

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 8715 of 2018****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE AKIL KURESHI****and****HONOURABLE MR.JUSTICE B.N. KARIA**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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M/S SUPERNOVA SYSTEM PRIVATE LIMITED

Versus

CHIEF COMMISSIONER OF INCOME TAX 2

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Appearance:

DARSHAN R PATEL(8486) for the PETITIONER(s) No. 1

MRS MAUNA M BHATT(174) for the RESPONDENT(s) No. 1,2

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CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MR.JUSTICE B.N. KARIA

Date : 17/09/2018

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. Petitioner has challenged the computation of

compounding fees made by the respondents to enable the petitioner to avoid penalty proceedings.

2. Brief facts are as under.

3. Petitioner is a private limited company. For the assessment year 2008-09, the petitioner had filed the return of income declaring total income of Rs.17,18,090/- and claimed refund of Rs.6,68,460/-. During the course of scrutiny assessment, the Assessing Officer objected to the assessee's claim of deduction for the provisions of income tax of a sum of Rs.8.70 lakhs. The representative of the assessee accepted it as an error and agreed to such claim being disallowed. The Assessing Officer thereupon passed the order of assessment on 24.12.2010. He also instituted penalty proceedings. He passed an order of penalty under section 271(1)(c) of the Income Tax Act, 1961 ('the Act' for short) on 15.03.2013, in which, he imposed penalty at the rate of 100% of the tax sought to be evaded. He thus, levied penalty of Rs.2,61,000/-. Petitioner's appeal against such order was rejected. Subsequently, the Revenue issued a notice on 23.02.2017 for initiating

prosecution against the petitioner under section 276C(1) of the Act. Subsequently, the petitioner also received a notice dated 30.03.2017 from the concerned Magistrate. The petitioner thereupon applied to the Chief Commissioner of Income Tax on 05.09.2017 and requested that the offense be compounded. He offered to pay the compounding fees as may be prescribed. In response to such application of the petitioner, the department wrote to the petitioner on 20.03.2018 asking the petitioner to pay the compounding fees of Rs.10,49,000/- before 31.03.2018. It was conveyed that if the petitioner does not pay such amount within the prescribed time, the application for compounding would be rejected. Along with this letter, the department had attached an annexure which shows the detailed computation of such sum of Rs.10,49,000/- towards the total of compounding charges. This annexure reads as under:

S.No.	Description	
1	Name of the assessee	M/s Supernova Systems Pvt. Ltd.
2	Status	Pvt. Limited Company
3	PAN	AAECS 9195 B
4	Assessment year	2008-09
5	Date of passing penalty order u/s 271(1)(c) of the Act and issue of	15/03/2013

	demand notice	
6	Quantum of addition confirmed penalty 271(1)(c) of the Act	2,61,000/-
7	<p>Amount of compounding fees:</p> <p>i) 100% of amount sought to be evaded as per para-12.2 of compounding guidelines.</p> <p>(ii) Liability of Directors u/s 278B: 10% of compounding fees (Shri Trupti S Mistry who digitally signed the return of income)</p> <p>(iii) Prosecution establishment expenses @ 10% subject to minimum fees of Rs.25,000/-</p> <p>(iv) Litigation expenses (as per rates prescribed by the Govt)</p>	<p>Rs.8,70,000/-</p> <p>Rs. 87,000/-</p> <p>Rs. 87,000/-</p> <p>Rs. 5,000/-</p> <hr/> <p>Total: Rs.10,49,000/-</p>

4. The petitioner thereupon applied for rectification of this computation under a letter dated 23.03.2018. He referred to the provisions of section 276C of the Act and contended that the compounding charges would be 100% of the amount of tax sought to be evaded and not the amount of income sought to be evaded. In his opinion, the basic compounding charges should have been taken at Rs.2,61,000/- which was the additional tax levied by the Assessing Officer.

5. Since the department did not accept the petitioner's view point, the present petition came to

be filed.

6. Short question that calls for consideration is what would be the basic compounding charges that the petitioner must pay in order to avail the offer for compounding the offense. The primary facts are not in dispute. In the assessment of the petitioner's return, an addition of Rs.8.70 lakhs came to be made. This gave rise to additional tax of Rs.2.61 lakhs. A penalty of Rs.2.61 lakhs at the rate of 100% of the tax sought to be evaded was also imposed in terms of section 271(1)(c) of the Act.

7. Section 276C of the Act pertains to willful attempt to evade tax, etc. Sub-section (1) of which at the relevant time read as under:

276C. Wilful attempt to evade tax, etc.

(1) If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable,-

(i) in a case where the amount sought to be evaded exceeds twenty-five hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend

to two years and with fine.

8. Section 279 of the Act pertains to the prosecution to be at instance of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. Sub-section (1) of section 279 provides that a person shall not be proceeded against for offenses under various sections including section 276C of the Act except with the previous sanction of the Principal Commissioner or Commissioner or Commissioner (Appeals) or the appropriate authority. Sub-section (2) of section 279 provides that any offense under this chapter may, either before or after institution of the proceedings be compounded by the Principal Chief Commissioner or Chief Commissioner or Principal Director General or the Director General.

9. In terms of such compounding powers, the CBDT has been issuing circulars for providing guidelines for compounding offenses under the Act. We are concerned with the latest guideline issued on 23.12.2014 issued by the CBDT. This circular contains detailed provisions and procedure for compounding offenses under the Act.

10. Para 12 of the said circular pertains to fees for compounding. In the context of section 276C(1) of the Act, para 12.2 prescribes fees for compounding as under:

*"12.2 Section 276C(1)- Wilful attempt to evade tax etc.
100% of the amount sought to be evaded."*

11. Para 12.2 of the said circular thus prescribes compounding fees for offense under section 276C(1) at 100% of the amount sought to be evaded. This para also starts with an expression *"Section 276C(1)- Wilful attempt to evade tax etc."*. The title of this para thus, is taken from the section itself and the compounding fee is to be computed at the rate of 100% of the amount sought to be evaded. Since this para does not contain any specification of *"the amount sought to be evaded"*, we may fall back on the statutory provisions in relation to which, this compounding fee is prescribed. Sub-section (1) of section 276C, as noted, prescribes punishment for a person who willfully attempts in any manner to evade any tax, penalty or interest chargeable under the Act. This could be without prejudice to any penalty that may be imposable on him under any provisions of

the Act. Under such circumstances, as per the sections stood at the relevant time, the person concerned would be punishable;

(i) In case where the amount sought to be evaded exceeds Rs.250,000/-, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine and;

(ii) In any other case with rigorous imprisonment for a term which shall not be less than three months but which may extend to two years and with fine.

12. This provision thus while prescribing punishment for willful attempt to evade tax, penalty or interest chargeable, provides for a more severe punishment in case the amount sought to be evaded exceeds Rs.250,000/-. For the rest, punishment prescribed is lesser. This prescription of punishments in two categories is thus linked with the amount sought to be evaded. This amount sought to be evaded is in relation with the action of a person of a willful attempt to evade tax, penalty or interest chargeable.

In the prescription of punishment thus, when there is a reference to amount sought to be evaded, it must be seen in light of the willful attempt on the part of the concerned person to evade tax, penalty or interest. This provision thus, links the severity of punishment on the amount sought to be evaded and thus, in turn has relation to the attempt at evasion of tax, penalty or interest. Thus, when the CBDT circular refers to the amount sought to be evaded, it must be seen and understood in light of the provisions contained in section 276C(1) and in turn must be seen as amount sought to be evaded. 100% of tax sought to be evaded would be the basic compounding fees which in the present case would be Rs.2,71,000/- and not Rs.8,70,000/- as computed by the departmental authorities. The rest of the computation is consequential and automatic. The impugned communication dated 20.03.2018 is therefore set aside. The respondent shall carry out fresh computation of the petitioner's liability to pay compounding charges in terms of this order. We are informed that, to avoid any complication, the petitioner has under protest, paid up the entire

amount of Rs.10,49,000/- as demanded by the department. Once such fresh computation is made, the excess would be refunded by the department to the petitioner latest by 31.10.2018.

13. Petition is disposed of accordingly.

