IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.01.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.4865 of 2023
and W.M.P.Nos.4897 and 4899 of 2023

M/s.Photon Kathaas Production Pvt.Ltd.,
Represented by its Director,
Mr.S.Venkatramanan,
No.19, Avenue Road, Nungambakkam,
Chennai 600 034. ... Petitioner

-vs-

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

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

3.The Chief Commissioner of Income Tax,
No.121 Aayakar Bhawan, Mahatma Gandhi Salai,
Nungambakkam, Chennai 600 034.

4.The Additional Commissioner of Income Tax,
Central Range - C,
Chennai 600 034.

5.The Deputy Commissioner of Income Tax,

Central Circle - I (1),
Income Tax New Building,
Room No.112, 1st Floor,
Chennai 600 034. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for records relating to the order dated 18.11.2022 made in DIN & Order No. ITBA/COMF/17/2022-23/1047505692(1) passed by the 1st respondent and quash the same as illegal, arbitrary, without jurisdiction, contrary to law and violative of principles of natural justice.

For Petitioner : Mrs.Revathi Manivannan

For Respondents : Mr.A.N.R.Jayaprathap, Jr.SC

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ORDER

The petitioner challenges an order dated 18.11.2022 of the first respondent rejecting the compounding application of the petitioner. The petitioner states that it is a subsidiary of Photon Kathaas Production Limited, Singapore, and that its return of income could not be filed in time because there was a difference of opinion between the auditors in India and Singapore. Such return of income was eventually filed on 14.05.2018. In those circumstances, prosecution was launched by the sixth respondent before the Additional Chief Metropolitan Magistrate, Egmore for belated filing of returns. The said prosecution was on the basis of complaint dated 03.01.2019. Summons was issued in such proceedings on 09.11.2021. After receipt thereof, on 19.05.2022, the petitioner filed a compounding application. Such application was rejected by the order impugned herein on the ground that the application was filed beyond the time limit specified in guidelines issued by the Central Board of Direct Taxes on 14.06.2019. The present writ petition arises in the above facts and circumstances.

2. Learned counsel for the petitioner submitted that the impugned order warrants interference by this Court because the conclusion recorded therein is unsustainable. By pointing out that the impugned order records that such compounding application may be filed within twenty four months from the end of the month in which the complaint was filed, learned counsel submits that the date of complaint was 03.01.2019. The covid-19 pandemic occurred on or about 15.03.2020. The pre-pandemic period, if computed from 03.01.2019 to 14.03.2020, is a period of about fifteen months. The Hon'ble Supreme Court in orders relating to exclusion of time held that the period running from 15.03.2020 to 28.02.2022 is liable to be excluded while computing the applicable period of limitation. Learned counsel submitted that if such period is excluded, the compounding application was filed within three months after the expiry of the period of exclusion. In effect, she submitted that the compounding application was filed within about eighteen months

from the date of lodging of the complaint.

3. Even otherwise, learned counsel submitted that the guidelines issued by the Central Board of Direct Taxes on 14.06.2019 were quashed by this Court by order dated 03.11.2023 in W.P.Nos.2968 and 2970 of 2023. As a consequence, learned counsel contended that the compounding application may be filed at any time when the proceedings are pending before the Magistrate.

4. In response to these contentions, Mr.A.N.R.Jayaprathap, learned junior standing counsel, submits that a review application was filed against the order dated 03.11.2023 and that such review application was dismissed as withdrawn on 08.01.2024. He further submits that the respondents intend to file an appeal against the order dated 03.11.2023.

5. Sub-section (2) of Section 279 of the Income Tax Act, 1961, which deals with the compounding of offences, provides as under:

> "*(2) The Commissioner may either before or after the institution of proceedings compound any such offence.*"

6. Neither sub-section (2) nor any of the other sub-sections of Section 279 prescribe a period of limitation with regard to compounding of offences. By taking note of this aspect, the guidelines issued by the Central Board of Direct Taxes on 14.06.2019 were quashed by this Court. At this point of time, the said judgment holds the field. Even otherwise, the complaint was lodged on 03.01.2019. A period of about fifteen months lapsed between the date of complaint and the onset of the Covid-19 pandemic. If the period excluded under orders of the Hon'ble Supreme Court, i.e. the period running from 15.03.2020 to 28.02.2022, is excluded the compounding application filed on 19.05.2022 would be within the period prescribed in the guidelines of the Central Board of Direct Taxes.

7. For reasons set out above, the conclusions recorded in paragraph 2 of the impugned order are unsustainable. Therefore, the

impugned order is quashed. As a corollary, the compounding application of the petitioner shall be considered and disposed of on merits. The first respondent is directed to dispose of the compounding application within a maximum period of ***one month*** from the date of receipt of a copy of this order after providing a reasonable opportunity to the petitioner.

8. W.P.No.4856 of 2023 is disposed of on the above terms. Consequently, W.M.P.Nos.4897 and 4899 of 2023 are closed. There shall be no order as to costs.

23.01.2024

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

To

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