IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.10.2024
CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

WP.No.22277 of 2023
and W.M.P.Nos.21665 and 21668 of 2023

M/s.MARG Ltd.
Represented by its Authorised Signatory:
Mr.G.Ramakrishnan Reddy
4/318, Marg Axis, Rajiv Gandhi Salai,
Kottivakkam,
Chennai – 600 041.
Having Administrative Office at:
15/26, 2nd Main Road Kottur Garden,
Kotturpuram,
Chennai – 600 085. .... Petitioner

Vs.

1.Chief Commissioner of Income Tax(TDS)
Aayakar Bhavan, Main Building 3rd Floor,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai-34.

2.The Assistant Commissioner of Income Tax,
TDS Circle -2,
Chennai. ... Respondents

Prayer:- Writ Petition is filed, under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent in F.No.Compounding/CHEM02014F/2021-22 dated 30.11.2021 u/s 279(2) of the Income Tax Act, 1961 in the case of the petitioner and quash the same and consequently direct the 1st respondent to permit the compounding applications for the assessment year 2013-14 in accordance with law.

For Petitioner : Mr.M.Veerabathran Prasanth

For Respondents : Mr.B.Ramasamy
Senior Standing Counsel

O R D E R

The present Writ Petition has been filed to call for the records on the file of the 1st respondent in F.No.Compounding/CHEM02014F/2021-22 dated 30.11.2021 u/s 279(2) of the Income Tax Act, 1961 in the case of the petitioner and quash the same and consequently direct the 1st respondent to permit the compounding applications for the assessment year 2013-14 in accordance with law.

2. The learned counsel for the petitioner would submit that a complaint was filed for non-payment of TDS on 03.05.2017. Subsequent to filing of the compliant, the petitioner had filed TDS. Therefore, the Director of the petitioner has filed an application for compounding before the office of the 1st respondent on 27.11.2020. However, the said application was dismissed citing the reason that it is barred by limitation. However, it has been mentioned that TDS amount has been deposited by the petitioner. He further submitted that the entire amount has been paid

before filing the compounding application and after the complaint. Hence, the impugned order 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).

3. Learned Senior Standing counsel for the respondents would submit that, in the present case, the tax amount has been deposited by the petitioner subsequent to the initiation of the prosecution. Therefore, there is no merit in the submission made by the learned counsel for the petitioner.

4. Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents and perused the materials placed before this Court.

5. In the present case, as far as limitation is concerned, the issue is covered by the Judgement of this Court in the case of *Jayshree*(supra) and hence, fixing the limitation for fling application for compounding will be contrary to law as held by this Court in the said judgement. For better appreciation, Paragraph Nos.12 to 25 of *Jayshree*(supra) is extracted hereunder:

“ 12. It appears that in the present case, the petitioner

had purchased an immovable property on 05.06.2006 and further, she had sold the said property on 05.02.2013. After the sale of the said property, she had re-invested the sale consideration in purchase of another immovable property. Further, since she is not an income tax assessee and she had re-invested the sale consideration in another property, she believed that she is not liable to pay any tax in terms of the IT Act. However, she had filed her income tax returns belatedly on 13.06.2016.

13. Subsequent to the filing of returns, the respondent had prosecuted the petitioner for delay in filing of the returns on 14.09.2016. Thereafter, the petitioner had filed an application for compounding of offences on 14.09.2021 in terms of the provisions of Section 279 of the IT Act. The said application came to be rejected for a simple reason that it is barred by limitation as prescribed by the said circular. The relevant portion of the said circular is extracted hereunder:

*"7.**Eligibility Conditions for Compounding***

i....................

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, no application of compounding can be 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 in respect of the offence for which compounding is sought."*

14. On perusal of the above circular, it appears that the CBDT had fixed the time limit, to file the application for compounding of offences, as 12 months from the date of prosecution. In the present case, the prosecution was launched on 14.09.2016. Hence, according to the respondent, the application for compounding of offences was supposed to be filed by the petitioner on or before 13.09.2017. However, the said application was filed only on 14.09.2021 i.e., beyond the period of prescribed time limit.

15. On the other hand, it was contended by the learned counsel for the petitioner that the fixation of time limit of 12 months for filing the application for compounding of offences is not in accordance with the Section 279(2) of the IT Act, which reads as follows:

*"**279. Prosecution to be at instance of Principal Chief Commissioner or Chief Commissioner or 4***

Principal Commissioner or Commissioner.-

(1) ....

(2) Any offence under this Chapter may, either before or after the institution of proceeding be compounded by the Principal Chief Commissioner or Chief Commissioner or a Principal Director General or Director General."

16. On perusal of the above Section of the IT Act, it is clear that in the said Section, nowhere it has been mentioned with regard to the fixation of time limit for filing the application for compounding of offences. However, in the explanation to the said Section, it has been stated that the CBDT is empowered to issue orders, circulars, instructions and directions for the purpose of proper implementation of the Act.

17. No doubt that under Section 119(1) of the IT Act, the CBDT is empowered to issue circulars, directions, instructions etc. However, the same should not be beyond the scope of the Act and it should be within the scope of the Act.

18. The intention of the Legislation for bringing Section 279(2) of the IT Act is to permit the Assessee to go for compounding of offences either before *institution of proceedings or after institution of proceedings. If that was the intention of the Legislation, contrary to the same, now the CBDT had brought the circular, whereby they intend to fix time limit, which almost amounts to amendment of Section 279(2) of the IT Act. Thus, since the idea of the Legislation was that the compounding of offences is permissible either before or after the institution of the proceedings, the CBDT cannot issue a circular contrary to the object of the said 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 the compounding of offences and not for the purpose of fixing time limit for filing the application for compounding of offences and 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.*

19. Therefore, this Court is of the view that the CBDT is not empowered to fix the time limit for filing the application for compounding of offences, which is contrary to the provisions of Section 279(2) of the IT Act. Thus in terms of Section 279(2) of the IT Act, the petitioner can file the application for compounding of offences either before or subsequent to the launching of

<u>the prosecution.</u>

20. As far as the citation provided by the learned counsel for the petitioner is concerned, in all those citations, the respective High Courts had struck down the provisions of Clause 7(ii) of the said circular dated 14.06.2019 with respect to the prescribed time limit of 12 months and held that at any point of time the application for compounding of offences can be filed i.e., even after the filing of the prosecution and before the disposal of the case.

21. As far as the Judgments provided by the learned counsel for the respondent is concerned, this Court is not in agreement with the same since the said Judgments had only dealt with regard to the holding of power of CBDT in issuance of circulars, guidelines and notifications for the purpose of proper implementation of the relevant provisions of the Act, however, in none of the Judgments, either the Apex Court or the respective High Courts had dealt with regard to the validity of the provisions of the circular, guidelines and notifications issued by the CBDT was not at all challengeable. Only in the present case, the validity of the provisions of CBDT, especially Clause 7(ii) of the said circular, has been challenged. In the said *judgments, the other Courts had no occassions to deal with the aspect as to whether the said circular, which was issued by CBDT, is within the scope of the Act or not, further, no arguments were advanced before the other Courts in this aspect. Empowering the CBDT to issue the circular, guidelines, notification will not ipso facto validate the contents of the circular issued by it. The contents of the circular will always be challengeable. The power of CBDT to issue the circular is entirely different aspect from challenging the contents of the circular. Therefore, the said Judgments will not be applicable for the issue decided by this Court.*

22. From the above discussions, <u>this Court is of the considered view that the order passed by the respondent, rejecting the application for compounding of offences on a sole ground that it is barred by limitation, is liable to be set aside.</u> Accordingly, the order dated 20.08.2022 is set aside.

23. At this juncture, the learned counsel for the respondent would suggest that in such case, the matter may be remitted back to the respondents to decide the same on merits and the same was accepted by the learned counsel for the petitoiner.

24. Considering the above submissions, this Court remits the matter back to the Authority concerned and the respondent is directed to decide the same on its own merits and in accordance with law.

25. As far as the petition in W.P.No.2968 of 2023 is concerned, the same was filed challenging the Clause 7(ii) of the circular, wherein it has been stated that "However, no application of compounding can be 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 in respect of the offence for which compounding is sought.". This Court had already discussed above and held that the said Clause 7(ii) of the circular is beyond the scope of the Act and hence, the same is liable to be struck down. Following the same, the said portion of the circular dated 14.06.2018 alone is hereby struck down by this Court." (emphasis supplied)

6. As far as the disputed TDS amount is concerned, the tax amount was already deposited by the petitioner, but the same was not considered by the respondents. Clause 7(iii) of the Circular No.285/8/2014-IT(INV.V)/147, qua the Eligibility conditions for compounding, reads as

follows:

> *"7.iii.The person has paid the outstanding tax, interest (including interest u/s, 220 of the Act), penalty and any other sum due, relating to the offence for which compounding has been sought before making the application. However, if any related demand is found outstanding on verification by the Department, the same should be intimated to the applicant and if such demand including interest u/s 220 is paid within 30 days of the intimation by the Department, then the compounding application would be deemed to be valid."*

7. Reading the above clause would clearly shows that if any related demand is found outstanding on verification by the Department, the same should be intimated to the applicant and if such demand including interest u/s 220 is paid within 30 days of the intimation by the Department, then the compounding application would be deemed to be valid. Therefore, rejecting the application on the ground that the amount has not been paid is not proper. Hence, for the aforesaid reasons, the present impugned order is

set aside and the matter is remanded to the respondents for fresh consideration and pass orders on merits and in accordance with law. If at all any amount is due from the petitioner, the respondents are directed to intimate the same to the petitioner within a period of 30 days from the date of receipt of this order.

8. With the above directions, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

03.10.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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To

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KRISHNAN RAMASAMY, J.

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