



WEB COPY



W.P.No.17388 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2024

CORAM

THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY

W.P.No.17388 of 2024

AND

W.M.P.No.19156 of 2024

Kabir Ahmed Shakir

.. Petitioner

Vs

The Chief Commissioner of Income Tax,
Aayakar Bhavan, Main Building, 3rd Floor,
No.121, Mahatma Gandhi Salai,
Chennai – 600 034.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order rejecting my compounding application passed by the respondent in ITBA/com/s/91/2024-25/1065320542(1) dated 31.05.2024 under section 279(2) of the it act for AY 2013-14 quash and set aside the same and direct the respondent to process the petitioner compounding application filed dated 30.11.2023 as per section 279(2) of the IT Act.

For Petitioner : Mr.Rachavan Ramabadran

For respondents : Dr.B.Ramaswamy
Senior Standing Counsel



W.P.No.17388 of 2024

ORDER

WEB COPY

This writ petition is filed challenging the impugned order dated 31.05.2024 of the respondent, whereby the respondent has rejected the compounding application filed by the petitioner on the ground that the application was filed beyond the period of limitation, as stated in Para 7(ii) of the CBDT circular dated 16.09.2022.

2. The learned counsel appearing for the petitioner submits that there is no time limit for filing of the compounding application and as per Section 279(2) of the Income Tax Act, any offence may, either before or after the institution of proceedings, be compounded by the Principal Chief Commissioner of Chief Commissioner or a Principal Director General of Director General. Therefore, there is no period of limitation prescribed under Section 279(2) of the Act and hence, the impugned order rejecting the compounding application on the ground of delay is unsustainable and therefore, is liable to be set aside. To buttress his submission, the learned counsel relied on the judgment of this Court in **Jayshree vs. CBDT** reported in **2023 (11) TMI 1110 :: (2024) 464 ITR 81 (Mad)**. The learned counsel, therefore, prays for quashing of the impugned order.



W.P.No.17388 of 2024

3. Per contra, Dr.B.Ramaswamy, learned Senior Standing Counsel appearing for the respondent, would fairly submit that this Court by virtue of the aforesaid judgment had struck down clause 7(ii) of the circular holding that it is beyond the scope of the Act. He would however submit that previously it was 12 months, but now the time limit was fixed as 24 months. Be that as it may, by virtue of the judgment of this Court in Jayshree's (supra), the learned counsel prays that appropriate orders may be passed.

4. I have given due consideration to the submissions of the learned counsel for the petitioner as well as the learned standing counsel for the respondent.

5. As rightly pointed out by the learned counsel for the petitioner, Section 279(2) of the Act does not prescribe any time limit for filing of the compounding application. Further, the judgment of this Court in **Jayshree's case (supra)**, this Court has categorically held that the CBDT cannot issue a circular contrary to the object of the provisions. The explanation, which empowers the CBDT to issue circular, is only for the purpose of implementation of the provisions of the Act with regard to compounding of offences and not for the purpose of fixing a time limit for filing the application for compounding of



W.P.No.17388 of 2024

offences and therefore, the same is contrary to the provisions of the Act and

hence, it is not permissible in terms of Section 279(2) of the IT Act.

6. It is the further submission of the learned Senior Standing Counsel that the petitioner is a repeated offender and hence, the offences against the petitioner cannot be compounded. A perusal of the relevant clause 8.1 [i] of the guidelines issued to compounding offences, it appears that if the offence is committed for more than three occasions, he will be considered as habitual offender. In the present case, the allegation against the petitioner is that he has not filed income tax return for two assessment years, viz., 2013-2014 & 2014-2015. As far as for the financial year 2013 – 2014 is concerned, the offence has already been compounded. Hence, the same will not come into picture of habitual offender category.

7. Dr.B.Ramasamy would submit though this matter is covered by the judgment of this Court cited supra, if these type of matters are allowed to continue, it will set as a bad precedent, as the petitioner is a habitual offender. Hence, opposed the Writ Petition.



W.P.No.17388 of 2024

8. As already stated above, even as per the guidelines issued by the authorities in the circular dated 06.09.2022, the petitioner cannot be considered as a habitual offender, as he has committed default only in two cases and in one case, the offence has already been compounded.

9. In such view of the matter, this Court is of the view that once the nature of offence is compoundable by virtue of the provisions of the Act, nature of compoundability of the said offence cannot be taken away by fixing a time limit for filing the compounding application. The law laid down by this Court in the aforesaid judgment is squarely applicable to the facts of the present case. Hence, the impugned order is liable to be set aside and it is accordingly set aside.

10. The writ petition is, accordingly, allowed. There shall be no order as to costs. The matter is remanded back to the respondent and the respondent is directed to take up the application for compounding of offences on record and pass orders on merits and in accordance with law within a period of eight [8] weeks from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petition is closed.



W.P.No.17388 of 2024

WEB COPY

11. The learned counsel for the petitioner submitted that the matter may be listed for reporting compliance. However, Dr.Ramaswamy would submit that the Order would be passed as per the directions issued by this Court. Recording the submissions of the learned Senior Standing Counsel, I am not inclined to fix a date for compliance.

30.08.2024

vrc

Index : Yes/No

Neutral Citation : Yes/No

To

The Chief Commissioner of Income Tax,
Aayakar Bhavan, Main Building, 3rd Floor,
No.121, Mahatma Gandhi Salai,
Chennai – 600 034.



WEB COPY



W.P.No.17388 of 2024

KRISHNAN RAMASAMY, J.

VRC

W.P.No.17388 of 2024

30.08.2024