

Revenue can compound offence of taxpayer if appeal against sentence is pending before Principal Session Judge

Summary – The High Court of Madras in a recent case of V.A. Haseeb & Co. (Firm), (the Assessee) held that where against conviction and sentence passed by Trial Court assessee had filed an appeal and same was pending, said appeal was also a 'proceeding' as contemplated under section 279(2); Revenue Authority, thus, for pending appeal, could compound offence

Facts

- The Assessee-firm consist of two partners paid interest to its depositors without deducting TDS for the assessment year in question. For the failure to deduct the TDS and remit it to the Government of India, complaints were filed against Assessee-firm and its partners.
- The Trial Court, convicted assessee-firm and one of its partner, A-3, and against the said conviction and sentence, same had filed Criminal Appeals. It appears that the surviving partner of the Firm, A-3 was absconding, and he did not appear before the Appellate Court, and for almost 15 years, the Criminal Appeals are pending.
- Subsequently, the assessee-firm filed an application before the Chief Commissioner of TDS for compounding the offence. This application was filed, without obtaining the leave of the Court. The Principal Session Judge pointed out that the offences are compoundable, hence, leave was granted to the Chief Commissioner TDS. However, the said application was rejected by the Chief Commissioner on the ground that the conduct of the assessee as well as the conviction would dis-entitle the assessee for compounding the offence.
- On Assessee's appeal to the High Court:

Held

- In the instant case, the matter has been pending since 1999, and there has been no progress. The respondent/Department stated that the petitioner/Firm was an accused. Furthermore, the Principal Sessions Court, while granting permission to the respondent to consider the petitioner's Application for compounding the offence, in its order, dated 28-4-2015, observed that the offences are compoundable in nature, therefore, leave is granted to the competent Authority to compound the offence.
- It was proposed to follow the judgment of the Division Bench in *Chairman, CBDT v. Umayal Ramanatha* [2009] 313 ITR 59 (Mad.).
- It was held that the respondent can examine the matter afresh without being, in any manner, influenced merely because of the conviction passed against the petitioner by the Criminal Court.

- In the result, the Writ Petition is allowed, and the impugned order is set aside, and the matter is remanded to the respondent for fresh consideration. Consequently, connected Miscellaneous Petition is closed.