



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

+ **W.P.(C) No. 4673/2010**

% Reserved On: JULY 05, 2011
Judgment Delivered On: JULY 27, 2011

ANIL BATRA

... Petitioner

Through: Mr. Viraj R. Datar, Advocate for the petitioner.

Versus

CHIEF COMMISSIONER OF INCOME TAX

... Respondent

Through: Mr. Anupam Tripathi, Standing Senior Counsel with Ms. Anusha Singh, Advocates for the respondent.

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI

HON'BLE MR. JUSTICE M.L.MEHTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

M.L.MEHTA, J.

1. The Petitioner is the Managing Director of M/s Anil Batra and Associates Private Limited. During the AY 1982-83, tax deducted at source by the company was deposited beyond the period prescribed by law. Similarly, during AY 1983-84 and 1984-85 also, the company deposited the tax beyond the period prescribed by law. That being so,



the Income Tax Department filed complaints dated 27.03.1986 against the Company & Directors under section 276B of Income Tax Act before the Court of CMM for all the three Assessment Years. The complaint for the Assessment Year 1982-83 is still at trial stage. As regards the complaints for the years 1983-84 and 1984-85, the Ld. ACMM awarded simple imprisonment of three months for the two Directors of the company and a fine of ₹ 7,000/- on the company and its two directors. Against this order, the Department has filed a revision petition for enhancement of sentence, and the petitioner has filed appeal against the conviction, both of which are pending before the Addl. Session's Judge, Delhi.

2. On 31.05.1986, (two months after the complaint was filed by the Income Tax Department) the petitioner moved an application before the department for compounding of offence under section 276B, which was rejected by the CBDT vide letter dated 16.01.1987.

3. On 29.07.2003, the CBDT issued a Circular whereby Guidelines for Compounding were reviewed in the light of past experiences and future needs. The petitioner received a letter dated 25.09.2003 and copy of guidelines. The petitioner replied the same vide letter dated 29.09.2003, expressing his willingness to compound the offence and requesting the Department to communicate the amount of compounding fees so that the same could be deposited at the earliest. The petitioner, however, received no reply from the department in this regard.



4. The petitioner, through its Chartered Accountants, sent a detailed proposal dated 17.11.2003 to the Department after calculating the approximate Compounding Fee applicable for each of the three years. Again, the petitioner received no reply from the Department.

5. The petitioner thereafter filed two petitions before this court, (which were clubbed together), praying *inter-alia* for staying of appeal proceedings pending before the Addl. Session's Judge, subject to the outcome of the disposal of the petitioner's compounding petition before the Income Tax Department. This court disposed of the same vide order dated 28.07.2005 in the following terms:

"In view of the same, petitioner is directed to appear before Commissioner of Income-Tax, Delhi-I, C.R.Building on 22.08.2005 or any other date, that may be convenient to the Commissioner, who shall adjudicate as to what amount is liable to be deposited by the petitioner, and pass appropriate orders regarding compounding of the offence. Petitioner shall deposit the balance amount within one week thereafter. Learned counsel for the respondent submits that petitioner be directed to deposit the amount which according to him is due and payable. Ordered accordingly."

6. Armed with this order, the petitioner through his representative approached the competent authority and put up his case for compounding of offences of all the three assessment years. However, the competent authority vide its detailed order dated 30.01.2006 rejected the compounding petition of the petitioner. While doing so, the competent authority reasoned as under:



"It will be pertinent here to mention that the assessee has been convicted for the A.Y.'s 1983-84, an 1984-85 by the Ld. ACMM who has awarded simple imprisonment of three months for the two Directors and a fine of ₹7,000/- on the company and the two Directors. The Department has filed a revision petition before the Hon'ble Sessions Judge, Delhi requesting for enhancement of the sentence. The assessee has also filed appeals before the Hon'ble Sessions Judge against the conviction. These petitions are still pending for disposal. The complaint filed for A.Y. 1982-83 is still at the trial stage.

After considering all the facts and materials of the case and the submission made by the counsel for the assessee I find that there is no material change in the facts of the case, since the disposal of earlier applications by the CBDT as well as the Chief Commissioner of Income Tax Delhi-I. Moreover, it is to be noted that the assessee has already been convicted for A.Y.'s 1983-84 and 1984-85 by a competent Court and the department is already in revision before a higher court for enhancement of punishment. The offence committed in the period relevant to AY 1982-83 is of similar nature as for other two years and the case is already under trial. In such circumstances in the interest of justice as well as judicial propriety it will not be prudent on my part to compound these offence at this stage. Therefore, the compounding petition of the assessee for all the three years is, hereby rejected."

7. The petitioner has impugned the order dated 30.01.2006 of the CCIT. Learned counsel for the petitioner contends that the CCIT was under an obligation to compound the offence in view of the order dated 28.07.2005 passed by this Court directing the CIT to adjudicate as to what amount is payable to be deposited by the petitioner. He also contends that in view of the amended guidelines, the offences



being technical in nature were eligible for compounding. He also contends that the proceedings for compounding of offence were proposed by the respondent itself vide its letter dated 25.09.2003. On the other hand, learned counsel appearing for the respondent submits that the offences were not compoundable since the complaints had already been filed against the petitioner and in two of those the petitioner stood convicted by the competent court.

8. With regard to the contention of the learned counsel for the petitioner that the CCIT has violated the order dated 28.07.2005 in failing to comply the terms and adjudicate as to the amount of compounding fee, it is seen that this order came to be passed by this Court on the submissions made by learned counsel for the petitioner that the TDS amount has already been deposited and that the petitioner was ready and willing to deposit any additional cost and compounding fee that may be imposed. That order cannot be construed to mean that the terms were to be effected and compounding fee charged, even if the offence was not compoundable. The order also states that the Commissioner is to pass appropriate orders regarding compounding of the offence. This cannot be interpreted to mean that the Commissioner was directed to compound the offence without considering if the same was compoundable or not.



9. After the existing guidelines dated 30.09.1994 for compounding of offences came to be revised vide notification dated 29.07.2003, a letter dated 25.09.2003 was issued by the ITO to the petitioner intimating the revised guidelines. Copy of the guidelines dated 29.07.2003 was also sent to the petitioner for perusal. The submission of the learned counsel that it was a proposal sent by the Department to compound the offence is untenable inasmuch as this was nothing more than intimation to the petitioner regarding revision of guidelines for compounding of offences. It is also noted here that the petitioner made his own estimate of the compounding fee and the interest and deposited ₹11,388, ₹58,208 and ₹29,215/- on these counts for the three assessments years in question. The revised guidelines dated 29.07.2003 mentioned about the existing guidelines dated 30.09.1994 and also the amendments made therein. Part A of the revised guidelines is related to procedural amendments which are reproduced hereunder:

“(A) **Procedural Amendments:**

- (1) *under the existing guidelines, Technical Offences (enlisted in para 2.2 of the said Guidelines) are to be compounded by the Chief Commissioner of Income Tax or Director General of Income Tax (Inv.) (as the case may be), if following conditions are collectively satisfied:*



- (i) It is the first offence by the assessee.*
- (ii) The compounding charges do not exceed ₹40 lakh.*
- (iii) The offence is compounded only before the filing of complaint.*

In all other cases, the technical offences as per existing Guidelines are to be compounded with the approval of the Board.

In this regard, it has now been decided that

- (a) All types of cases relating to technical offences are to be compounded by CCIT/DGIT.*
 - (b) distinction between first offence and subsequent offence is removed; and*
 - (c) CCIT/DGIT shall not reject an application for compounding of a technical offence, if all conditions prescribed in the Guidelines are satisfied.*
- (II) Para 5 (iii) of the existing Guidelines provides that for compounding of substantive / non-technical, in which the amount involved in the offence exceeds ₹1 lakh, the Board shall grant approval if Ministry of Law advises that the chances of successful prosecution are not good. This requirement of referring the matter to the Ministry of Law has now been done away with."*



10. From the above, it may be seen that under the existing guidelines of 30.09.1994 (enlisted in para 2.2. of the said Guidelines), technical offences could be compounded by CCIT or DGIT if the three conditions were collectively satisfied namely (i) it is the first offence by the assessee; (ii) the compounding charge did not exceed ₹40 lac and (iii) the offence is compounded only before the filing of complaint. In all other cases, the technical offences as per the existing guidelines could be compounded with the approval of the Board. The amendment which came to be made in the revised guidelines of 29.07.2003 was to the effect that instead of the approval of the Board, all types of cases relating to technical offences could be compounded by CCIT and DGIT. Further distinction between first and subsequent offence was also removed. It was also specifically provided that CCIT/DGIT shall not reject an application for compounding of technical offence, if all conditions prescribed in the guidelines are satisfied.

11. Thus, it is seen that the condition that offences could be compounded only before the filing of the complaint remained unaltered in the revised guidelines of 29.07.2003. The amendment specifically stipulates that all the conditions prescribed are required to be satisfied for compounding of a technical offence. The learned counsel draws our attention to Clause-3 of the revised Guidelines of 29.07.2003 and submits that the compounding could be done even if the cases are pending in the Court. The Clause-3 thereof reads as under:



“3. Above amendments shall be applicable to future as well as to cases pending at any stage. However, the offences already compounded shall not be reconsidered.”

12. The interpretation of the aforesaid Clause as presented by learned counsel is erroneous and misplaced. The plain and literal interpretation of the aforesaid Clause would only mean that the amendments made in the existing guidelines on 29.07.2003 would be applicable to the future as well as to the cases pending at any stage and that the offences already compounded shall not be reconsidered. In other words it would mean that it was the applicability of the amendments to the future as also to the cases pending and not that the compounding would be allowed even after the filing of the complaint or where the person has already been convicted by a competent court. The conditions stipulated for compounding of a technical offence being very clear and unambiguous, compounding of such an offence was not permissible after filing of the complaint. Undisputedly, three complaints have already been filed against the petitioner and in two of those, the petitioner stands convicted by the competent court. The revisions for enhancement of punishment have been filed by the Department and the appeals against the conviction have also been filed by the petitioner. Those revisions and the appeals are pending before the Appellate Court. One of the complaints is also still pending trial before the learned ACMM. That being the factual matrix, offence could not be said to be compoundable at this stage. In that fact situation, the competent



authority was not bound to effect compounding in violation of the mandatory prohibitions prescribed therefor.

13. In view of all this, no directions can be given by this Court to the competent authority to effect compromise or adjudicate compounding fee. The petition merits dismissal and is accordingly dismissed.

**M.L.MEHTA
(JUDGE)**

**A.K. SIKRI
(JUDGE)**

JULY 27, 2011
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