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W.P.No.24029 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	25.11.2025
Pronounced on	16.12.2025

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.24029 of 2025
and
W.M.P.No.27031 of 2025

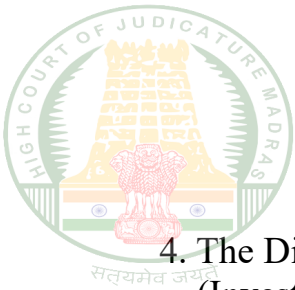
K.M.Mammen

... Petitioner

Vs.

- 1.The Principal Commissioner of Income Tax,
Central-1,
No.46, Old No.48, M.G.Road,
Nungambakkam,
Chennai-600 034.
2. The Additional Commissioner of Income Tax,
Central Range – 1,
No.46, Old No.108, M.G.Road,
Nungambakkam,
Chennai – 600 034.
3. The Assistant Commissioner of Income Tax,
Central Circle – 1(1),
Income Tax New Building,
Room No.320, 4th Floor,
No.46, Old No.108, M.G.Road,
Nungambakkam,
Chennai – 600 034.

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

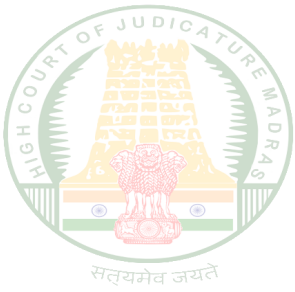
5. The Income Tax Officer (HQ) (Inv) (OSD)
Office of the Director General of Income Tax (Investigation),
2nd Floor, New Building,
New No.46 (Old No.1108)
Mahatma Gandhi Road,
Chennai – 600 034.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the communication/proceedings issued by the 5th respondent in F.No.2009(37)/2019-20 dated 11.06.2025, quash the same as illegal, arbitrary, and in violation of the order dated 05.03.2025 passed by the Hon'ble Supreme Court in SLP (Crl) No.6179 of 2019 and SLP (crl) No.7047 of 2024 and consequently direct the respondents to recompute the compounding fees strictly in accordance with the CBDT guidelines bearing F.No.285/90/2008-IT(Inv)/12 dated 16.05.2008.

For Petitioner : Mr.J.Sivanandaraj,
Senior Standing Counsel
For Mr.Rajagopal Vasudevan

For Respondents : Mr.A.P.Srinivas,
Senior Standing Counsel
& Mr.A.N.R.Jayapathap,
Junior Standing Counsel



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ORDER

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This is the third round of litigation before this Court in the present Writ Petition.

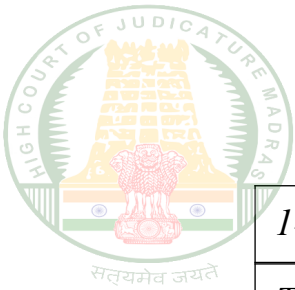
2. The Petitioner, a senior citizen, has challenged the impugned communication dated **11.06.2025** passed by the 5th Respondent bearing reference **F.No. 2009(37)/2019-20**.

3. The impugned order has been passed purportedly in compliance with the order of the Hon'ble Supreme Court dated **05.03.2025** in **S.L.P. (Crl.) No. 6179 of 2019** and **S.L.P. (C) No. 7047 of 2024**.

4. By the impugned communication the Petitioner has been asked to pay a sum of Rs.1,29,88,765/- as compounding charges. Operative portion of the impugned communication is extracted as below:-

I am directed to inform you that the compounding charges determined by the Assessing Officer, in accordance with the Guidelines dated 17.10.2024, have been approved by the Director General of Income Tax (Investigation), Tamil Nadu & Puducherry. As per the compounding Guidelines dated 17.10.2024 the compounding charges have been determined as below:-

<i>Income sought to be concealed as per order u/s</i>	<i>Rs.2,26,38,372/-</i>
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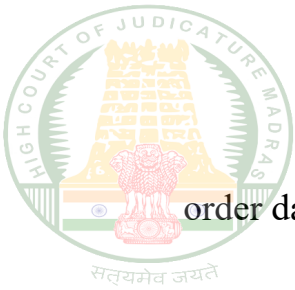
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<i>143(3) r.w.s 147 dated 29.12.2009</i>	
<i>Tax thereon @ 30% and Surcharge @ 2%</i>	<i>Rs.69,27,342/-</i>
<i>Compounding Fees @ 125% of tax sought to be evaded on unreporting income u/s 276C(1)</i>	<i>Rs.86,59,177/-</i>
<i>Compounding Fees @ 50% of tax sought to be evaded due to offence committed u/s 277*</i>	<i>Rs.0/-</i>
<i>Increased compounding charges as per para 10.7 of the guideline**</i>	<i>Rs.43,29,588/-</i>
<i>Compounding Charges payable now</i>	<i>Rs.1,29,88,765/-</i>

In this regard you are directed to pay compounding charges of Rs.1,29,88,765/- within a period of 30 days and to produce the challan in proof of the same, for consideration of compounding of offences.

5. In the background is an application dated 25.03.2011 filed earlier under Section 279 of the Income Tax Act, 1961 before the 4th Respondent, namely the Director General of Income Tax (Investigation), which came to be rejected by an order dated **15.01.2014** by the said Respondent. Thus, the Petitioner challenged the said order dated **15.01.2014** in **W.P. No. 3929 of 2014**.

6. After considering the submissions of the Petitioner and the Respondents therein, **W.P. No. 3929 of 2014** was allowed by writ Court vide



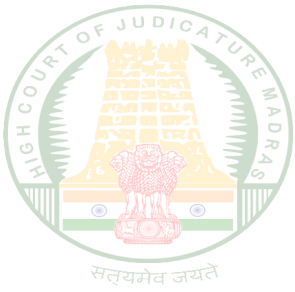
order dated **28.08.2019** with the following observations:-

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9. Point C, D and E

Now that, this Court has held that the appropriate authority to consider a compounding petition filed under Section 279 of the Act would be by a Committee comprising of the CCIT (CCA); DGIT (Investigation); and CCIT/DGIT having jurisdiction over the case, as per the revised Guidelines of CBDT and that in view of the subsequent developments, whereby the penalty imposed on the petitioner has been reduced by the Commissioner of Income Tax, Appeals on 25.03.2014 and the same being confirmed by the Income Tax Appellate Tribunal on 27.09.2017, the contentions raised in point Nos.C,D and E are not specifically dealt with by this Court since, this Court is of the view that the matter be remanded back to the Committee prescribed under the revised Guideline No.7.1(c) for passing appropriate orders.

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. The Writ Petition stands allowed accordingly. Consequently connected Miscellaneous petition is closed. No costs.



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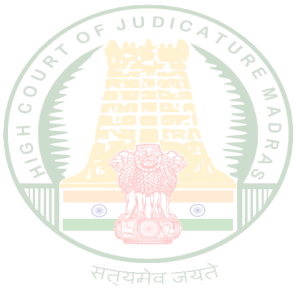
7. The Petitioner therefore filed a fresh application on **10.09.2019** for compounding of offences under Section 279(2) of the Income Tax Act, 1961. However, the Compounding Committee consisting of the three Respondents rejected the said application vide order dated **06.11.2019**. The reasons given for rejecting the application was based on the **CBDT** guidelines dated **16.05.2008**. It is reproduced below:-

5. Acceptance or Rejection of the petitions:

5. 1 The assessee's Compounding Petition was considered by the RCC in line with the Compounding guidelines dated 16.05.2008. As per Compounding guidelines, the following has been mentioned in para 4.4:

"Cases not to be compounded: Notwithstanding anything contained in the guidelines, the following cases should normally not to be compounded

- a) In case of a non technical offence, offences other than the first offence as defined in para 8 below.
- b) Offences involving major fraud or scam or misappropriation of government funds or public property.
- c) Offences committed by an assessee linked to any Anti-national/terrorist activity and cases being investigated by CBI, police, enforcement directorate or any other Central Govt, agencies, as per information available with the Income Tax department.
- d) Offences committed by assessee who has enabled others in large-scale concealment of income in a



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systematic and planned way over a number of years like hawala entries, bogus trusts, bogus remittance etc.

e) Offences committed by an assessee whose application for 'plea-bargaining' under 'Chapter XXI-A of Code of Criminal Procedure' is pending in a Court or a Court has recorded that a mutually satisfactory

f) Where conviction order has been passed by a Court.

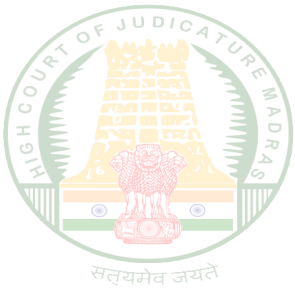
g) any other ground the CCIT/DGIT may consider relevant for not accepting the compounding petition, in view of the nature and magnitude of the offence".

5.2 The RCC considered all the materials and records before it, in detail. The Assessing Officer reopened the case under section 147 after receiving information on moneys deposited in a foreign bank account and the assessee remained non-cooperative during the course of the assessment proceedings. While replying to the issue of notice under section 148, assessee submitted

"On the basis of the reasons provided by you by your letter dated 24.04.2009. I have written to LGT Bank, Lichtenstein on 14.05.2009 requesting them to verify the details of the Trust purported to have an account with LGT Bank and beneficiaries in the said Trust. The Bank has replied by their letter dated 08.07.2009 copy of which is enclosed (Original Bank letter is produced for your perusal). The Bank's letter will show that they have no information of any such Trust or the stated beneficiaries in the Trust.

In view of the Bank's confirmation, the reassessment is without merits and therefore, the proceedings may be dropped."

Whereas, the Assessing Officer found that the bank has actually replied as under



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"Due to the Liechtenstein banking Act, the bank can disclose information about any possible business relation between a bank client and the bank only to authorised person(s) and none else. We, therefore regret our inability to give you the information called for by you"

Secondly, a sworn statement u/s 131 of the IT Act, 1961 was recorded from the assessee by the Assessing Officer on 10.11.2009. Some of the intercepts are reproduced here under:

Q.17 There is a Trust by name M/s. Webster Foundation. Are you reminded of anything when you hear it.

Ans: I am not aware of such Trust or Foundation. Nothing comes to my mind

further in the sworn statement, assessee also stated that

Ans-18: The signature appears to be mine but I have never signed any such document.

Ans-21: I am not aware of the existence of Webster Foundation.

5.3 The above replies by the assessee clearly show that the assessee gave false statement under oath before the Assessing officer. The information about the foreign bank account of the assessee was authentic since the same was received from the Govt of Germany. Thus it is clear that the assessee was hindering the course of investigation and gave false information.

5.4 The mens rea behind the offence, committed by the assessee, is clear and this stand is supported by the fact that the CIT (A) confirmed the penalty order under section 271(1)(c) of the Income Tax Act, though the penalty was restricted to 100% instead of 300% of the tax sought to be evaded. Further, the ITAT has also confirmed the CIT(A)



order.

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5.5 *The Regional Compounding Committee also took into consideration the fact that a large sum was deposited in the foreign bank accounts and the period in which the offence was committed. The Indian rupee equivalent of the Euro currency at the time of deposit in foreign bank account was Rs.2,26,38,372 in Asst. year 2002-03. This was a huge amount at that point of time.*

5.6 *Moreover, the RCC deliberated on the following points:*

- a) the assessee has cross border transactions, but for the information received from a foreign Government, the Revenue would have been put to loss.*
- b) the evidence gathered in the instant case establishes major frauds in so far as funds have gone out of the country and if not for the information obtained, the monies would have remained untaxed.*
- c) The assessee has neither produced the documents nor the account copy to disprove the contentions of the department. The attitude of the assessee was of total non-cooperation in the entire proceedings before Assessing Officer on this issue.*

5.7 *Considering the above, facts and circumstances the RCC recommended that the Compounding Petition of the assessee deserve to be rejected according to the guidelines prescribed in the Para 4.4(g) considering the nature and magnitude of offence as non compoundable.*

11. *In the result, the application of the assessee Shri. K M Mammen, (AAEPM0314R) for the Asst. Year.2002-03 u/s.279(2) of the Income Tax Act, 1961 dated 10/09/2019 has been rejected.*

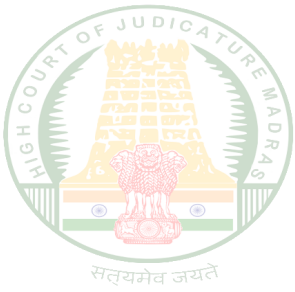


8. In this background that the Petitioner filed the Contempt Petition in **Cont.P. No. 2079 of 2019**. By the time the Contempt Petition was taken up for hearing, a new **Circular dated 14.06.2019** had been issued. Thus, **Cont.P. No. 2079 of 2019**, was disposed of vide order dated **31.01.2020** with the following observations:-

37. The respondents shall also consider the age of the petitioner and his status in society while deciding the case of the petitioner. The fact that petitioner has been subjected to the prosecution from 2011 is itself also an adequate punishment. This factor also should be kept in mind by the respondents while disposing the case. If petitioner has no other cases against him, the respondents shall consider compounding application for compounding the offence favourably in favour of the petitioner subject to payment of appropriate compounding fees by the petitioner. 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 police 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.

39. The respondents shall pass appropriate orders within a period of three months from the date of receipt of a copy of this order in the light of the observation contained herein. Needless to state, petitioner shall



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also be heard in person or through authorised representatives/legal representatives.

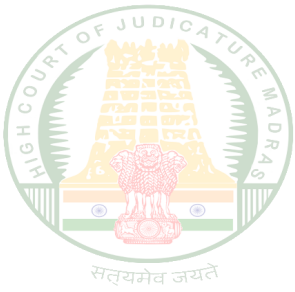
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40. The present Contempt Petition is dismissed with the above observations. No cost. Consequently, connected Sub Applications are also closed.

9. Both the Petitioner and the Respondent, namely, the Income Tax Department therein filed Writ Appeals against the order dated 31.01.2020 in Cont.P. No. 2079 of 2019 before the Hon'ble Division Bench. The appeal filed by the Petitioner was not numbered and it was listed for maintainability in W.A.SR.No. 84101 of 2020. The appeal preferred by the Respondent, namely, the Income Tax Department was numbered as W.A.No. 967 of 2020.

10. By two separate orders dated 11.02.2021, the Hon'ble Division Bench of this Court:-

- i. dismissed the appeal filed by the Petitioner in W.A.SR.No. 84101 of 2020 at the S.R. stage as the Writ Appeal was not maintainable.
- ii. disposed W.A.No. 967 of 2020 appeal filed by the Department with a liberty to the Petitioner to file a fresh petition under Section 279 of the Income Tax Act, 1961 before the 4th Respondent within a period of 30 days from the date of the receipt of a copy of the order and direction to the 4th Respondent to consider the said petition and



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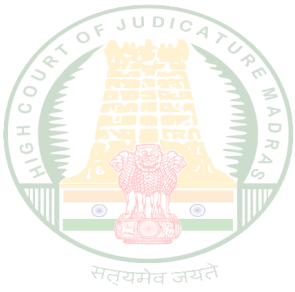
pass order within a reasonable time not later than 90 days from the date on which the petition is presented in full form.

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11. Operative portion of the order of the Division Bench dated 11.02.2021 which modified order dated 31.01.2020 in Cont.P.No. 2079 of 2019 in W.A.No. 967 of 2020 is reproduced below:-

*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 canvas 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.*

18. In the light of the above, this writ appeal is allowed and the directions issued in paragraphs 37 to 40 are set aside and the observations made in paragraphs 32 to 36 leading to the directions are vacated. Liberty is granted to the respondent to file a fresh petition under Section 279 of the I.T. Act before the first appellant



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within a period of 30 days from the date of receipt of a copy of this judgment and the same shall be considered in accordance with law within a reasonable time not later than 90 days from the date on which the petition is presented in full form. No costs. Consequently, connected miscellaneous petition is closed.

12. Pursuant to the order dated **11.02.2021** in **W.A.No. 967 of 2020**, the Petitioner filed a 3rd compounding application on **05.03.2021** under Section 279 of the Income Tax Act, 1961 before the 4th Respondent. The 4th Respondent with the approval of Regional Compounding Committee vide order dated **30.08.2021**, rejected the said compounding application filed by the Petitioner on **05.03.2021**. The said order dated **30.08.2021** was subjected to a challenge before this Court once again in **W.P. No. 23800 of 2021**.

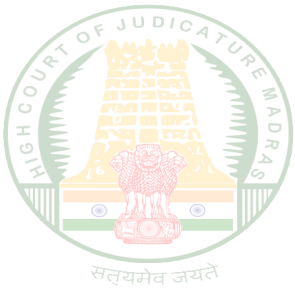
13. By an order dated **13.04.2022**, the Writ Petition in **W.P. No. 23800 of 2021** allowed the case of the Petitioner and remitted the case back back to the 4th Respondent to pass fresh order. The Court held it was a fit case for compounding the offence considering the age of the petitioner and considering the fact that the petitioner has paid the tax interest and penalty. The Court further observed that the fourth respondent shall compound the case by fixing the compounding fee to be paid by the petitioner, if it has not been already



paid by the petitioner. It was observed as under:-

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31. *Guidelines for compounding offences have been issued in the form of Circulars under Section 119(1) of the Income Tax Act, 1961. At the time when the first application for compounding the offence was filed, Circular No.F.No.285/90/2008-IT(Inv.)/12 dated 16.5.2008 was in force. By the time, when W.P.No.3729 of 2014 and Contempt petition were disposed on 28.08.2019 and on 31.01.2020, respectively **Circular** bearing reference No.F.No.285/08/2014-IT (Inv-V)/147 dated 14.6.2019 was in force with effect from 17.6.2019. It was to apply for fresh application filed after the said date.*
32. *The Division Bench by its order dated 11.2.2021 in in W.A.No.967 of 2020 in its discussion has impliedly held that Circular No.F.No.285/08/2014-IT (Inv-V)/147 dated 14.6.2019 which was in force with effect from 17.6.2019 and therefore cannot be applied to the facts of the case. However, in the impugned order, the fourth respondent has relied on the same.*
33. *As per 2019 guidelines in Circular bearing reference F.No.285/08/2014-IT (Inv-V)/147 dated 14.06.2019, cases involving any offence which has a bearing on an offence relating to undisclosed foreign bank account / assets in any manner are not to be normally compounded.*
38. *Both 2015 or 2019 guidelines are strictly binding on the authorities. They are intended to guide officers to bring a closure of cases where there are extenuating circumstance for compounding offence on application filed under Section 279(2) of the Act.*
40. *The petitioner is now over 70 years and has been facing prosecution for over a period of last one*



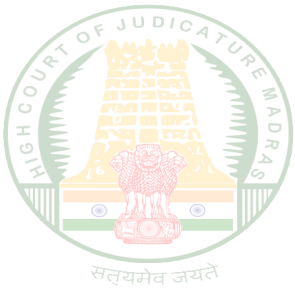
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decade for an offence allegedly committed by him during 2001-2002 for the relevant assessment year 2002-2003.

- 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 a 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*



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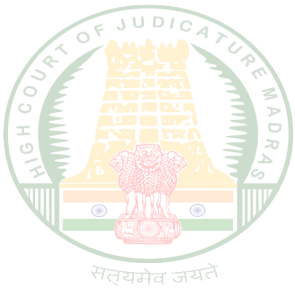
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offence considering the age of the petitioner and considering the fact that the petitioner has paid the tax interest and penalty.

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.*

14. This order was sought to be assailed by the Respondents in W.A. No. 1767 of 2022. However, W.A. No. 1767 of 2022 was dismissed by the Hon'ble Division Bench of this Court vide order dated 11.12.2023 with the following observations:-

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 attained 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***



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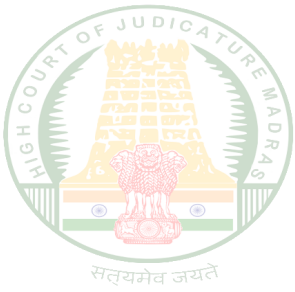
of the revenue to contend to the contrary nor can the directions of the Court issued in Writ jurisdiction as discussed supra be watered down under the garb of examining compliance with the orders of the learned Judge in a contempt proceeding/jurisdiction.

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.*

15. It is in this background, a further appeal was filed by the Respondents before the Hon'ble Supreme Court in S.L.P.(C) No. 7047 of 2024, which came to be dismissed on 05.03.2025 with the following observations:-

S.L.P. (Civil) No.7047 of 2024:-

Considering the peculiar facts of the case, we are of the view that interference under Article 136 of the Constitution of India cannot be made. The Special



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Leave Petition is accordingly dismissed.

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However, the questions of law, if any, are kept open.

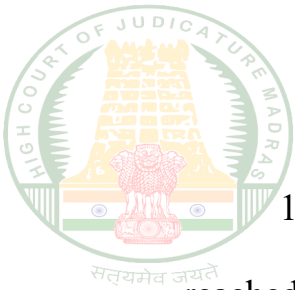
In terms of the directions issued by the learned Single Judge in paragraph 47 of the judgment dated 13th April, 2022, we direct the petitioners to calculate the compounding fee and communicate the same to the respondent within a period of 60 days from today.

We grant time of one month to the respondent to pay the compounding fee as determined by the petitioners from the date on which the exact amount is communicated to the respondent.

Pending application also stands disposed of.

16. Another appeal was filed by the Petitioner in S.L.P.(Crl) No. 6179 of 2019, which also was disposed on 05.03.2025 in view of the order in S.L.P.(C) No. 7047 of 2024 as mentioned above.

17. In light of the above order, the office of the 5th Respondent, namely, Director General of Income Tax (Investigation) TamilNadu & Puducherry has now issued the impugned communication on 11.06.2025, wherein reliance has been placed on the Compounding Guidelines dated 17.10.2024.



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18. On behalf of the Petitioner it is submitted that once the dispute had reached the stage of finality during the earlier proceedings before this Court between the parties, there is no scope for imposing higher compounding fee, as per the new compounding Guidelines dated 17.10.2024. Further, it is submitted that once a mandamus has been issued in favour of the petitioner, any subsequent amendment, whether to the compounding Guidelines or to the provision of the Income Tax Act, 1961, cannot dilute the vested rights of the Petitioner under order dated 28.08.2019 in W.P.No.3929 of 2014 filed on 06.02.2014.

19. In this connection, the learned Senior Counsel for the Petitioner has drawn attention to the following decisions of the Hon'ble Supreme Court:-

- i. **Madras Bar Association Vs. Union of India and another** in (2022) 12 Supreme Court Cases 455
- ii. **Madan Mohan Pathak and another Vs. Union of India and others** in W.P.No.108 of 1976

20. The learned counsel for the Respondent has drawn attention to Section 279(2) and the explanation to the Section 279(6). It is submitted that, as per the explanation, the Board has a power to issue orders, instructions or directions under the Income Tax Act, 1961, which shall include and shall be deemed to have always 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 Section 279 of the Income Tax Act, 1961.

21. The learned counsel for the Respondent drew attention to the decision of the Hon'ble Supreme Court in **Y.P.Chawla Vs. M.P.Tiwari**, [1992] 195 ITR 607 (SC); [1992] 63 Taxman 538 (SC). It is submitted that the Hon'ble Supreme Court held as under:-

“The Explanation is in the nature of a proviso to Section 279(2) with the result that the exercise of power by the Commissioner under the said section has to be subject to the instructions issued by the Board from time to time. The Explanation empowers the Board to issue orders, instructions or directions for the proper composition of the offences under section 279(2) and further specifically provides that directions for obtaining the previous approval of the Board can also be issued. Reading section 279(2) along with the Explanation, there is no matter of doubt that the Commissioner has to exercise his discretion under section 279(2) in conformity with the instructions issued by the Board from time to time.”

22. The learned counsel for the Respondent submits that a new application was filed by the Petitioner for compounding on **05.03.2021** pursuant to the directions of the Division Bench in **Cont.P. No. 2079 of 2019** dated **31.01.2020**. Thereafter, further order was passed on **30.08.2021**,



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resulting in a challenge to the order in **W.P. No. 23800 of 2021**, which was disposed of on **13.04.2022**.

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23. It is submitted that during this period, a new Guidelines for compounding came into force, thus the 5th Respondent has issued directions to the Petitioner to pay the compounding charges under revised Guidelines for compounding dated **17.10.2024** in **F.No. 285/08/2014-IT(Inv.V)**.

24. Hence, it is submitted that there is no scope for doubt that the Hon'ble Supreme Court directed the Respondent to calculate only the amount payable by the Petitioner while passing the order dated 05.03.2025. It is submitted that the calculation in the impugned communication is strictly in compliance with the Hon'ble Supreme Court's order dated 05.03.2025 in S.L.P. (Civil) No. 7047 of 2024, and therefore, the impugned communication does not merit any interference in the hands of this Court.

25. Having considered the submissions made by the learned Senior Standing Counsel for the Petitioner and learned Senior Standing Counsel for the Respondents, and having perused the orders passed in the earlier round and the decisions of the court cited by the learned Senior Standing Counsel for the



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Petitioner and learned Senior Standing Counsel for the Respondents, I am of the view that the determination of the compounding charges payable by the Petitioner as per the revised Guidelines dated **17.10.2024** bearing reference **F.No.285/08/2014-IT(Inv.V)** is unsustainable. Reasons are many. I shall give my reasons in the ensuing paragraphs.

26. This is the third round of litigation and the fourth order in a row passed by the respondent. Last Order was passed on 30.08.2021 which was challenged by the Petitioner in W.A.No. 967 of 2020. The Writ Court vide its Order dated **13.04.2022** in **W.P.No.23800 of 2021** remitted the case back to the Regional Committee for Compounding to determine the Compounding fee that was to be paid by the Petitioner, if same had not been paid already by the petitioner.

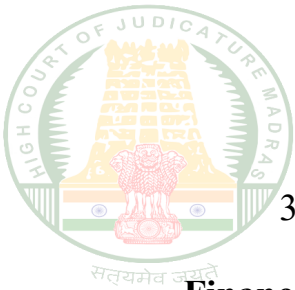
27. On the date of the said order on **13.04.2022** in **W.P.No.23800 of 2021**, the revised Guidelines dated **17.10.2024** bearing reference **F.No.285/08/2014-IT(Inv.V)** was not in force. In fact, Circular bearing **F.No.285/08/2014-IT(Inv-V)/147** dated **14.6.2019** was in force with effect from 17.06.2019, which was directed to be applied, by the Court vide its order dated 31.01.2020 in Cont.P.No. 2079 of 2019. However, the Respondents were



aggrieved by it and filed W.A.No.967 of 2020. The Hon'ble Division Bench by its order dated **11.02.2021** ordered fresh application to be filed which was to be considered in the light of Circular in F.No.285/90/2008-IT(Inv.)/12 dated 16.5.2008 as was in force when the first application was filed on 25.03.2011.

28. Therefore, the question of imposing the revised **Guidelines** dated **17.10.2024** bearing reference **F.No.285/08/2014-IT(Inv.V)** in the light of the **Explanation** to **Section 279(6)** of the Income Tax Act, 1961 was not available to the Respondents. Pressing of **Explanation** to **Section 279(6)** of the Income Tax Act, 1961, in the light of the revised **Guidelines** dated **17.10.2024** bearing reference **F.No.285/08/2014-IT(Inv.V)** cannot be countenanced in the light of Order dated **13.04.2022**.

29. **Explanation** to **Section 279(6)** merely states that the power of the Board to issue orders, instructions or directions under the Act includes and shall always be deemed 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 **Section 279(6)** of the Income Tax Act, 1961.



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30. The above **Explanation** to **Section 279(6)** was introduced by the **Finance (No. 2) Act, 1991**. It is in operation with retrospective effect from **01.04.1962**. The Explanation is in the nature of a proviso to **Section 279(2)**. It merely means that the exercise of power by the Commissioner under the said section had to be subject to the instructions issued by the Board from time to time.

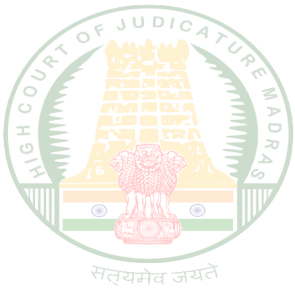
31. **Explanation** to **Section 279(6)** is reproduced below for the sake of clarity.

***Explanation.**—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.*

32. In fact, **Section 119(1)** of the **Income Tax Act, 1961** also empowers the Board to issue orders, instructions and directions for the proper administration of the Act. **Section 119(1)** of the Income Tax Act, 1961 is reproduced below:-

119. Instructions to subordinate authorities.

(1) The Board may, from time to time, issue such orders, instructions and directions to other income-tax authorities as it may deem fit



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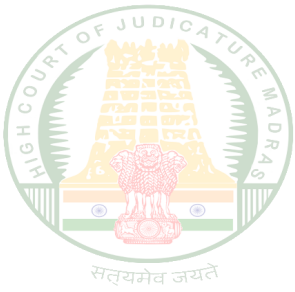
for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board:

***Provided** that no such orders, instructions or directions shall be issued—*

- (a) so as to require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or*
- (b) so as to interfere with the discretion of the Joint Commissioner (Appeals) or the Commissioner (Appeals) in the exercise of his appellate functions.*

33. On a plain reading of **Explanation to Section 279(6)** of the Income Tax Act, 1961, it is clear that the new compounding **Guidelines** dated **17.10.2024** bearing reference **F.No.285/08/2014-IT(Inv.V)** would apply, only if a new application is/was filed in terms of paragraph 3.2 of the said guidelines. Paragraph 3.2 of the new compounding **Guidelines** dated **17.10.2024** bearing **F.No.285/08/2014-IT(Inv.V)** is reproduced for the sake of clarity:-

3.2 Applications may also be filed again, in case applications under earlier guidelines were rejected only on account of curable defects such as non-payment of outstanding tax, interest, penalty, or any other sum related to the offence, filing of application in incorrect proforma, mention of incorrect assessment year/financial year or section under which offence has been committed, non-payment or short payment of compounding charges, non-submission of undertaking regarding withdrawal of



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appeals, etc. Credit for the payment already made shall be given against the compounding charges to be paid under these Guidelines. Further, it is clarified that those applications rejected in the past on merits by the Competent Authority shall not be reconsidered, under this provision.

34. Only if a new application was file independently in terms of Paragraph 3.2 of the new compounding **Guidelines** dated **17.10.2024** bearing reference **F.No.285/08/2014-IT(Inv.V)**, the respondents would have been justified in imposing the content of it, in the light of **Explanation to Section 279(6)** of the Income Tax Act, 1961.

35. In fact, Order dated **13.04.2022** in **W.P.No.23800 of 2021** was also upheld by the Hon'ble Division Bench by vide Order dated **11.12.2023** in **W.A.No.1767 of 2022**. The Courts have not ordered the Petitioner to file a fresh compounding application.

36. Thus, what was to be adjudicated was the compounding application that was filed on **05.03.2021** pursuant to order dated **11.02.2021** in **W.A.No. 967 of 2020** against order **31.01.2020** in **Cont.P.No.2079 of 2019**. Merely because the petitioner filed a fresh application on **05.03.2021** would not *ipso facto* mean that by virtue of **Explanation to Section 279(6)** of the Income Tax



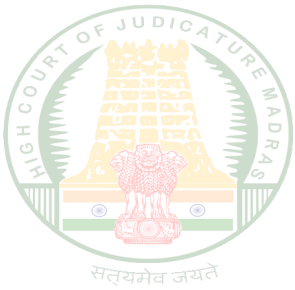
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Act, 1961, the new compounding **Guidelines** dated **17.10.2024** bearing reference **F.No.285/08/2014-IT(Inv.V)** was to be applied for compounding the case of the Petitioner.

37. Explanation merely empowers the Board to issue orders, instructions or directions for the proper composition of the offences under Section 279(2) and further specifically provides that directions for obtaining the previous approval of the Board. However, new revised revised **Guidelines** dated **17.10.2024** bearing reference **F.No.285/08/2014-IT(Inv.V)** cannot applied contrary to the directions of the Writ Court dated **28.8.2019** in **W.P.No. 3929 of 2014**. This view was reiterated by the Writ Court vide its Order dated **13.04.2022** in **W.P.No.23800 of 2021** and affirmed by the Division Bench vide its order dated **11.12.2023** in **W.A.No. 1767 of 2022**.

38. In this connection, the views of the Constitutional Bench of the Hon'ble Supreme Court in **Madan Mohan Pathak Vs. Union of India, (1978) 2 SCC 50** is relevant. It was held as follows:-

- (a) *irrespective of whether the impugned Act is constitutionally valid or not, the Life Insurance Corporation is bound to obey the writ of mandamus issued by the Calcutta High Court and to pay annual cash bonus for the year April 1, 1975 to March 31, 1976 to Class III and Class IV employees.*



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- (b) *whenever any factual or legal situation is altered by retrospective legislation, a judicial decision rendered by a Court on the basis of such factual or legal situation prior to the alteration, would not straightaway cease to be effective and binding on the parties. Therefore, the judgment given by the Calcutta High Court, which was relied upon by the petitioners, was not a mere declaratory judgment holding an impost or tax to be invalid, so that a validation statute can remove the defect pointed out by the judgment amending the law with retrospective effect and validate such impost or tax. But a judgment giving effect to the right of the petitioners to annual cash bonus under the Settlement by issuing a writ of mandamus directing the Life Insurance Corporation to pay the amount of such bonus.*

39. The Court further held, if by reason of retrospective alteration of the factual or legal situation, the judgment is rendered erroneous, the remedy may be by way of appeal or review, but so long as the judgment stands, it cannot be disregarded or ignored and it must be obeyed by the Life Insurance Corporation.

40. In fact, the Court held that the amendment to an Act would not take away the basis of the judgment of the Court. It categorically held that the Orders of the Court cannot be touched by an ordinary Act of Parliament. Since even an Act of the Parliament cannot dilute the decision of the Courts, the



issuance of revised circulars/guidelines viz., **Guidelines** dated **17.10.2024**

bearing reference **F.No.285/08/2014-IT(Inv.V)** either taking away such rights or imposing more onerous condition cannot be countenanced.

41. Both in **Cauvery Water Disputes Tribunal, [1993 Supp (1) SCC 96 (2)]** and **Medical Council of India Vs. State of Kerala and Others [(2019) 13 SCC 185]** also that Hon'ble Supreme Court has categorically held that even an interim direction of a Court cannot be whittled by a legislative action of the law makers.

42. This view has been reiterated by the Hon'ble Supreme Court in **Madras Bar Association vs. Union of India and Another, (2022) 12 SCC 455**. In paragraphs 50.3 and 64.2 the majority view authored by **Hon'ble Mr. Justices L. Nageswara Rao** for himself and **Hon'ble Mr. Justice S. Ravindra Bhat** observed as under:

50.3. Nullification of mandamus by an enactment would be impermissible legislative exercise (see: S.R. Bhagwat [S.R. Bhagwat v. State of Mysore, (1995) 6 SCC 16 : 1995 SCC (L&S) 1334]). Even interim directions cannot be reversed by a legislative veto (see: Cauvery Water Disputes Tribunal [Cauvery Water Disputes Tribunal, In re, 1993 Supp (1) SCC 96 (2)] and Medical Council of India v. State of Kerala [Medical Council of India v. State of Kerala, (2019) 13 SCC 185]).

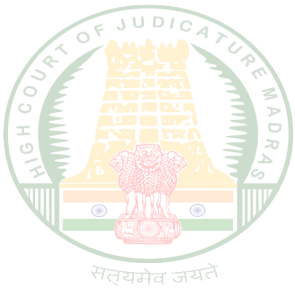


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”64.2.Subordinate legislation cannot be given prospective effect unless the parent statute specifically provided the same. It is understood that while inserting sub-section (11) in Section 184 in the Finance Act, 2017 and giving it retrospective effect from 26-5-2017, the Ordinance has attempted to cure the defect as was pointed out by this Court in terms of retrospective application while considering the 2020 Rules. However, the implications are not relevant for clauses (i) and (ii) of Section 184(11) which are declared as void and unconstitutional for the reasons mentioned above.”

43. The Hon'ble Supreme Court, there also, referred to the earlier decision in **Virender Singh Hooda v. State of Haryana, (2004) 12 SCC 588**, wherein, it upheld the challenge to the legislation on the ground that it can come with retrospective effect, and at the same time, it had held that an appointment made pursuant to a direction of the Court is to be saved.

44. In his concurring view **Hon'ble Mr. Justice S.Ravindra Bhat** in **Madras Bar Association vs. Union of India and Another, (2022) 12 SCC 455**, referred to *supra*, emphasized the independence of the judiciary as one of the foundational pillars of every democracy governed by the rule of law, where the Constitution reigns supreme. Therefore, it is inconceivable as to how the revised Guidelines dated **17.10.2024** bearing reference **F.No.285/08/2014-IT(Inv.V)** could have been applied.



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45. In his dissenting view, his Lordship **Hon'ble Mr. Justice. Hemant Gupta**, however, observed as under:-

“182. The judgment in Virender Singh Hooda is quite different. The appellants before this Court were successful in an earlier round of litigation and were thus appointed. It was thereafter that the Act in question was enacted with retrospective effect. The appellants were falling in the first category out of three category of candidates such as:

- (i) Those who had been appointed in implementation of decision in Hooda and Sandeep Singh's cases before passing of the impugned Act;*
- (ii) Those, though not so appointed, who have judgments of the High Court passed in their favour relying upon Hooda and Sandeep Singh's cases, and claim a right to appointment but would be deprived of it if the validity of the Act is upheld and on that basis the judgments of the High Court upturned; and*
- (iii) Those, who would be covered by law laid down in Hooda's case on interpretation and applicability of the aforementioned two circulars.*

46. Further, emphasizing the power to deal with retrospective provisions and referring to the decision of the Hon'ble Supreme Court in **State of Gujarat v. Raman Lal Keshav Lal Soni, (1983) 2 SCC 33**, it held that, “today's equals cannot be made unequal by saying that they were unequal



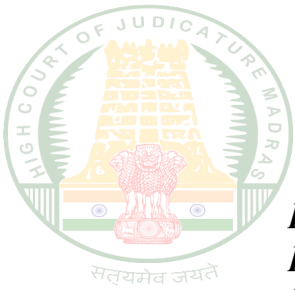
twenty years ago and we will restore that position by making a law today and making it retrospective”.

47. Similarly, in **S.R.Bhagwat v. State of Mysore, (1995) 6 SCC 16**, it was declared that a mandamus against the Respondent State giving a financial benefit already accrued to the petitioners cannot be nullified by retrospective legislation.

48. The Hon’ble Supreme Court also referred to its decision in **Virender Singh Hooda v. State of Haryana, (2004) 12 SCC 588** and observed as under:

“47. There is a distinction between encroachment on the judicial power and nullification of the effect of a judicial decision by changing the law retrospectively. The former is outside the competence of the legislature but the latter is within its permissible limits (Tirath Ram Rajendra Nath v. State of U.P.). The reason for this lies in the concept of separation of powers adopted by our constitutional scheme. The adjudication of the rights of the parties according to law is a judicial function. The legislature has to lay down the law prescribing norms of conduct which will govern parties and transactions and to require the court to give effect to that law (I.N. Saksena case).

*48. The legislature can change the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events at large. **It cannot, however, set aside an individual decision inter parties and affect their rights and liabilities alone. Such an act on the***



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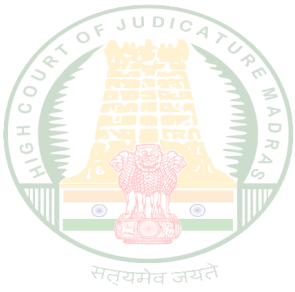


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part of the legislature amounts to exercising the judicial power by the State and to function as an appellate court or tribunal, which is against the concept of separation of powers. (Cauvery Water Disputes Tribunal, Inre).

52. *It is not possible to accept the contention that vested rights cannot be taken away by legislature by way of retrospective legislation. Taking away of such right would, however, be impermissible if violative of Articles 14, 16 and any other constitutional provision. In **State of T.N. v. Arooran Sugars Ltd.**, [(1997) 1 SCC 326], this Court held that whenever any amendment is brought in force retrospectively or any provision of the Act is deleted retrospectively, in this process rights of some are bound to be affected one way or the other. In every case, it cannot be urged that the exercise by the legislature while introducing a new provision or deleting an existing provision with retrospective effect per se shall be violative of Article 14 of the Constitution. If that stand is accepted, then the necessary corollary shall be that legislature had no power to legislate retrospectively, because in that event a vested right is affected.”*

49. In **Medical Council of India vs. State of Kerala and Others**, (2019) 13 SCC 185, the Hon’ble Supreme Court held that, no doubt it is open to legislature to change the law in general by changing the basis but it is not open to set aside an individual decision inter partes and thus affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising judicial power cannot be defiance to judicial decision. Once judgment has attained finality and is binding, it cannot be overruled by legislative measure. Such an act is an open invitation to lawlessness and anarchy. It would be against the rule of law.



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50. Thus, the individual rights that have accrued to petitioner by virtue of the orders passed by this Court on **28.08.2019** in **W.P.No.3929 of 2014** which remains unchallenged even as on date as was reiterated by the Division Bench vide its **Order** dated **11.02.2021** in **W.A.No.967 of 2020** and by the Writ Court vide its **Order** dated **13.04.2022** in **W.P.No.23800 of 2021** which has been affirmed concurrently by the Division Bench vide its **Order** dated **11.12.2023** in **W.A.No.1767 of 2022** and by the Hon'ble Supreme Court by its **Order** dated **05.03.2025** in **S.L.P.(Crl).No.7047 of 2024** cannot be whittled down.

51. Hence, the question of imposing the revised new **Guidelines** dated **17.10.2024** bearing reference **F.No.285/08/2014-IT(Inv.V)** cannot be countenanced. The petitioner can be asked to pay compounding fee as the CBDT Guidelines in **F.No.285/90/2008-IT(Inv.)/12** dated **16.05.2008** as was ordered in paragraph 32 of the **Order** dated **13.04.2022** in **W.P.No. 23800 of 2021**, wherein it has been clearly observed that, “the Division Bench, by its **Order** dated **11.02.2021** in **W.A.No.967 of 2020**, had, in its discussion, impliedly held that Circular No.F.No.285/08/2014-IT (Inv-V)/147 dated



14.06.2019 as in force with effect from 17.06.2019 cannot be applied to the facts of the case.”

52. The Division Bench in Paragraph No.10 of its order dated 11.12.2023 in W.A.No. 1767 of 2022, has also held that the Petitioner was governed by the **compounding guidelines** dated **16.05.2008** in view of order dated **28.08.2019** in **W.P.No. 3929 of 2014** of the Writ Court.

53. The decision of the Division Bench has also been upheld by the Hon'ble Supreme Court by its Order dated 05.03.2025 in **S.L.P.(Crl).No.6179 of 2019** and **S.L.P.(C).No.7047 of 2024** as mentioned above. The law on the subject is also clear.

54. Thus, only CBDT Guidelines in **F.No.285/90/2008-IT(Inv.)/12** dated **16.05.2008** was to be applied. Since, the 5th Respondent, in the impugned communication has applied the revised **Guidelines** dated **17.10.2024** bearing reference **F.No.285/08/2014-IT(Inv.V)** as in force with effect from **17.10.2024**, the impugned order is liable to set aside.



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55. The Writ Petition, therefore, deserves to be allowed. It is accordingly allowed by way of remand to the concerned respondent to issue a fresh calculation of the compounding fee to be paid after adjusting the compounding fee already paid by the petitioner based on CBDT Guidelines in **F.No.285/90/2008-IT(Inv.)/12 dated 16.05.2008.**

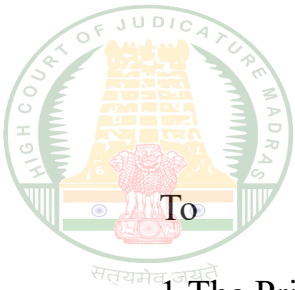
56. This exercise shall be completed by the concerned respondent within a period of 3 months from date of the receipt of this order. The petitioner shall thereafter pay the amount determined within such time as may be stipulated in the order to be passed by the concerned Respondent pursuant to this order and thereby compound the case of the Petitioner.

57. Accordingly, this Writ Petition stands allowed in terms of the above observations. Consequently, connected miscellaneous petition is closed. No costs.

16.12.2025

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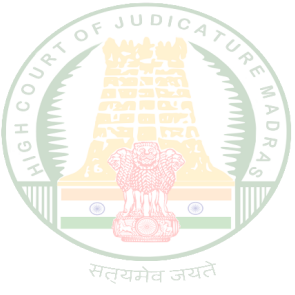
Neutral Citation : Yes / No



W.P.No.24029 of 2025

To

1. The Principal Commissioner of Income Tax,
Central-1,
No.46, Old No.48, M.G.Road,
Nungambakkam,
Chennai-600 034.
2. The Additional Commissioner of Income Tax,
Central Range – 1,
No.46, Old No.108, M.G.Road,
Nungambakkam,
Chennai – 600 034.
3. The Assistant Commissioner of Income Tax,
Central Circle – 1(1),
Income Tax New Building,
Room No.320, 4th 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.
5. The Income Tax Officer (HQ) (Inv) (OSD)
Office of the Director General of Income Tax (Investigation),
2nd Floor, New Building,
New No.46 (Old No.1108)
Mahatma Gandhi Road,
Chennai – 600 034.



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C.SARAVANAN, J.

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Pre-Delivery Order in
W.P.No.24029 of 2025 and
W.M.P.No.27031 of 2025

16.12.2025