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

\+ **W.P.(C) 6825/2016**

VIKRAM SINGH ..... Petitioner
Through: Mr. Ashish Mohan, Advocate.

versus

UNION OF INDIA & ORS. ..... Respondents
Through: Mr. P.C. Yadav, Advocate for R-1.
Mr. Rahul Kaushik, Advocate for R-2 & 3.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE NAJMI WAZIRI

O R D E R

% 11.04.2017

Dr. S. Muralidhar, J.:

1. The present writ petition was filed at a stage when the Petitioner's application for compounding of offences under Section 279 (2) of the Income Tax Act, 1961 ('Act'), was still pending with the Respondent Income Tax Department ('Department'). In response to the Petitioner's application filed on 1st April, 2016, he was sent the following communication on 26th April, 2016:

> *".... Sub: Application for compounding of offences u/s 276C(1)/276C(2)/ 277 of the Income-tax Act, 1961 for the Block Period 01/04/1986 to 1/11/1996 in the case of Sh. Vikram Singh (AANPS8704R) – reg.*
>
> *Kindly refer to your application dated 1/4/2016 for compounding of offences u/s 276C(1)/ 276C(2)/277 of the Income Tax Act, 1961 on the above captioned subject.*
>
> *2. On going through the above application, vide Column*

> *No. 9, wherein you have undertaken to pay the compounding charges, as shall be intimated by the Department. In this regard, it is informed to you that the total compounding charges of Rs.69,67,699/- (excluding counsel's fee and litigation expense that will be informed accordingly) payable in your case. Details of calculation of compounding charges is enclosed herewith.*
>
> *3. In this regard, you are requested to give your consent for compounding on an affidavit latest by 2/5/2016 in this office for submission of report to the Pr. CCIT, Delhi-1, New Delhi for necessary action at their end in the matter..."*

2. Appended to the said letter was a 'calculation of compounding charges'. In terms thereof, the Petitioner was required to pay a sum of Rs. 69, 67,699/- even for his application to be considered. This was purportedly in terms of a circular dated 23rd December, 2014 issued by the Central Board of Direct Taxes (CBDT) issuing the guidelines for compounding of offences under Direct Taxes Law & Practice, 2015. Inter alia, its title 'compounding procedure' under clause 11(v) states as under:

> *"...The competent authority shall pass the compounding order within 30 days of payment of compounding charges. Where compounding charge is not deposited within the time allowed, the compounding application may be rejected after giving the applicant an opportunity of being heard. The order of rejection shall be brought to the notice of the Court immediately through prosecution counsel in the cases where prosecution had been instituted...."*

3. The Petitioner contends that the above levy of compounding charges of nearly Rs. 70 lakhs, even before its application could be considered was exorbitant and without any authority of law. In those circumstances, the present writ petition was filed on 20th July, 2016 seeking the quashing of the

above circular dated 23rd December, 2014 and, in particular, para 12 thereof which sets out the fee for compounding.

4. In response to the notice issued in the present writ petition, a reply has been filed by the Department setting out the basis for calculation of the compounding charges. In para 8 of the said reply, it is stated as under:

> *".....8. That it is seen from the facts that the subject compounding application was filed before CCIT, Delhi-I on 1.4.2016. The Prosecution complaint under sections 276C(1) & 276C(2) were filed before the criminal court on 12.4.2006. The charges have already been framed by the Court. Thus, the compounding application under consideration was filed by the accused after about 10 years of filing the prosecution complaint. Para 8(vii) of the Revised Guidelines for compounding dated 23.12.2014 provides that offences Committed by a person for which prosecution complaint was filed by the Department with the competent court 12 months prior to receipt of the compounding application are generally not to be compounded...."*

5. Enclosed with the counter affidavit is an order dated 03rd November, 2016 passed by the Chief Commissioner of Income Tax (CCIT) declining the Petitioner's application for compounding of offences under Section 275C(1), 276C(2) & 277 of the Act for the block period 1st April, 1996 to 1st November, 1996 on the ground that "*there is inordinate delay of 9 years in filing of application for compounding of offences by the assessee*".

6. On the strength of the above order, it is urged by Mr. Rahul Kaushik, the learned counsel for Respondent Nos. 2 and 3 that the rejection of the application for compounding was not on the ground of failure to pay the

compounding fee, but on the ground of the delay in filing the application.

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*".

8. 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.

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.

10. The reason given in the impugned order dated 3rd November, 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 3rd November, 2016 of the CCIT 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 CCIT.

11. That brings us back to the Petitioner's principal prayer regarding the validity of the circular dated 23rd December 2014 of the CBDT and in

particular para 12 thereof which sets out the compounding fee.

12. Mr. Rahul Kaushik, learned counsel for the Department, in seeking to justify the levy of the compounding fee in advance, placed reliance on the decision of the Supreme Court in ***Y.P. Chawla v. M.P. Tiwari (1992) 195 ITR 607 (SC)*** where the Supreme Court while setting aside the judgment of this Court in ***M.P. Tiwari v. Y.P. Chawla (1991) 187 ITR 506 (Del)*** took note of the insertion of the following Explanation under Section 279 of the Act inserted with retrospective effect from 1st April, 1962:

> *"Explanation. – For the removal of doubts, it is hereby declared that the power of the Board to issue orders, instructions or directions under this Act shall include and shall be deemed always to have included the power to issue instructions or directions (including instructions or directions to obtain the previous approval of the Board) to other income-tax authorities for the proper composition of offences under this section...."*

13. The Supreme Court reversed the judgment of this Court on the facts of that case and held that the CBDT had the power to issue instruction to authorities, other than the Income Tax authorities, in the matter of compounding of offences. However, that judgment does not answer the principal question that arises for consideration in the present writ petition, viz., whether on the strength of the above Explanation to Section 279 of the Act the CBDT can issue instructions requiring an applicant seeking compounding of an offence, to pay upfront the compounding fee even before the application for compounding can be considered on merits? It would appear from para 11(v) of the impugned Circular dated 23rd December 2014 of the CBDT that where an applicant seeking compounding

of the offences does not pay the compounding fee upfront, his application need not be considered at all.

14. The Court finds nothing in Section 279 of the Act or the Explanation thereunder to permit the CBDT to prescribe such an onerous and irrational procedure which runs contrary to the very object of Section 279 of the Act. The CBDT cannot arrogate to itself, on the strength of Section 279 of the Act or the Explanation thereunder, the power to insist on a 'pre-deposit' of sorts of the compounding fee even without considering the application for compounding. Indeed Mr Kaushik was unable to deny the possibility, even if theoretical, of the application for compounding being rejected despite the compounding fee being deposited in advance. If that is the understanding of para 11(v) of the above Circular by the Department, then certainly it is undoubtedly *ultra vires* Section 279 of the Act. The Court, accordingly, clarifies that the Department cannot on the strength of para 11(v) of the Circular dated 23rd December 2014 of the CBDT reject an application for compounding either on the ground of limitation or on the ground that such application was not accompanied by the compounding fee or that the compounding fee was not paid prior to the application being considered on merits.

15. The question of payment of the compounding fee, if any, would arise, only if upon considering the application on merits, the Department is of the view that the prayer should be allowed subject to terms that are reasonable and subserve the object of Section 279 of the Act.

16. The further and larger question that remains to be answered is whether in

the garb of a Circular the CBDT can prescribe the compounding fee in the absence of such fee being provided for either in the statute or prescribed under the rules. However, at this stage when the Petitioner's application is yet to be decided afresh, the said question may be academic. The Court, accordingly, while directing the CCIT to consider afresh the Petitioner's application for compounding of offence under Section 279 of the Act and communicate to the Petitioner the decision thereon in writing consistent with the present judgment, within a period of six weeks from today, leaves it open to the Petitioner to urge the larger question which has not been decided in this writ petition in the event that the Petitioner is aggrieved by the fresh order passed by the CCIT.

17. The writ petition is disposed of in the above terms.

S.MURALIDHAR, J

NAJMI WAZIRI, J

APRIL 11, 2017
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