

Jayshree vs The Central Board Of Direct Taxes on 3 November, 2023

Author: Krishnan Ramasamy

Bench: Krishnan Ramasamy

W.P.No.2968 & 29

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2023

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.2968 & 2970 of 2023

and

W.M.P.Nos.3070, 3072 & 3074 of 2023

Jayshree

... Petitioner in bo

Vs.

1.The Central Board of Direct Taxes,
Represented by its Chairperson,
Department of Revenue-Ministry of Finance,
Government of India,
New Delhi.

2.Chief Commissioner of Income Tax-1, Chennai,
Aayakar Bhavan, Main Building,
3rd Floor, Mahatma Gandhi Salai,
Chennai-600 034.

3.Income Tax Officer,
Non-Corp.Ward 11(3), Chennai,
16 BSNL Building Tower-2,
2nd Floor, Greams Road,
Chennai – 600 006.

... Respondents in both p

Prayer in W.P.No.2968 of 2023:

Writ Petition filed under Article 226 of the Constitution for the issuance of a Writ of Certiorari, calling for the records on the file of the Respondent and quash the impugned guidelines in F.No.285/08/2014-IT(Inv.V)/147 dated 14.06.2019.

Prayer in W.P.No.2970 of 2023:

Writ Petition filed under Article 226 of the Constitution for the issuance of a Writ of Certiorari, calling for the records on the file of the respondent and quash the impugned order in ITBA/COM/F/17/2022-23/1045029844(1) dated 20.08.2022 under Section 279(2) of the Income Tax Act, 1961 passed by the 2nd respondent.

For Petitioner
in both petitions : Mr.R.Sivaraman

For Respondents
in both petitions : Dr.B.Ramaswamy,
Senior Standing Counsel

COMMON ORDER

The writ petition in W.P.No.2970 of 2023 has been filed challenging the impugned order dated 20.08.2022 passed by the 2nd respondent. <https://www.mhc.tn.gov.in/judis> W.P.No.2968 & 2970 of 2023

2. The writ petition in W.P.No.2968 of 2023 has been filed challenging the circular dated 14.06.2019 issued by the 1st respondent.

3. The learned counsel for the petitioner would submit that the petitioner had purchased a property in the year 2006 and sold the same in the year 2013. Thereafter, in the same year (2013), she had purchased another property. Therefore, she was under the impression that since she is not an income tax assessee and she had re-invested the capital gain of her sale consideration in another property, she is not liable to pay any income tax to the respondents and hence, she had not filed the income tax returns. However, though the petitioner had not filed her income tax returns on time for the assessment year 2013-2014, she had filed the same belatedly on 13.06.2019. Under these circumstances, the respondent had launched the prosecution against the petitioner on 14.09.2016 for delay in filing of Income Tax Returns for the assessment year 2013-14.

4. At this juncture, in terms of the provisions of the Section 279(2) of the Income Tax Act, 1961 (hereinafter called as “IT Act”), the petitioner had filed an application before the respondents for compounding of offences. <https://www.mhc.tn.gov.in/judis> W.P.No.2968 & 2970 of 2023 However, the said application was rejected for the reason that the same was filed beyond the prescribed time limit, i.e., a period of 12 months from the date of launching of prosecution, which was fixed by the 1st respondent vide circular F.No. 285/08/2014-IT(Inv.V)/147 dated 14.06.2019 (hereinafter called as “ the said circular”) .

5. The learned counsel for the petitioner would contend that as per Section 279(2) of the IT Act, there is no provision with regard to the fixation of time limit for filing the application for compounding of offences. Hence, the time limit of 12 months is fixed by CBDT circular only to restrain the rights of the petitioner to file the application for compounding of offences and the same is contrary to the provisions of Section 279(2) of the IT Act. Therefore, since the said circular was issued beyond the scope of the Act, the same is liable to be quashed. However, without considering all these aspects, the respondents had passed the impugned order dated 20.08.2022 by non-application of mind. Hence, the present writ petitions have been filed by the petitioner.

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6. In support of his contentions, he had referred to the following judgments of other High Courts, wherein the provisions of the circular, with regard to the fixation of the time limit of a period 12 months from the date of prosecution, was struck down and the order of rejection of application for compounding of offences was set aside:

(i) Footcandles Film Pvt. Ltd., and another vs. Income Tax Officer-TDS-1 and others, in W.P.No.429 of 2022;

(ii) Vikram Singh vs. Union of India, reported in [2017] 80 taxmann.com 371 (Delhi);

7. Per Contra, Dr.B.Ramaswamy, the learned Senior Standing counsel appearing for the respondent had vehemently opposed the submissions of the learned counsel for the petitioner by stating that in terms of Section 119 of the IT Act and the proviso to explanation of Section 279 of the IT Act, the CBDT is empowered to issue any guidelines, circular or notifications for the purpose of proper implementation of the Act.

8. Further, he had referred to the Judgments of the Hon'ble Apex Court and other High Courts, which reads as follows:

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(i) Y.P.Chawla Tiwari & Others vs. M.P.Tiwari and another reported in (1992) 2 SCC 672;

(ii) Dattatraya Govind mahajan vs. State of Maharashtra reported in (1977) 2 SCR 790;

(iii) Anil Batra vs. Chief Commissioner of Income Tax, judgement passed by Delhi High Court on 27.07.2011;

(iv) Sports Infratech (P) Ltd. vs. Deputy Commissioner of Income Tax in W.P.(c)No.3397 of 2016 vide judgement dated 03.01.2017;

(v) Government of India, Ministry of Finance, Department of Revenue (Central Board of Direct Taxes) Vs R.Inbavalli, judgement passed by Madras High Court;

9. By referring the aforesaid judgments of the Hon'ble Supreme Court and other High Courts, he would submit that though none of the judgment had dealt with regard to the power of CBDT to fix the time limit of 12 months for filing of application for compounding of offences, it was held therein that the CBDT can pass the appropriate guidelines and issue circulars.

10. He would also submit that since the said circular was issued by CBDT within the power provided under the provisions of IT Act, the petitioner is bound to the provisions of the said circular and hence, taking all <https://www.mhc.tn.gov.in/judis> W.P.No.2968 & 2970 of 2023 these facts into consideration, the Authorities concerned has rightly rejected the application filed by the petitioner for compounding of offences. Therefore, he prayed for the dismissal of these writ petitions.

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 re- invested 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.

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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 suo- moto 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.”
<https://www.mhc.tn.gov.in/judis W.P.No.2968 & 2970 of 2023>

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 <https://www.mhc.tn.gov.in/judis> W.P.No.2968 & 2970 of 2023 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 <https://www.mhc.tn.gov.in/judis> W.P.No.2968 & 2970 of 2023 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 occasions 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 <https://www.mhc.tn.gov.in/judis> W.P.No.2968 & 2970 of 2023 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. <https://www.mhc.tn.gov.in/judis> W.P.No.2968 & 2970 of 2023

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.

26. With the above directions, these writ petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are also closed.

03.11.2023 veda/nsa Index : Yes / No Speaking order/Non-Speaking order Neutral Citation : Yes / No <https://www.mhc.tn.gov.in/judis> W.P.No.2968 & 2970 of 2023 To

1.The Central Board of Direct Taxes, Represented by its Chairperson, Department of Revenue-Ministry of Finance, Government of India, New Delhi.

2.Chief Commissioner of Income Tax-1, Chennai, Aayakar Bhavan, Main Building, 3rd Floor, Mahatma Gandhi Salai, Chennai-600 034.

3.Income Tax Officer, Non-Corp.Ward 11(3), Chennai, 16 BSNL Building Tower-2, 2nd Floor, Greaves Road, Chennai – 600 006.

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veda/nsa W.P.No.2968 & 2970 of 2023 and W.M.P.Nos.3070, 3072 & 3074 of 2023 03.11.2023 <https://www.mhc.tn.gov.in/judis>