IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.07.2023	**Pronounced on:** 17.11.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.21387 of 2022
and
W.M.P.Nos.20379 of 2022 & 1776 & 15187 of 2023

Thirupathi Kumar Khemka,
No.36, Walajah Road, Chennai – 600 002. .. Petitioner

Vs.

The Chief Commissioner of Income Tax-1,
Room No.118, Main Building,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034. .. Respondent

Prayer: 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 respondent in Order bearing ITBA/COM/F/17/2022-23/1044336512(1) dated 30.07.2022 and to quash the same and consequently direct the respondent to consider the Compounding Application of the Petitioner dated 20.11.2019 without reference to Para 8.1.(iii) of Circular bearing F.No.285/08/2014-IT(Inv.V)/147 dated 14.06.2019.

For Petitioner : Mr.Srinath Sridevan
Senior Counsel
for Ms.Anitha Suresh
For Respondent : Mr.V.Mahalingam
Senior Standing Counsel

O R D E R

By this order, the writ petition is being disposed.

2.Heard the learned Senior Counsel for the petitioner and the learned Senior Standing Counsel for the respondent at length.

3.The petitioner is aggrieved by the impugned order bearing DIN & Order No.: ITBA/COM/F/17/2022-23/1044336512(1) dated 30.07.2022 passed by the respondent rejecting the compounding application filed by the petitioner on 20.11.2019.

4.By the impugned order dated 30.07.2022, the aforesaid application filed by the petitioner has been rejected with the following observations:-

> *"16. On the merits of the case, the RCC observed that the assessee had committed not one but multiple grave offences, which is exemplified by the elaborate contents of the conviction order passed by Additional Chief Metropolitan Magistrate, Economic Offences-1, Egmore, Chennai – 600 008 in EOCC No.184 of 2017 dated 06.03.2019. The assessee did not file the return of income voluntarily before the due dates specified under section 139 of the IT Act. There was no response to the notices u/s 142(1)*

> *calling for return of income and information with regard to investment made in shares, expenditure incurred on credit cards etc. The assessment was completed u/s 144 of the IT Act after carrying out enquiries and obtaining additional particulars from banks on a taxable income of Rs.46,32,210/- raising a demand of Rs.38,45,340/-. It can be seen that the taxable income was arrived at Rs.46,32,210/- by making additions u/s 69 of the IT Act in respect of unexplained investment in shares and credit card expenditure u/s 2(24)(4) of the IT Act."*

5. Arguing on behalf of the petitioner, the learned Senior Counsel would submit that the issue is no longer *res integra* and has been settled by plethora decisions of this Court in the following cases:-

(i) **The Chairman, Central Board of Direct Taxes and others** Vs. **Umayal Ramanathan**, MANU/TN/0829/2009, order dated 06.04.2009 in W.A.No.439 of 2023.
(ii) **R.Inbavalli** Vs. **The Government of India, Ministry of Finance, Department of Revenue and others**, MANU/TN/1966/2016, order dated 18.08.2016 in W.P.No.24588 of 2016.
(iii) **V.A.Haseeb and Company (Firm)** Vs. **The Chief Commissioner of Income Tax TDS**, MANU/TN/2175/2016, order dated 02.09.2016 in W.P.No.32731 of 2015.

6.It is submitted that the decision of this Court in **R.Inbavalli** Vs. **The Government of India, Ministry of Finance, Department of Revenue and others** in W.P.No.24588 of 2016 dated 18.08.2016 has also affirmed by the Hon'ble Division Bench of this Court in **The Government of India, Ministry of Finance and others** Vs. **R.Inbavalli**, order dated 05.07.2017 in W.A.Nos.132, 455 of 2017.

7.The learned Senior Counsel for the petitioner has also placed reliance on yet another decision of this Court in **V.K.Lohia** Vs. **Chief Commissioner of Income Tax**, order dated 11.11.2020 in W.P.No.35826 of 2016.

8.It is submitted that the impugned order denying the benefit of compounding of offences under Section 279(2) of the Income Tax Act, 1961, solely on the ground of prior conviction of the petitioner cannot be countenanced in the light of the above mentioned decisions of this Court.

9.The learned Senior Counsel for the petitioner further refers to a recent decision of the Hon'ble Division Bench of this Court rendered in the case of **M/s.C.R.N. Investments Private Limited** Vs. **The Chief Commissioner of Income Tax-1 and another** vide its order dated 28.09.2022 in W.A.No.1750 of 2022.

10.It is submitted that although the petitioner had suffered adverse orders both in the hands of the adjudicating authority and the appellate authority and was convicted by the Additional Chief Metropolitan Magistrate Court, Economic Offences-1, Egmore, Chennai – 600 008 vide order dated 06.03.2019 in EOCC No.184 of 2017, the impugned order was unsustainable as the petitioner has paid the disputed tax, penalty and interest.

11.It is submitted that there are no arrears as on date. It is further submitted that the rejection of the compounding application filed by the petitioner is both contrary to the guidelines in F.No.285/08/2014-IT(Inv.V)/147 dated 14.06.2019 issued by the Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India and a further relaxation of time given for filing compounding application under direct tax laws vide a Circular No.25/2019 dated 09.09.2019. Hence, the learned Senior Counsel for the petitioner prays for quashing the impugned order and for allowing the writ petition.

12.Defending the impugned order, the learned Senior Standing Counsel for the respondent has submitted that the petitioner is a recalcitrant assessee inasmuch as the petitioner had failed to file Returns of Income in time under Section 139(1) or 139(4) of the Income Tax Act, 1961.

13.It is submitted that the petitioner has also failed to cooperate with the Department as a result of which, proceedings came to be initiated, which was culminated in the Assessment Order dated 27.03.2000 passed by the Deputy Commissioner of Income Tax under Section 144 of the Income Tax Act, 1961.

14.It is submitted that the petitioner was imposed with tax, penalty and interest. Further appeal filed by the petitioner in IT Appeal No.31/2000-2001 was also dismissed by the Appellate Commissioner, the Commissioner of Income Tax (Appeals-II) on 06.12.2000.

15.It is submitted that further appeal filed by the petitioner before the Income Tax Appellate Tribunal (ITAT) in I.T.A. No.354/Mds/2001 was also rejected by the ITAT by its order dated 24.03.2005 for the Assessment Year 1997-1998.

16.It is further submitted that both the tax and penalty imposed on the petitioner have been upheld by this Court by its Judgment referred to in the case of **Thirupathy Kumar Khemka and another** Vs. **The Commissioner of Income Tax, Central Chennai** rendered in T.C.(A) Nos.1005 and 1006 of 2005 vide order dated 26.03.2007. It is therefore submitted that the petitioner has taken all the knowing avenue / possible routes to redeem his grievance. Only having failed in this endeavor, the petitioner approached the Authorities for compounding the offence.

17.It is therefore submitted that the petitioner's case has been rightly rejected. It is further submitted that the petitioner did not have a right to compound the offences as the petitioner did not all along cooperate with the Department. It is therefore submitted that third application for compounding the offence has been rightly rejected.

18.That apart, it is submitted that the petitioner was convicted on the following offences:-

1) for the offence of willfully concealing the investment of Rs.10 lakhs and was to be punishable u/s.276(1) of Income Tax Act, 1961, and,
2) for the offence of knowingly making false statement of without disclosing the information

regarding investment in the Income Tax Return, which punishable u/s.277 of Income Tax Act, 1961; and

3) for the offence of knowingly given false verification in Income Tax Return which is punishable u/s.277 of Income Tax Act, 1961, and

4) for the offence of failure to furnish Return of Income in time, in spite, of notices, punishable u/s.276CC of Income Tax Act, 1961, and

5) for the offence of failure to furnish the accounts and documents as called for, to be punishable u/s.276D of Income Tax Act, 1961.

19.The learned Senior Standing Counsel for the respondent has also placed reliance on the following decisions:-

(i) **Ramesh Jain** Vs. **Union of India**, [2023] 146 Taxmann.com 320 (Madhya Pradesh)
(ii) **Viraj Exports (P.) Limited** Vs. **Chief Commissioner of Income (TDS)**, [2022] 142 Taxmann.com 285 (Delhi)
(iii) **Union of India** Vs. **Banwari Lal Agarwal**, [1999] 238 ITR 461 (SC)
(iv) **Punjab Rice Mills** Vs. **Central Board of Direct Taxes**, [2011] 12 Taxmann.com 225 (Punjab & Haryana)
(v) **Shree Sonal Gum Industries** Vs. **Income-tax Officer**, [2000] 112 Taxmann.com 509 (Gujarat)
(vi) **Income-tax Officer** Vs. **Dr.K.Jagadeesan**, [2001] 118 Taxman 499 (Mad.)

20.The learned Senior Standing Counsel also referred to a guide lines issued in the context of the last mentioned case vide Instruction No.5256, dated 20.10.1995, wherein, it has been clarified as follows:-

> *"The existing guidelines for compounding of offences under the Direct Tax Laws were issued vide F.No.285/161/90-IT (Inv.), dated 30-9-1994 and were circulated under a separate forwarding letter of every number and date. These guidelines do not cover cases of withdrawal of prosecutions once initiated.*
>
> *The Board has been receiving a number of proposals from Chief Commissioners for withdrawal of prosecution in the event of the Revenue losing its case in appeal either in respect of penalty or quantum or both.* ***In this connection, it has been decided that in cases where either the quantum additions and/or penalty by the Appellate Authorities and such decisions have been accepted by the Department, the CCIT would, instead of forwarding to the Board the proposals/requests for withdrawal of prosecution, direct that the relevant facts and changed circumstances be brought to the notice of the Department Prosecution Counsel who in turn should inform the Trial Court of the changed circumstances and concomitant infirmity in the prosecution complaint. This would facilitate disposal and discharge of the complaint."***

21.The learned Senior Standing Counsel for the respondent submitted that if, the persons like the petitioner is allowed to compound their offences particularly, after exhausting all the remedies before a Jurisdictional Authority and after suffering a conviction order, it would send a wrong signal as the Department will find it difficult to prosecute the offenders like petitioner on any of the offences. Therefore, it is submitted that the impugned order does not require any interference. Hence, prays for dismissal of the writ petition.

22.By way of rejoinder, the learned Senior Counsel for the petitioner has drawn attention to the information obtained by the petitioner under the Right to Information (RTI) Act, 2005, to state that even the cases where there have been conviction, the applications have been allowed. It is submitted that even the cases involving wilful failure to file return, the respondents have allowed the offences to be compounded.

23.That apart, it is submitted that the earlier decisions rendered in the context of 2008 circular bearing F.No.285/90/2008-IT (Inv.)/12, Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, Room No.243F, North Block, New Delhi, dated 16th May 2008 is *pari materia* with Clause 8.1 (iii) and (xiii) of

Circular bearing F.No.285/08/2014-IT(Inv.V)/147 dated 14.06.2019 issued by the Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India. Hence, it is prayed that this is a fit case for exercising the power under Article 226 of the Constitution of India in favour of the petitioner by quashing the impugned order and to grant consequential relief to the petitioner by allowing this writ petition.

24.I have heard the learned Senior Counsel for the petitioner and the learned Senior Standing Counsel for the respondent. I have also perused the impugned order.

25.In the present case, the impugned order has been passed by the Chief Commissioner of Income Tax. A reading of the impugned order indicates that it has been passed by placing reliance on the opinion of the Regional Compounding Committee (RGC) dated 18.07.2022.

26.Facts and law are clear. Under section 279 (2) of the Income Tax Act, 1961, the Principal Chief Commissioner or Chief Commissioner or the Principal Director General of Income Tax or Director General of

Income Tax may compound any offence under Chapter XXII either before or after institution of proceedings. For the aforesaid purpose, the Central Board of Direct Taxes has issued circular under Section 119 of the Income Tax Act, 1961.

27.The power to compounding offences is vested with the Principal Chief Commissioner or Chief Commissioner or Principle Director General or Director General of Income Tax under Section 279 of the Income Tax Act, 1961. Relevant clauses from Clause 4 of Circular dated 16th May 2008 and Clause 8 of Circular dated 14th June 2019 read as under:-

Sl. No.	***Clause 4 of Circular dated 16th May 2008***	***Clause 8 of Circular dated 14th June 2019***
1	Clause 4: Eligibility conditions for consideration of a case for compounding The following conditions should be satisfied before considering a case for compounding: 4.4**Cases not to be compounded**:- Notwithstanding anything contained in the guidelines, the following cases should normally not be compounded:- f) **Where conviction order has been passed by a Court**.	Clause 8: Offences normally not to be compounded 8.1 The following offences are generally not to be compounded Clause 8.1 (iii) **Offences committed by a person for which he was convicted by a court of law under Direct Taxes Laws**. Clause 8(xiii)

Sl. No.	*Clause 4 of Circular dated 16th May 2008*	*Clause 8 of Circular dated 14th June 2019*
	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.	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.

28.In **The Chairman, Central Board of Direct Taxes and Others Versus Umayal Ramanathan,** [2009] 313 ITR 59, the Court allowed the case of the petitioner taking note of the fact that during the pendency of an appeal against the conviction order before the Principal Sessions Judge's Court, an Application was filed on 09.04.2012 under Section 279(2) of the Income Tax Act, 1961 for compounding of the offence.

29.There also the application for compounding of offence was earlier rejected on the ground that the petitioner therein had been convicted of the offence. It was held that the rejection of the compounding application during the pendency of the appeal was not justified merely because the applicant/the writ petitioner therein was convicted by the Trial Court of the offence.

30.In **Inbavalli Vs The Government of India, Ministry of Finance, Department of Revenue,** this Court vide its order dated 18.8.2016 in W.P.No. 24588 of 2016 rendered reported in Manu/TN/ 1996/2016 followed the above mentioned decision and allowed the case of the petitioner therein.

31.There, the Court took note of the fact that the petitioner was a lady aged more than 70 years of age and had lost her husband and only son and was the sole proprietor of a small firm dealing in electrical and electronic appliances while allowing the writ petition.

32.The Court in both the above mentioned cases did not take note of the aforementioned circular issued under Section 119 of the Income Tax Act, 1961 issued specifically in context of compounding of offences.

33.There is no merits in this writ petition as petitioner has shown no remorse. The petitioner has taken the chance all the way up to the Tribunal and waited for conviction order to be passed in the criminal case instituted against the petitioner for violation of the provisions of the Income Tax Act, 1961.

34.These decisions cited by the learned Senior Counsel for the petitioner therefore do not come to his rescue. The circular of the Board also makes it clear that there is no scope for compounding of the offences, if there was a conviction of the person by a court of law under direct tax laws. Further, the application is belated.

35.The petitioner has taken a chance all the way up to the Income Tax Appellate Tribunal and waited for an order of conviction by the Economic Offences Court on 06.03.2019 in EOCC No.184 of 2007.

36.The decision of the Delhi High Court in **Vikram Singh versus Union of India,** (2017) 394 ITR 746 also does not lay down any general principle of law to be followed by Courts. Para 9 of the said decision which has been highlighted is of no relevance.

37.The decision of the Court rendered in **Ram Prakash Khemka Vs Commissioner of Income Tax,** [2007] 295 ITR 33 relied upon by the counsel for the respondent dealing with an identical situation also impels this Court to dismiss this writ petition.

38.To allow compounding of the offences at this stage merely because the petitioner has paid the tax, penalty and interest would not mean that the petitioner is in return entitled to compound of the offence particularly having taken a chance for an acquittal before the Trial Court. By paying the tax, penalty and interest, the petitioner has done no favour for the revenue. What he had to do earlier, he has done later.

39.To interfere with the impugned order and to allow compounding of the offence would also send wrong signal in the society. There has to be deterrent effect not only on the petitioner from committing similar offence in future but also on others from committing such offence by taking the tax laws casually.

40.The Court is not inclined to interfere with the impugned order rejecting the compounding petition filed by the petitioner. Hence, this writ petition is liable to be dismissed. It is accordingly dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

17.11.2023

Arb / krk

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

The Chief Commissioner of Income Tax-1,
Room No.118, Main Building,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

C.SARAVANAN, J.

Arb / krk

W.P.No.21387 of 2022

17.11.2023