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.30537 of 2024 &
W.M.P.No.33150 of 2024

E-Apps Mantra Software Solution Private Limited,
[CIN No.U72200TN2009PTC073287]
No.23, Veera Koil Street,
Velapadi, Vellore- 632 001. ... Petitioner

Vs.

1. The Secretary,
   Ministry of Finance
   Government of India,
   Room No.129-A, North Block,
   New Delhi.

2. The Central Board of Direct Taxes
   represented by its Chairman,
   Department of Revenue
   Ministry of Finance,
   Government of India
   C-Block, Dr.S.P.Mukherjee Civic Centre,
   Minto Road, New Delhi-110002.

3. Chief Commissioner of Income Tax
   Income Tax Department
   Office of Chief Commissioner of Income Tax (CCIT),
   Room No.118, Main Building-I Floor,

Chennai-Main Building,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai-600034.

4. The Assistant Commissioner of Income Tax
Circle-I, Central Revenue Building,
No.2, Barrack's Cross Street,
Officer's Line,
Vellore-632001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records on the file of the 3rd Respondent in DIN & Order No.ITBA/COM/F/17/2023-24/1063646591 (1) dated 29/03/2024 and quash the same.

For Petitioner : Mr.Sai Srujan Tayi

For Respondents : Dr.B.Ramaswamy
Senior Standing Counsel

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ORDER

This writ petition has been filed by the petitioner challenging the order of the 3rd Respondent dated 29.03.2024 and to quash the same.

2. Dr.B.Ramaswamy, learned Senior 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) The Petitioner Company was incorporated in the year 2007 inter alia with the business object of providing information technology services. In the Financial Year (FY) 2012-13[relevant to Assessment Year (AY) 2013-14] the Company suffered heavy loss and therefore Income Tax Return for the Assessment Year 2012-13 was not filed on time which led to institution of prosecution by the 4th Respondetn vide C.C.No.409/16 before the Chief Judicial Magistrate, 1st Class, Vellore. Thereafter, the Petitioner preferred an application for compounding before the 3rd Respondent herein and the said authority has dismissed the said compounding application with the following observations:

> *"7. Decision of the competent Authority:*
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> *In view of the above findings, 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 2013-14, committed by the applicant M/s. E-Apps Mantra Software Solutions Private Limited No.23, Veera Koil Street, Velapadi, Vellore-632 001.

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

6. The learned counsel appearing for the Petitioner 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 and is handed over to the assessee at the earliest. He therefore prays to set aside the impugned order.

7. Dr.B.Ramaswamy, learned Junior Standing Counsel appearing for the Respondents vehemently opposed the submissions of the learned counsel for the Petitioner by stating that in terms of Section 119 of the Income Tax Act, 1961 and the proviso to explanation of Section 279 of the IT Act, the CBDT is empowered to issue any guidelines, circular or notifications for the purpose of proper implementation of the Act.

8. Heard both sides. Perused the records.

9. It is seen that the impugned order is challenged on the ground of limitation. This Court has already passed a series of orders,whereby it was held that the limitation period fixed by CBDT for filing compounding application and the same is beyond the scope of provision of the Act. In this case also, the petitioner's application for compounding offences were rejected on the aspect of limitation fixed by CBDT. In W.P.Nos. 2968 and 2970 of 2023 this Court has held as under:

> *"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 month in which prosecution compliant, 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.

26.With the above directions, these writ petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

10. In W.P.Nos. 4855 and 4857 of 2023,this Court has held as follows:

"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 compliant 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 runing 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 the 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 htis 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."

11.Further, in terms of Section 279(2), the application for compounding offences can be filed either before or after institution of proceedings. In this case, the said application was filed after the institution of proceedings. Therefore,when the Act has not fixed any limitation, the Rules or any other guidelines cannot impose any time limit for filing the application for compounding offences. In such case, as stated above, the time limit fixed by CBDT for filing the application for compounding offences is beyond the scope of provision of the Act.

12.In view of the orders passed by this Court in W.P.Nos.2968 and 2970 of 2023 and W.P.Nos. 4855 and 4857 of 2023, since the issue since the issue is covered by the decisions of this Court, this Court is inclined to set aside the impugned order passed by the 3rd Respondent.

13. Accordingly, the impugned order passed by the 3rd Respondent dated 29.03.2024 is set aside and the matter is remitted back to the 3rd Respondent. The 3rd Respondent is directed to take the compounding application on record, if it is otherwise in order and dispose of the same, within a period of four weeks from the date of receipt of a copy of this order.

This Writ Petition is disposed of with the above directions. 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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KRISHNAN RAMASAMY.J.,

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