

**ORDER RESERVED ON :26.04.2017
ORDER DELIVERED ON:05.07.2017**

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05..7..2017

CORAM

THE HONOURABLE **MR. JUSTICE RAJIV SHAKDHER**
And
THE HONOURABLE **MR. JUSTICE R.SURESH KUMAR**

**W.A.Nos.132 & 455 of 2017 and
C.M.P.No.2244 of 2017 in W.A.No.132/17**

1. The Government of India
Ministry of Finance,
Department of Revenue,
(Central Board of Direct Taxes),
E2, ARA Centre,
Jhandewalan Extension, New Delhi,
Rep. By Joint Commissioner of
Income Tax (OSD), (Inv.V.), CBDT.

2. The Income Tax Officer,
Business Ward X (1),
Chennai – 600 006.

...Appellants in W.A.No.132/17 &
Respondents in W.A.No.455/17

-Vs-

R.Inbavalli

...Respondent in W.A.No.132/17 &
Appellant in W.A.No.455/17

Common Prayer : Writ Appeals filed under Clause 15 of Letters Patent, praying to set aside the order passed by the learned Judge passed in W.P.No.24588 of 2016 dated 18.08.2016.

For Appellant in W.A.No.455/17 &
Respondent in W.A.No.132/17 : Mr.G.Jayachandran

For Respondent in W.A.No.455/17 &
Appellant in W.A.No.132/17 : Mr.T.Ravikumar

JUDGMENT

(Order of the Court was delivered by **R.SURESH KUMAR ,J.**)

This is a case, where, the Revenue seeks to assail the directions issued by the learned Single Judge to the concerned statutory authority to exercise his powers of compounding the offence, in a case of an Assessee, who is suffering from dementia and other physical ailments, is a widow, and has otherwise liquidated the demand raised against her, in its entirety.

2. What surprises us is the vigour, with which, the Revenue is contesting this matter, whereas, in at least two other instances, such power has been exercised by the Revenue, even when, appeal against conviction was pending adjudication.

3. The Assessee has been found guilty of not filing returns in time for the reasons articulated hereafter. Given the fact that our prisons are teeming with persons convicted of heinous crimes, the

energy, time and money that the Revenue seeks to expend in a case like this, could have been brought to better use in other graver cases.

4. With this preface, let us advert to the facts of the instant case:

(i) The Assessee was carrying on a business as sole proprietrix, under the name and style of Sri Ganeshram Electronics, at Chennai, since 1990, and has filed Income Tax Returns in time. A survey under section 133A of the Income Tax Act 1962 (in short, 'the IT Act') was conducted at the business premises of the Assessee on 03.04.1988 and the books of accounts for financial year 1996-97 relevant to the Income Tax Assessment year 1997-1998 were impounded. The said survey was conducted mainly because of non-filing of the returns, from the Assessment year 1996-97 onwards.

(ii) The further case of the Assessee is that, she had engaged the services of a part time accountant, who was charged with the duty of writing the books of accounts and to submit the same to the income tax authorities.

(iii) In September 1996, the younger son of the Assessee died due to an accident. Therefore, the life of the Assessee became miserable. Hence, the Assessee claimed that, she was mentally and physically shattered completely after the loss of her son and in fact, lost her mental equilibrium. The same was the case of the husband of the Assessee, who was ten years older than the Assessee; being a father, he was also completely shattered on the sudden demise of their son. Therefore, the Assessee's husband also was not paying attention, either to the business, or even to the accounting aspects of the business, which included the business of filing Income Tax Returns.

(iv) Thus, the Assessee engaged a Chartered Accountant for looking after the filing of the Income Tax Returns. The Assessee was under the impression that, the Chartered Accountant would have taken care of the statutory formalities of filing Income Tax Returns. Since, the Assessee is barely educated, and in fact was not aware of the resultant consequence of failure to file returns of Income Tax within time, she did not fully concentrate on those aspects, an omission, which was neither intentional nor deliberate, on her part.

(v) In these circumstances, the Assessee was served with an

Assessment Order for three years, with a very huge demand of Rs.1,34,08,347/-. Since, the business carried out by the Assessee was located in an area, which is predominantly, a lower middle class area, by no stretch of imagination, the Assessee could have earned substantial income, as was projected and demanded by the Revenue.

(vi) On being served with such a huge demand, the Assessee engaged other professionals to take necessary action, and accordingly, an appeal was filed with the Commissioner of Income Tax (Appeals). The Commissioner (Appeals) by order dated 26.03.2003 had determined the income of three years in issue and pegged it at Rs.27,77,350/-. As a consequence of the above determination, the interest under section 234A, 234B worked out to a sum of Rs.23,92,491/-.

(vii) Aggrieved, the assessee preferred further appeals with the Income Tax Appellate Tribunal (in short, 'The Tribunal'), which were numbered as Tax Appeal No.969/Mds/2002, 970/Mds 2002 and 971/Mds 2002 for the Assessment years 1996-1997, 1997-1998 and 1998-1999 respectively. Revenue, in turn also filed two appeals i.e., ITA No: 1366/Mds/2002 and 1367/Mds/2002. Since, the 3 appeals

filed by the Assessee were only allowed in part and one appeal i.e., ITA No.1367/Mds/2002, filed by the Revenue was allowed by the Tribunal on 24.02.2004, the Assessee filed appeal before this Court against those four appeals, in TC (A) No.761 to 764 of 2001. The said tax appeal cases filed, under Section 260A of the IT Act against the order of the Tribunal, dated 24.02.2004, was disposed by this Court on 20.02.2012. On the basis of the order of this Court, the Revenue finally determined the income for all the three assessment years at Rs.18,87,910/- and the income tax payable was determined at Rs.6,06,090/-. The interest under Section 234A was determined at Rs.3,50,070/- and the interest under Section 234B was determined at Rs.5,29,100/- in all totalling to Rs.14,85,260/-, since the Assessee, had paid the final tax together with interest under various provisions of the IT Act, there were no demands outstanding as on date.

(viii) The Revenue, however, has also initiated prosecution proceedings, for all the three assessment years against the Assessee, before the Chief Metropolitan Magistrate (E.O.), Chennai. After completion of trial, by order dated 01.11.2010, the Metropolitan Magistrate Court convicted and sentenced the Assessee, under Section 276CC of the IT Act, to undergo six months rigorous imprisonment and

imposed a fine of Rs.10,000/- for each of the three years. Assailing the said conviction and sentence, the Assessee preferred appeals under Section 374 (3) of Cr.P.C. in C.A.Nos.227 to 229 of 2010 before the Principal Sessions Judge, City Civil Court, Chennai. The Principal Sessions Court, Chennai suspended the sentence of imprisonment, by an order dated 30.11.2010. However, the said appeals are still pending adjudication.

(ix) It is the further case of the Assessee that, in view of these chain of events, the Assessee has in fact closed down her business on 31.3.2012. The Assessee has also suffered yet another loss, as, on 12.04.2012 her husband also passed away.

(x) The Assessee is 71 years old and therefore, given her wherewithal and debilitating physical health moved the Revenue for compounding the offence under Section 276CC of the IT Act, by adhering the procedure of compounding the offence, thereby the Assessee had expressed her readiness and willingness, to pay the compounding fee as well as any interest, penalty or any other sum levied. The necessary petition to that effect for compounding the offence, was filed by the Assessee on 24.3.2015. However, the Joint

Commissioner of Income Tax, Government of India, Ministry of Finance, Department of Revenue (Central Board of Direct Taxes), on behalf of the Revenue communicated an order, which is, in fact, a non-speaking, dated 03.5.2016; rejecting, thereby, the Assessee's request for compounding the offence by stating that, the case of the petitioner was not a deserving case, as per parameters of para 7.2 of the Guidelines dated 16.5.2008, issued by the department, in respect of compounding of offences.

(xi) Challenging the said order dated 03.05.2016, the Assessee had filed the writ petition in W.P.No.24588 of 2016 before this Court.

(xii) The learned Judge after hearing the writ petition, passed a detailed order, by way of the impugned Judgment dated 18.8.2016. In the said Judgement, the following reasoning was given and conclusion was arrived at, by the learned Judge, which are reproduced hereunder, for easy understanding of the issue :

“6.Thus, in the light of the above decision, the power of compounding is exercisable when proceedings are pending. In the case on hand, the sentence imposed on the petitioner has been suspended by the Appellate Court and the appeal is still pending.

Therefore, it has to be seen as to whether that conviction by the Criminal Court should be the only reason for rejecting the petitioner's application for compounding the offence. Clause 4.4 of the guidelines states that cases not to be compounded. It commences with a non obstante clause stating that notwithstanding anything contained in the guidelines, the category of cases mentioned in clauses (a) to (g) should normally not be compounded. Thus, the guidelines does not specifically place an embargo on the competent authority to consider the application for compounding merely on the ground when the assessee has been convicted by a court of law.

7. The expression used in the guidelines "should normally not be compounded", as pointed out earlier Clause 4.4 commences with a non obstante Clause. Therefore, the competent authority is entitled to examine the merits of each matter and to take a decision as to whether the facts make out a case for compounding even in cases where there is a conviction by a Court of law. Thus the guidelines did not place any fetters on the power of the competent authority to examine cases for compounding. However, this cannot

be an universal yardstick and these observations are made by this court considering the peculiar facts and circumstances of the case as pointed out earlier.

8. The petitioner is a senior citizen aged more than 70 years, she has lost her husband and she lost her son and she is the sole proprietrix of the small firm dealing in Electrical and Electronic Appliances. She has paid the entire tax after the decision was rendered by the Honble Division Bench in Tax Cases (Appeal) No. 761 to 764 of 2004 dated 20.02.2004 and apart from that, the order of conviction passed against the petitioner has been suspended by the Sessions Court and the appeal is still pending. Thus considering the overall factual position, the competent authority, namely, the Chief Commissioner, Income Tax Department, Chennai should consider the petitioners case taking note of the peculiar facts and take a decision on merits uninfluenced by any observations or findings rendered by the authorities on an application moved by the petitioner before the Hon'ble Finance Minister. The above direction shall be complied with within a reasonable time and the

petitioner may be permitted to appear for personal hearing through her authorised representative as it appears that she is not very illiterate.”

(xiii) Aggrieved by the said order of the learned Judge, the Revenue filed W.A.No.132 of 2017, seeking to set aside the order of the learned Judge dated 18.8.2016.

5. Simultaneously, the Assessee also filed W.A.No.455 of 2017 against the impugned Judgement, however, only insofar as it relates to the non-quashing of the original order impugned, passed by the Revenue dated 03.05.2016, and seeks, therefore, the quashing of the said impugned order before the writ court, on the grounds urged herein in the appeal filed by the Assessee. This is how these appeals were filed and are taken up for disposal by this common order.

6. Mr. T. Ravikumar, learned counsel appearing for the Revenue has made submission that the learned Judge's direction, through the impugned Judgement, that the Chief Commissioner Income Tax Department, Chennai should take up the application of the Assessee for compounding the offence and decide the same, is erroneous

because, the said request of the Assessee, in fact was considered by the Central Board of Direct Taxes (in short, 'CBDT') and only based on the decision taken at CBDT, the Assessee's request was rejected via the impugned order. Therefore, the learned counsel submits, that the Chief Commissioner of Income Tax, who is, an hierarchy subordinate to the CBDT, cannot hear the application, once again, which has already been decided by the CBDT.

7. Learned counsel for Revenue would also submits that, though a recommendatory report was submitted by the Principal Chief Commissioner of Income Tax, Tamil Nadu, Chennai on 27.4.2015, to the CBDT, that the case of the Assessee, in peculiar facts and circumstances, is desirable to be considered for compounding, purely on sympathetic grounds, the same was considered duly and the CBDT thereafter, decided to reject the claim of the Assessee. The learned counsel would further submit that the Principal Chief Commissioner cannot re-visit the issue, therefore, in that context, the direction issued by the learned Judge, is not only erroneous but also impractical. Therefore, the Revenue's appeal has to be allowed.

8. Mr. T Ravikumar, the learned counsel for the Assessee would

also rely upon the relevant provisions of the guidelines for compounding of offences issued under the provisions of the Direct Tax Laws, by The Government of India, Ministry of Finance, Department of Revenue, dated 16.5.2008. Mr. Ravikumar in fact relied upon clause 4.4(f) as well as clause 7.2 of the guidelines which reads as follows:

4.4. Cases not be compounded:-
Notwithstanding anything contained in the guidelines, the following cases should normally not be compounded:-

- a).....
- b).....
- c).....
- d).....
- e).....
- f)Where conviction order has been passed by a Court.
- g).....सत्यमेव जयते

“7.2 Notwithstanding anything contained in the Guidelines, the Finance Minister may grant approval for compounding of an offence in a suitable and deserving case, after obtaining report from the Board on the petition of the applicant”

9. By relying upon the said provisions of the guidelines, the learned counsel for Revenue would submit that, wherever conviction order has been passed by a competent court, it would fall under the category of cases, which are not to be compounded. He would further submit that though a discretionary power was given, under clause 7.2 of the guidelines, to the Finance Minister, for grant of approval for compounding of an offence in a suitable and deserving case, and accordingly, in this case, such a course of action was taken, whereupon the matter was referred to the CBDT, who in turn has sent a report to the Government and on considering the same, it was considered to be an undeserving case and accordingly, it was rejected.

10. Therefore, Mr. Ravikumar submits that since the Assessee's case falls under the category of clause 4.4(f) of the guidelines, even the discretionary power vested in the Government under clause 7.2, though was exercised, has not been in favour of the Assessee, and only pursuant to which, the impugned order was passed on 03.5.2016. Therefore, the learned counsel would submit that the direction now issued by the learned Judge, through the impugned Judgement, is erroneous as it is contra to the mandatory guidelines issued by the Department, as referred to above.

11. For all these reasons, Mr. Ravikumar made submissions that, the impugned direction issued by the learned Judge in the Judgement dated 18.8.2016 have to be set aside .

12. However on the other hand, Mr. G. Jayachandran, learned counsel appearing for the Assessee, who filed appeal in W.A. No 455 of 2017 has made submissions that, all these arguments now advanced by the Revenue have been considered and discussed elaborately by the learned Judge, in the impugned Judgement itself.

13. In this regard Mr.Jayachandran drew our attention to paras 3, 4 and 5 of the impugned Judgement. For the sake of convenience, paras 3 and 4 of the impugned judgement are extracted hereunder:

“3.While the matter pending consideration before the Principal Chief Commissioner, it appears that based on certain advice given to the old lady, she sent a representation to the Honourable Finance Minister, Government of India requesting for exercising his powers and compounding the petitioner's case. This has been rejected and intimated to the petitioner by the first respondent by the impugned proceedings

stating that the petitioner case is not a deserving case as per the parameters of para 7.2 of the guidelines dated 16.05.2008 for compounding of offences. The reasons for holding that the petitioner's case is not a deserving case are not mentioned in the impugned order not furnished to the petitioner. From the counter affidavit filed on behalf of the respondents, it is clear as to what weighed in the mind of the authority is the conviction of the petitioner by the criminal court.

4. The learned Senior Standing Counsel appearing for the respondents pointed out that Clause 4 of the guidelines dated 16.05.2008 stipulates the eligibility conditions for consideration of a case for compounding and in terms of Clause 4.4 (f), if the order of conviction has been passed by the court, then the case cannot be compounded. "

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14. In this regard, Mr. Jayachandran would further submit that, the difficulty expressed by the Revenue, by quoting clause 4.4(f) of the guidelines, as well as the power of the Government under para 7.2 of the guidelines, dated 16.5.2008, has, in fact, been completely discussed, along with case laws in para 5 of the impugned judgement.

15. In this context, according to the learned counsel for the Assessee, the learned Judge has exhaustively discussed the issue and in this context cited two decisions, where such a discretion has been exercised by the Revenue, even in those cases also concerned Assessee was convicted by criminal court. Therefore, Mr. Jayachandran would add that this case also is a similarly circumstanced, as the two cases referred therein, in the impugned Judgement, by the learned Judge, and therefore, there is every justification in the learned Judge issuing of such a direction to the Revenue; especially, the Chief Commissioner of Income Tax, Chennai, to consider the case of the petitioner, uninfluenced by the observations or findings rendered by the authorities, on an application moved by the petitioner, before the Honb'le Finance Minister.

16. Mr. Jayachandran would also submit that, it is not a case of any willful suppression or failure on the part of the Assessee to file returns for three years. The situation, which was faced by the Assessee during the relevant period, was totally explained before the Revenue, while making the application for compounding the offence and also before the learned Judge, who dealt with the writ petition.

Since, the Assessee had suffered loss after loss of her family members and being an old lady aged more than 70 years, her failure in filing IT returns for three consecutive years, can, by no stretch of imagination be deemed as wilful suppression or the negligence on the part of the assessee, warranting penal action against her.

17. Mr. Jayachandiran would also submit that, only in order to meet such like situations, the provision for compounding the offences are made available in the IT Act, and therefore, merely because the court has convicted the Assessee, cannot come in the way of the Revenue in compounding the offences on terms with respect to which the Assessee has already expressed her willingness in her application, which includes her agreement to pay the compounding fee as determined along with interest and penalty, if any. The learned counsel for Assessee would also submit that it is not the case of the Revenue that the Assessee's case was outrightly rejected by the Department. In fact, the Principal Chief Commissioner of Income Tax by his report dated 27.4.2015 submitted to the CBDT has made the following observations, and the relevant portion of which are extracted hereinafter:

“6. The assessee in her petition now filed before the Hon'ble Finance Minister has claimed

as follows: She is aged 67 years and is a senior citizen. She is having several medical problems. She is a widow and she lost her son in 1996. She admits that she had no intention to avoid filing the return of income; she trusted her accountant and professional who ultimately let her down; and that she had not earned substantial income.

7. A report was called from the jurisdictional CIT for his comments on the assessee's petition before the Hon'ble Finance Minister. The CIT-9, Chennai vide report dated 06.04.2015 (Annexure E) has stated that although the reasons for the delay in filing the returns are not convincing, the other grounds cited by the assessee such as her health ground, financial position and other reasons are acceptable. The CIT has also reported that the assessee has paid entire arrear demand and that no penalty u/s. 271(1)(c) was levied.

8. As per para 7.2 of the CBDT's compounding guidelines dated 16.05.2008, "Notwithstanding anything contained in the Guidelines, the Finance Minister may grant approval for compounding of an offence in a suitable and deserving case, after obtaining

report from the Board on the petition of the applicant."

9. An examination of the records and also the facts of the case and in particular the condition of the assessee, it is desirable that her case is compounded. Her petition may kindly be considered favourably on sympathetic grounds as she is aged and there is a bereavement in the family. This report may please be put up to the Hon'ble Finance Minister for kind consideration."

(emphasis is ours)

18. Therefore, for all these reasons, the learned counsel for the Assessee would submit that, the order dated 03.05.2016 cannot stand. He would further submit that even though, the learned Judge has given a suitable direction to the Revenue, to decide the application of the Assessee, for compounding the offence, he has not quashed the order dated 03.05.2016, which, according to the learned counsel for the Assessee, should have been quashed being the logical sequitur. Therefore, the learned counsel for the Assessee would submit that, while accepting the entire Judgement of the learned single Judge, the Assessee, has impugned only that part, whereby, the order dated 03.05.2016 was not quashed by the learned Judge. Therefore, the

learned counsel has urged that the said order may be quashed .

19. We have given our thoughtful consideration to the rival submissions made by both sides. During the hearing, in fact, we have called for the original file relating to the rejection order passed by the Revenue dated 03.05.2016. Pursuant to our directive, Mr. T. Ravikumar, learned counsel for the Revenue produced the original file before this court for our perusal. After having perused the same, the original file was returned to the learned counsel for the Revenue. However Mr. Ravikumar has handed over to us, a photo copy of the original file, containing materials, pertaining to the present case.

20. The factual matrix as has been projected by the Assessee are not in much controversy except for a few aspects.

21. Admittedly, the Assessee had not filed IT return in time consecutively for three assessment years i.e. 1996-97, 1997-98 and 1998-99. Only after the intervention of the Revenue, the issue was triggered and after assessment and demand of tax to be paid, the Assessee filed appeals before the Commissioner (Appeals), whereby she gained some benefit through the order of the Commissioner (Appeals),

dated 26.3.2002. Still not convinced of the turnability of the said order of the Commissioner (Appeals), assessee filed appeal before the Tribunal, where also final order was passed on 24.2.2004. Being aggrieved with the said order of the Tribunal, the Assessee approached this Court by filing Tax Case Appeal, which got concluded by an order dated 20.2.2012. Only on the basis of the order of this Court in the Tax Case Appeal filed by the Assessee, the entire tax with interest and with penalty seems to have been paid by the Assessee. Therefore, there is no wonder that the Revenue initiated prosecution against the Assessee, which ultimately, ended in conviction of 6 months imprisonment with Rs.10,000/- fine for each of the assessment year with the rider that, in case of failure, on the part of the Assessee, to make the payment of penalty, a further simple imprisonment of 3 months would have to be undergone by the Assessee. This sentence of the Trial court stands suspended in an appeal filed by the Assessee. We are informed, that the appeal is still pending, adjudication.

22. During the pendency of the appeal, the Assessee had submitted application for compounding the offence.

23. Pursuant to the said application submitted by the Assessee,

a Regional Compounding Committee was constituted. The Regional Compounding Committee (in short, 'RCC') consisted of the Principal Chief Commissioner of Income Tax, Tamil Nadu, The Chief Commissioner of Income Tax (II), Chennai and The Chief Commissioner of Income Tax (IV) Chennai. The said RCC had a meeting on 20.3.2015, when two out of three members participated. The RCC after having taken into account the factual matrix of the issue, decided to reject the application for compounding the offence, filed by the Assessee, under section 279 (2) of IT Act seeking compounding of offences under section 276 CC of the IT Act.

24. Thereafter, the Assessee had filed a petition dated 24.3.2015 for compounding her case with the Hon'ble Finance Minister, under para No.7.2 of the guidelines issued by the Department, dated 16.5.2008.

25. In response to the said application of the Assessee, the Principal Chief Commissioner of Income Tax, Tamil Nadu, Chennai submitted a detailed report dated 27.04.2015. Certain portion of the said report, especially para 6 to 9 have already been extracted herein above.

(i) For further understanding of the issue, some more portions of the said report dated 27.4.2015 are extracted hereunder:

“ As the assessee was already convicted by the trial Court, and in the absence of any direction by the Hon'ble High Court to consider the compounding application or the leave of the Sessions Court, the case could not be compounded in terms of para 4.4(f) of the Board guidelines dated 16.05.2008. In this regard, it is brought to your kind notice that the Hon'ble High Court of Madras in the case of Dr. K.Jagadeesan (118 Taxman 499 Madras), Smt. Umayal Ramanathan (313 ITR 59 Madras) and M/s VG Pannerdas and Co Pvt Ltd (352 ITR 77 Madras) etc. (copies enclosed as Annexure D) has directed the department to consider the compounding applications even after conviction by trial court. The Hon'ble High Court of Madras has held that if an appeal is pending against the order of lower court convicting the assessee, the proceedings are deemed to be pending and hence, the compounding application can be considered on the merits. In all these cases, the competent authority has accepted the compounding applications in the aforesaid cases after the

direction of the High Court to consider on merits. The department has not filed SLP in the Hon'ble Supreme Court against the above decisions of the High Court. As already stated above, in the instant case, there is no such direction either by the Hon'ble High Court or leave of the Session's Court. Hence, the RCC did not accept the assessee's compounding application. The Board Circular does not permit the CCIT to compound a case wherein a conviction order has been passed. The decisions of the High Courts given in writ proceedings cannot be applied as general law in every case and hence there is no option but to reject the application at the level of CCITs."

(ii) Thereafter, based on the report submitted by the Principal Chief Commissioner of Income Tax, Tamil Nadu dated 27.4.2015, a note was prepared by the CBDT, New Delhi, on 21.12.2015, wherein the following recommendation has been made:

"4. It is pertinent to mention that as per para 4.4(f) of the CBDT's compounding guideline dated 16.05.2008 the case cannot be compounded. However, para 7.2 of the same guideline provides that *"Notwithstanding anything contained in the Guidelines, the Finance Minister may grant approval for*

compounding of an offence in a suitable and deserving case, after obtaining report from the Board on the petition of the applicant.

5. On perusal of the petition and report of the Pr.CCIT, Tamilnadu, Sh.T.Jayasankar which is based on the report of Jurisdictional CIT-9, Chennai, it is proposed that although the reasons provided by the petitioner for delay in filing of returns are not convincing, the case may be considered for compounding on humanitarian grounds. If approved the same may be conveyed to the Pr.CCIT, Tamilnadu for necessary action.

6. DFA submitted accordingly.”

(iii) Pursuant to the said note prepared and placed by the Under Secretary, CBDT, New Delhi, the Director, CBDT made the following notings:

Director (inv.V) CBDT

The above noting may kindly be perused.

In this case -

a. The assessee has been convicted under section 276 CC for not filing ROI for A.Y.1996-97 to 1998-99

b. Her compounding Application dated 15.12.14 was rejected by the Regional

Compounding Committee as the case was not found fit as per para 4.4(f) of the compounding guidelines dated 16.05.2008.

c. She has filed petition dated 24.03.2015 before the Hon'ble Finance Minister for relaxation of conditions of compounding as per para 7.2 of the compounding guidelines dated 16.05.2008.

Looking into the contents of the petition, and the reports submitted by the Pr.CCIT (Tamil Nadu) and CIT-9 Chennai, we may consider the case on sympathetic grounds, if deemed fit, considering the age of the assessee, her delicate medical condition etc. as also the fact that the offence was not of concealment of income and that the taxes due have been paid.

DFA submitted for consideration /approval.

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Sd/-

22.12.2015"

(emphasis is ours)

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(iv) Thereafter, as desired by the CBDT, a report of jurisdictional CIT (FR) was called for.

(v) After the report of Pr.CCIT, Tamil Nadu, dated 15.2.2016 with relevant documents about the details of ailments of the Assessee, the following note was prepared by the CIT (OSD) (INV), CBDT, New Delhi:

"Kindly see the notes on pre-pages.

The assessee has filed an application on 15.12.2014 before Hon'ble FM for relaxation of condition for compounding of offence under para 7.2 of the compounding guidelines dated 16.05.2008 (old guidelines). Since the application for compounding of offence has been filed on 15.12.2014 i.e. before 1st January, 2015, the case is governed by the old guidelines. As per para 7.2 of the said compounding guidelines, at F/B the Hon'ble Finance Minister can grant approval for compounding of offence in a suitable and deserving case after obtaining report from the Board. The facts of the case have been summarized at F/C for kind perusal. In the report of Pr.CCIT, Tamil Nadu dated 27.04.2015, it has been stated that although the reasons provided by the petitioner for delay in filing of Return of income (RoI) are not convincing, the case may be considered for compounding on Sympathetic ground.

2. While examining the report of the Pr.CCIT, Tamil Nadu and of CIT-9, Tamil Nadu it was noted that the assessee had explained the delay in filing of Return of income (RoI) on health ground, financial hardship and other reasons such as demise of husband and son. In order to consider the petition on merit, not much evidence/details in relation to the poor health condition and financial condition of the assessee were available on record. Hence, with the approval of Member (inv.) the Pr.CCIT Tamil Nadu was requested to provide supporting documents. The Pr.CCIT in his reply dated 15.02.2016 has forwarded a medical certificate in support of poor health condition of the assessee and an enquiry report of ITI on financial condition of the assessee. The medical report at FR gives details of ailments mostly related to old age. The assessee is reported to be 67 years old. The report of the Inspector is not indicative of any major financial hardship faced by the assessee. However as recommended by Pr.CCIT, Tamil Nadu, the case may be considered on sympathetic grounds.

3. Put up consideration of the Competent authority.

(AMITAV)

CIT (OSD)(inv.)
CBDT, New Delhi."

(emphasis is ours)

(vi) Subsequently, by further note dated 16.3.2016, the very same CIT (OSD) (Inv.), CBDT, New Delhi has made the following note for placing it before the Hon'ble Minister for decision:

" The matter has been examined with reference to the guidelines on compounding of prosecution. As per para 7.2 of the guideline, the Finance Minister may grant approval for compounding of an offence in a suitable – and deserving case after obtaining report from the Board on the petition of the applicant.

2. Since the reasons given by the assessee for delay in filing of returns of incomes for Ays 1996-97 to 1998-1999 (3 years) were not found to be convincing, prosecution was launched by the Income Tax Department and confirmed by the Court. The fact that assessee lost her son during this period (on 07.09.1996) cannot be refuted. As per record, the assessee has filed criminal appeal against the conviction order. The assessee has filed the present petition before the Hon'ble Finance Minister to grant approval for compounding of offence on the ground that

she is a widow aged 67 years and suffering from old age related medical problems. The medical certificate do indicate old age related disability including cerebal atrophy with dementia. As per the report of Income Tax Inspector dated 18.03.2015, she is not facing any major financial hardship.

3. However, considering the present physical condition of the assessee, her case can be considered for grant of approval for compounding of offences under par 7.2 of the guidelines dated 16.05.2008 (copy placed below) by the Hon'ble Finance Minister.

4. Put up for approval."

(emphasis is ours)

(vii) However, on assessing the said note dated 16.3.2016, the member, CBDT has written the following note on 30.3.2016:

" I have gone through the order of Court and the report of CIT. In this case, the returns were filed as a consequence of survey u/s 133A. There is a wide gap between returned income and the assessed income for which no explanation has been offered. Even the Court has observed that but for Survey u/s 133A the returns would not have been filed. Even the

CIT is not convinced with the reason for delay in filing the returns. Therefore, in my opinion the case is not fit for compounding and application is liable for rejection.

Sd/-

30.3.16"

(viii) Only based on the said note/opinion of the member of CBDT, which was further placed before the Revenue Secretary, and ultimately, before the Hon'ble Finance Minister, that the application of the Assessee for compounding of offences was rejected.

(ix) Only pursuant to the said decision under para 7.2 of the guidelines dated 16.5.2008, the present impugned order dated 03.05.2016 was issued.

26. The learned Judge, as has been quoted above, in his Judgment in para 3 and 4 as well as in para 5, has discussed this issue in detail, and after quoting atleast two earlier instances, which were similarly circumstanced, ultimately, concluded that the power of compounding is exercisable even when criminal appeal against conviction is pending.

27. In this regard, it would be pertinent to set out herein certain reasons given by the RCC, in its meeting held on 20.3.2015. The relevant portion of the said reasoning given by the RCC reads thus:

" 5. After perusing the check list in Annexure-2(a) and the Statement of Facts, the Committee has observed that

(i) For the offences under sec.276CC for non-filing of returns of income for the Asst. Years 1996-97 to 1998-99, the assessee has been convicted by the Additional Chief Metropolitan Magistrate, Economic Offences-I, Chennai, by an order dated 1.10.2010 with the punishment of six months R/I and fine of Rs.10,000/- each per year and in default of fine to undergo three month simple imprisonment. Therefore, para-4.4(f) of the CBDT's guidelines dated 16.5.2008 is attracted and the offence after conviction is not compoundable.

(ii) In the cases of Dr. Jagadeesan, Smt Umayal Ramanathan, and VGP Ltd., there are instances of acceptance of compounding after conviction. In none of these cases, the Hon'ble Madras High Court directed the department to compound but only directed to dispose of the compounding petitions on merits. In these cases, there was either a direction from the Hon'ble Madras High Court or leave from the

Court of Principal Sessions Judge where the assessee's appeals against conviction were pending. In these cases, after taking into account the existence of exceptional circumstances the compounding petitions were accepted by the department with due justification. In the present case, there is neither any direction from the jurisdictional Madras High Court nor any leave granted by the Hon'ble Principal Sessions Judge and as such the RCC cannot proceed to compound the offences in violation of mandatory prohibition laid down in para-4.4 (f) of the guidelines dated 16.5.2008."

(emphasis is ours)

28. In paragraph 5 (ii) of the said extract of the RCC's report as extracted above, the committee has stated that, neither any direction was given by the jurisdictional Madras High Court nor any leave was granted by the Principal Sessions Judge and as such, the RCC cannot proceed to compound the offences, in violation of mandatory prohibition, laid down in para 4.4(f) of the guidelines dated 16.5.2008. So, the only hurdle, according to RCC, was that, there was no direction from this Court or a leave was granted by the Sessions Court where the appeal was pending. However, in similar cases referred to by the

RCC, that is in respect of one Dr. Jagadeesan and Smt Umayal Ramanathan as well as one VGP Ltd, directions were issued by the Madras High Court to dispose the compounding petitions on merits. Therefore, what emerges is had there been any direction to that effect in respect of the Assessee's case, according to RCC, Assessee's plea for compounding would also be taken into account and decided, unmindful of the provisions of para 4.4(f) of the guidelines dated 16.5.2008.

29. Therefore, in other words, what was required was not available before the RCC at the time of consideration of Assessee's plea, i.e. on 20.3.2015. This missing link, if any, in Assessee's case, was subsequently made available by virtue of the direction issued by this Court, vide the impugned Judgement.

30. In the instant case, the learned Judge has issued a direction to the Chief Commissioner of Income Tax Department, Chennai to consider the writ petitioner's case (i.e. the Assessee's case) taking note of the peculiar facts, and to take a decision on merits uninfluenced by any observations or findings rendered by the authorities on an application moved by the petitioner before the

Hon'ble Finance Minister.

31. After having considered the rejection order issued by the Revenue, of course, pursuant to the decision taken by the CBDT as approved by the Hon'ble Finance Minister, the learned Judge has given such a direction, which is exactly on the line of earlier directions issued by atleast in two cases, as referred to by the learned Judge in his Judgment, as well as by the RCC committee, in its deliberations dated 20.3.2015. The present appeal filed by the Revenue assailing such direction, issued by the learned Judge, in the impugned order, in our considered view, is totally unjustifiable, bereft of any sustainable ground.

32. Moreover, on perusal of the report of the Principal Chief Commissioner of Income Tax, Chennai, dated 27.4.2015 and subsequent report as well as documents on record, and the periodical notes generated from time to time at the level of CBDT that all authorities, unimpeachably, have uniformly recommended the case of the Assessee for consideration, in view of her age, illness and the circumstances encountered by her during the relevant period.

33. The only negative turn, which we noticed from the reading of the note file produced before us, is the view expressed by the member CBDT on 30.3.2016, which we have extracted hereinabove. The reason according to the CBDT for taking a different view on 30.3.2016 is, that the Assessee had filed the returns as a consequence of survey under Section 133 A and there is a wide gap between returned income and the Assessed income, for which no explanation has been offered and even the Court has observed that but for survey under Section 133 A, the returns would not have been filed.

34. This reasoning given by the member CBDT, albeit taking a different view, was already available, despite which, the Principal Chief Commissioner, of Income Tax, had sent a recommendatory report to the CBDT. These reasons, in our view, cannot form the sole criteria, to take a different stand and thus, form the basis of rejecting the plea of the Assessee in exercise of its powers by the Hon'ble Minister under para 7.2 of the guidelines dated 16.05.2008.

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35. Given the over all factual matrix, we find that there is considerable force in the submissions made by the learned counsel appearing for the Assessee that the direction issued by the learned

Judge, is a well considered one, as the learned Judge took into account not only the circumstances of the Assessee but also relied upon precedents of similar nature.

36. Therefore, the mere pendency of the appeal against the conviction, in our view, could no longer be a reason for refusing the consideration for compounding of offence within the meaning of clause 4.4(f) of the guidelines dated 16.05.2008.

37. Likewise, the reasoning given by the CBDT via its note dated 30.3.2016, which has subsequently been approved by the concerned Secretary to the Government of India as well as by the Hon'ble Finance Minister, in our view, in the present circumstances, cannot stand in the way of the Revenue re-visiting the issue of compounding the Assessee's offence, as accordingly, has been directed by the learned Judge, via the Judgment impugned.

38. For all these reasons, we are of the considered view that, there is no infirmity in the directives issued by the learned Judge save and except for the fact that for completeness he ought to have gone further and dealt with order dated 3.5.2016 as well. Accordingly, the

appeal filed by the Revenue in W.A.No.132 of 2017 is liable to be dismissed. It is ordered accordingly.

39. Insofar as the W.A.No.455 of 2017 is concerned, in view of the directives issued by the learned Judge through the impugned order since confirmed by us, the necessary corollary would be to quash the order impugned dated 03.5.2016 as without which, the directives issued by the learned Judge, may not have the necessary efficacy even as per the Revenue. Therefore, in order to remove any such perceived hurdle, we are inclined to allow the W.A.No.455 of 2017 filed by the Assessee by setting aside the impugned order dated 03.05.2016.

40. In the result, W.A.No.132 of 2017 is dismissed. W.A.No.455 of 2017 is allowed. Consequently, connected miscellaneous petition is closed. However, the parties shall bear their respective costs.

सत्यमेव जयते

(R.S.A.,J)

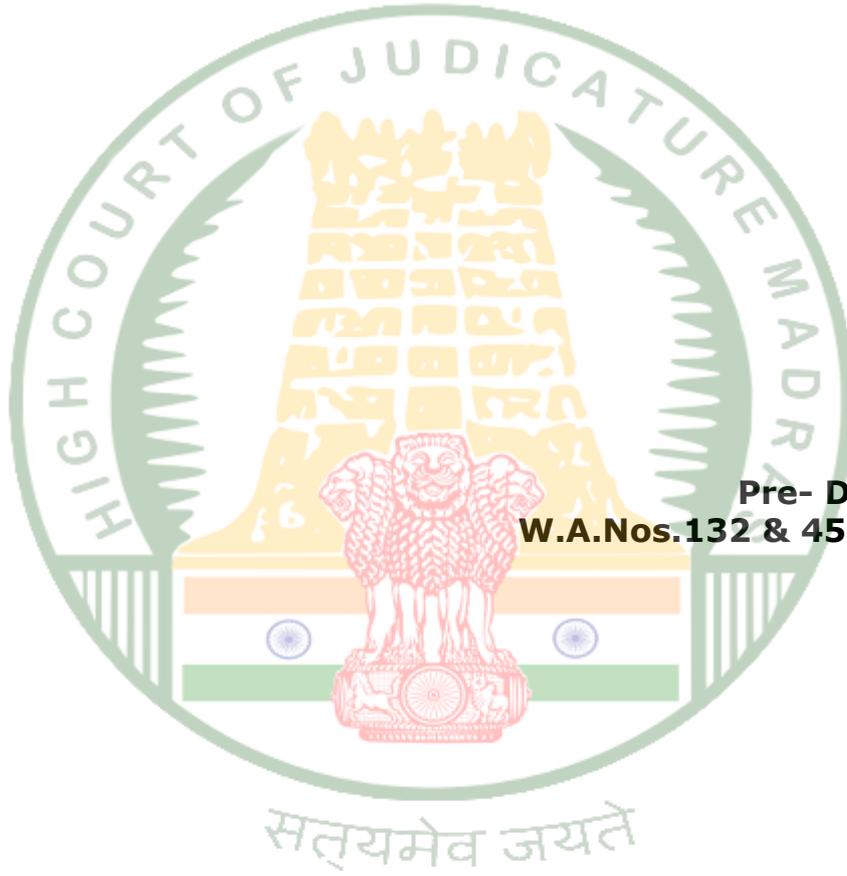
(R.S.K.,J)

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Speaking Order/Non Speaking Order
Index: Yes/No Internet:Yes/No
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**RAJIV SHAKDHER, J.
AND
R.SURESH KUMAR, J.**

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**Pre- Delivery in
W.A.Nos.132 & 455 of 2017**

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