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(1998) 02 DEL CK 0018

In the Delhi High Court

Case No : C.W. No. 396 of 1998

Dr. K. Jagadeesan — APPELLANT

Vs

Central Board of Direct Taxes and Others — RESPONDENT

Date of Decision : 23-02-1998

Acts Referred:
Income Tax Act, 1961 — Section 119, 119(1), 276CC, 279, 279(2)

Citation : (1998) 231 ITR 755

Hon'ble Judges : R.C. Lahoti, J;Dalveer Bhandari, J

Bench : Division Bench

Advocate : M.S. Syali, for the Appellant; R.D. Jolly and Ajay Jha, for the Respondent

Judgement

R.C. Lahoti, J.—By this petition under article 226 of the Constitution, the petitioner seeks quashing of the order dated January 8, 1997, passed by the Central Board of Direct Taxes, Delhi, communicated to the petitioner, by the Commissioner of Income Tax, Madras, whereby the petitioner''s request for compounding of the offences has been rejected by the Central Board of Direct Taxes, Delhi.

2. The petitioner is a doctor practicing at Chennai. He is also a shareholder of a company. He derives income from business and profession.

3. In the assessment year 1985-86, the return of income was due to be filed on July 31, 1985. The same was filed on March 29, 1988. A complaint u/s 276CC of the Income Tax Act, 1961, was filed before the ACMM, EO(I), Madras. Vide judgment dated April 19, 1996, the petitioner was held guilty of the offence charged and sentenced to rigorous imprisonment for six months and to pay a fine of Rs. 10,000. The petitioner preferred an appeal to the court of Sessions Judge, Madras, and, vide judgment dated August 12, 1996, the petitioner''s conviction has been maintained though the sentence of imprisonment has been reduced to three months and fine maintained. The petitioner has filed a revision before the High Court of Madras which is pending (as stated by counsel for the

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petitioner at the time of hearing).

4. When the appeal was pending before the sessions judge, the petitioner moved a petition dated July 2, 1996 (annexure P-I), before the Central Board of Direct Taxes, New Delhi, making a prayer "that the chairman may be pleased to compound the alleged offence u/s 276CC of the Income Tax Act, 1961, at whatever reasonable amount the chairman deems fit." As already stated the prayer has been rejected and the rejection communicated to the petitioner by the Central Board of Direct Taxes, Delhi, through the Commissioner of Income Tax, Madras.

5. The relief sought for in the petition is calling for the impugned order dated January 8, 1997, passed by the Central Board of Direct Taxes and the records of the case and thereafter to quash the order dated January 8,1997.

6. On behalf of the respondents, the maintainability of the petition itself has been objected to on the ground that the petition is entirely misconceived and certainly does not lie Within the territorial jurisdiction of the High Court of Delhi. It was submitted that the authorities competent to compound are the Chief Commissioner of Income Tax or the Director of Taxes, both situated at Chennai, whom the petitioner did not even approach. He filed an ill-advised petition directly to the Central Board of Direct Taxes and having suffered its dismissal, has invoked the jurisdiction of the High Court at Delhi, within whose territorial jurisdiction, no cause of action has arisen to the petitioner.

7. Learned counsel for the petitioner submitted that the Central Board of Direct Taxes has passed the impugned order dated January 8, 1997, at Delhi and in face of that order, no authority of the Income Tax Department subordinate to the Central Board of Direct Taxes would now entertain the petitioner''s prayer to compound. The petitioner has to seek quashing of the order of the Central Board of Direct Taxes for which purpose the petition filed at Delhi is competent.

8. Having heard learned counsel for the parties, we are of the opinion that the petition is misconceived and certainly does not lie within the territorial jurisdiction of the Delhi High Court.

9. Sub-section (2) of Section 279 of the Act provides that offence under this Chapter may, either before or after the institution of proceedings, be compounded by the Chief Commissioner or the Director-General. The Finance (No. 2) Act, 1991, has inserted an Explanation giving it retrospective operation with effect from April 1, 1962, which reads as under :

"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."

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10. Counsel for the petitioner submitted that the Board is competent to issue orders, instructions or directions to other Income Tax authorities for the proper composition of offences u/s 279 which power would enable the petitioner making a prayer to the Board for directing the Chief Commissioner or Director-General to compound the offence with which the petitioner was charged. The application should not have been rejected.

11. The background in which the Explanation above said came to be appended to Section 279 is not clear. However, the very language employed in Explanation reveals that the amendment is clarificatory and declaratory in nature. Some doubts must have been expressed if the power of the Board to issue orders, instructions or directions under the Act (obviously referable to Section 119(1) of the Act), included the power to issue instructions or directions for the proper composition of offences u/s 279 . The doubts have been removed by declaring that such power was so included and thereby setting at rest the doubts, if any. The Explanation is thus in the nature of a proviso to Section 279 (2) of the Act as held in Y.P. Chawla and others Vs. M.P. Tiwari and another, , and has also to be read as clarificatory and declaratory of the scope of power of the Board emanating from Section 119.

12. Section 119, as it stands, contemplates orders, instructions and directions to the Income Tax authorities being issued by the Board for the proper administration of the Act. They are the policy decisions and thus of general nature which are covered by Section 119(1). The proviso makes it clear that the Board does not have power to circumvent the statutory powers or discretion of an Income Tax authority by reference to a particular assessment or a particular case. The only cases in which the orders touching any individual case can be issued are provided by Clauses (b) and (c) of Sub-section (2) [as it now stands]. They are for avoiding genuine hardship occasioned by rigorous application of the rule of limitation in specified matters and for avoiding genuine hardship in any case, by relaxing any requirement contained in any of the provisions of Chapter IV or VIA relating to deduction claimed thereunder. The categories of such "any case" do not cover the cases of prosecution and composition.

13. The Explanation to Section 279 read with Section 119 does not empower the Board to issue order, instruction or direction to compound in an individual case. The power can be exercised only for the purpose of laying down policy or general guidelines.

14. We are, Therefore, of the opinion that the petitioner''s effort at directly approaching the Central Board of Direct Taxes for issuance of order, instruction or direction so as to compound his prosecution was entirely misconceived. No fault can be found with the Board having turned down the petitioner''s such attempt. The petitioner would have been better advised to approach the Chief Commissioner or the Director-General as contemplated by Section 279(2). Any communication between any of them and the Board would have been an internal matter between the two. The petitioner is still at liberty to approach the Chief

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Commissioner or the Director-General which he does not appear to have done so far.

15. Learned counsel for the petitioner submitted that once the Board has turned down his petition u/s 279, howsoever misconceived it might have been, no Income Tax authority subordinate to the Board would have power to entertain the petitioner''s prayer for compounding in face of the order of the Central Board of Direct Taxes and, Therefore, the court may at least quash the order of the Central Board of Direct Taxes as uncalled for. The contention cannot be entertained even for a moment for two reasons. Firstly, the petitioner has to thank himself for having invited the pronouncement of the Central Board of Direct Taxes. Secondly, the cause of action to the petitioner has arisen only at Chennai. If the Chief Commissioner or the Director-General decline the petitioner''s prayer for compounding on the ground of the order of the Central Board of Direct Taxes, then he may file an appropriate writ petition in Chennai and therein lay a challenge to the order of the Central Board of Direct Taxes as well. However; we express no opinion thereon.

16. The petition is dismissed as we find the petitioner not entitled to any relief within the territorial jurisdiction of this court.

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