

- : 1 :-

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

ON THE 27th OF SEPTEMBER, 2022

WRIT PETITION No. 21950 of 2022

BETWEEN:-

RAMESH JAIN

1.

JINESH JAIN

2.

.....PETITIONERS

*(SHRI SHAILENDRA SHRIVASTAVA, LEARNED COUNSEL FOR THE
PETITIONERS)*

AND

UNION OF INDIA THROUGH INCOME TAX DEPARTMENT
1. AAYAKAR BHAWAN NEAR WHITE CHURCH, INDORE (MADHYA
PRADESH)

PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX M.P. AND
2. C.G. AAYAKAR BHAWAN HOSHANGABAD ROAD BHOPAL
(MADHYA PRADESH)

SARDARMAL JAIN S/O SHRI SUKHLAL JAIN, AGED ABOUT 66
3. YEARS, OCCUPATION: BUSINESS R/O 221 TELEPHONE NAGAR
INDORE, M.P. (MADHYA PRADESH)

YOGESH JAIN S/O SHRI SARDARMAL JAIN, AGED ABOUT 42
4. YEARS, OCCUPATION: BUSINESS R/O 221 TELEPHONE NAGAR
INDORE (MADHYA PRADESH)

CHANDRAPRABHU HOMES PVT. LTD. THROUGH ITS DIRECTOR
5. REGD OFFICE 16 WAREHOUSE ROAD INDORE (MADHYA
PRADESH)

.....RESPONDENTS

*(SHRI VEENA MANDLIK, LEARNED COUNSEL FOR THE
RESPONDENT)*

This petition coming on for orders this day, JUSTICE VIVEK RUSIA passed the following:

ORDER

Petitioners have filed the present petition challenging the validity of the order dated 10.12.2021 passed under Section 278(2) of the Income Tax Act, 1961 (hereinafter referred to as 'IT Act,1961") whereby the request of the petitioners for compounding the offence has been turned down.

The facts of the case are in short as under:

[1] The petitioners are the director of the Company M/s Chandraphabhu Homes Pvt. Ltd (respondent No.5). The company is engaged in the business of purchase, sale and development of plots. According to the petitioners without their knowledge, they were unlawfully removed from the directorship of the company w.e.f.12.04.2006 for which they have challenged before Company Law Board and vide order dated 12.09.2011, their removal has been declared null and void and restored status quo ante as on dated 12.04.2006.

[2] Vide assessment order dated 21.12.2008, the Assessment Officer assessed the income of the company Rs.4,63,140/- for the assessment year 2006-2007 and accordingly raised demand of Rs.2,07,338/- with a fine of Rs.3,50,000/-. Thereafter, respondent No.1 filed a complaint on 28.03.2012 before JMFC, Indore for prosecution under Section 276 C (1) (i) of the IT Act, 1961. According to the petitioners they have deposited the tax as well as penalty on 22.03.2011, 08.08.2012 and 01.06.2013. Vide judgment dated 04.10.2019 passed by the learned Special Judicial Magistrate

(CBI and Economic Offences) the petitioners have been convicted under Section 276 C (1) (i) of the Income Tax Act, 1961 and sentenced with 6 months S.I. and a fine of Rs.5000/- and in default of payment of fine additional simple imprisonment for 15 days.

[3] Being aggrieved by the aforesaid conviction, the petitioners have preferred Criminal Appeal under Section 374 of the Cr.P.C. which is pending as Criminal Appeal No.299/2019 before the Session Court. The petitioners applied to respondent No.1 seeking compounding of the above offence under circular dated 09.09.2019 issued by the Government of India Ministry of Finance, Department of Revenue. Simultaneously, in the pending criminal appeal, the petitioners filed an application under Section 320 (5) of the Cr.P.C. seeking permission for the compounding of the offence. Vide order dated 01.11.2021, the learned Session judge dismissed the application that after conviction, no compounding can be done under the aforesaid circular.

[4] Being aggrieved by the aforesaid order, the petitioners preferred Criminal Revision No.3177/2021 before this Court. Vide order dated 08.07.2022, this Court has directed the learned Appellate Court to consider the application afresh within the period of two months. During the pendency of the aforesaid revision, by way of the impugned order dated 10.12.2021, respondent No.1 has rejected the application for compounding as it is not a fit case for compounding the aforesaid circular due to the conviction. Thereafter learned Special Judge has also dismissed the application under Section 320 (5) of Cr.P.C. vide order dated 27.08.2022 on the ground that the Court cannot direct respondent No.1 for compounding the offence. Now petitioners have approached this

Court challenging validity of the order dated 10.12.2021 whereby respondent No.1 did not agree to the compounding of the offence.

[5] Learned counsel for the petitioners submits that petitioners are entitled to the compounding of the offence under guidelines issued for compounding of the offence under Direct Tax Laws,2019 circulated on 14.06.2019. The petitioners fall under the eligibility condition for compounding. It is further submitted that respondent No.1 has dismissed the application only on the ground that petitioners have been convicted by the Court of law. The authorities have failed to appreciate that against the conviction, a criminal appeal is pending and an appeal is always treated as a continuation of original proceedings wherein the entire proceedings are again left open for consideration by the appellate authorities. In support of his submission, learned counsel for the petitioner has placed reliance on the judgment passed by the Apex Court in the case of *Lachhman Dass. Vs.Santokh Singh reported in (1995) 4 SCC 201*. Learned counsel for the petitioners also placed reliance on the judgments passed by High Court of Judicature at Madras in case of *M/s V.A. Haseeb and Co (Firm) Vs. The Chief Commissioner of Income Tax and Chairman, Central Board of Direct Taxes and others Vs. Umayal Ramanatha reported in (2009) 313 ITR 59 (Mad)* in which relying on the judgment in *Lachhman Dass (supra)*, the High Court has directed Income Tax Authorities to reconsider the application afresh without being influenced merely because of the conviction passed against the petitioners by the Criminal Court.

[6] With the aforesaid submission, learned counsel for the petitioners submits that the matter is liable to be remitted back to respondent no.1 to consider the application afresh in the light of the

order passed by Apex Court in the case of *Lachhman Dass (supra)* and Madras High Court.

We have heard the learned counsel for the parties at length and perused the record of the case .

[7] As clear from the subject of the guidelines issued on 14.06.2019 the offence under the IT Act is liable to be compounded under the provisions of Section 279(2) of the I.T. Act. Section 279 (2) of the IT Act provides that any offence under this Chapter either before or after the institution of the proceedings can be compounded by the Principal Chief Commissioner, Chief Commissioner, Director General or Principal Director General. In order to give the effect of Section 279(2) of the IT Category, the Government of India, Ministry of Finance issued guidelines.

Clause 7 of the guidelines provides eligibility conditions for compounding and clause 8 provides a list of certain offences which are normally not be compounded. In order to become eligible for compounding clause 7(v) says that there has to be an undertaking by the assesses for withdrawal appeal filed by him, if it is related to the offence sought to be compounded. Likewise, clause 8(iii) provides that offence committed by a person for which he was convicted by a Court of law under direct taxes laws compounding cannot be done. As on today, the petitioners are convicted persons and in appeal, only the sentence has been suspended not the conviction, therefore, respondent No. 1 has rightly declined to compound the offence .

[8] By conjoint reading of section 279(2) and clauses 7(v) and 8. (iii), it is explicit that the Income Tax Authorities have the power to compound the offence either before or after the institution of the

proceedings but certainly not after the conviction. Clause 4 of the policy also provides that compounding of offence is not a matter of right, however, the offence may be compounded by the competent authority on satisfaction prescribed in these guidelines. It is also important to see Clause 7.(ii) which provides that no application of compounding can be filed after the end of 12 months in which a prosecution complaint, if any, has been filed in the court of law.

In view of the above, no writ/order/direction can be issued to the respondents for compounding the offence, hence the Writ Petition is dismissed .

(VIVEK RUSIA)
JUDGE

(AMAR NATH (KESHARWANI))
JUDGE

praveen