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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 5309/2024 & CM APPL. 21769/2024 (interim directions)

EARTHCON CONSTRUCTIONS PRIVATE LIMITED & ANR. ..... Petitioners

Through: Ms. Shreya Kumar, Adv.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Sunil Agarwal, SSC with Mr. Shivansh Pandya, Mr. Utkarsh Tiwari, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **10.04.2024**

CM APPL. 21770/2024 (Ex.)

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

W.P.(C) 5309/2024 & CM APPL. 21769/2024 (interim directions)

3. This writ petition is directed against the order dated 18 January 2024 pursuant to which the application for compounding as made by the petitioner and referable to Section 279(2) of the Income Tax Act, 1961 has come to be declined and rejected solely on the basis of the Central Board of Direct Tax's Compounding Guideline dated 16 September 2022.

4. We note that while dealing with the validity of the time frames as prescribed in Compounding Guidelines, a Division Bench of the

Court in **Vikram Singh vs. Union of India** [2017 SCC OnLine Del 7826] had held as under: -

> "**7.** The circular dated 23rd December, 2014 does not stipulate a limitation period for filing the application for compounding. What the said circular sets out in para 8 are "Offences generally not to be compounded". In this, one of the categories which is mentioned in sub-clause (vii) is: "Offences committed by a person for which complaint was filed with the competent court 12 months prior to receipt of the application for compounding".
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> **8.** <u>The above clause is not one prescribing a period of limitation for filing an application for compounding. It gives a discretion to the competent authority to reject an application for compounding on certain grounds. Again, it does not mean that every application, which involves an offence committed by a person, for which the complaint was filed to the competent court 12 months prior to the receipt of the application for compounding, will without anything further, be rejected. In other words, resort cannot be had to para 8 of the circular to prescribe a period of limitation for filing an application for compounding. For instance, if there is an application for compounding, in a case which has been pending trial for, let us say 5 years, it will still have to be considered by the authority irrespective of the fact that it may have been filed within ten years after the complaint was first filed. Understandably, there is no limitation period for considering the application for compounding. The grounds on which an application may be considered, should not be confused with the limitation for filing such an application.</u>
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> **9.** This has to be also understood in the context of the object of providing for compounding of offences. There is an acknowledgement that the judicial system is not as efficient as it is intended to be. There are trials, even in non-serious offences, that have been pending for decades. It is in the public interest, apart from the interest of the Department itself, that some closure is brought to such cases which may be pending interminably in our court system. It is for this reason that some discretion has been vested in the officers of the Department to compound offences. It provides an opportunity for some assessees, notwithstanding that their appeals as regards the assessments may be pending, to come forward to have their offences compounded. It does subserve both public interest as well as the interest of the Department itself that on some reasonable terms such offences, which may not be considered serious, are compounded. The guidelines have to be understood only in that context.
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> **10.** The reason given in the impugned order dated November 3,

> 2016 for rejection of the Petitioner's application does not satisfy the criteria spelt out in the guidelines issued by the Department by its Circular dated 23rd December 2014. It has proceeded on a ground that is not available to the Department viz., that the application is inordinately delayed. Since there is no other reason given for the rejection of the application, the Court is unable to sustain the order dated November 3, 2016 of the Chief Commissioner of Income-tax by which the petitioner's application for compounding was rejected. The said order is hereby set aside. The petitioner's application for compounding will have to considered afresh by the Chief Commissioner of Income-tax."

5. In that view of the matter, it is ex facie evident that the impugned order would not sustain. As is manifest from the aforesaid extracts, the Court had found that Section 279 (2) constructs no time lines within which an application for compounding could be made. The Circular thus clearly travels beyond the statutory provision and erects a condition of disability which is not even contemplated by the Act. In that view of the matter, the impugned order cannot possibly be upheld.

6. We, accordingly, allow the writ petition and set aside the order dated 18 January 2024. The matter shall in consequence stand remanded to the Chief Commissioner of Income Tax (TDS) who shall consider the application for compounding afresh and bearing in mind the observations made hereinabove.

7. All other rights and contentions of parties are kept open.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 10, 2024/neha