IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-06-2025

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THE HONOURABLE MR JUSTICE KRISHNAN RAMASAMY

WP No. 23086 of 2024
AND
WP NO. 23094 OF 2024,WMP NO. 25197 OF 2024,WMP NO. 25209 OF 2024

Moorthy Elumalai,
S/o. M. Elumalai,
No.32, Abirami Avenue, 1st Street,
Sakthi Plaza, First Floor,
Kaviarasu Kannadasan Nagar,
Chennai-600 118.

Petitioner in both W.Ps

Vs

1.The Central Board Of Direct Taxes,
Rep By Its Chairperson,
Department Of Revenue - Ministry of Finance,
Government Of India, New Delhi.

2.Chief Commissioner Of Income Tax – 1, Chennai,
Room No. 118, Main Building - I Floor,
Chennai -Main Building,
No. 121, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

3.Deputy Commissioner Of Income Tax,
Non-Corporate Circle – 4(1), Chennai,
16 BSNL Building Tower – 2,
2nd Floor, Greams Road, Chennai-600 006.

Respondents in both W.Ps

PRAYER in WP No. 23086 of 2024:-Writ Petition filed under article 226 of the Constitution of India, praying for an issuance of Writ of Certiorari,_calling for the records on the file of the 1st respondent and quash the impugned guidelines in F. No. 285/08/2014-IT (Inv.-V)/196 dated 16.09.2022 issued by the 1st respondent as illegal and not in accordance with law.

PRAYER in WP No. 23094 of 2024:- Writ Petition filed under article 226 of the Constitution of India, praying for an issuance of Writ of Certiorarified Mandamus, calling for the records on the file of the 2nd respondent and quash the impugned order in ITBA/COM/F/17/2023-24/1062750868(1) dated 16.03.2024 under section 279(2) of the Income Tax Act 1961 for the assessment year 2013-14 passed by the 2nd respondent as illegal and not in accordance with law and direct to the 2nd respondent to restore the compounding application filed by the petitioner to the file of the 2nd respondent and to consider the compounding application in light of the provisions of section 279 of the Act.

In both W.Ps

For Petitioner(s): M/s.A.Sharren

For Respondent(s): Dr.B.Ramaswamy Senior Standing Counsel

COMMON ORDER

These writ petitions have been filed by the petitioner challenging the impugned guidelines in F.No. 285/08/2014-IT (Inv.-V)/196 dated 16.09.2022, issue by the 1st respondent and the impugned order dated 16.03.2024, passed by the 2nd respondent.

2.Learned counsel for the petitioner would submit that a criminal proceedings was initiated by the 3rd respondent against the petitioner for the default in filing return of income for the Assessment Year 2013-14 before the Economic Offences Court, Chennai Court on 27.07.2016 in EOCC No.118 of 2016 and the same is pending as on date before the Additional Chief Metropolitan Magistrate, EO – I, Egmore, Chennai.

3.Learned counsel for the petitioner would further submit that the petitioner filed an application for compounding the offences on 15.09.2023. However, the 2nd respondent vide impugned order dated 16.03.2024, rejected the compounding application of the petitioner on the ground of being barred by limitation as per the impugned guidelines in F.No. 285/08/2014-IT (Inv.-V)/196 dated 16.09.2022 issued by the 1st respondent which prescribes the period of limitation for filing compounding application as 36 months from the end of the month in which the complaint was filed.

4.Learned counsel for the petitioner would also submit that in the present case, the EOCC No.118 of 2016 is still pending before the Economic Offences Court, Egmore. She would submit the offence is compoundable in nature and pending criminal case cannot taken away the right of compounding the offence by way of fixing time limit for the filing the compounding application by virtue of the guidelines. As far as the said guideline is concerned, this Court has struck down Clause 7(ii) of the guideline stating that the said clause travels beyond the scope of the Act in the case of ***Jayashree vs. CBDT & Ors*** in **W.P.Nos.2968 &**

2970 of 2023 dated 03.11.2023 and the hence, the entire issue is covered by the decision of this Court in the ***Jayashree case (cited supra)***.

5.Dr.B.Ramaswamy, learned Senior Standing Counsel appearing for the respondents would submit that the issue in the present case is covered by the decision of this Court in W.P.Nos.2968 & 2970 of 2023 dated 03.11.2023.

6.Heard the learned counsel for the petitioner as well as the learned Senior Standing Counsel appearing for the respondents and perused the materials available on record.

7.For better appreciation, the relevant portion of the order dated 03.11.2023 passed by this Court in W.P.No.2968 & 2970 is extracted hereunder:-

> "11. I have given due consideration to the submissions made by the learned counsel for the petitioner as well as the respondents and perused the materials available on record, particularly the said circular and the case laws produced before this Court by the

petitioner as well as the respondents.

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 reinvested 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 suomoto 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 the prosecution.

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, 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. 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 petitioner.

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."

8.Therefore the 1st respondent/CBDT cannot come with a circular by fixing limitation for filing an application for compounding of offence which aspect was already elaborately dealt with in the order passed in ***Jayashree case (cited supra).***

9.Following the aforesaid order of this Court dated 03.11.2023, in W.P.No.2968 & 2970 of 2025, the rejection order dated 16.03.2024 passed by the 2nd respondent is set aside and the matter is remanded back to the 2nd respondent. The 2nd respondent shall take the compounding application filed by the petitioner on 15.09.2023 on record and decided the same on merits and in accordance with law.

10.With the above directions, these writ petitions are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

18-06-2025

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

To

1.The Central Board Of Direct Taxes,
Rep By Its Chairperson,
Department Of Revenue Ministry of Finance,
Government Of India, New Delhi.

2.Chief Commissioner Of Income Tax – 1, Chennai,
Room No. 118, Main Building - I Floor,
Chennai -Main Building,
No. 121, Mahatma Gandhi Road,
Nungambakkam Chennai-600034.

3.Deputy Commissioner Of Income Tax,
Non-Corporate Circle - 4(1) Chennai,
16 BSNL Building Tower – 2,
2nd Floor Greams Road, Chennai-600006.

KRISHNAN RAMASAMY J.

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