



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3284 of 2023

Binod Pattanayak

....

Petitioner(s)

Mr. Milan Kanungo, Senior Advocate
along with Mr. S. K. Dwivedy, Advocate

*-versus-**Union of India*

....

Opposite Party(s)

Mr. Abinash Kedia, Junior Standing Counsel (Income Tax)

CORAM: JUSTICE SIBO SANKAR MISHRA

ORDER

07.01.2025

Order No.

10.

1. Heard.

2. The petitioner by invoking the inherent jurisdiction of this Court under section 482 Cr.P.C seeking quashing of the order dated 20.07.2023 passed by the learned ACJM (Special Court), Cuttack in 2(c)C.C. Case No.70 of 2013, whereby the application of the petitioner seeking discharge from the criminal prosecution initiated by the Revenue has been turn down.

3. The opposite party instituted a complaint under Section 190 Cr.P.C. against the present petitioner inter alia alleging that the petitioner had deducted the tax at source in respect of various payments of an amount of Rs.2,52,000/- from the payments made to the employees towards salary during month of April 2010 to



November 2010 but did not deposit the TDS amount into the Central Government account by the stipulated dues dates. The deductor is the Drawing and Disbursing Officer of M/s. Indoo Ingots and Re-rollers Private Limited, which is a private company registered and incorporated under the relevant provisions of the Companies Act, 1956 and the said company is assessed to tax. It is alleged that the deductor being the Drawing and Disbursing Officer and being the responsible officer on behalf of the company was authorized to deduct the tax at source and was responsible to deposit the tax deducted by him from the deductee to the Government of India account on or before the statutory period i.e. 07.05.2010. The deductor had deducted tax at source in terms of Section 192 of the I.T. Act, 1961 during the financial year 2010-11 amounting to Rs.2,52,000/-. As per the I.T. Rules, it should have been deposited to the credit of Central Government Account by 7th of next month. However, the said amount has been deposited belatedly i.e. on 28.12.2011 after delay of more than 12 months. Hence, the complaint.

4. The learned trial Court has taken cognizance of the offences under Sections 276(B) of the Income Tax Act against the petitioner on the basis of the complaint filed by the opposite party.



The petitioner moved an application for discharge from the aforementioned case on the ground that the petitioner has deposited the entire TDS amount deducted along with the delayed interest. He has explained the cause of delay and sought for benefit contemplated under Section 278AA of the I.T. Act. However, the application of the present petitioner has been turned down.

5. Mr. Kanungo, learned Senior Counsel for the petitioner has relied upon the judgment of this Court 15.04.2024 passed in ***CRLMC No.1921 of 2023*** in the case of ***Sree Metaliks Limited and others vs. Union of Indian and another*** and submitted that the case of the petitioner is directly covered by the said judgment.

6. Mr. Kedia, learned Junior Standing Counsel for the Income Tax has vehemently opposed the prayer made by the petitioner and submitted that this Court should not give indulgence to the petitioner on the face of the recent Circular dated 17.10.2024 issued by the CBDT, which provides fresh guidelines for compounding of offences under the I.T. Act. He has pointed out Clauses 4.6 and 8.3 of the said Circular issued by the CBDT on 17.10.2024, which reads as under:-

“4.6 Consolidation of offences: Any application for compounding of offence u/s.276B/276BB of the Act by an applicant for any period for a particular TAN should cover all defaults constituting offence u/s 276B/276BB in respect of that



TAN for such period. For the purposes of considering the quantum of TDS defaults, the total default on account of non-payment of TDS/TCS for a quarter shall be considered by combining the defaults in all the statements filed by the TDS deductor, in respect of the relevant quarter.

8.3 In case an applicant files Compounding application for offences committed u/s 276B/276BB of the Act, in respect of two or more TANs falling in two or more jurisdictions, the jurisdictional authority where the quantum of TDS default is higher shall be the Competent Authority. All other applications shall be transferred to such Competent Authority. Further, in case of any dispute in deciding Competent Authority, the Pr. CCIT having PAN jurisdiction will decide Competent Authority, within 30 days of receipt of such reference.”

On the strength of the aforementioned Circular, Mr. Kedia submitted that since the Department has now formulated a guideline for compounding the offences punishable under Sections 276B/276BB of the I.T. Act, the inherent jurisdiction of this Court under Section 482 Cr.P.C. is forbidden for such offenders against who prosecution has been launched.

7. I have given a careful consideration to the submissions made by the parties at the Bar and perused the documents placed before this Court. Perusal of the Circular dated 17.10.2024 issued by the CBDT makes it abundantly clear that the department has harmonized the entire procedure for compounding all kinds of offences under the I.T. Act arising out of curable defects. Clauses 4.6 and 8.3 as reproduced above clearly deals with the offences for which the petitioner is sought to be prosecuted in 2(C) C.C. Case



No.70 of 2013. Therefore, in the present regime, where the compounding of the offence is permissible, the jurisdiction of this Court under Section 482 Cr.P.C. may not be necessarily invoked by the petitioner. In that view of the matter, the petitioner may resort to the procedural remedy under Section 320 Cr.P.C. by relying upon the Circular dated 17.10.2024 and seek for compounding of the offences complained off against him by the Revenue in the 2(c)C.C. Case No.70 of 2013. Mr. Kedia, learned Junior Standing Counsel for the Income Tax precisely submits the same.

8. In view of the same, the CRLMC is disposed of with a liberty to the petitioner to approach the learned trial Court under the appropriate provision of law for compounding of the offence by relying upon the Circular dated 17.10.2024 issued by the CBDT. If such application is moved before the Court below, the same shall be considered on its merit without being influenced by the observation of this Court in the present order.

(S.S. Mishra)
Judge

Swarna

Signature Not Verified

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