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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 6268/2017**

Reserved on : 7th November, 2017
Date of decision : 23rd January, 2018

VIKRAM SINGH ..... Petitioner

Through: Mr. Ashish Mohan, Advocate.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Santosh Kumar Pandey, Advocate for UOI.
Mr. Rahul Kaushik, Sr. Standing Counsel for Income Tax Department

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

The petitioner challenges the imposition, legality and validity of compounding fee - a fee charged under the Income Tax Act, 1961 (*for short,`the Act'*), to compound offences committed by assessees. Challenge has been primarily raised to the legality of the quantum of compounding fee, as prescribed by guidelines issued by the Central Board of Direct Taxes (*for short, 'CBDT'*) dated 23rd December, 2014 and seeks quashing of the same as being arbitrary and unfair. The petitioner further seeks setting aside of the compounding fee of Rs.69,75,949/- imposed upon him for compounding of offences under the Act.

Brief Background

2. A search and seizure operation was carried out at the petitioner's residence and office in New Delhi. Pursuant to the said operation, notices dated 19th March, 1997 were issued under Section 158BC of the Act. In response to the notices, the petitioner filed block assessment returns on 28th May, 1997 disclosing NIL undisclosed income. The Assessing Officer (*for short, 'the AO'*) passed a block assessment order dated 28th November, 1997, under Section 158BA of the Act holding that the petitioner had earned undisclosed income of Rs.30,15,158/- during the block assessment period.

3. The block assessment order was challenged in appeal before the Income Tax Appellate Tribunal (*for short, 'ITAT'*) registered as IT(SS)375/DEL/97**.** No stay was granted. During the pendency of the appeal before the ITAT, prosecution proceedings were initiated against the petitioner under Sections 276C(1), 276C(2) and 277 of Act for wilful evasion of tax, wilful failure to pay tax, false verification etc., The complaint registered as case No.23 of 2004 was filed before the ACMM, Special Acts (Central Government), Delhi. After pre-charge evidence, charges were framed against the petitioner on 21st April, 2010 for wilful evasion of tax and interest payable under the Act, as also for failure to pay the tax demand in spite of notice under Section 221 of the Act having been received. Another charge against the petitioner was that he had made a false verification of his block return declaring NIL undisclosed income. Order for framing of charge was passed on 25th January, 2010. Charges were framed on 21st April, 2010.

4. On 6th January 2014, nearly 17 years after the assessment order was passed and 4 years after order for framing of charge was passed, the petitioner approached the Commissioner of Income Tax for compounding of offences under Sections 276C and 277 read with Section 278D of the Act for the block assessment period between 1st April, 1986 to 1st November, 1996. This application for settlement was rejected by the Commissioner on 31st July, 2014, primarily on the ground that tax as due and demanded had not been paid by petitioner.

5. On 23rd December, 2014, the CBDT issued revised guidelines for compounding of offences. The petitioner deposited the tax amount of Rs.8,19,419/- on 13th November, 2014 and thereafter on 20th November 2015, informed the authorities that the interest amount of Rs.19,33,295/- also stood deposited. A further sum of Rs.90,136/- which was the balance amount of interest was, thereafter, deposited by the Petitioner on 6th January 2016. On 7th January, 2016 a fresh application for compounding was filed.

6. Notice dated 18th January, 2016 was issued to the petitioner informing him that an application for compounding of offences should be made to the Principal CCIT. On 22nd January, 2016 the petitioner submitted the application to the Principal CCIT. Since the same was not in the prescribed format as was intimated to the petitioner vide letter dated 10th March, 2016, the petitioner thereafter made a fresh application in the prescribed format on 1st April, 2016.

7. The petitioner received letter dated 26th April, 2016 calling upon him to deposit a sum of Rs.69,75,949/- as compounding charges, including limitation expenses and counsel's fee, before his application for settlement

could be considered. A calculation sheet was attached to the said communication.

8. The petitioner then informed the department that he had deposited the entire tax and interest and his appeal was still pending before the ITAT.

9. Since the department insisted upon the payment of compounding charges as a pre-deposit in order to entertain the compounding application, the Petitioner approached this Court vide W.P.(C) No. 6825/2016 in July 2016. On 3rd November, 2016 the Principal CCIT rejected the petitioner's compounding application on the ground of limitation. The writ petition was finally allowed on 11th April, 2017 with the Court holding that compounding charges cannot be collected prior to the compounding application being decided on merits. The question as to whether compounding charges can be levied at all, on the strength of the circular, was left open by this Court.

10. On 19th May 2017, the petitioner was informed that the application for compounding had been considered by the competent authority and it was decided that the offences could be compounded subject to the following conditions:

> "*In connection, 1 have been directed to intimate you that Competent Authority to compound offences for compounding on 18-05-2017 deliberated upon the judgment pronounced by the Hon'ble Delhi High Court in this case and reviewed its earlier decision dated 01-11-2016 on the issue of compounding of offences u/s 279(2) of the Income Tax Act considering the observations made by the Hon'ble Court in Para 9 of the judgment in the case of Sh. Vikram Singh. On due deliberations, all the members of the Committee decided that the offences in the case of Sh. Vikram Singh, may be compounded subject to:-*

a) The assessee making the payment of sum of Rs. 69,75,949/- (Rs. Sixty nine lacs seventy five thousand nine hundred forty nine) (as per annexure) in the form of compounding charges including the compounding fee, the prosecution establishment expenses and litigation expenses including counsel's fee within a period of 60 days from the receipt of intimation.

b) The assessee undertaking to withdraw appeals filed by him which are pending at appellate level."

11. The imposition of compounding fees to the tune of Rs. 69,75,949/- was reiterated vide letters, on 19th May, 2017, 30th May, 2017 and 23rd June, 2017 by the authorities. The petitioner then filed the present writ petition before this Court. On 24th July, 2017, it was directed that the compounding application filed by the petitioner shall not be rejected for non-payment of compounding charges. Thereafter, on 18th August, 2017 the proceedings before the ACMM in CC No. 294032/2016 were also stayed by this Court. We have heard arguments of both sides.

Petitioner's submissions

12. Learned counsel appearing for the petitioner submits that the quantum of compounding charges is exorbitant and in fact constitutes a tax or a levy without the sanction of law. It is further submitted that as against the total tax demand of Rs.8,19,419/-, that remained unpaid, and interest thereon of Rs.20,23,431/-, the compounding charges are disproportionate and unreasonable. In his submission, the guidelines of 2014, which prescribe the manner of calculation of compounding charges is *ultra vires*, inasmuch as the power to issue orders, instructions or directions for proper composition of offences under Section 279 of the Act cannot be deemed to include the

power to impose amounts which are astronomical and have no proportionality to the tax and interest which was to be paid.

13. The petitioner submits that the compounding charges are, in effect, in the nature of a tax and penalty which do not have any sanction under the Act. Since the notification, in effect, takes away the discretion vested in the authorities, the same is *ultra vires* Section 119 (1) of the Act as it seeks to prescribe a method to calculate the compounding fee. He relies upon various authorities to submit that the compounding fee charged has no statutory basis and the exorbitant nature of the same renders it discriminatory and illegal, as also unconstitutional.

14. Following are authorities relied upon by the petitioner.

- ***Hingir-Rampur Coal Co. Ltd v State of Orissa (1961) 2 SCR 537*** *(hereinafter 'Hingir-Rampur')*
- ***Secunderabad Hyderabad Hotel Owner's Association v Hyderabad Municapal Corporation, Hyderabad (1999) 2 SCC 274*** *(hereinafter 'Hyderabad Hotel Owner's Association')*
- ***Mahant Sri Jagannath Ramanuj Das v State of Orissa AIR 1954 SC 400*** *(hereinafter 'Mahant Sri Jagannath Ramanuj Das')*
- ***Corporation of Calcutta v Liberty Cinema (1965) 2 SCR 477*** *(hereinafter 'Liberty Cinema')*
- ***P. Ratnakar Rao v Govt of A.P. (1996) 5 SCC 359*** *(hereinafter P. Ratnakar Rao')*
- ***Paramjit Bhasin v UOI (2005) 12 SCC 642*** *(hereinafter 'Paramjit Bhasin')*

- ***Tata Teleservices Limited v Central Board of Direct Taxes & Anr (2016) 386 ITR 30*** *(hereinafter 'Tata Teleservices Limited')*
- ***CIT v. McDowell & Co. Ltd. (2009) 10 SCC 755*** *(hereinafter 'Mcdowell & Co. Ltd.')*

Respondent's submissions

15. Learned Senior Standing Counsel, appearing for the Revenue, submits that subsequent to the judgment of the Delhi High Court in ***M.P. Tewari v. Y.P. Chawla [1991] 187 ITR 506 (Del)*** *(for short, 'Y.P. Chawla DHC')* an explanation was added to Section 279 of the Act by which it was declared that power vests with the CBDT to issue orders, instructions or directions for proper composition of offences. Thereafter, the Supreme Court in ***Y.P. Chawla v. M.P. Tiwari (1992) 2 SCC 672*** *(for short, 'Y.P. Chawla SC')* reversed the decision of the Delhi High Court**,** and affirmatively recognized the power of CBDT to issue guidelines for compounding, including compounding charges.

16. It is the submission of the respondent that compounding charges have a deterrent element, for they compound an offence and by itself, the said charge is one which cannot be assailed on the ground of arbitrariness.

Compounding of Offences – Concept

17. The concept of compounding of offences in taxation law is not unique to India. Most jurisdictions of the world do provide for such measures even when there is wilful non-payment or evasion of tax which is an offence under the respective laws. Such offences can be compounded on the request

of the assessee as per the guidelines provided either in the statutes, judicial precedents, administrative instructions or any other laws.

18. By way of illustration, in the United Kingdom, any person found guilty of an offence of fraudulent evasion of income tax is liable to criminal prosecution with a fine upto the statutory maximum.[1] This is a fine as prescribed by the Legal Aid, Sentencing and Punishment of Offenders Act, 2012.[2] Provisions also exist for the offence of corporate failure to prevent criminal facilitation of tax evasion by corporate bodies which is punishable with an unlimited fine.[3] In the United States of America, the position is slightly different as jurisprudence there is based on the principle of restitution, for tax loss incurred by the Internal Revenue Service ('IRS') due to wilful evasion. The computation of tax loss includes the interest and penalties in cases where defendants are convicted for wilful evasion of payment of taxes and wilful failure to pay taxes.[4] The court could properly include penalties in its tax loss calculation, owing to the defendant's conduct in the years preceding the tax evasion.[5] In cases where loss could not be reliably ascertained, then gain resulting from the offence is used as an alternative measure of loss caused to the State.[6]

19. Usually, offences are also categorized depending on the gravity of the violation. Some offences are held to be non-compoundable, whereas, some are compoundable. Even for those offences which are compoundable, the

[1] Taxes Management Act, 1970; § 106 A
[2] Legal Aid, Sentencing and Punishment of Offenders Act, 2012; § 85
[3] Criminal Finances Act 2017; § 46
[4] United States Sentencing Guidelines (U.S.S.G.) § 2T1.1 (2016)
[5] U.S. v. Thomas, 635 F.3d 13 (1st Cir. 2011) at p. 16-17
[6] U.S. v. Gordon, 710 F.3d 1124 (10th Cir. 2013)

amount to be charged as compounding fee depends upon the nature of the offence, the conduct of the party, loss suffered, gain of the accused, restitution and such other such factors. In some other jurisdictions, offences are not compoundable at all in any category of cases. In some other jurisdictions, specific laws have been enacted to permit compounding of only a few classes of offences.

Judgment of Y.P. Chawla v. M.P. Tiwari (1992) 2 SCC 672

20. The issue of compounding of offences under the Act came before the Supreme Court in the case of ***Y.P. Chawla SC (supra)***. The matter arose out of a dispute where the assessee therein failed to deposit the penalty amount imposed under Section 221 of the Act. The assessee had paid the interest as per Section 201 (1A) of the Act. However, the TDS amount, which was to be deposited, had not been deposited. The ITO, thus, launched criminal prosecution.

21. The CBDT had issued a circular in respect of compounding which came to be challenged in a writ petition before this court. The contention of the assessee-writ petitioner was that under Section 279(2) of the Act, the powers of the Commissioner to compound an offence cannot be regulated, dictated or circumscribed in any manner. In ***Y.P. Chawla DHC (supra)***, a Division Bench of this Court had quashed instructions of the CBDT to the extent that they curtailed the power of the Commissioner to compound offences. It was observed that the Commissioner exercises judicial or quasi-judicial functions and the same cannot be controlled by means of circulars and guidelines.

22. The Supreme Court in ***Y.P. Chawla SC (supra)***, reversed the decision of the Delhi High Court, reiterating that the circulars issued by CBDT are binding on all officers and persons employed in the execution of the Act. It was noticed that an explanation had been introduced by the Finance Act (2) of 1991 with retrospective effect from 1st April, 1962. The Supreme Court, thereafter, held:

> *"10. The Explanation is in the nature of a proviso to Section 279(2) of the Act with the result that the exercise of power by the Commissioner under the said section has to be subject to the instructions issued by the Board from time to time. The Explanation empowers the Board to issue orders, instruction or directions for the proper composition of the offences under Section 279(2) of the Act and further specifically provides that directions for obtaining previous approval of the Board can also be issued. Reading Section 279(2) along with the Explanation, there is no manner of doubt the Commissioner has to exercise the discretion under Section 279(2) of the act in conformity with the instructions issued by the Board from time to time."*

23. Thus, the Supreme Court upheld the validity of guidelines issued by the CBDT under Section 119(1) of the Act in the exercise of powers under Section 279(2) of the Act. The relevant provisions as upheld by the Supreme Court in ***Y.P. Chawla SC (supra)*** read as under:

> *"**Section 119:** Instructions to subordinate authorities*
>
> *(1) The Board may, from time to time, issue such orders, instructions and directions to other Income Tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board :*

Provided that no such orders, instructions or directions shall be issued—

(a) so as to require any Income-Tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or

(b) so as to interfere with the discretion of the Deputy Commissioner (Appeals) or the Commissioner (Appeals) in the exercise of his appellate functions.

*"**Section 279** (1)……*

(2) The Commissioner may either before or after the institution of proceedings compound any such offence.

(3)……..

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 to have always 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."

Analysis and Findings

24. Compounding of offences cannot be taken as a matter of right. It is for the law and authorities to determine as to what kind of offences should be compounded, if at all, and under what conditions. The power to compound cannot be completely unbridled inasmuch as the same could give rise to enormous discretionary power, which could also lead to arbitrariness, discrimination, abuse etc. For this reason, and in order to maintain uniformity and consistency, circulars and guidelines are required to be

issued for compounding of offences. Such guidelines and circulars ensure a degree of objectivity.

25. In view of the decision in ***Y.P. Chawla SC (supra)***, the power to issue guidelines is now unquestionable and cannot be challenged. One such guideline was Instruction No. 1317 dated 11th March, 1980 which was the subject matter of the ***Y.P. Chawla SC (supra)***. Subsequently also, guidelines and circulars have been issued from time to time.

Guidelines on Compounding of Offences, 2014

26. The guidelines under challenge in the present petition were issued on 23rd December, 2014 by the CBDT. The salient features of these guidelines are:

- The power to compound vests in CCIT/DGIT;
- Offences under the Indian Penal Code ('IPC') are not compoundable;
- Offences under Sections 276, 276B, 276BB, 276DD, 276E, 277, and 278 were categorized as category 'A' offences;
- Offences under Sections 275A, 275B, 276, 276A, 276AA, 276AB, 276C(1), 276C(2), 276CC, 276CCC, 276D, 277, 277A, and 278 were categorized as category 'B' offences.

27. Eligibility conditions for compounding of an offence under the Guidelines are:

- the person seeking compounding of his offence has to make an application in the prescribed format;
- the outstanding tax interest, penalty and any other sum due has to be paid;

- the assessee has to undertake to pay the compounding charges including the compounding fee;
- prosecution expenses/litigation expenses/counsel's fee as may be determined has to be paid by the assessee; and
- the assessee has to give an undertaking to withdraw any appeal, which the assessee has filed relating to the subject matter of the compounding application;
- A repeat category 'A' offence under the same Section, is one where, compounding is sought for three times or more and is compoundable;
- A first category 'B' offence can be compounded;
- A repeat category 'B' offence, other than the first offence, and other offences as enumerated in clause 8 of the guidelines, cannot be compounded.

28. The authority competent to compound offences is the CCIT/DGIT. If the compounding charges are in excess of Rs.10,00,000/- (Rupees Ten Lacs) for a category 'B' offence, the compounding order shall be passed by the CCIT/DGIT only on the recommendations of the three-member committee consisting of the Principal CCIT, DGIT(Inv.) and the CCIT/DGIT, having jurisdiction over the case.

29. The procedure for compounding has been prescribed which includes filing of an application with all the requisite documents. The compounding fee so determined has to be paid within sixty days which can be extended up to 180 days. However, in the latter case, an additional compounding charge @ 2% per month would be liable to be paid for the delay caused.

30. The fee for compounding is separately stipulated for each of the offences. In respect of offences under Section 276C(2)- *wilful attempt to evade the payment of any tax*, the compounding fee payable is 3% per month or part thereof of the amount of tax etc, the payment of which was sought to be evaded, for the period of default in respect of offences under Section 276C of the Act.

31. In respect of *a wilful attempt to evade the tax* under Section 276C(1) of the Act, 100% of the amount of tax sought to be evaded shall be the compounding fee. A maximum amount of Rs. 25,000/- can be included in the compounding charges for prosecution, establishment expenses, litigation expenses, including the counsel's fee, etc. Prosecution expenses, establishment expenses, etc., would be charged @ 10% of the compounding fee, subject to a minimum of Rs.25,000/-.

32. The guidelines also provide a format for an assessee to make a compounding application, which includes an undertaking to pay the compounding charges. Thus, the guidelines are exhaustive in nature and provide different compounding charges for different offences. The CBDT, while issuing the said guidelines, has obviously borne in mind the various established principles for compounding of offences including gravity of the offences, conduct of the parties, manner in which the offence is sought to be committed, etc. The Explanation to Section 279 clearly vests the CBDT with the powers to issue circulars, orders, instructions or directions "*for proper composition*" of offences. The circular does not suffer from any illegality. The guidelines do not reflect any exercise of power which is arbitrary or illegal, inasmuch as such guidelines are issued by authorities for

compounding of various kinds of offences. Examples of offences which can be compounded include those under the Motor Vehicles Act, 1988 Negotiable Instruments Act, 1881 etc.

33. In ***P. Ratnakar Rao (supra)***, the Supreme Court had the occasion to consider the compounding of an offence under Section 200 of the Motor Vehicles Act, 1988, wherein it was argued that prescribing a maximum rate for compounding of interest is violative of Article 14. This argument was rejected and the Supreme Court held:

> *"It is a matter of volition or willingness on the part of the accused either to accept compounding of the offence or to face the prosecution in the appropriate court. As regards canalization and prescription of the amount of fine for the offences committed, Section 194, the penal and charging section prescribes the maximum outer limit within which the compounding fee would be prescribed. The discretion exercised by the delegated legislation, i.e., the executive is controlled by the specification in the Act. It is not necessary that Section 200 itself should contain the details in that behalf. So long as the compounding fee does not exceed the fine prescribed by the penal section, the same cannot be declared to be either exorbitant or irrational or bereft of guidance"*

34. Though, in the above judgment, the charging Section did provide for an upper limit of compounding fee that could be charged, the Supreme Court held that so long as the fee imposed did not exceed the fine prescribed in the Section, there would be no illegality. In ***Hingir-Rampur (supra),*** the question was whether the levy, which was imposed as per the Orissa Mining Areas Development Fund Act, 1952 and the Orissa Mining Areas Development Act Rules, 1955 (*'1955 Rules', for short)* made thereunder,

was a tax or a fee. The same was being imposed by way of a notification under the 1955 Rules and it was argued that the imposition and collection of cess under Section 4 of the Orissa Mining Areas Development Fund Act, 1952 was illegal and contrary to law. The cess was to be allotted to a separate fund which was to be used for the development of State. It was leviable only against the class of persons owning mines to enable the government to render specific services. In view thereof, the Supreme Court held that the cess partakes the character of a fee as distinct from a tax. The Supreme Court in that case went into the *quid pro quo* aspect of the imposition and upheld the levy.

35. In ***Hyderabad Hotel Owner's Association (supra)***, the Supreme Court was considering the increase in license fee with respect to a trade license for running a lodging house, hotel, and restaurant and as to whether the same is in the nature of a tax or a fee. The contention of the Petitioner was that there is no *quid pro quo* between the fee charged by the Respondent and the services rendered by the respondent to traders. The Supreme Court held that it is not necessary that fee must be charged only a *quid pro quo* and the same could be even for regulatory purposes. The Supreme Court observed:

> *"9. It is, by now, well settled that a license fee may be either regulatory or compensatory. When a fee is charged for rendering specific services, a certain element of quid pro quo must be there between the service rendered and the fee charged so that license fee is commensurate with the cost of rendering the service although exact arithmetical equivalence is not expected. However, this is not the only kind of fee which can be charged. License fees can also be*

regulatory when the activities for which a license is given require to be regulated or controlled. The fee which is charged for regulation for such activity would be validly classifiable as a fee and not a tax although no service is rendered. An element of quid pro quo for the levy of such fees is not required although such fees cannot be excessive....."

Thus, it is clear that in every case for imposition of tax, fee or levy, the element of *quid pro quo* is not a pre-condition. Compounding fee is a different concept and such fee, because of the nomenclature, cannot be equated with the types of fee payable where the quid pro quo doctrine is applicable.

36. Again in ***Jagannath Ramanuj (supra),*** relied upon by the petitioner, the Supreme Court held that the contribution towards religious endowments under Section 49 of the Orissa Hindu Religious Endowments Act, 1951 has to be considered as fee and not as tax.

37. In ***Liberty Cinema (supra)*** a question arose as to whether the annual license fee payment of Rs.6,000/- under the Calcutta Municipal Act, 1951 was a tax or a fee. The Supreme Court categorically held that even though the term fee is used, it is, in fact, a tax and not a fee for the services rendered. Hence, the *quid pro quo* aspect does not arise and neither does the question of proportionality arise.

38. In ***Paramjit Bhasin (supra)***, the Court was considering notifications issued by various State Governments imposing compounding fee for carrying excess weight on trucks/lorries. The Court held that once the compounding fee was paid, the offence could not continue as the offence

stood compounded. This judgement had relied upon ***P. Ratnakar Rao (supra)*** of the Supreme Court.

39. None of the authorities relied upon by the Petitioner support the stand that compounding fee has to be charged as *quid pro quo*. The written submissions of the petitioner tend to misinterpret these judgments. These authorities do not help the petitioner's case.

40. In the present case, the block assessment order was passed almost two decades ago, and relates to 1st April, 1986 to 1st November, 1996 i.e. the period began three decades ago. The block assessment order passed under Section 158BA shows that the petitioner was unable to explain the source of loan of One Million Indian Rupees given to a resident of Sri Lanka. As per the AO, the Petitioner did not give a satisfactory reply explaining this loan. The AO, after detailed assessment order determined the total undisclosed income in the block period at Rs.30,15,158/-

"ALL UNDISCLOSED INCOMES WITH RESPECTIVE YEARS

Undisclosed income for the AY 1993-94	*5,23,875*
Undisclosed income for the AY 1994-95	*5,05,227*
Undisclosed income for the AY 1995-96	*13,68,225*
Undisclosed income for the AY 1996-97	*3,56,694*
Undisclosed income for the AY 1997-98	*2,61,137*

(This way the total undisclosed income for the block period is worked out at Rs.30,15,158/-)"

41. Sometime in 2006, notice was issued by the department to the petitioner that the tax amount was not paid. An appeal appears to have been preferred by the petitioner before the ITAT in the year 1997. As on 22nd January, 2007, only revised grounds of appeal were filed. The petitioner has not prosecuted his appeal as is apparent from the record. In any event, with the filing of the compounding application, the petitioner has undertaken to withdraw his appeal. Thus, the appeal before the ITAT would have no bearing on the decision of the present case, though the same has remained pending, for whatever reasons, for almost 20 years. It is a fact that taxes due and payable have not been paid.

42. The petitioner appears to have completely ignored the outstanding tax demands against him, though there was no stay granted in his favour against the assessment order or taxes due. Even after criminal prosecution was launched, an order for framing of charges was passed and charges were framed, the taxes were still unpaid. The dates are extremely crucial. On 25th January, 2010, an order for framing of charge was passed by the ACMM (Special Acts), Central Delhi, which held that *prima facie* there was enough material on record to frame charges against the petitioner for the wilful defaults, including failure to pay the tax due. Thereafter, formal charges were framed against the petitioner by the ACMM (Special Acts) in Case No. 23/2004 in ***ITO v. Vikram Singh*** under Section 276 C(1), 276C(2) and 227 of the Act on 21st April, 2010. The petitioner, even at this stage, did not take the matter seriously. The first application for compounding was filed by the petitioner on 6th January, 2014, i.e., after 17 years of passing of the assessment order, and nearly 4 years after framing of charge against him.

The petitioner did not even follow up with the compounding application with seriousness inasmuch as, firstly, the application was returned as the petitioner had not paid the tax due. When the petitioner filed the compounding application for the second time on 22nd January 2015, only the principal amount of Rs.8,19,419/- was paid and not the interest. Thus, this application was rejected on 12th February, 2015 since it was not in the prescribed format and a fresh application had to be filed for the third time. This third application dated 23rd February, 2015 was also rejected on 1st April, 2015 due to non-payment of interest and a fourth application dated 20th November, 2015 had to be filed as the interest amount had not been deposited. Despite making payment of interest amount of Rs. 19,33,295/-, there was a balance interest amount of Rs.90,136/- for the period from 1st December, 2014 to 31st October, 2015 which was to be deposited by the petitioner, and was finally paid on 6th January, 2016 and a fresh application for compounding was made on 7th January, 2016. Vide letter dated 18th January, 2016, the Petitioner was informed that the application for compounding had to be made to Pr. CIT, and an application in this regard was made on 22nd January, 2016. However, this application was also rejected on 10th March, 2016, since it was not in the prescribed format laid down in Annexure A to the 2014 Compounding Guidelines. Finally, the application made by the Petitioner on 1st April, 2016 was accepted as being in the correct format.

43. By letter dated 26th April, 2016, the petitioner was informed that deposit of compounding charges amounting to Rs.69,75,949/- was to be made. The authorities also insisted on a pre-deposit of the compounding

charges, which was then dealt with by this court in W.P. (C) 6825/2016. The petitioner was permitted to pursue his application for compounding without pre-deposit of the compounding charges. The pending application was then rejected as being barred by limitation. This came to be dealt with in W.P. (C) 6825/2016. Thereafter, the matter was referred to the Committee and on the recommendation of the Committee, the compounding charges have been determined at Rs.69,75,949/-. Thus, the compounding application was also treated in a cavalier manner by the petitioner inasmuch as, it was only after the order on framing of charge was passed that the petitioner even thought of filing an application for compounding.

44. The authorities have examined the petitioner's case, and as per the guidelines issued by the CBDT compounding charges have been imposed. The first and foremost argument of the Petitioner is that the power of the Adjudicating Officer has been curtailed by the issuance of the impugned guidelines. This issue is no longer *res integra* and is fully covered by the judgment of the Supreme Court in ***Y.P. Chawla SC (supra).*** The power of the CBDT to issue guidelines and the validity of the Explanation added to Section 279 by the Finance Act, 1991 has been upheld in ***Y.P. Chawla SC (supra)***.

45. The next ground of challenge by the petitioner is that the compounding charges are exorbitant and extraordinary in nature inasmuch as, the principal amount which was determined as Rs.30,15,158/- out of which only Rs. 8,19,419/- was due. The interest amounts of Rs.19,33,295/- and Rs.90,136, were also deposited. Thus, according to the Petitioner, there is no proportionality whatsoever between the compounding charges of

Rs.69,75,949/- being levied and the same is totally unreasonable and arbitrary.

46. Though the said arguments sound appealing, when one looks at only the amounts which were due and payable, the chronology of events in this case leads to a completely different conclusion. Firstly, the petitioner, as per the AO could not properly explain the undisclosed income. The AO's order could have rightly been challenged by the petitioner, which in fact the petitioner appears to have done. However, this appeal, filed before the ITAT as early as in 1997, does not appear to have been seriously pursued by the petitioner even till 2007 i.e. 10 years later. The revised grounds of the appeal were filed in 2007 and until 2014, no decision in the appeal came about. Despite there being no interim protection in favour of the petitioner, he did not deposit the tax. The petitioner waited until the criminal court passed the order of framing of charge on 25th January, 2010 and subsequent framing of charges, to make the first deposit of Rs.8,19,419/-, at the time when the second application for compounding was filed by him on 22nd January, 2015. Even this compounding application was not as per the prescribed guidelines and format, prescribed at that time. Interest as due for 20 years was not paid. It required a full one year of correspondence before the petitioner deposited the interest amounts. Thus, it was almost 20 years after passing of the block assessment order that the petitioner actually even deposited the principal amount and the interest.

47. It is the long delay, which is attributable only to the petitioner that has resulted in the compounding charges, for the delay in payment of taxes, being what they are. As per the guidelines, the compounding charges

payable for an offence under Section 276C(1) is 100% of the amount sought to be evaded, and for an offence under Section 276C(2) it is 3% per month of the amount of tax, the payment of which was sought to be evaded, for the period of default. Thus, the monthly 3% charge which constitutes a part of the compounding charges was only due to the petitioner's fault, due to prolonged period of default. The break-up of the compounding charges is as under:

Calculation of Compounding Charges

Compounding fee u/s 276C(1)	100% of the amount sought to be evaded		Rs. 18,09,094
Compounding fee u/s 276C(2)	3% per month or part thereof of the amount of tax, etc, the payment of which sought to be evaded for the period of default	1) Interest on Rs. 18,09,094 payable for the period December 1997 to March 1998 (4 months) 18,09,094 x 3% x 4 = Rs. 2,17,091/- 2) Interest on Rs. 8,19,419/- payable for the period April 1998 – November, 2014 (200 months) 8,19,419 x 3% x 200 = Rs. 49,16,514	1) Rs. 2,17,091/- 2) Rs. 49,16,514/-
Fee payable u/s 277	Not applicable as per para no.		NIL

	12.8.2 of guidelines		
Prosecution Establishment Expenses	10% of compounding fee subject to a maximum of Rs. 25,000	10% of 69,42,699/- = Rs. 6,94,269 OR Rs. 25,000	Rs. 25,000/-
Limitation exp. including counsel's fee paid/payable	Letters were issued to Sr. Standing counsel for the same and reply awaited		Rs. 8,250/-
		Total Compounding charges payable by the assessee (excluding Counsel's fee and litigation exp.)	Rs. 69,67,699

48. The above calculation shows that almost Rs. 50 lakhs is due to the long duration that has elapsed from the date of the order till the payment of taxes and interest. The CBDT, in its wisdom, has issued circulars and guidelines from time to time prescribing the compounding charges leviable for compounding of various offences. Only because in a particular case, due to the delay attributable purely to the petitioner, the amount of compounding charges turned out to be much higher than the principal and the interest, it does not *per se* render the compounding charges illegal or arbitrary.

49. The petitioner ought to have exercised due diligence and deposited the tax and the interest at the inception without prejudice to his rights and

contentions in the appeal. The non-payment of tax amounts, which are determined to be offences under the Act and delay by the petitioner in depositing the same is non-condonable in any manner whatsoever. Moreover, the petitioner has, by seeking compounding, consciously and voluntarily opted for:

(a) Compounding of the criminal offence;

(b) Undertaking to withdraw the appeal;

(c) Undertaking to pay the compounding charges determined;

50. Having filed the compounding application the petitioner cannot attempt to wriggle out of his obligations to pay the compounding charges by alleging that the same are exorbitant. The amount of compounding charges is not to be merely compared with the principal and the interest charged but has to be adjudged from the point of view of the long duration during which there was wilful non-payment of taxes. The conduct of the petitioner brooks no sympathy. The respondent authorities, it appears, were helpless. Even filing of criminal prosecution appears to have made no difference. The judgments discussed above are clear to the effect that in cases of this nature, *quid pro quo* or proportionality is not always applicable.

51. There is no element of *quid pro quo* required, inasmuch as, the compounding fee charged is in the nature of tax under the Act. The legislation has vested the CBDT with power to prescribe compounding fee, etc., for different offences. It is well within the powers of CBDT as vested in it under the Act. The principle of proportionality also would not apply in the present case, inasmuch as, compounding fee is in the nature of a payment made to avoid punishment for a criminal offence.

52. In ***M. P. Purusothaman v. Assistant Director of Income Tax (Prosecution) [2001] 252 ITR 603*** the High Court of Madras, while considering the power of the CBDT to compound an offence under Chapter XXII of the Act held that compounding of an offence is the exception and not the rule. It rejected the contention that the CBDT has to compulsorily hear the petitioner before rejecting the application for compounding. Compounding fee is of a deterrent nature and is imposed with a view to ensure compliance with the law.

53. The petitioner was conscious of the fact that if he was convicted in the criminal complaint, no compounding could have taken place after that. This is clear from a reading of ***Anil Batra v. Chief Commissioner of Income Tax (2011) 337 ITR 25 (Del)*** and ***Sangeeta Exports v. Union of India (2009) 311 ITR 258***. Thus, the petitioner has consciously and with full knowledge applied for compounding. In fact at the time when the petitioner filed the compounding application for the first time, the charges for compounding would have been higher, as per the guidelines in operation then, than what was applied finally to the petitioner's case. In any event, the guidelines *per se* do not fall foul of Article 14 inasmuch as, the only ground which is sought to be raised to challenge the same is the exorbitant nature of the compounding charges in the petitioner's case. The petitioner has not argued that the compounding charge is *per se* exorbitant, in view of the facts noticed above.

54. Viewed in the totality of circumstances, the guidelines do categorize between different types of offences and prescribe different compounding charges for different offences. The categorization or the classification in the

guidelines do not appear to be arbitrary or irrational. A perusal of the 2008 Guidelines which were in operation, when the petitioner first made the application for compounding of offences reveals that under the said Guidelines, the charges leviable for an offence under Section 276C(1) were 50% of amount of tax sought to be evaded and for an offence under Section 276C(2) it was 5% per month of the tax, the payment of which was sought to be evaded, for the period of default. Thus, under the older guidelines, the compounding charges leviable against the petitioner may have been much higher.

55. Thus, the Guidelines of 2014, under which the last application for compounding was made, and was accepted to be in the prescribed format, has enured to the benefit of the petitioner and the application has rightly been processed under these Guidelines. The petitioner has not raised a challenge either to the 2008 Guidelines or 2003 Guidelines. It is only after the charges were framed in the criminal proceedings and after filing the applications for compounding and after compounding charges have been determined as per the formula prescribed in the 2014 Guidelines, that the challenge has been raised by the petitioner.

56. The petitioner having voluntarily agreed and undertaken to the department to pay the compounding charges and to withdraw his appeal, ought to be directed to be bound down by the same. It is a settlement process voluntarily invoked by the petitioner in order to escape criminal prosecution under the Act. Since an accused may have to suffer severe consequences for non-payment of tax, if he is held to be guilty, it is not open to him to challenge the reasonableness of the same. The petitioner had consciously

undertaken to abide by the decision of the Committee constituted for compounding the offences.

57. Accordingly, the petitioner has the option to deposit the compounding charges as determined within a period of four weeks from the date of this order, failing which, the authorities would be entitled to re-compute the compounding charges for the delayed payment and proceed in accordance with law.

58. In the facts of the present case, the Petitioner is directed to pay costs of Rs.50,000/- to the Respondent within a period of four weeks from the date of this order.

59. The writ petition is disposed of in the aforesaid terms.

PRATHIBA M. SINGH, J

SANJIV KHANNA, J

JANUARY 23, 2018 *dk/R*