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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 21032 OF 2024

M/s. L. T. Stock Brokers Pvt. Ltd.

...Petitioner

Versus

The Chief Commissioner Of
Income Tax - 2, Mumbai

...Respondent

Mr Mayur Vinod Faria a/w Mr Harshal Hasmukh Savla, for
the Petitioner.

Ms Shilpa Goel, for the Respondent.

CORAM M.S. Sonak &
Jitendra Jain, JJ.

DATED: 4 March 2025

ORAL JUDGMENT (Per M.S.Sonak,J):-

1. Heard learned counsel for the parties.
2. Rule. The rule is made returnable immediately at the request of and with the consent of learned counsel for the parties.
3. The petitioner challenges the Chief Commissioner's order dated 17 January 2024, made under Section 279(2) of the Income-tax Act, 1961, dismissing the petitioner's application for compounding the offence.
4. On perusing the impugned order, we find that the Chief Commissioner has dismissed this application on the sole ground that it was filed beyond 36 months from the date of

filing of the complaint against the petitioners. The Chief Commissioner has relied upon paragraph 9.1 of CBDT guidelines dated 16 November 2022 for compounding offences under the Income Tax Act 1961.

5. Paragraph 9 of the CBDT guidelines dated 16 September 2022 reads as follows:

9. Relaxation of time

9.1 The restrictions imposed in Para 7(ii) of these Guidelines for compounding of an offence in a deserving case may be relaxed with the approval of the Pr. Chief Commissioner of Income tax of the Region wherein lies the jurisdiction of the case, for application filed beyond 24 months but before 36 months from the end of month in which complaint was filed in a court.

9.2 However, in all such cases where relaxation has been provided in this Para, the compounding charges would be @1.5 times of the normal compounding charges as applicable to the offence on the date of filing of the original compounding application.

6. The Co-ordinate bench of this Court in its judgment and order dated 18 July 2023 disposing of the ***Writ Petition (L) No.14574 of 2023 (Sofitel Realty LLP and Ors Vs Income-tax Officer (TDS) and Ors)*** had the occasion to consider similar CBDT guidelines dated 23 December 2014. In the context of such guidelines and clauses like Clause 9 of the 2022 guidelines, this Court held that since the Income-tax Act had provided for no period of limitation to apply for compounding, such period could not have been introduced through guidelines. In any event, no rigid timeline could have been introduced through such guidelines. This Court held that the compounding application could not have been rejected on delay alone.

The observations of the Madras High Court in the case of

Kabir Ahmed Shakir Vs The Chief Commissioner of Income Tax & Ors have a similar effect.¹ This decision was made in the context of the 2022 CBDT guidelines.

7. Ms. Shilpa Goel, learned counsel for the revenue, however, submitted that even where no limitation is prescribed by the State, the application has to be filed within a reasonable period. She submits that the guidelines only specified what would be reasonable period in the given case. Further, she referred to the decision of the Hon'ble Supreme Court in the case of ***Vinubhai Mohanlal Dobarla Vs Chief Commissioner of Income Tax & Anr.***² and submitted that the CBDT guidelines of 2014 were upheld by the Hon'ble Supreme court, including, the paragraph which has prescribed limitation period to file application for compounding.

8. She emphasized on paragraph 79 of this decision. Para 79 reads as follows:

A plain reading of the 2014 guidelines reveals that while it is mandatory that the eligibility conditions prescribed under Paragraph 7 are to be satisfied, the restrictions laid down in Paragraph 8 have to be read along with Paragraph 4 of the Act which provides that the exercise of discretion by the competent authority is to be guided by the facts and circumstances of each case, the conduct of the appellant and nature and magnitude of offence. Seen thus, it becomes clear that the restrictions laid down in Paragraph 8 of the guidelines are although required to be generally followed, the guidelines do not exclude the possibility that in a peculiar case where the facts and circumstances so require, the competent authority cannot make an exception and allow the compounding application.

9. The above paragraph states that para 8 of the 2014 guidelines [which had referred to the period of limitation]

1 Writ Petition No.17388 of 2024 decided on 30 August 2024.

2 Civil Appeal No.1977 of 2025 decided on 7 February 2025

does not exclude the possibility that in the peculiar case where the facts and circumstances so required, the competent authority should consider the explanation and allow the compounding application. This means that notwithstanding the so-called limitation period, in a given case, the competent authority can exercise discretion and allow compounding application.

10. The competent authority has treated the guidelines as a binding statute in the present case. On the sole ground that the application was made beyond 36 months, the same has been rejected. The competent authority has exercised no discretion as such. The rejection is entirely premised on the notion that the competent authority had no jurisdiction to entertain a compounding application because it was made beyond 36 months. Such an approach is inconsistent with the rulings of this Court, Madras High Court and the Hon'ble Supreme Court ruling in the case of ***Vinubhai Dobaria (Supra)*** relied upon by the learned counsel for the revenue.

11. On the above short ground, we set aside the impugned order dated 17 January 2024 and direct the Chief Commissioner to reconsider the petitioner's application for compounding in the light of observations made by the Hon'ble Supreme Court in ***Vinubhai Dobaria (Supra)***. This means that the Chief Commissioner will have to consider all facts and circumstances and decide whether such facts make out the case for exercising discretion in favour of compounding the offence. All contentions of all parties on merits are accordingly left open for decision by the Chief Commissioner in the first

instance.

12. The rule is made absolute in the above terms without any cost order.

(Jitendra Jain, J)

(M.S. Sonak, J)