



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION (L) NO.14574 OF 2023

1. Sofitel Realty LLP )  
Formerly known as: Sofitel Realty P. Ltd. )  
Having registered office at Plot No.1/838, )  
Near Bank of Maharashtra, Lady Jamshedji )  
Road, Mahim (west), Mumbai 400 016 )  
TA No.MUMS 6000078 E )

2. Taslim Chougale )  
Director of erstwhile Sofitel Realty P. Ltd. )  
Plot No.1/838, Near Bank of Maharashtra, )  
Lady Jamshedji Road, Mahim (west), )  
Mumbai 400 016, PA No.AABPC 1361 C )

3. Dilshad Chougale )  
Director of erstwhile Sofitel Realty P. Ltd. )  
Plot No.1/838, Near Bank of Maharashtra, )  
Lady Jamshedji Road, Mahim (west), )  
Mumbai 400 016, PA No.AAGPC 2269 M )

...Petitioners

V/s.

1. Income Tax Officer (TDS)- )  
Ward2(2)((4), Mumbai Earlier Income Tax )  
Officer-TDS Ward-3(3) Mumbai, )  
having office at MTNL Telephone Exchange )  
Cumbala Hill, Peddar Road, Tardeo, )  
Mumbai 400 026 )

2. Commissioner of Income Tax (TDS)-2 )  
having office at MTNL Telephone Exchange )  
Cumbala Hill, Peddar Road, Tardeo, )  
Mumbai 400 026 )

3.Chief Commissioner of Income Tax (TDS) )  
having office at MTNL Telephone Exchange )  
Cumbala Hill, Peddar Road, Tardeo, )  
Mumbai 400 026 )

4 The Central Board of Direct Taxes )  
Through the Chairperson, Department of )  
Revenue, Government of India, North block )  
New Delhi 110 001 )

Meera Jadhav

5 Union of India )  
Through its Finance Secretary Department )  
of Revenue, Ministry of Finance, 3<sup>rd</sup> Flr. )  
Jeevan Deep Building New Delhi 110 001 ) ...Respondents

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Mr. Sham Walve i/b Mr. Sameer Dalal and Mr. Hafeezur Rahman for  
Petitioners.

Mr. Suresh Kumar for Respondents.

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**CORAM : K.R. SHRIRAM &  
FIRDOSH. P POONIWALLA, JJ**  
**DATED : 18<sup>th</sup> JULY 2023**

**(ORAL JUDGMENT PER K. R. SHRIRAM J.) :**

1 Petitioner no.1 is a Limited Liability Partnership firm. Petitioner nos.2 and 3 are partners of petitioner no.1. For the period of assessment year 2009-2010, petitioner no.1 for various reasons did not deposit the TDS amount that it had deducted with the income tax authorities. Petitioner no.1 deposited those TDS amounts on or about 23<sup>rd</sup> March 2010 beyond the time provided for deposit. This was before petitioners even received a show cause notice from the department. There is no outstanding on amount of TDS.

2 Petitioners received the show cause notice dated 30<sup>th</sup> November 2011 calling upon petitioners to show cause as to why prosecution against them be not lodged for offence under Section 276B read with Section 278B of the Income Tax Act, 1961 (the Act). On 26<sup>th</sup> March 2012, petitioners filed a compounding application dated 5<sup>th</sup> March 2012 (first application) in the prescribed format. On 25<sup>th</sup> February 2013, hearing notice was issued to

petitioners and petitioners were given a personal hearing. Chief Commissioner of Income Tax, i.e., respondent no.3 declined the prayer to compound the offence. This was because on 25<sup>th</sup> February 2013, during the personal hearing, petitioners' representative had agreed to pay the compounding fees of Rs.7,39,984/- as calculated by CIT (TDS) Mumbai by 15<sup>th</sup> March 2013 but petitioners failed to deposit the compounding fees. The break up of Rs.7,39,984/- is as under:

Particulars	Amt.(Rs.)
Compounding fees	5,89,984/-
Establishment Expense of accused assessee company	50,000/-
Mr. Taslim A Chougule, Director, Co-accused	50,000/-
Mrs. Dishad T Chougule, Director, Co-accused	50,000/-
TOTAL	7,39,984/-

3 On 22<sup>nd</sup> April 2013, petitioner requested for time of one more month for payment and extension was granted up to 10<sup>th</sup> May 2013. No payment was however made. Therefore, the department sent a reminder on 5<sup>th</sup> July 2013 calling upon petitioner to pay the compounding fees by 12<sup>th</sup> July 2013. Petitioner did not respond or deposit the said compounding fees. In view thereof, petitioner's application dated 5<sup>th</sup> March 2012 came to be rejected.

4 On 26<sup>th</sup> August 2013, respondent no.2 passed a sanction order for initiation of prosecution against petitioners. On 28<sup>th</sup> August 2013, respondent no.2, through respondent no.1, filed a complaint before the Metropolitan Magistrate, 38<sup>th</sup> Court at Esplanade under Section 276B read with Section 278B of the Act. Matter was later transferred to Ballard Pier

Court and then now it is at Mazgaon Court, Mumbai.

5 On 14<sup>th</sup> July 2014, petitioner no.1 paid the entire compounding fees of Rs.7,39,984/- as was indicated by respondent no.3 during the personal hearing on 25<sup>th</sup> February 2013 and as indicated in the rejection order dated 17<sup>th</sup> July 2013. On 8<sup>th</sup> October 2015, petitioner filed a fresh compounding application (second application) before respondent no.3 and also agreed to pay any further or additional compounding fees as may be directed.

Almost three years later on 21<sup>st</sup> September 2018, petitioner received a letter dated 17<sup>th</sup> September 2018 annexing thereto copy of the order dated 17<sup>th</sup> July 2013. The letter dated 17<sup>th</sup> September 2018 reads as under:

*"No:-CCIT(TDS)/Mum/HQ/Compounding matter/173/2018-19  
Date: 17.09.2018*

*To,*

*The Principal Officer,*

*M/s. Sofitel Realty Pvt Ltd.,*

*Plot No. 1/838, Lady Jamshedji Road,*

*Near Bank of Maharashtra,*

*Mahim (W).*

*Mumbai 400 016.*

*Sir,*

*Sub: Clarification and reply for the compounding of offences for A.Y. 2009-10-reg*

*Ref: Your compounding application filed on 04.08.2015 for the A.Y. 2009-10.*

*Kindly refer to the above.*

*2. In this regard, I have been directed by the CCIT (TDS), Mumbai to inform you that your application for compounding of offence for AY. 2009-10 filed on 26.03.2012 has already been **Rejected** by CCT(TDS), Mumbai on 17.07.2013.*

*3. A copy of the order passed u/s. 279(2) of the LT. Act, 1961 dated 17.07.2013 for the AY. 2009-10 is enclosed for your information.*

*Encl: As above*

*Yours sincerely,*

*(LINESH N PATHAK)*

*ACIT (OSD) to CCIT (TDS), Mumbai.”*

6 On 2<sup>nd</sup> March 2013, over 10 years later, department has filed evidence before the Additional Chief Metropolitan Magistrate Court. Therefore, petitioner addressed a letter on 17<sup>th</sup> March 2013 to respondent no.3 requesting him to provide a copy of order passed in the second application. In response petitioner received a letter dated 13<sup>th</sup> April 2023 which reads as under:

*“No. CCIT(TDS)/Mum/Compounding/173/2023-24/22*

*Date: 13.04.2023*

*To,*

*The Principal Officer,*

*M/s. Sofitel Reality Pvt Ltd.*

*Plot No 1/838,*

*Lady Jamshedji Road,*

*Near Bank of Maharashtra,*

*Mahim(W). Mumbai 400 016.*

*Sir.*

*Sub: Application for compounding of offences u/s 276B of the I.T. Act, 1961 in the case of M/s. Sofitel Reality Pvt Ltd. TAN:MUMS60078E for A.Y.2009-10 - Reg.*

*Ref: Your compounding application filed on 04.08.2015 for AY 2009-10.*

*Kindly refer to the above.*

*2. In this regard, I am directed to state that your application mentioned above for compounding of offence u/s 276B of Income tax Act 1961 has been rejected on 17.07.2013.*

*3. As requested, a copy of the order passed u/s 279(2) of the I.T. Act, 1961 dated 17.07.2013 for AY 2009-10 is enclosed. The copy of the same had already been forwarded to you vide this office letter dated 17.09.2018 on your request Acknowledgement of the service of the order is enclosed herewith for your ready reference.*

*Yours sincerely.*

*(RAVI SHEKHAR SINGH)*

*ITO (HQ) to CCIT(TDS), Mumbai”*

7 In the letters dated 17<sup>th</sup> September 2018 and 13<sup>th</sup> April 2023, the compounding application referred to is dated 4<sup>th</sup> August 2015. There is no application dated 4<sup>th</sup> August 2015. Moreover, the order of rejection referred to in two letters is dated 17<sup>th</sup> July 2013. These indicate total non application of mind since; a) there is no compounding application dated 4<sup>th</sup> August 2015, and b) how can an order of rejection be passed on 17<sup>th</sup> July 2013 when the application itself is dated 4<sup>th</sup> August 2015. Moreover, the order of 17<sup>th</sup> July 2013 refers to the first compounding application that petitioners had filed on 5<sup>th</sup> March 2012. It is, therefore, very clear that petitioners' second compounding application dated 8<sup>th</sup> October 2015 has not been even considered or disposed.

8 In the affidavit in reply filed through one Shashi Shekhar Singh, Income Tax Officer (TDS)-2(2)(4) Mumbai, affirmed on 7<sup>th</sup> July 2023, it is stated that compounding application dated 8<sup>th</sup> October 2015 is barred by limitation of time as per the compounding guide lines dated 23<sup>rd</sup> December 2014 issued by respondent no.4 where in paragraph 8(vii) it is provided that in respect of offences for which complaint had been filed with competent court 12 months prior to the receipt of the application for compounding, such offences generally not be compounded. According to affiant, since complaint had been filed on 20<sup>th</sup> August 2013 and the fresh compounding application dated 8<sup>th</sup> October 2015 was beyond the period of 12 months, the application is null and void.

We are surprised with the affidavit because it is not for the Income

Tax Officer to decide the compounding application. Section 279(2) of the Act provides that any offence under chapter XXII of the Act may, either before or after the institution of proceedings, be compounded by the Principal Chief Commissioner of Income Tax or Commissioner of Income Tax or Principal Director General of Income Tax or Director General. The Income Tax Officer has no power to even state that the application is null and void. We find that the application dated 8<sup>th</sup> October 2015, has not even been disposed as is also evident from the affidavit in reply filed by Shashi Shekhar Singh.

9 We have to observe, in view of the comment made by the Income Tax Officer in the affidavit in reply, that sub-section (2) of Section 279 of the Act provides for compounding of any offence by the authorised officer either before or after the institution of the proceedings. There is no limitation provided under sub section (2) of Section 279 of the Act for submission or consideration of the compounding application. What is relied upon by the Income Tax Officer is the Guidelines issued by respondent no.4, Central Board of Direct Taxes (CBDT). CBDT by the Guidelines cannot provide for limitation nor can it restrict the operation of sub section (2) of Section 279 of the Act. Mr. Suresh Kumar submitted that the Guidelines were issued under second explanation appended to Section 279 of the Act. The Guidelines is subordinate to the principal Act or Rules, it cannot override or restrict the application of specific provision enacted by legislature. The Guidelines cannot travel beyond the scope of the powers conferred by the

Act or the Rules. It cannot contain instructions or directions curtailing a statutory provision by prescribing the period of limitation where none is provided by either the Act or the rules framed thereunder. Moreover, the explanation merely explains the main section and is not meant to carve out a particular exception to the contents of the main Section. Paragraphs 9 to 14 of the Judgment of Allahabad High Court in ***J. P. Engineering Works Kachhwa Vs. Union of India***<sup>1</sup>:

*9. From a bare perusal of sub-section (2) of section 279, it is evident that any offence under Chapter XXII of the Act, 1961 may be compounded by the authorized officer either before or after the institution of the proceedings. No limitation for submission or consideration of compounding application has been provided under sub-section (2) of section 279 of the Act, 1961. Therefore, the Central Board of Direct Taxes by a Guidelines can neither provide limitation for the purposes of sub-section (2) nor can restrict the operation of sub-section (2) of section 279 of the Act, 1961, in purported exercise of its power to issue Guidelines under the second Explanation appended to section 279 of the Act, 1961. It has not been disputed before us by the learned counsel for the respondent or in the impugned show cause notice that the criminal case in question is still pending.*

*10. A Guidelines is subordinate to the principle Act or Rules, it cannot override or restrict the application of specific provision enacted by legislature. A Guidelines cannot travel beyond the scope of the powers conferred by the Act or the Rules. Guidelines containing instructions or directions cannot curtail a statutory provision as aforesaid by prescribing a period of limitation where none has been provided by either the Act, 1961 or the Rules. The authority to issue instructions or directions by the Board stems from the second Explanation appended to section 279 of the Act, 1961. It is well settled that the Explanation merely explains the main section and is not meant to carve out a particular exception to the contents of the main section ( Ku. Sonia Bhatia v. State of U.P. [1981] 2 SCC 585 at page 597). The object of an Explanation to a statutory provision was elaborated by the Supreme Court in S. Sundaram Pillai v. V.R. Pattabiraman [1985] 1 SCC 591, in which it was held as follows:*

*"53. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is*

*(a) to explain the meaning and intendment of the Act itself,*

1. (2022) 139 taxmann.com 130 (Allahabad)

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,

(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and

(e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same."

11. By means of para 7(ii) of the compounding guidelines circulated by F.No.285/08 /2014-IT(Inv.V)/147 dated 14-6-2019, that has been quoted in the impugned notice dated 16-11-2021 the period for filing an application for compounding has been restricted to 12 months from the end of the month in which the prosecution complaint has been filed in the court of law. Given the interpretation of the Supreme Court regarding the object of an Explanation to a statutory provision, the Board has sought to introduce the provision of limitation by means of Guidelines that is not contemplated by the second Explanation.

12. In the case of *Vikram Singh v. Union of India* [2017] 80 taxmann.com 371/247 Taxman 212/394 ITR 746 by a Division Bench of the Delhi High Court (enclosed as Annexure No. 5 to the writ petition), in response to the petitioner's application for compounding of offences under section 279(2) of the Act, 1961, he was sent a communication informing him the total compounding charges payable in his case which he was required to pay even for his application to be considered. This was purportedly in terms of a Guidelines dated 23-12-2013 issued by the Board containing guidelines for compounding of offence under clause 11(v). A writ petition was filed seeking quashing of the Guidelines dated 23-12-2014 particularly the paragraph which set out the fee for compounding. In the reply filed to the writ petition, the Department, inter alia, stated that the compounding application under consideration was filed by the accused after about 10 years of filing the prosecution complaint; that para 8( vii) of the revised guidelines for compounding dated 23-12-2014 provides that offences committed by a person for which prosecution complaint was filed by the Department with the competent court 12 months prior to receipt of the compounding application are generally not to be compounded. With that reply, the Department had also filed an order dated 3-11-2016 passed by the Chief Commissioner of Income-tax on the ground that there was inordinate delay of 9 years in filing of the application for compounding of offences by the assessee. While referring to para

8(vii) of the Guidelines dated 23-12-2014, the Court observed that it did not stipulate a limitation period for filing the application for compounding. It gave a discretion to the competent authority to reject an application for compounding on certain grounds. Thus, the Court held that resort cannot be had to para 8 of the Guidelines to prescribe a period of limitation for filing an application for compounding. The Court accordingly held as follows:

"14. The Court finds nothing in section 279 of the Act or the Explanation thereunder to permit the CBDT to prescribe such an onerous and irrational procedure which runs contrary to the very object of section 279 of the Act. The CBDT cannot arrogate to itself, on the strength of section 279 of the Act or the Explanation thereunder, the power to insist on a 'pre-deposit' of sorts of the compounding fee even without considering the application for compounding. Indeed Mr Kaushik was unable to deny the possibility, even if theoretical, of the application for compounding being rejected despite the compounding fee being deposited in advance. If that is the understanding of para 11(v) of the above Guidelines by the Department, then certainly it is undoubtedly ultra vires section 279 of the Act. The Court, accordingly, clarifies that the Department cannot on the strength of para 11(v) of the Guidelines dated 23rd December 2014 of the CBDT reject an application for compounding either on the ground of limitation or on the ground that such application was not accompanied by the compounding fee or that the compounding fee was not paid prior to the application being considered on merits."

13. However, in the present case a specific limitation has been provided by para 7( ii) of the compounding guidelines contained in the Guidelines dated 14-6-2019 in purported exercise of power under the second Explanation to section 279(2) of the Act, 1961. The second Explanation merely enables the Board to issue instructions or directions to other Income-tax authorities for the proper composition of offences under that section. That is to say the instructions or directions may prescribe the methodology and manner of composition of offences to clarify any obscurity or vagueness in the main provisions to make it consistent with the dominant object of bringing closure to such cases which may be pending interminably in our Court system. Such instructions or directions that are prescribed by the Explanation cannot take away a statutory right with which an assessee has been clothed, or set at naught the working of the provision of compounding of offences.

14. Considering the facts and circumstances of the case and the provisions of sub-section (2) of section 279 of the Act, 1961, the writ petition is allowed to the extent that compounding application of the petitioner cannot be rejected by the Income-tax Authority concerned on the ground of delay in filing the application. Accordingly, we also direct that compounding application of the petitioner shall be considered by the Income-tax Authority concerned in accordance with law."

(emphasis supplied)

10 It will also be useful to reproduce paragraph 33 of the judgment of this court in ***Foot candles Film (P) Ltd. Vs. Income Tax Officer***<sup>2</sup>, which reads as under:

*“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 Guidelines 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.”*

*(emphasis supplied)*

It will also be useful to reproduce paragraph 6 of the judgment of Delhi High Court in ***Sports Infratech (P) Ltd. Vs. Deputy Commissioner of Income-tax (HQRS)***<sup>3</sup>, which reads as under:

2. (2023) 146 taxmann.com 304(Bombay)

3. (2017) 78 taxmann.com 44 (Delhi)

*“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.”*

*(emphasis supplied)*

11 We should also note that a Division Bench of this Court in ***Durgeshwari Hi-Rise & Farms (P) Ltd. Vs. Chief Commissioner of Income Tax (TDS)***<sup>4</sup>, was considering a matter where the assessee had filed more than one compounding application. Though court has observed that the order was being passed in peculiar facts of that case, we find that the court

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4. (2019) 103 taxmann.com 292 (Bombay)

has observed that just because the first application was rejected for default, does not mean the second application should be rejected.

12 It will also be appropriate to reproduce paragraphs 12 to 15 of the judgment of Delhi High Court in *Vikram Singh Vs. Union of India*<sup>5</sup> which read as under:

*"12. Mr. Rahul Kaushik, learned counsel for the Department, in seeking to justify the levy of the compounding fee in advance, placed reliance on the decision of the Supreme Court in Y.P. Chawla v. M.P. Tiwari[1992] 195 ITR 607/63 Taxman 538 where the Supreme Court while setting aside the judgment of this Court in M.P. Tiwari v. Y.P. Chawla[1991] 187 ITR 506/58 Taxma 182 (Delhi) took note of the insertion of the following Explanation under Section 279 of the Act inserted with retrospective effect from 1st April, 1962:*

*"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...."*

*13. The Supreme Court reversed the judgment of this Court on the facts of that case and held that the CBDT had the power to issue instruction to authorities, other than the Income Tax authorities, in the matter of compounding of offences. However, that judgment does not answer the principal question that arises for consideration in the present writ petition, viz., whether on the strength of the above Explanation to Section 279 of the Act the CBDT can issue instructions requiring an applicant seeking compounding of an offence, to pay upfront the compounding fee even before the application for compounding can be considered on merits? It would appear from para 11(v) of the impugned Guidelines dated 23rd December 2014 of the CBDT that where an applicant seeking compounding of the offences does not pay the compounding fee upfront, his application need not be considered at all.*

*14. The Court finds nothing in Section 279 of the Act or the Explanation thereunder to permit the CBDT to prescribe such an onerous and irrational procedure which runs contrary to the very object of Section 279 of the Act. The CBDT cannot arrogate to itself, on the strength of Section 279 of the Act or the Explanation thereunder, the power to insist on a 'pre-deposit' of sorts of the compounding fee even without considering the application for compounding. Indeed Mr Kaushik was unable to deny the possibility, even if theoretical, of the application for compounding being rejected*

5. (2017) 80 taxmann.com 371 (Delhi)

*despite the compounding fee being deposited in advance. If that is the understanding of para 11(v) of the above Guidelines by the Department, then certainly it is undoubtedly ultra vires Section 279 of the Act. The Court, accordingly, clarifies that the Department cannot on the strength of para 11(v) of the Guidelines dated 23rd December 2014 of the CBDT reject an application for compounding either on the ground of limitation or on the ground that such application was not accompanied by the compounding fee or that the compounding fee was not paid prior to the application being considered on merits.*

*15. The question of payment of the compounding fee, if any, would arise, only if upon considering the application on merits, the Department is of the view that the prayer should be allowed subject to terms that are reasonable and subserve the object of Section 279 of the Act.”*

13 Therefore, we make it clear to respondent no.3 that the compounding application cannot be rejected on the ground of delay in filing the application. Moreover, there is no restriction also on the number of applications that could be filed. The only requirement under sub-section (2) of Section 279 of the Act is that the complaint filed should be still pending which Mr. Suresh Kumar concurs with Mr. Walve, is still pending.

14 Therefore, we dispose the petition with a direction to respondent no.3 to consider and dispose petitioner's application dated 8<sup>th</sup> October 2015 within 8 weeks from today. Before passing any order which shall be a reasoned order dealing with every submission of petitioners, a notice of personal hearing shall be given which shall be communicated at least five working days in advance.

15 Statement of Mr. Walve that if any further compounding fees, has to be paid, petitioners are ready and willing to pay, is accepted. Once the amount is determined, the credit for the sum of Rs.7,39,984/- that is

already paid, will naturally be given.

16 As we have directed the compounding application be disposed within 8 weeks, the proceedings being C.C.No.4824/SCN-2013 pending before the Additional Chief Metropolitan Magistrate, 38<sup>th</sup> Court, Mumbai shall remain stayed until respondent no.3 / department disposes petitioner's compounding application dated 8<sup>th</sup> October 2015.

17 Petition disposed.

**(FIRDOSH P POONIWALLA, J.)**

**(K.R. SHRIRAM, J.)**