IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.429 OF 2022

1. Footcandles Film Pvt. Ltd.,]
   a company incorporated under the]
   Companies Act, 1956, having its]
   registered office at 101, Saturn 729,]
   Palimala Road, Bandra (West),Mumbai – 400 050.]
2. Nirav Dama, of Mumbai,]
   Principal Officer of Footcandles Film]
   Private Ltd., presently residing at 103,]
   Ashirwad CHS, Plot No.99, Sector 16,]
   Koparkhairane, Navi Mumbai – 400 705.] .. Petitioners

Versus

1. Income Tax Officer – TDS – 1,]
   [Successor to ITO – TDS – 1(5)],]
   Room No.907, 9th Floor,]
   K.G. Mittal Ayurvedic Hospital Building,]
   Opp. Charni Road Station (West),]
   Mumbai – 400 002.]
2. Commissioner of Income-Tax (TDS), Mumbai,]
   Room No.900-B, 9th Floor,]
   K.G. Mittal Ayurvedic Hospital Building,]
   Opp. Charni Road Station (West),]
   Mumbai – 400 002.]
3. Chief Commissioner of Income Tax (TDS), Mumbai]
   Room No.1000A, 10th Floor, K.G. Mittal]
   Ayurvedic Hospital Building,]
   Opp. Charni Road Station (West),]
   Mumbai – 400 002.]
4. Union of India,]
   Through Secretary,]
   Ministry of Finance, North Block,]
   New Delhi.] .. Respondents

Ms. Fereshte Sethna, with Ms. Mrunal Parekh, i/by DMD Advocates, for the Petitioners.
Mr. Suresh Kumar for the Respondents.

CORAM : DHIRAJ SINGH THAKUR &
VALMIKI SA MENEZES, J.J.

DATE : 28TH NOVEMBER, 2022.

ORDER : { Per Valmiki SA Menezes, J.}

1. Rule. Rule made returnable forthwith, with the consent of the parties.

2. This Writ Petition, filed under Article 226 of the Constitution of India, impugns the order, under the provisions of sub-section (2) of Section 279 of the Income Tax Act, 1961, dated 1st June 2021, passed by respondent no.3-Chief Commissioner of Income Tax (TDS), Mumbai, whereby an application filed by the petitioners for compounding of an offence committed, under Section 276B, r/w. Section 287B of the Income Tax Act, 1961 during the Financial Year 2009-10 relevant to the Assessment Year 2010-11, was rejected.

3. The case of the petitioner no.2 is that for the relevant Financial Year 2009-10, the petitioner no.1-company deducted income tax to the tune of Rs.25,02,336/- from the salaries of its employees, under the provisions of Section 192 of the Income Tax Act, 1961 ***(the Act)***, but had failed to deposit the tax so deducted to the credit of the Central Government within the time prescribed under Section 200 r/w. Section 204 of the Act. The petitioners

claim that this situation arose due to accumulated losses and delays in receiving tax refund from respondent no.1 during the period 1st April 2009 to 31st March 2010.

4. It is further case of the petitioners that, subsequently, on 2nd September 2010, petitioner no.1-company voluntarily deposited the entire amount of Tax Deducted at Source due, along with statutory interest liability thereon, with respondent no.1 without any prior notice of default or demand from the said respondent. However, the petitioner no.1-company subsequently received Show Cause Notice dated 18th October 2011, calling upon it to show cause as to why prosecution should not be launched for offences committed under Section 276B, r/w. Section 278B, of the Act for failure to deposit tax deducted to the credit of the Central Government, within the statutory time-frame. The said show cause notice also required petitioner no.1 to nominate its Principal Officer for that purpose. Petitioner no.1 replied to the show cause notice on 24th October 2011 and 16th November 2011, attributing accumulated losses, cash crunch and delay in receiving tax refund from respondent no.1 as reasons for their inability and delay in discharging the tax deduction liability. Petitioner no.1 further stated in the reply that the entire liability, along with interest on the delayed payment, had already been deposited by petitioner no.1 voluntarily, before any demand was made. Thereafter, upon hearing petitioner no.1-company, the respondent no.2 issued sanction letter dated 10th March 2014, granting sanction for prosecution against petitioner no.1-company and its Principal Officer-

petitioner no.2 herein, pursuant to which, on 11th March 2014, respondent no.1 lodged a Criminal Complaint bearing No.75/SW/2014 against the petitioners before the 38th Court of Additional Chief Metropolitan Magistrate, Ballard Pier, Mumbai alleging offence punishable under Section 276B, r/w. Section 278B, of the Income Tax Act.

5. It is further the case of the petitioners that the said criminal case was tried and by order dated 14th January 2020, the learned Magistrate convicted the petitioners, under Section 248(2) of the Code of Criminal Procedure, for the offence punishable under Section 278B, r/w. Section 276B of the Income Tax Act, whereby both the petitioners were sentenced to pay the fine of Rs.10,000/- each and imposed a sentence of rigorous imprisonment for one year on petitioner no.2.

6. Aggrieved by this Judgment and Order of the Additional Chief Metropolitan Magistrate, convicting the petitioners, Criminal Appeal No.127 of 2020 was filed on 5th February 2020 before the City Sessions Court at Greater Mumbai. Along with Criminal Appeal, Criminal Miscellaneous Application No.407 of 2020, for stay and suspension of sentence, was filed before the same court and the sentence was suspended by order dated 7th February 2020. Since then, the criminal appeal is pending adjudication before the Sessions Court.

7. In this set of facts, the application, under the provisions of Section 279(2) of the Income Tax Act, came to be filed on 5th February 2020 for compounding of offence before respondent no.3. Along with this application, the petitioners have also filed an application for condonation of delay, if any, in filing the application for compounding of offence. It is stated by the petitioners that the application under Section 279(2) of the Act was rejected by the impugned order dated 1st June 2021, which is now challenged before this court by way of present petition on several grounds.

8. After service of notice on the respondents, an affidavit-in-reply dated 26th May 2022 came to be filed by the respondents opposing the petition. The respondents have also relied upon the CBDT Circulars No.25/2019 and 01/2020, which deal with the procedure set down by the Board for consideration of applications for compounding of offences under the provisions of Section 279 of the Income Tax Act.

9. An affidavit-in-rejoinder dated 4th July 2022 came to be filed by the petitioners opposing the contentions raised by the respondents in their reply. The affidavit-in-rejoinder sets out that the compounding application was filed with just six days delay, after considering relaxation granted till 31st January 2020 as per the CBDT Circular No.25 of 2019 dated 9th September 2019, r/w. CBDT Circular No.01 of 2020 dated 3rd January 2020. It is further the petitioners' contention in the affidavit-in-rejoinder that respondent no.3

has erroneously relied on paragraph 8.1(vii) of the Compounding Guidelines, 2019, as they are inapplicable to the facts of this case since the petitioners had not been convicted of any offence under any Indirect Tax Law and the conviction pertains to a Direct Tax Law.

10. We have heard Ms. Fereshte Sethna, learned counsel for the petitioners and Mr. Suresh Kumar, learned counsel for the respondents and perused the record before us.

11. It is the contention of learned counsel for the petitioners that the provisions of Section 279(2) do not impose any fetters on respondent no.3 from considering the petitioners' application for compounding of offence, even when the Court of Metropolitan Magistrate had convicted the petitioners and during pendency of an appeal before the Sessions Court. It is further contended that plain reading of the provisions of sub-section (2) of Section 279 allows compounding of offence either before or after the institution of proceedings and the word "proceedings" encompasses all stages of the criminal proceedings i.e. to say before the Magistrate and even after the Magistrate has convicted the concerned party or when the proceedings are pending before the Sessions Court in appeal.

12. Learned Advocate for the petitioners submits that, in the present case, the Sessions Court has suspended sentence of petitioner no.2 and this would

have been otherwise a fit case for respondent no.3 to consider application of the petitioners for compounding of offence, as it is not in dispute that petitioner no.1-company has deposited the entire amount of TDS collected along with the interest, though beyond the stipulated period but prior to any demand or show cause notice was issued.

13. Further proposition advanced by the petitioners is that a proceeding in appeal is a continuation of main proceedings and on that count, the learned counsel for the petitioners submits that the Sessions Court, in the present matter, having suspended sentence of petitioner no.2, the appeal which is pending and being a continuation of the original criminal case, there is a "proceeding" for compounding of offence within the meaning of the words "institution of proceedings" incorporated in Section 279(2) of the Income Tax Act and, therefore, refusal of respondent no.3 to exercise jurisdiction vested in it, is an act contrary to the mandate of Section 279(2). Learned counsel further submits that the Circulars of the CBDT, relied upon by respondent no.3 while rejecting the application for compounding of offence, which provides that the application for compounding of offence is required to be filed within twelve months from the end of the month in which the complaint was filed, cannot operate as a rule of limitation since the same cannot override the provisions of the statute i.e. Section 279 of the Income Tax Act.

14. The learned counsel for the petitioners has relied upon the following decisions in support of his case :-

(i) Sports Infratech (P.) Ltd. Vs. Deputy Commissioner of Income-Tax (HQRS)[1]

(ii) Vikram Singh Vs. Union of India[2]

(iii) Government of India, Ministry of Finance, Department of Revenue (Central Board of Direct Taxes) Vs. R. Inbavalli[3]

(iv) K.V. Produce and Ors. Vs. Commissioner of Income-Tax and Anr.[4]

15. Opposing the petition, Mr. Suresh Kumar, learned counsel for the respondents submits that the CBDT Circulars, bearing Nos.25/2019 and 01/2020, provide for relaxation to file compounding applications beyond twelve months from the end of the month in which the complaint was filed and does not permit respondent no.3 to grant such an application beyond the periods specified in the aforesaid circulars. It is further his argument that these circulars are issued pursuant to powers vested in the Board under Section 119 of the Act as guidelines issued to the officers of the Income Tax Department exercising jurisdiction under various provisions of the Income Tax Act and the officers are bound by the same. He further contends that the CBDT Guidelines for Compounding of Offences under Direct Tax Laws, 2019, dated 14th June 2019, more specifically contained in paragraph 8.1(vii), make the petitioners ineligible for compounding the offences notwithstanding the fact that the provisions of the statute contained in Section 279 of the Income Tax Act, 1961 do not provide for any rule of limitation.

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1 *(2017) 78 taxmann.com 44 (Delhi)*

2 *(2017) 80 taxmann.com 371 (Delhi)*

3 *(2017) 84 taxmann.com 105 (Madras)*

4 *(1992) 196 ITR 293 (Kerala)*

16. Mr. Suresh Kumar has relied upon a judgment of the Division Bench of High Court of Delhi in *Anil Batra Vs. Chief Commissioner of Income Tax*[5] and on the basis of the ruling in this judgment, which was rendered on the basis of the CBDT Guidelines of 30th September 1994 for compounding of offences, contends that since the learned Court of Metropolitan Magistrate had already convicted the petitioners, there was no question of respondent no.3 exercising its jurisdiction under Section 279 of the Income Tax Act as the application for compounding of offence ought to have been filed before the filing of the complaint or at-least before an order of conviction was rendered by the Court of Metropolitan Magistrate.

17. For ready reference, Section 279 of the Income Tax Act, 1961 is reproduced hereunder :-

> **Prosecution to be at instance of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.**
>
> **279.** (1) A person shall not be proceeded against for an offence under section 275A, section 275B, section 276, section 276A, section 276B, section 276BB, section 276C, section 276CC, section 276D, section 277, section 277A or section 278 except with the previous sanction of the Principal Commissioner or Commissioner or Commissioner (Appeals) or the appropriate authority:
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> **Provided** that the Principal Chief Commissioner or Chief Commissioner or, as the case may be, Principal Director General or Director General may issue such instructions or directions to the aforesaid income-tax authorities as he may deem fit for institution of proceedings under this sub-section.

5 *(2011) 15 Taxman.Com 121 (Delhi)*

Explanation.—For the purposes of this section, "appropriate authority" shall have the same meaning as in clause (*c*) of section 269UA.

(1A) A person shall not be proceeded against for an offence under section 276C or section 277 in relation to the assessment for an assessment year in respect of which the penalty imposed or imposable on him under section 270A or clause (*iii*) of sub-section (1) of section 271 has been reduced or waived by an order under section 273A.

(2) Any offence under this Chapter may, either before or after the institution of proceedings, be compounded by the Principal Chief Commissioner or Chief Commissioner or a Principal Director General or Director General.

(3) Where any proceeding has been taken against any person under sub-section (1), any statement made or account or other document produced by such person before any of the income-tax authorities specified in clauses (*a*) to (*g*) of section 116 shall not be inadmissible as evidence for the purpose of such proceedings merely on the ground that such statement was made or such account or other document was produced in the belief that the penalty imposable would be reduced or waived, under section 273A or that the offence in respect of which such proceeding was taken would be compounded.

(4) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of granting sanction under sub-section (1) or compounding under sub-section (2), so as to impart greater efficiency, transparency and accountability by—

(*a*) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;

(*b*) optimising utilisation of the resources through economies of scale and functional specialisation;

(*c*) introducing a team-based sanction to proceed against, or for compounding of, an offence, with dynamic jurisdiction.

(5) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (4), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

Provided that no direction shall be issued after the 31st day of March, 2022.

(6) Every notification issued under sub-section (4) and sub-section (5) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

Explanation.—For the removal of doubts, it is hereby declared that the power of the Board to issue orders, instructions or directions under this Act shall include and shall be deemed always to have included the power to issue instructions or directions (including instructions or directions to obtain the previous approval of the Board) to other income-tax authorities for the proper composition of offences under this section.

18. In *Anil Batra (Supra)*, the Delhi High Court was dealing with the application of Guidelines issued on 29th July 2003 to a case where three complaints had been filed against the petitioners, in which he had been convicted in two cases. Anil Batra's case was not dealing with the effect of the CBDT Guidelines dated 14th June 2019 as in the present matter, nor was it dealing with the question whether, in the face of the provisions of Section 279(2), which set no rule of limitation, the Guidelines can set a period of limitation for filing of an application for compounding offences.

19. In *Sports Infratech (P.) Ltd. (Supra)*, a Division Bench of the Delhi High Court was considering the provisions of the Board's Guidelines dated 3rd December 2014. In that case, an application for compounding came to be rejected on the ground that the petitioner did not fulfill the eligibility criteria for consideration of its case for compounding. As per paragraph 8(v) of the Guidelines, while considering the binding nature of the guidelines and their effect and considerations to be adopted while deciding an application for compounding under Section 279(3) of the Act, it was held as under :-

> "6. The learned counsel for the Revenue urges that the binding nature of the Board's instructions and guidelines is apparent from explanation to Section 279(3), which clarifies that the power to grant or refuse compounding is essentially discretionary and actually administrative. Therefore, the guidelines framed for its exercise under Section 279 are binding upon all Revenue Authorities including the Chief Commissioner. Learned counsel relied upon the Supreme Court decision in Asstt. CIT v. Velliappa Textiles Ltd., (2003) 263 ITR 550 / 132 Taxman 165 (SC) to highlight that compounding application cannot be concluded to as a matter of right, but rather is subject to exercise of discretion. There is no quarrel with the proposition that power to accept a plea for compounding or refusal is essentially discretionary. The exercise, however, in each case is dependent upon the Authority, who has to apply his or her mind judiciously to the circumstances of each case. The rejection of the petitioner's application in this case is entirely routed on the Chief Commissioner's understanding of the conditions of ineligibility of para 8(v) apply. In this Court's opinion, that view was based upon an erroneous understanding of law. Whilst guidelines no doubt are to be kept in mind specially while exercising jurisdiction, they cannot blind the authority from considering

> the objective facts before it. In the present case, petitioner's failure to deposit the amount collected was beyond its control and was on account of seizure of books of accounts and documents etc. But for such seizure, the petitioner would quite reasonably be expected to deposit the amount within the time prescribed or at-least within the reasonable time. Instead of considering these factors on their merits and examining whether indeed they were true or not, the Chief Commissioner felt compelled by the text of para 8(v). That condition, no doubt, is important and has to be kept in mind, cannot be only determining. In the present case, the material on record in the form of a letter by the Superintendent of CBI also shows that a closure report was in fact filed before the competent court. Having regard to all these facts, this Court is of the opinion that the refusal to consider and accept the petitioner's application under Section 279(2) cannot be sustained. The impugned order is hereby set aside.
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> 7. The Chief Commissioner is hereby directed to consider the relevant facts and pass necessary orders in accordance with law within six weeks after granting a fair opportunity to the petitioner in that regard. The petition is allowed in the above terms."

20. The Delhi High Court has concluded that the condition in the guidelines, no doubt, is important but cannot be the only determining factor for deciding an application under Section 279(2) of the Act. It further held that the authority, while exercising jurisdiction under this provision, was also required to consider the objective facts in the application before it.

21. In *Vikram Singh (Supra)*, another Division Bench of the Delhi High Court considered the provisions of the Circular dated 23rd December 2014

issued by the CBDT and, more specifically, the guidelines contained in para 8(vii), which provides that offences committed by a person for which complaint was filed by the Department with the competent court twelve months prior to receipt of the application for compounding was generally not to be compounded. While considering the import of such a clause in the circular, it has held as under :-

> "7. The Circular dated 23rd December 2014 does not stipulate a limitation period for filing the application for compounding. What the said circular sets out in para 8 are "Offences generally not to be compounded". In this, one of the categories, which is mentioned in sub-clause (vii), is : "Offences committed by a person for which complaint was filed with the competent court 12 months prior to receipt of the application for compounding".
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> 8. The above clause is not one prescribing a period of limitation for filing an application for compounding. It gives a discretion to the competent authority to reject an application for compounding on certain grounds. Again, it does not mean that every application, which involves an offence committed by a person, for which the complaint was filed to the competent court 12 months prior to the receipt of the application for compounding,w ill without anything further, be rejected. In other words, resort cannot be had to para 8 of the circular to prescribe a period of limitation for filing an application for compounding. For instance, if there is an application for compounding, in a case which has been pending trial for, let us say 5 years, it will still have to be considered by the authority irrespective of the fact that it may have been filed within ten years after the complaint was first filed. Understandably, there is no limitation period for considering the application for compounding. The grounds on which an application may be considered, should not be

confused with the limitation for filing such an application.

9. This has to be also understood in the context of the object of providing for compounding of offences. There is an acknowledgment that the judicial system is not as efficient as it is intended to be. There are trials, even in non-serious offences, that have been pending for decades. It is in the public interest, apart from the interest of the Department itself, that some closure is brought to such cases which may be pending interminably in our Court system. It is for this reason that some discretion has been vested in the officers of the Department to compound offences. It provides an opportunity for some assessees, notwithstanding that their appeals as regards the assessments may be pending, to come forward to have their offences compounded. It does subserve both public interest as well as the interest of the Department itself that on some reasonable terms such offences, which may not be considered serious, are compounded. The guidelines have to be understood only in that context.

10. The reason given in the impugned order dated 3rd November 2016 for rejection of the petitioner's application does not satisfy the criteria spelt out in the guidelines issued by the Department by its Circular dated 23rd December 2014. It has proceeded on a ground that is not available to the Department viz. that the application is inordinately delayed. Since there is no other reason given for the rejection of the application, the Court is unable to sustain the order dated 3rd November 2016 of the CCIT by which the petitioner's application for compounding was rejected. The said order is hereby set aside. The petitioner's application for compounding will have to be considered afresh by the CCIT."

22. A similar provision, as has been dealt with by the Delhi High Court, contained in the Circular dated 23rd December 2014 is found in para 7(ii) of the Circular dated 14th June 2019, which is applicable to the present case. The

provisions of para 7(ii) of 2019 Circular would be required to be read with the provisions of para 9.1 of that circular, which provides for relaxation in cases where an application is filed beyond twelve months referred to in paragraph 7(ii), specially when there is a pendency of an appeal or at any stage of the proceedings.

23. In *R. Inbavalli (Supra)*, a Division Bench of the Madras High Court was dealing with the CBDT Guidelines dated 16th May 2008, wherein an application for compounding was rejected on the ground that it was not a deserving case as parameters of para 7.2 of those guidelines had not been adhered to. In that case, it was argued by the Revenue that wherever conviction order has been passed by the competent court, it would fall under the category of cases which are not to be compounded and though a discretionary power was given under clause 7.2 of the guidelines for grant of approval for compounding of an offence in a suitable and deserving case, such discretion could not be exercised in favour of the assessee when the assessee had been convicted. In that case also, an appeal was pending against the order of conviction before the higher court when the application for compounding of offence was made to the party.

24. In the face of these facts, the Madras High Court, considering the provisions of the Guidelines dated 16th May 2008, has held as under :-

> "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."

25. A Single Judge of the Kerala High Court in *K.V. Produce and Ors. (Supra)*, while considering the effect of the circulars issued under Section 119 of the Income Tax Act, has held as under :-

> "Though circulars issued under section 119 of the Income-Tax Act, may have the force of law, they may not override the law itself. Concepts like "ultra vires" would come into play if a notification of a rule runs derogatory to the parent law. However, I consider it unnecessary to examine that question for purposes of this case. The basic question is whether the circular governs the case."

26. The Explanation to sub-section (6) of Section 279, provides power to the Board to issue orders, instructions or directions under the Act to other income tax authorities for proper composition of offences under the section. The Explanation does not empower the Board to limit the power vested in the authority under Section 279(2) for the purpose of considering an application for compounding of offence specified in Section 279(1).

27. In our opinion, the orders, instructions or directions issued by the CBDT under Section 119 of the Act or pursuant to the power given under the Explanation will not limit the powers of the authorities specified under Section 279(2) in considering such an application, much less place fetters on

the powers of such authorities in the form of a period of limitation. We are, therefore, of the opinion that the guidelines contained in the CBDT Guidelines dated 14th June 2019 could not curtail the power vested in Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General under the provisions of Section 279(2) of the Income Tax Act.

28. In our considered view, to the extent CBDT Guidelines dated 14th June 2019 creates a limitation on the time, within which application under Section 279(2) of the Income Tax Act is required to be filed, is of no consequence and does not take away jurisdiction of respondent no.3 or the other authorities, referred to in sub-section (2) of Section 279, from entertaining an application for compounding of offence at any time during the pendency of the proceedings, be they before the Magistrate or on conviction of the petitioners, in an appeal before the Sessions Court. As long as a proceeding, as referred to in sub-section (1), is pending, an application for compounding of offence would be maintainable under sub-section (2) of Section 279 and will have to be dealt with by the authorities on its own merits.

29. These Guidelines / Circular of 2019 before us sets out "Eligibility Conditions for Compounding" in para 7 thereof. In paragraph 7(ii), the guidelines state that no application of compounding can be filed after the end of twelve months from the end of the month in which prosecution complaint

has been filed in the court. Guideline 7(v) prescribes that the person seeking compounding of the offence is required to give an undertaking to withdraw any appeals that may have been filed by him relating to the offences sought to be compounded. Guideline 9.1 contains powers to relax the time period prescribed under para 7(ii) and refers to situations where there is a pendency of an appeal. Conjoint reading of these provisions leaves us with no manner of doubt that the condition specified in clause 7(ii) is not a rule of limitation, but is only a guideline to the authority while considering the application for compounding. It in no manner takes away the jurisdiction of the authority under Section 279(2) of the Act to consider the application for compounding on its own merits and decide the same.

30. Clause (vii) of guideline 8.1, which is referred to in the impugned order, has the basis on which the application can be rejected. It prescribes the offences which are generally not to be compounded. Clause (vii) refers to offences under any law **other than the Direct Taxes Laws.** The present case is one where the petitioners have categorically averred that they have not been convicted under any other law other than Direct Taxes Laws, nor is it the case of the Revenue that the petitioners have been convicted under such law other than Direct Taxes Laws.

31. The reason stated by the authority in the impugned order, wherein it proceeds on the erroneous factual assumption that the petitioners have been

convicted by a court of law for an offence other than under the Direct Taxes Laws, is unsustainable and on this count alone, the impugned order is required to be set aside.

32. In the present case, we find that this is a classic case for consideration by respondent no.3 for compounding of offence, inasmuch as petitioner no.1-company has deposited the TDS due, though beyond time-limit set down, but before any demand notice was raised or any show cause notice was issued. The Tax Deducted at Source was deposited along with penal interest thereon. A reply setting out detailed reasons for not depositing the same within the time stipulated under the law had been filed in reply to the show cause notice issued earlier. Though the petitioners had been convicted, a proceeding in the form of an appeal is pending before the Sessions Court, which is yet to be disposed of, and in which there is an order of suspension of sentence imposed on petitioner no.2 is operating.

33. Under these circumstances, we are of the view that the findings arrived at by respondent no.3 in the impugned order dated 1st June 2021, that the application for compounding of offence, under Section 279 of the Income Tax Act, was filed beyond twelve months, as prescribed under the CBDT Guidelines dated 14th June 2019, are contrary to the provisions of sub-section (2) of Section 279. The respondent no.3 has failed to exercise jurisdiction vested in it while deciding the application on merits and consideration of the

grounds set out when the application for compounding of offence was filed before it. On this count, the impugned order dated 1st June 2021 needs to be quashed and set aside. Accordingly, we pass the following order :-

(i) The impugned order dated 1st June 2021 passed by respondent no.3-Chief Commissioner of Income Tax (TDS), Mumbai, on the application filed by the petitioners for compounding of an offence, is quashed and set aside.

(ii) Consequently, we remand the application, under the provisions of Section 279(2) of the Income Tax Act, of the petitioners back to respondent no.3 to consider afresh on its own merits.

(iii) Respondent no.3 shall dispose of the application of the petitioners preferably within a period of thirty days from the date of receipt of this judgment.

(iv) Until disposal of the application of the petitioners for compounding of offence, under sub-section (2) of Section 279 of the Income Tax Act, 1961, by respondent no.3, the proceedings, being Criminal Appeal No.127 of 2020, along with Criminal Miscellaneous Application No.407 of 2020, pending before the City Sessions Court, Greater Mumbai, shall remain stayed.

(v) The challenge to the validity of clause 7(ii) contained in Circular F. No. 285/08/2014-IT(INV.V)/147 dated 14th

June 2019, as raised in the present petition, is left open in the event the petitioners are aggrieved by a fresh order to be passed by respondent no.3.

34. Rule is made absolute in the above terms.

35. Petition is disposed of accordingly.

[VALMIKI SA MENEZES, J.] [DHIRAJ SINGH THAKUR, J.]