IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.10.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.30260 of 2024 &
W.M.P.No.32943 of 2024

Mr.Mathan Senthilkumar
PAN DIDPS6635F ... Petitioner

Vs.

1. Chief Commissioner of Income Tax
   Aayakar Bhawan, M.G.Road,
   Nungambakkam, Chennai- 600 014.

2. Income Tax Officer,
   Non Corporate Ward
   Chennai- 600 034. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the DIN & Order No. ITBA/COM/F/17F2023-24/1060143142(1) dated 25.01.2024 passed by the 1st Respondent and quash the order passed by 1st Respondent and grant an opportunity to file fresh compounding application.

For Petitioner : Mr.Cline Li Johny

For Respondents : Mr.D.Prabhu Mukunth
Arunkumar
Junior Standing Counsel

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ORDER

This writ petition has been filed by the petitioner challenging the order of the 1st Respondent dated 25.01.2024 and to quash the same and for a direction to the 1st Respondent to grant an opportunity to the Petitioner to file fresh compounding application.

2. Mr.D.Prabhu Mukunth Arun Kumar, learned Junior Standing Counsel takes notice on behalf of the Respondents.

3. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

4. The case of the Petitioner in brief is as follows:

(i) Initially the Petitioner received a Show Cause Notice from the 2nd Respondent dated 27.06.2017, alleging that the Petitioner failed to file return of income for the Assessment Year 2014-15 under the Income Tax Act, 1961 and it was alleged that during the year 2013-14, the Petitioner sold the immovable property for Rs.1,12,50,000/-. Pursuant to the Show Cause Notice, the Petitioner filed his reply on 12.07.2017, explaining the particulars of transactions and in the said reply, the Petitioner has clearly stated that sale consideration for the aforesaid immovable property was invested in the new house property for Rs.60,00,000/- and hence there is no capital gain, but the Respondents without considering the said reply has issued prosecution notice. The Petitioner was jeopardized after receiving the sanction order dated 25.10.2017, stating that after the issuance of show cause notice the Petitioner failed to furnish the returns and thus the Petitioner was brought under the ambit of evader of tax. It is further stated that the property is purchased for the benefit of his parents and therefore the sale of property will not attract capital gains to the Petitioner unless the contrary is proved and the reverse burden of proof is on the Respondents. The 2nd Respondent preferred a private complaint in the Court of

Additional Chef Metropolitan Economic Offence-1, Egmore, Chennai under Section 200 Cr.P.C. for the offences under Section 276CC.

(ii) After receiving summons, the Petitioner preferred an application for compounding on 11.07.2023, before the Chief Commissioner of Income Tax, the 1st Respondent herein and the said authority has dismissed the said compounding application with the following observations:

"6. Decision of the competent Authority:

It is seen from the report of the PCIT that the assessee had taxable income by way of Captial Gains for the Assessment Year 2014-15 and by not filing his return of income u/s.139(1) of u/s.139(4), the assessee has made a deliberate attempt to suppress his taxable income. In view of the above, being the jurisdictional Chief Commissioner of Income Tax [CCIT-1, Chennai], vested with powers as per the provisions of Section 279(2) of the Income Tax Act, 1961 and in terms of Para 10.1 of CBDT guidelines for compounding of offence in F.No.285/08/2014-IT (Inv.V)/196 dated 16.09.2022. I hereby decline the prayer to compound the offence u/s. 276CC of the Income Tax Act, 1961 for the Asst. Year 2014-15, committed by the applicant Shri Mathan Senthil Kumar, No.14, Jesson Street, Park Twon, Chennai-600 003.

5. Challenging the aforesaid order, the present Writ Petition has been filed.

6. The learned counsel appearing for the Petitioner would submit that in paragraph 9 of the impugned order, the 1st Respondent has stated that the Petitioner has not given the opportunity to the Assessing Officer to determine his true and correct income within the statutory time limit prescribed u/s.153 of the Income Tax Act, 1961 and the same is considered as deliberate attempt of the assessee to suppress taxable income and thus not a fit case for compounding offence but as per Section 279(2) of the Act, any offence under this Chapter may either before or after the institution of proceedings be compounded by the Principal Chief Commissioner, Chief Commissioner or a Principal Director General or Director General and the 1st Respondent without considering the same has erroneously rejected the compounding application filed by the Petitioner.

7. Further, he would submit 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. That apart, this Court vide order dated 13.12.2023 in W.P.Nos. 4855 and 4857 of 2023 has observed that the applications can be filed either before or after the institution of the case and the well-settled principal of law is that such applications would be filed before conviction attains finality against the assessee.

8. Mr.D.Prabhu Mukunth Arun Kumar, learned Junior Standing Counsel appearing for the Respondents though initially opposed for setting aside the impugned order,after some arguments, submitted that as far as limitation aspect is concerned, this Court may set aside the impugned order and with respect to jurisdictional aspect, the Petitioner may be permitted to file appeal before the concerned authority.

9. Heard both sides. Perused the records.

10. The impugned order is challenged on two grounds viz., Limitation as well as Jurisdiction. As far as the limitation is concerned, since, it was already covered by the decisions of this Court as stated by the learned counsel for the Petitioner, this Court is inclined to set aside the impugned order to the extent of limitation alone and with regard to the issue of jurisdiction, it is left open to the Petitioner to agitate before the appropriate authority. Accordingly, this Court passes the following order:

(i) The impugned order passed by the 1st Respondent dated 25.01.2024 is set aside, on the issue of limitation alone.

(ii) The Petitioner is permitted to file fresh compounding application before the competent authority, within a period of four weeks from the date of receipt of a copy of this order and if the compounding application is filed, the authority concerned shall consider the same and pass orders,as per law, without insisting on the period of limitation.

(iii) As far as jurisdiction is concerned, it is open to the Petitioner to challenge the same by filing appropriate appeal before the appropriate authority.

This Writ Petition is disposed of. No Costs. Consequently, connected Miscellaneous Petition is closed.

17.10.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To

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   Aayakar Bhawan, M.G.Road,
   Nungambakkam, Chennai- 600 014.

2. Income Tax Officer,
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   Chennai- 600 034.

KRISHNAN RAMASAMY.J.,

arr

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