

Compounding fee to be computed on basis of tax sought to be evaded and not income sought to be evaded: HC

Summary – The High Court of Gujarat in a recent case of Supernova System (P.) Ltd., (the Assessee) held that In terms of section 276C(1), compounding fee has to be computed on basis of 100 per cent of tax sought to be evaded by assessee and not amount of income sought to be evaded

Facts

- For relevant year, the assessee filed its return claiming refund of tax. During the course of scrutiny assessment, the Assessing Officer objected to the assessee's claim of deduction of a sum of Rs.8.70 lakhs. The assessee accepted it as an error and agreed to such claim being disallowed. The Assessing Officer thereupon passed the order of assessment. He also imposed penalty under section 271(1)(c) at the rate of 100 per cent of the tax sought to be evaded.
- Subsequently, the revenue issued a notice for initiating prosecution against the petitioner under section 276C(1) of the Act. The assessee also received a notice from the concerned Magistrate. The assessee thereupon applied to the Chief Commissioner and requested that the offense be compounded.
- In response to such application of assessee, the department asked the assessee to pay compounding fee which was computed on basis of 100 per cent of income sought to be evaded.
- The assessee applied for rectification of computation contending that compounding charges would be 100 per cent of the amount of tax sought to be evaded and not the amount of income sought to be evaded. Since the department did not accept the assessee's viewpoint, the instant petition came to be filed.

Held

- The question that calls for consideration is what would be the basic compounding charges that the assessee must pay in order to avail the offer for compounding the offence. The primary facts are not in dispute. In the assessment of the assessee's return, an addition of Rs.8.70 lakhs came to be made. This gave rise to additional tax of Rs.2.61 lakhs. A penalty of Rs.2.61 lakhs at the rate of 100 per cent of the tax sought to be evaded was also imposed in terms of section 271(1)(c) of the Act.
- Section 276C of the Act pertains to wilful attempt to evade tax, etc. Section 279 pertains to the prosecution to be at instance of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. Sub-section (1) of section 279 provides that a person shall not be proceeded against for offences under various sections including section 276C of the Act except with the previous sanction of the Principal Commissioner or Commissioner or Commissioner (Appeals) or the appropriate authority. Sub-section (2) of section 279 provides that any offence under this

chapter may, either before or after institution of the proceedings be compounded by the Principal Chief Commissioner or Chief Commissioner or Principal Director General or the Director General.

- In terms of such compounding powers the CBDT has been issuing circulars for providing guidelines for compounding offences under the Act.
- Para 12.2 of the said circular dated 23-12-2014 thus prescribes compounding fees for offence under section 276C(1) at 100 per cent of the amount sought to be evaded. This para also starts with an expression '*Section 276C(1) Wilful attempt to evade tax etc.*'. The title of this para thus, is taken from the section itself and the compounding fee is to be computed at the rate of 100 per cent of the amount sought to be evaded. Since this para does not contain any specification of '*the amount sought to be evaded*', it is necessary to fall back on the statutory provisions in relation to which, this compounding fee is prescribed. Sub-section (1) of section 276C, as noted, prescribes punishment for a person who wilfully attempts in any manner to evade any tax, penalty or interest chargeable under the Act. This could be without prejudice to any penalty that may be imposable on him under any provisions of the Act. Under such circumstances, as per the sections stood at the relevant time, the person concerned would be punishable;
 - (i) In case where the amount sought to be evaded exceeds Rs.250,000, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine and;
 - (ii) In any other case with rigorous imprisonment for a term which shall not be less than three months but which may extend to two years and with fine.
- This provision thus while prescribing punishment for wilful attempt to evade tax, penalty or interest chargeable, provides for a more severe punishment in case the amount sought to be evaded exceeds Rs.250,000. For the rest, punishment prescribed is lesser. This prescription of punishments in two categories is thus linked with the amount sought to be evaded. This amount sought to be evaded is in relation with the action of a person of a wilful attempt to evade tax, penalty or interest chargeable.
- In the prescription of punishment thus, when there is a reference to amount sought to be evaded, it must be seen in light of the wilful attempt on the part of the concerned person to evade tax, penalty or interest. This provision thus, links the severity of punishment on the amount sought to be evaded and, thus, in turn has relation to the attempt at evasion of tax, penalty or interest. Thus, when the CBDT circular refers to the amount sought to be evaded, it must be seen and understood in light of the provisions contained in section 276C(1) and in turn must be seen as amount sought to be evaded. 100 per cent of tax sought to be evaded would be the basic compounding fees which in the present case would be Rs.2,71,000 and not Rs.8,70,000 as computed by the departmental authorities. The rest of the computation is consequential and automatic. The impugned communication is therefore set aside.
- Petition is disposed of accordingly.