjan Borewell & Co.**, (1997)

95 taxmann.com 306 (SC), wherein, it was held as under:-

"From a plain reading of the above Section it is manifest that if an offence under the Act is committed by a company the persons who are liable to be proceeded against and punished are: (i) The company, (which includes a firm); (ii) every person, who at the time the offence was committed, was incharge of, and was responsible to the company for the conduct of the business; and (iii) any director (who in relation to a firm means a partner), manager, secretary or other officer of the company with whose consent or connivance or because of neglect attributable to whom the offence has



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been committed. The words 'as well as the company' appearing in the Section also make it unmistakably clear that the company alone can be prosecuted and punished even if the persons mentioned in categories (ii) and (iii), who are for all intents and purpose vicariously liable for the offence, are not arraigned, for it is the company which is primarily guilty of the offence."

15. Alternatively, the learned Senior Standing Counsel for the respondents would submit that as per circular also, the petitioner and its Directors are not entitled to file application beyond the prescribed period in the above Circular in Para 7(ii).

16. It is submitted that the time expired during the time when the Country was in a lock down mode due to out break of Covid-19 Pandemic. It is submitted that the Hon'ble Supreme Court vide its order dated 10th February 2022, gave reprieve wherever limitations expired and clarified that the period from 15.03.2020 till 28.02.2022 shall stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and Provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within



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which the Court or Tribunal can condone delay) and termination of proceedings. It is submitted that the said benefit is not available to the petitioner.

17. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

18. I have also perused the applications filed by the petitioner on 25.11.2022. The respective applications filed by the petitioner are bereft of the details required for compounding the offence.

19. Under Section 279(2) of the IT Act, 1961, the Principal Chief Commissioner, Chief Commissioner, Principal Director General or the Director General, as the case may be, can compound any offence committed by an assessee, which is punishable under Chapter XXII of the IT Act, 1961.



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20. Applications can be filed either before or after the institution of the case. The well-settled principal of law is that such applications should be filed before conviction is handed over to an assessee and at the earliest.

21. By two separate orders dated 09.03.2018, the second respondent sanctioned leave to prosecute the petitioner and its Directors under Sections 279 and 276B read with Section 278B of the IT Act, 1961 for the offences before the Court of competent jurisdiction and also directed the TDS Assessing Officer to file a complaint and proceed against the petitioner and its Directors.

22. It is under these circumstances, the third respondent filed E.O.C.C.Nos.193 and 194 of 2018 before the Additional Chief Metropolitan Magistrate, Egmore, Chennai.

23. The applications filed by the petitioner and its Directors for compounding of the offences under Sections 200, 204 read with Rule 30 of the Income Tax Rules, 1961 on 25.11.2022 were clearly beyond the



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time prescribed in the Circular dated 16.09.2022 bearing Ref.F.No.285/08/2014-IT(Inv.V)/196 of the Central Board of Direct Taxes (CBDT) issued under Section 119 of the IT Act, 1961.

24. However, there is no limitation prescribed for compounding of the offences committed by an assessee under Section 279(2) of the IT Act, 1961. It is only in para 7(ii) to the above mentioned Circular, it has been stated that in a case where prosecution complaint has already been filed in a court of law, the application for compounding of offence cannot be filed later than 12 months from the end of the month of filing of the complaint before the Court.

25. However, there is exception to the above rule in Para 9.1 of the same circular. As per Para 9.1, in deserving case, the restrictions in Para 7(ii) can be relaxed with the approval of the Principal Chief Commissioner within beyond 24 months but before the expiry of 36 months from the date of the complaint before the Court. The limitation in the above circular cannot bind either the petitioner or this Court. The limitation in the Circular is not mandatory. It is to be construed as



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directory.

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26. There cannot be any restriction/limitation for filing application for compounding of offence contrary to Section 279(2) of the IT Act, 1961. There is also no useful purpose in prosecuting an assessee who may otherwise deserve to compound the offence. This is also not a case where the petitioner has been convicted of the offence in E.O.C.C.Nos.193 and 194 of 2018 and had filed the applications for compounding of the offence thereafter under Section 279(2) of the IT Act, 1961.

27. The applications filed by the petitioner for the respective Assessment Years for compounding the offence are bereft of details. Therefore, even if the limitation prescribed in Circular dated 16.09.2022 bearing Ref.F.No.285/08/2014-IT(Inv.V)/196 of the Central Board of Direct Taxes (CBDT) issued under Section 119 of the IT Act, 1961 was overlooked, there was no material available with the first respondent to determine whether the petitioner otherwise deserved to compound the offences.



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28. As the respective application filed by the petitioner are bereft of the details required for compounding the offence, it is the view of the Court that the petitioner can be given an opportunity to explain the case properly, as in deserving and appropriate cases, applications to compound the offence cases can be allowed to be filed. There is no point in prosecuting an assessee whose conduct may otherwise warrant compounding of offence(s). As long as there is no conviction, such application can be entertained, considered and ordered.

29. Since the applications filed by the petitioner and its Directors are bereft of any details, the petitioner is given a fresh chance to file an amended copy of applications for compounding of the offence explaining the reasons as to why the offences for which they have been prosecuted should not be compounded under Section 279(2) of the IT Act, 1961. Such amended applications shall be filed within a period of thirty days from the date of receipt of a copy of this order.

30. Therefore, the impugned Common Order is quashed and the cases are remitted back to the first respondent to pass a fresh order on merits within a period of six months from the date of receipt of a copy of



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this order.

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31. These Writ Petitions stand allowed by way of remand with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

13.12.2023

Index : Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation: Yes/No

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To:

- 1.The Chief Commissioner of Income Tax (TDS),
Office of the Chief Commissioner of Income Tax,
Aayakar Bhavan,
Main Building, 3rd Floor,
No.121, Mahatma Gandhi Salai,
Chennai - 600 034.
- 2.The Commissioner of Income Tax (TDS),
BSNL Building, Tower-1, 1st Floor,
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- 3.Income Tax Officer,
TDS Ward 2(2), Tower-1, BSNL Building,



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No.16, First Floor, Greams Road,
Chennai - 600 006.

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C.SARAVANAN, J.

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Pre-delivery Common Order
in



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