IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2023

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A. No.1767 of 2022 and
C.M.P. No.12970 of 2022

1.The Principal Commissioner of Income Tax,
Central-I, No.46, Old No.108, M.G.Road,
Nungambakkam, Chennai-600 034.

2.The Additional Commissioner of Income Tax,
Central Range-I, No.46, Old No.108, M.G.Road,
Nungambakkam, Chennai-600 034.

3.The Deputy Commissioner of Income Tax,
Central Circle-I(1), Income Tax New Building,
Room No.112, 1st Floor,
No.46, Old No.108, M.G.Road,
Nungambakkam, Chennai-600 034.

4.The Director General of Income Tax (Investigation),
No.46, Old No.108, M.G.Road,
Nungambakkam, Chennai-600 034. ... Appellants / Respondents

v.

K.M.Mammen,
No.17, Boat Club Road,
3rd Avenue, R.A.Puram,
Chennai-600 028. ... Respondent / Petitioner

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, praying to set aside the order dated 13.04.2022 passed by the learned Judge in W.P.No.23800 of 2021.

For Appellants : Mr.AR.L.Sundaresan
Additional Solicitor General
assisted by Mr.A.P.Srinivas

For Respondent : Mr.N.L.Rajah,
Senior Advocate
for Mr.S.Ashok Kumar

JUDGMENT

(Judgment of the Court was made by MOHAMMED SHAFFIQ,J.)

The present writ appeal has been filed challenging the order of the learned Single Judge insofar as it remitted the case back to the 4th Appellant herein with a direction to compound the case under Section 279 (2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. There have been proceedings in relation to the alleged offences under Sections 276C and 277 of the Act before various forums including the Economic Offences Court, Statutory appeals before the Commissioner (Appeals) and Tribunal, Writ Petitions and Contempt Petition / Appeal. It may thus be necessary to give a broad overview of the history of the litigation

so far under the following heads:

a. Assessment and Appellate Proceedings;

b. Criminal Proceedings;

c. Writ and Contempt Proceedings

a. Assessment and Appellate Proceedings:

(i) The respondent herein is an individual aged about 72 years and the Chairman and Managing Director of MRF Limited. He was assessed to tax with PAN AAEMP0314R.

(ii) For the Assessment Year 2002-03, the assessee filed the return of income on 29.07.2002 declaring a total income of Rs.45,48,850/- and the same was processed under Section 143(1) of the Act.

(iii) Whileso, the assessing officer allegedly received information that the respondent had transferred through LGT Bank Liechenstein, substantial sums of Euro currencies in favour of Webster Foundation, a Trust, in which the respondent is stated to be one of the direct beneficiaries, apart from his father and brother.

(iv) The assessment was sought to be reopened and notice under Section 148 of the Act for the assessment year 2002-03 was issued proposing to bring to tax income which has allegedly escaped assessment. The reasssessment was made vide order dated 29.12.2009 under Section 147 r/w

143(3) of the Act whereby, a sum of Rs.2.26 Crores lying in the said bank account as on 31.12.2001 was assessed as unexplained investment under Section 69 of the Act.

(v) The respondent preferred an appeal against the above said order of reassessment before the Commissioner of Income Tax (I), Chennai, which was dismissed by the Commissioner (Appeals) vide order dated 30.03.2011. It was carried by way of appeal to the Tribunal. The appeal to the Tribunal also stood dismissed vide order dated 25.02.2013 on the premise that the foundation was created and duly signed by the respondent, who was found to be a beneficiary of the said Trust / Foundation. The order of the Tribunal is the subject matter of appeal in TCA. No. 252 of 2013, which is pending before this Court.

(vi) In the meanwhile, vide order dated 21.03.2012, a maximum penalty at 300% of tax sought to be evaded under Section 271(1)(c) of the Act was imposed. Aggrieved by the levy of penalty, an appeal was preferred before the Commissioner (Appeals), who, vide order dated 25.03.2014 in ITA No.12/2012-13, reduced the penalty from 300% to 100% of the tax sought to be evaded. The penalty thus stood reduced from Rs.2,07,82,020/- to Rs.69,27,342/-. The respondent as well as the Revenue preferred further appeals against the above order of the Commissioner (Appeals). Both the

appeals stood dismissed by the Tribunal *vide* common order dated 27.09.2017. In other words, the penalty, which was originally imposed at 300% stood reduced to 100% of the tax sought to be evaded. Aggrieved by the order of the Tribunal, both the Revenue as well as the respondent are in appeal before this Court in Tax Case Appeal Nos. 216 of 2018 and 875 of 2017 respectively.

b. Criminal Proceedings:

The respondent was prosecuted under Sections 276C and 277 of the Act, in E.O.C.C.No. 121 of 2011 before the Additional Chief Metropolitian Magistrate (Economic Offence – I), Egmore. He preferred a Criminal O.P. No. 9065 of 2011 before this court to call for the records in the said proceedings and quash the same. *Vide* order dated 28.02.2019, the said criminal original petition was dismissed with a direction to the Additional Chief Metropolitian Magistrate (Economic Offence-I) to expedite the trial and conclude the same. Though a clarification was sought to the order dated 28.02.2019, *vide* order dated 06.03.2019, it was declined. Importantly, reliance was placed by the respondent herein on the decision of the Hon'ble Supreme Court in *Prem Dass v. ITO, (1999) 5 SCC 241* to contend that in view of the reduction of penalty from 300% to 100%, no prosecution can be

launched or continued, which was however distinguished by the learned Judge, while disposing the Criminal Original Petition. The matter was challenged before the Apex Court and an order of stay of operation of the order dated 28.02.2019 passed by the learned Judge in Crl.O.P.No. 9065 of 2011 was granted by the Apex Court.

c. Writ and Contempt Proceedings:

i) The respondent filed a Writ Petition in W.P.No.3929 of 2014 before this Court challenging the order dated 15.01.2014, whereby the petition for compounding under Section 279(2) of the Act stood rejected. This Court found that in view of the reduction of penalty from 300% of the tax evaded to 100%, the decision in *Prem Dass* case would apply. Further, it was found that the respondent would be entitled to the benefit of Section 279(1A) of the Act.

ii) Pursuant to the above directions of this Court in W.P. No. 3929 of 2014, the 4th Appellant herein passed an order dated 06.11.2019 wherein it was found to be not a fit case for compounding by the Regional Compounding Committee (RCC) interalia for the following reasons:

a) The assessee / respondent herein has cross border transactions, but for the information received from Foreign government the revenue would

have been put to loss.

b) The evidence gathered in the instant case established major frauds inasmuch as funds have gone out of the country, but for the information obtained, the monies would have remained untaxed.

c) The assessee / respondent herein has neither produced documents nor the account copy to disprove the contentions of the department. The attitude of the assessee / respondent herein was of total non-cooperation in the entire proceedings before Assessing Officer on this issue.

d) On consideration of the above facts and circumstances, the RCC recommended that the Compounding Application of the Respondent herein deserves to be rejected in terms of Para 4.4(g) of the Circular dated 16.05.2008.

iii) A contempt petition in Cont.P. No. 2079 of 2019 was filed on the ground of wilful and intentional disobedience of the order of the learned Judge dated 28.08.2019 in W.P. No. 3929 of 2014 and it was closed on the finding that there was no contempt, while observing that there was no positive direction in the order dated 28.08.2019 by the learned Judge and it was found that paragraph 8.6 of the said order, were mere passing comments. However, after finding so, the learned Judge quashed the order dated 06.11.2019 and directed that the application filed by the Respondent

herein should be re-examined in the light of the clarification dated 14.06.2019 of the Central Board of Direct Taxes (CBDT), which, in view of the learned judge was far more liberal than the previous circular dated 16.05.2008. The following portion of the order in Cont. P.No.2079 of 2019 is relevant:

> *"37... I am therefore of the view that the impugned order is liable to be quashed and the application filed by the petitioner should be re-examined by the respondents in the light of the liberalised policy of Central Board of Direct Taxes in its clarification dated 14.06.2019, Section 279(1A) and other facts mentioned herein.*
>
> *38. In my view, the petitioner's case deserves to be considered by the respondents in the light of the liberalised policy since the petitioner's application was entertained after the new guideline came into force. Also for the same reason, it cannot be construed that the respondents committed contempt of this court since the order did not specify the same."*

iv) A Writ Appeal in W.A.No. 967 of 2020 was filed by the revenue against the order of the learned Judge in Cont. P. No. 2079 of 2019 dated 13.01.2020 insofar as the learned Judge after finding that the Contempt Petition had no merits, proceeded to direct the authority to re-examine the application filed by the respondent herein, in the light of the fresh circular dated 14.06.2019, which provides for a more liberal policy. The Division Bench of this court found that the learned Judge directing the application to be considered in line with the subsequent circular was unsustainable inasmuch as the issue as to whether the previous or the later circular should

be applied, was never an issue in W.P.No.3929 of 2014. In view thereof, the Division Bench was pleased to set aside the observations in Paragraphs 32-40 in the order of Contempt Petition No. 2079 of 2019, while granting liberty to file a fresh compounding application/petition to the respondent herein. The assessee / respondent herein had also filed a Writ Appeal Sr. No. 84101 of 2020 challenging the order of dismissal of the Contempt Petition No. 2079 of 2019. The appeal was listed for maintainability and on hearing both sides, the Division Bench found that the role of the respondent herein is only that of an informant in the Contempt Petition and on giving the information, his role would end and thus, the Intra-Court appeal filed against the order of the learned Judge that there was no contempt, was held to be not maintainable.

v) Pursuant to the above order of this Court, the 4th Appellant herein passed the order under Section 279(2) of the Act rejecting the compounding application vide order dated 30.08.2021 inter alia for the following reasons, as could be seen from the following extracts from the said order:

> "*a. ....*
>
> *b. The Compounding application of Shri K.M. Mammen filed on 9.3.2021 deserves to be rejected for the following reasons:*
>
> *i. The offence relating to undisclosed foreign bank accounts/asset is normally not to be compounded as specified in Para 8.1(x) of the guidelines dated 14.6.2019 and*

ii. The conduct of the assessee, nature and magnitude of offence warrants rejection of compounding petition as per Para 8.1 (xiii) of the guidelines dated 14.6.2019.

c. Without prejudice to the above, the Committee unequivocally decided that even if the assessee's application were to be considered under CBDT compounding guidelines dated 16.05.2008, it still deserved to be rejected on the grounds that the offence involves major fraud and also considering the nature and magnitude of offence as non compoundable in accordance with clauses prescribed in Para 4.4(g) of the guidelines dated 16.05.2008.

d. The Committee rejects the contentions of the assessee that the decision of the Hon'ble Supreme Court in the case of Prem Dass cited supra would be applicable to his case in terms of S. 279(1A) rws 273A of the IT Act.

e. The facts in the case of the assessee are similar to the facts in the case of South India Surgical Co., a decision rendered by the Hon'ble Madras High Court, cited supra, wherein the Hon'ble Supreme Court's judgement in the case of Prem Dass was distinguished. The Committee observed that the case of the assessee was fully covered by the decision of Hon'ble Madras High Court in the case of South India Surgical Co. cited supra. ... "

vi) Aggrieved by the above order of rejection, the respondent herien filed a Writ Petition in W.P. No.23800 of 2021 dated 13.04.2022 wherein the learned Judge had allowed the Writ Petition, finding that the case was fit for compounding inter alia for the following reasons:

"41. Earlier, the petitioner faced, adjudication proceeding both under Section 148 and penalty proceeding under Section 279(2) of the Income Tax Act, 1961. The petitioner has paid the tax interest and the penalty imposed on him. Though, the petitioner has paid the penalty, the petitioner has filed an appeal against order of CIT (Appeals) confirming imposition of penalty to the extent of 100% of the tax. The Department is also in appeal as mentioned above.

42. The 2019 Circular which has been pressed against the

petitioner in the impugned order makes it clear that there is fair amount of discretion vested with the fourth respondent. Even in the case covered by para 8, the phrase used is "offence normally not to be compounded". Thus, even these cases can be compounded.

43. In Prem Dass Vs. ITO, (1999) 5 SCC 241, the Hon'ble Supreme Court accepted the contention of the assessee that legislative intent of Section 279 (1A) of the Income Tax Act, 1961 has to be kept in mind where there is a reduction of penalty. This aspect has also not been kept in mind by the fourth respondent while passing the impugned order.

44. Further by prosecuting a septuagenarian, who is also an industrialist will serve no purpose. The petitioner entitled for buying a peace subject to his agreeing to pay the compounding fee that may be imposed by the fourth respondent. The petitioner has been sufficiently dealt for his past dalliances by the respondent.

45. In my view, this was a fit case for compounding the offence considering the age of the petitioner and considering the fact that the petitioner has paid the tax interest and penalty.

46. Therefore, I am inclined to set aside the impugned order passed by the fourth respondent and remit the case back to the fourth respondent to compound the case by fixing the compounding fee to be paid by the petitioner, if it has not been already paid by the petitioner.

47. Compounding fee, if it has not been already paid, shall be calculated by the fourth respondent and intimated to the petitioner within a period of sixty days from the date of receipt of a copy of this order. The petitioner shall thereafter pay the afore said amount. Subject to such payment within such time as may be prescribed, the case against the petitioner shall be treated as having compounded and settled."

3. The revenue is in appeal, challenging the above order of the learned Judge inter alia on the following grounds:

i) There was no positive direction in W.P. No. 3929 of 2014 dated 28.08.2019 with regard to the manner in which the compounding application

filed by the petitioner ought to be considered / dealt with.

ii) There was merger of the order dated 28.02.2019 with the subsequent proceedings arising out of the directions contained therein.

iii) The observation of the learned Judge that the provisions of Section 279(1A) of the Act and the decision in *Prem Dass* case are applicable, is incorrect inasmuch as the reduction in penalty by the Commissioner (Appeals) or the Tribunal cannot be treated as an order under Section 273A of the Act and would thus not be covered under Section 279(1A) of the Act. In any view, the decision in *Prem Dass* is distinguishable on facts. Further, reliance was placed on the judgment of this Court in *South India Surgical Company v. K. Govindan, (2001) 251 ITR 78.*

4. To the contrary, it is submitted by the learned counsel for the Respondent herein that the learned Judge in W.P. No. 3929 of 2014 had found that in view of the reduction in penalty from 300% to 100%, the respondent would be entitled to the benefit of Sections 279 (1A) of the Act. Further, it was also observed that there cannot be any impediment for the Department to compound the offence under Sections 276 and 276C of the Act. The learned Judge after making the above observations, which are

conclusive of the respondent's right to compound, directed the Committee to dispose the applications in the light of the observations made and pass appropriate orders in accordance with law. It is thus submitted that the above order of the learned Judge does not give any room/discretion to the appellants to reject the compounding application.

4.1. It is further submitted that the above order of the learned Judge in W.P.No.3929 of 2014 has not been challenged by the revenue and has thus attained finality. That the above order in Writ jurisdiction not having been challenged, cannot be watered down in a Contempt proceedings.

5. Heard both sides. Perused the materials available on record.

6. In our considered view, the order of the learned Single Judge insofar as it remits the matter back to the 4th appellant to compound the case by fixing the compound fee, does not warrant interference. We say so, inasmuch as we find that the learned Judge in W.P. No. 3929 of 2014 even while remanding the matter, had made it clear that the judgment in *Prem Dass* case would apply to the respondent, and further, the respondent herein is entitled to the benefit of Section 279 (1A) of the Act. The revenue having failed to challenge the above order is bound by it. It may be relevant to extract the

relevant portions of the learned Single Judge's order, which read as under:

"8.4. Section 279 of the Income Tax Act, in explicit terms, is selfexplanatory to the effect that when the penalty imposed on the assessee is reduced under Section 273A, such an assessee cannot be proceeded against for offences under Sections 276C or 277. The term used in the Section is 'shall' and hence is required to be considered as mandatory in nature and would therefore imply that when the penalty imposed has been reduced or waived, the Assessee cannot be proceeded against for the alleged offences.

8.5. The Hon'ble Supreme Court, in Prem Dass's case (supra) has reiterated this proposition as seen from the above extract. The Commissioner of Appeals, in his order dated 25.03.2014 in ITA, had taken note of the fact that in the penalty order, the Assessing Officer has not accorded any justification or reasons for levying the maximum penalty of 300% of the tax sought to be evaded and thereby was of the opinion that a minimum amount of penalty at 100% can be imposed.

8.6. The only objection to such a proposition from the Department is that the order passed by the Tribunal, reducing the penalty, has been challenged in Tax Case Appeal before this Court. It is not the case of the Department that this Court had stayed the order of the Commissioner of Appeals, as well as the Tribunal in the Tax Case Appeals. Just because the order reducing the penalty has been put under challenge in the Tax Case Appeals, it cannot be said that the order reducing the penalty itself has been kept under abeyance. In this background, it can only be said that the petitioner would be entitled to the benefit of Section 279 (1A) of the Act and the mere challenge to the order reducing the penalty may not suffice to deny such a benefit. In view of these subsequent developments, there cannot now be any impediment on the part of the Department to compound the offences under Sections 276C and 277 of the Act.

8.7. The learned Standing counsel for the respondents made a faint attempt by placing reliance on paragraph 19 of the dismissal order dated 28.02.2019 passed in Crl.O.P.No.9065 of 2011 and submitted that Prem Dass's case (supra) has been distinguished and held to be not applicable to the present case. Hence the learned Standing counsel would submit that, since the order of reduction of penalty was not passed under Section 273B of the Act, Section 279 (1A) of the Act is not applicable to the petitioner."

9. As observed earlier, Section 279 (1A) is selfexplanatory and the Hon'ble Supreme Court in Prem Dass's case (supra) has further clarified that the assessee cannot be proceeded against for an offence when the

penalty imposed on him has been reduced. Under Article 141 of the Constitution of India, the law declared by the Hon'ble Supreme Court shall be binding on all Courts, which includes the High Courts. As such, the decision in Prem Dass's case (supra) would be binding on this Court and as such, with due respects to the observations made in this regard in paragraph 19 of the order passed by the learned Judge in Crl.O.P.No.9065 of 2011 dated 28.02.2019, is per incuriam and the observation made therein is not the proper appraisal and cannot be relied upon.

10. In the light of the above observations, the impugned order passed by the first respondent herein under Section 279 (2) of the Income Tax Act, 1961 dated 15.01.2014 is set aside and the matter is remanded back to the Committee prescribed under the CBDT Guideline No.7.1 (c) dated 16.05.2008. The petitioner is granted liberty to place a copy of this order along with afresh compounding petition under Section 279 of the Income Tax Act, before the Committee, within a period of 30 days from the date of receipt of a copy of this order. On receipt of the aforesaid application along with a copy of this order, the Committee shall consider the same, in the light of the observations made in this order and pass appropriate orders in accordance with law, within a period of 60 days there from."

(emphasis supplied)

6.1. A reading of the above observations of the learned Judge leave no room for any doubt, in our mind, that the learned Judge had found that the Respondent herein was entitled to compound in terms of Section 279(1A) of the Act, which provides that the assessee would be entitled to compound if the penalty stood reduced or waived under Section 273A of the Act. Importantly, the Supreme Court in *Prem Dass* case, while construing Section 279(2) of the, Act had rejected the argument that the reduction of penalty by an appellate authority not being an order under Section 273A of the Act, the

assessee/applicant would not be entitled to the benefit of Section 279(1A) of the Act and it was held that it may not be appropriate to adopt a literal construction of provisions of Section 279(1A) of the Act. The relevant portion of the judgment of the Supreme Court is extracted hereunder:

> *In Prem Dass v. ITO, (1999) 5 SCC 241*
>
> *"10. We also find sufficient force in the contention of Mr. Salve that the legislative mandate in Section 279(1A) of the Income Tax Act has not been borne in mind by the High Court while interfering with an order of acquittal. Mr. Shukla, no doubt has indicated that the said provision will have no application as the penalty imposed has not been reduced or waived by an order under Section 273A. We do not agree with the aforesaid literal interpretation of the provisions of Section 279(1A) of the Act, when we find that the Commissioner of Income Tax(Appeal) has reduced the penalty. Further the tribunal has totally set aside the order, imposing penalty could not have been lost sight of by the High Court while considering the question whether the order of acquittal passed by the Sessions Judge has to be interfered with or not, particularly, when the gravamen of indictment relates to filing of incorrect return and making wrong verification of the statements filed in support of the return, resulting in initiation of penalty proceedings. Bearing in mind the legislative intent engrafted under Section 279(1A) of the Income Tax Act and the conclusion of the learned Sessions Judge, on appreciation of evidence not having been reversed by the High Court and the grounds of acquittal passed by the Sessions Judge not having been examined by the High Court, we have no hesitation to come to the conclusion that the High Court was not justified in interfering with an order of acquittal."*

7. The observation in the contempt proceedings in Cont.P.No. 2079 of 2019 dated 31.01.2020 that the order dated 28.08.2019 in W.P.No.3929 of 2014 of the learned Judge, did not contain any positive direction, is grossly misconcieved and contrary to the plain language of the order of the learned Judge in W.P. No. 3929 of 2014. Since the learned Judge in W.P.No.3929 of

2014 by order dated 28.08.2019 has conclusively found that the Respondent would be entitled to the benefit of Section 279(1A) of the Act and the judgment of Supreme Court in *Prem Dass* case in view of reduction of penalty from 300% to 100% by the appellate authority, the failure of the appellant to challenge, in our view, would prove fatal, to any attempt by the revenue to contend to the contrary.

8. The Writ Appeal in W.A. No. 967 of 2020 against the order of the learned Judge in Cont.P. No. 2079 of 2019 confined itself to the legality of observations/directions which traversed beyond the order in the Writ Petition in W.P.No.3929 of 2014 dated 28.08.2019. The Division Bench only examined the jurisdiction/authority of the learned Judge in contempt jurisdiction to issue directions which travelled beyond the order in the Writ Petition and found, it was impermissible rather in excess of jurisdiction. The Division Bench did not examine the scope of the observations/directions of the learned Judge in W.P. No. 3929 of 2014 dated 28.08.2019 while hearing the appeal in W.A. No. 967 of 2020 against the order pased in the contempt petition. This would be evident from the fact that the Division Bench after setting aside the directions of the learned Judge in Cont.P. No. 2079 of 2019 which in its view traversed beyond the direction of the learned Judge in

W.P.No. 3929 of 2014 dated 28.08.2019, granted liberty to the Respondent to file a fresh petition and to canvass all issues including the directions which according to the Respondent are in their favour. The following observation is relevant:

> *"17.In the light of the above, we are to necessarily set aside the direction issued by the Court in paragraphs 37 to 40 of the impugned order and all the observations, which were made by the Court in paragraphs 32 to 36, which have led to issuance of the impugned directions. Having held so, we need to take note of the submissions of the learned Senior Counsel for the respondent that the respondent should not be left without a remedy because his contempt petition was dismissed as being devoid of merit and now we have come to a conclusion that the direction could not have been issued by the Contempt Court, which was beyond the scope of the contempt petition. Bearing this in mind, we are inclined to give liberty to the respondent to file a fresh petition for compounding in which, he may canvass all issues available to him on law as well as on facts and orders and directions which according to them are in their favour as well as the decisions which he chooses to rely upon."*

8.1. The above observation of the Division Bench in W.A. No. 967 of 2020 clearly indicates that the scope and purport of the observations in W.P. No. 3929 of 2014 were not examined in the above Writ Appeal. We had dealt with the order in the Contempt Petition and the order in appeal against the same in W.A. No. 967 of 2020 only to allay any apprehension rather ensure that the Division Bench has not in any manner touched on the observation/direction of the learned Judge in W.P. No. 3929 of 2014 insofar as it deals with the entitlement of the respondent herein to compound under section 279 (2) of the Act in respect of the offence under Sections 276C and

Section 277 of the Act.

9. In any event, the appellants/revenue would be bound by the observations of the learned Judge in W.P. No. 3929 of 2014, which cannot be watered down by any observations to the contrary in a contempt jurisdiction. This is in view of the settled law that a contempt jurisdiction is *sui generis,* inherent and is confined to examining whether there is wilful violation of the order of the Court and any attempt to examine the correctness or otherwise of the order stated to be in contempt would be in excess of its jurisdiction. It is trite law that in a contempt petition, the jurisdiction is limited viz., to examine whether there is a violation of the order of the court or otherwise. Under the guise of exercise of jurisdiction in contempt proceedings, the order / judgment of a Court cannot in any manner be diluted/watered down by issuing fresh directions. It may be relevant to refer to the following judgments:

i) Jhareswar Prasad Paul v. Tarak Nath Ganguly, (2002) 5 SCC 352:

> ***"11. ....****The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the*

judgment or order should have contained. At the cost of repetition, be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which is alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order. If this limitation is borne in mind then criticisms which are sometimes levelled against the courts exercising contempt of court jurisdiction "that it has exceeded its powers in granting substantive relief and issuing a direction regarding the same without proper adjudication of the dispute" in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the judgment or order passed in the contempt proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended to maintain the majesty and image of courts."

ii) Sudhir Vasudeva v. M. George Ravishekaran, (2014) 3 SCC 373 :

***"19.....** The Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self-evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or wilful violation of the same. Decided issues cannot be reopened; nor can the plea of equities be considered. The Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above. The above principles would appear to be the cumulative outcome of the precedents cited at the Bar, namely, Jhareswar Prasad Paul v. Tarak Nath Ganguly[(2002) 5 SCC 352 : 2002 SCC (L&S) 703], V.M. Manohar Prasad v. N. Ratnam Raju [(2004) 13 SCC 610 : 2006 SCC (L&S) 907], Bihar Finance Service House ConstructionCoop. Society Ltd. v. Gautam Goswami [(2008) 5 SCC 339] and Union of India v. Subedar Devassy PV[(2006) 1 SCC 613] ."*

10. We do not propose to examine the correctness or otherwise of the observations / findings of the learned Judge in W.P. No. 3929 of 2014 dated 28.08.2019 insofar as the applicability of the Supreme Court in *Prem Dass* case and the interpretation of Section 279 (1A) of the Act which has attainted finality insofar as the appellants are concerned, in the absence of any appeal being preferred by the revenue. For the same reason we are also of the view that it may not be necessary to examine the question as to whether the Appellants would be governed by the 2008 or 2019 Circular inasmuch as we have already found that the order of the learned Judge in W.P. No. 3929 of 2014 has conclusively held that the respondent herein is entitled to compound in view of the reduction of penalty by the appellate authority thereby attracting Section 279(1A) of the Act as explained by the Supreme Court in *Prem Dass* case. The revenue having failed to challenge the above order in Writ Petition No. 3929 of 2014, it would ill lie in the mouth of the revenue to contend to the contrary nor can the directions of the Court issued in Writ jurisdiction as discussed supra be watered down under the garb of examining compliance with the orders of the learned Judge in a contempt proceeding / jurisdiction.

11. We are of the view that though for the reasons discussed supra which are different from that which weighed with the learned Single Judge in W.P.No. 23800 of 2021, the respondent herein is entitled to compound under Section 279(2) of the Act in respect of the offences under Sections 276C and 277 of the Act. We say so inasmuch as in our view the respondent's entitlement to compound in terms of Section 279(2) of the Act stands resolved conclusively by the order of the learned Single Judge in the previous round of litigation in W.P.No.3929 of 2014 dated 28.08.2019 the same having not been challenged by the revenue, is bound by it, nor is it open to them to water down those directions/observations in the Contempt jurisdiction. Thus, the order of the learned Single Judge does not warrant any interference.

12. In the result, the Writ Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]
11.12.2023

Index: Yes/No
Speaking order/ Non speaking order
Neutral Citation: Yes/No
Spp

To

1.The Principal Commissioner of Income Tax,
Central-I, No.46, Old No.108, M.G.Road,
Nungambakkam, Chennai-600 034.

2.The Additional Commissioner of Income Tax,
Central Range-I, No.46, Old No.108, M.G.Road,
Nungambakkam, Chennai-600 034.

3.The Deputy Commissioner of Income Tax,
Central Circle-I(1), Income Tax New Building,
Room No.112, 1st Floor,
No.46, Old No.108, M.G.Road,
Nungambakkam, Chennai-600 034.

4.The Director General of Income Tax (Investigation),
No.46, Old No.108, M.G.Road,
Nungambakkam, Chennai-600 034.

R.MAHADEVAN, J.
and
MOHAMMED SHAFFIQ, J.

Spp

W.A. No.1767 of 2022 and
C.M.P.No.12970 of 2022

11.12.2023