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

Date of Decision: 25.02.2022

+ **W.P.(C) 2356/2020**

JAI SINGH GOEL Petitioner
Through: Mr.Satyen Sethi and Mr.Arta
Trana Panda, Advs.
versus

CHIEF COMMISSIONER OF INCOME TAX(CENTRAL)
& ANR. Respondents
Through: Ms.Vibhooti Malhotra, Sr. SC
with Mr.Shaliender Singh, Jr.
SC, Mr.Udit Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. The present writ petition has been filed by the petitioner challenging the orders dated 21.08.2018 passed by the respondent no.1 rejecting the application of the petitioner seeking compounding of the offence under Section 276CC read with Section 278E of the Income Tax Act, 1961 (hereinafter referred as the 'Act') for the Assessment Years 2008-09 to 2013-14, as also the order dated 29.01.2020 dismissing the application seeking review of the order dated 21.08.2018.

2. By way of the impugned Order dated 21.08.2018, the respondent no.1 rejected the prayer of the petitioner for compounding

of the offences under Section 276CC read with Section 278E of the Act on the ground that the application seeking compounding of the offences has not been filed within the stipulated time and that the petitioner already stood convicted vide order dated 19.02.2018 passed by the learned Additional Chief Metropolitan Magistrate (Special Acts) Central, Tis Hazari Courts, Delhi (hereinafter referred to as 'ACMM') in CC No.535107/2016.

3. The petitioner filed an appeal challenging the order dated 19.02.2018 passed by the learned ACMM. In the said appeal, the petitioner also filed an application under Section 391 of the Code of Criminal Procedure placing on record the assessment and the appellate orders passed for the relevant assessment years, that is, 2008-09 to 2013.14. Simultaneously, the petitioner also filed an application seeking review of the order dated 21.08.2018 before the respondent no.1.

4. In the appeal, the learned Special Judge-03, CBI (PCT Act), Delhi, vide order dated 03.12.2018, set aside the conviction and order of sentence, directing the learned ACMM to consider the fresh documents filed by the petitioner and pass fresh order in the trial.

5. In spite of the conviction having been set aside, the respondent no.1, vide Impugned Order dated 29.01.2020, rejected the application seeking review of the order dated 21.08.2018 filed by the petitioner, observing that the conviction of the petitioner is still open for adjudication and the petitioner has not been acquitted of the criminal charges. The relevant observation of the respondent no.1 in the impugned order is reproduced herein below:

“4. I have considered the claim of the applicant assessee that the Hon’ble Special Judge, CBI-03 (PC Act) vide his order dated 03.12.2018 in criminal appeal no. 126/2018 had set aside the order of conviction of the lower court. It is seen that the conviction of the applicant had been set aside with the directions that certain documents which were purported to be filed by the assessee before the lower court and could not be filed, should be filed by given date. It only means that conviction of the applicant decided by the lower court was still open for adjudication and does not mean that the assessee has been acquitted of the criminal charges filed by the department. In these circumstances, the assessee’s prayer for reviewing the compounding is hereby rejected.”

6. Learned counsel for the petitioner submits that the Central Board of Direct Taxes (hereinafter referred to as ‘CBDT’) vide Circular No.25/2019 dated 09.09.2019 has given one time concession relaxing the period of 12 months from the filing of the complaint as limitation for filing of the applications seeking compounding as prescribed in para 8(vii) of the Guidelines for Compounding of Offences under Direct Tax Laws, 2014 dated 23.12.2014 or in view of para 7(ii) of the Guidelines for Compounding of Offences under Direct Tax Laws, 2019 dated 14.06.2019, provided such application is filed on or before 31.12.2019 and the offence is not one which is generally/normally not compoundable. He submits that as the application seeking compounding of offence and the review application were filed before 31.12.2019 and the offence alleged against the petitioner were otherwise compoundable, the objection of limitation taken by the respondent no.1 in its impugned order dated 21.08.2018, no longer survives.

7. He further submits that the rejection of the review application is on totally fallacious ground inasmuch as the conviction has been set aside by the learned Special Judge and merely because the trial is now pending, the compounding application cannot be rejected.

8. On the other hand, the learned counsel for the respondents submits that in the facts of the present case, the petitioner is not entitled to compounding of offences inasmuch as there was a deliberate delay by the petitioner in filing the returns.

9. We have considered the submission made by the learned counsels for the parties. As noted hereinabove, the Impugned Order dated 21.08.2018 rejects the application of the petitioner seeking compounding of offence on two grounds:

- i) That the application has been filed beyond the period of limitation;
- ii) The petitioner already stands convicted by the Competent Court.

10. As far as the ground of limitation is concerned, in view of the CBDT circular dated 09.09.2019, the said objection does not survive any further. As far as the conviction is concerned, in view of the order dated 03.12.2018 passed by the learned Special Judge, the said objection also no longer survives as the conviction has been set aside.

11. As far as the Impugned Order dated 29.01.2020 dismissing the application seeking review is concerned, we find that the reason given is untenable in law. The conviction having been set aside by the learned Special Judge, application seeking compounding of the offence cannot be rejected on the ground that the petitioner has not

been acquitted of the criminal charges. In fact, such application is premised on the fact that the petitioner is facing such criminal charge and not been acquitted thereof.

12. As far as the submissions of learned counsel for the respondents that on facts of the case the petitioner is not entitled to seek compounding of the offence, as the applications have been dismissed without considering the merit of the same, we refrain from expressing any opinion thereon. It shall be open to the respondent no.1 to consider the application filed by the petitioner seeking compounding of the offences on its own merit and in accordance with law.

13. In view of the above, the Impugned Order dated 21.08.2018 and 29.01.2020 are set aside. The respondent no.1 is directed to consider the application of the petitioner seeking compounding of the offence under Section 276CC read with Section 278E of the Act for the Assessment Years 2008-09 to 2013-14 on merit and in accordance with law.

14. The petition is disposed of in the above terms. There shall be no order as to cost.

NAVIN CHAWLA, J

MANMOHAN, J

FEBRUARY 25, 2022