

Assessee wasn't entitled to compounding of offence if notice was issued for same offence in earlier year: HC

Summary – The High Court of Gujarat in a recent case of Vinubhai Mohanlal Dobaria., (the Assessee) held that where there was already a show cause notice for prosecution issued under section 246CC for non-filing of return before due date for previous assessment year and despite same, assessee did not file return of income for subsequent assessment year within prescribed time, offence for subsequent assessment year could not be compounded

Facts

- The assessee filed the return of income for assessment year 2011-12 after the due date. The Assistant Commissioner sent a proposal for prosecution to the Commissioner, who in turn issued a show cause notice. The assessee filed an application for compounding as prescribed under the Guidelines for Compounding of Offence, 2008. The said application along with application for other years, *i.e.*, assessment years 2011-12 and 2012-13 was accepted by the Chief Commissioner and the application of the assessee for compounding offence was granted.
- Later, the assessee filed return of income for assessment year 2013-14, which was also filed after the due date. The assessee again received a notice for prosecution under section 276CC for assessment year 2013-14. On receipt of the said notice, the assessee filed an application for compounding as prescribed under the Guidelines which was rejected by the Chief Commissioner, observing that as per the Guidelines issued with, respect to first offence only, compounding is permissible.
- In instant writ petition, the assessee had contended that the compounding application of the assessee was rejected by the Chief Commissioner solely on the ground that it was not the 'first offence' of the assessee. It was submitted that the show cause notice for prosecution under section 276CC for assessment year 2013-14 was issued only on 12-3-2015. Prior thereto the petitioner already filed the return of income on 29-11-2014 and therefore, it could not be said that it was the first offence. The Chief Commissioner had erroneously computed date of issue of show cause notice for assessment year 2011-12 for holding that the assessee had committed the offence post that date. It could not be said that the assessee had further committed the offence after issuance of show cause notice. The assessee also contended that as provided in the Guidelines, the Guidelines of non-compounding offence is only a general guideline and not a strict law as suggested by the heading 'offence generally not to be compounded'.

Held

- By impugned order, the Chief Commissioner has rejected the compounding application submitted by the petitioner for assessment year 2013-14 on the ground that as per the Guidelines only in a case of 'first offence' the compounding is permissible. As per the clause 4 of the said Guidelines, the compounding offence is not a matter of right. There are different categories of offence mentioned

in the Guidelines. The offence under section 276CC falls in category 'B'. As per clause 8(ii) with respect to offence falling under category 'B', the offence other than first offence as defined generally not to be compound. What can be said to be first offence is also mentioned in the clause 8(ii) and as per the same, first offence means offence under any of the Direct Tax Laws committed prior to (a) the date of issue of any show cause notice for prosecution or (b) any intimation relating to prosecution by the department to the person concerned or (c) launching of any prosecution, whichever is earlier. It is the case on behalf of the department and so mentioned in the impugned order that in the present case prior to offence under section 276CC for assessment year 2013-14 there was already show cause notice for prosecution for assessment year 2011-12 and despite the same, the assessee did not file the return of income for assessment year 2013-14 within the time prescribed. Therefore, the offence under section 276CC for assessment year 2013-14 cannot be said to be the "first offence".

- However, on the other hand, it is the case on behalf of the petitioner-assessee that for assessment year 2013-14 the show cause notice under section 276CC was issued on 12-3-2015 and prior thereto the return of income for assessment year 2013-14 was already filed on 29.11.2014 and therefore, the same can be said to be "first offence" even as per the clause 8(ii) of the Guidelines. The submission on behalf of the assessee cannot be accepted. The aforesaid submission on behalf of the assessee is absolutely on misreading of clause 8(ii). On true interpretation of clause 8(ii), in case the offence is committed prior to date of issuance of any show cause notice for prosecution, in that case, it can be said to be the "first offence" Therefore, in case for any prior assessment year, the show cause notice has been issued for prosecution and despite the same, in the subsequent year, the offence is committed by not filing the return, the same cannot be said to be "first offence".
- The submission on behalf of the petitioner-assessee that in the present case the show cause notice for prosecution for assessment year 2013-14 was issued on 12-3-2015 and prior thereto the return of income was filed for assessment year 2013-14 on 29-11-2014 and therefore, the same can to be said to be first offence, cannot be accepted. What is required to be considered is whether for any prior year any show cause notice for prosecution is issued and served upon the petitioner or not. If the contention on behalf of the petitioner is accepted, in that case, it will be contrary to the clause 8(ii) of the Guidelines. In the present case, for assessment year 2011-12, the show cause notice was already issued under section 276CC on 27-10-2014 for non filing of return before due date (for assessment year 2011-12) and despite the same for the subsequent years *i.e.* for assessment year 2013-14 the assessee did not file return of income before due date of filing of return. Therefore, again the petitioner-assessee committed the offence for assessment year 2013-14. Thus, it cannot be said that in assessment year 2013-14 it can be said to be the 'first offence' committed by the assessee.
- Under the circumstances, the Chief Commissioner has rightly rejected the compounding application submitted by the petitioner. Rejection of the compounding application submitted by the petitioner is absolutely in consonance with the Guidelines, 2014.