

No time limit prescribed by CBDT for filing of compounding application; Compounding application not rejectable merely since the fee was not paid

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In brief

In a recent judgment, the Delhi High Court (HC) held that the Central Board of Direct Taxes (CBDT) revised guidelines for compounding of offences dated 23 December, 2014 does not stipulate a limitation period for filing compounding application. In addition, the HC has further held that the application for compounding could not be rejected merely if the compounding fee was not paid prior to the application being considered on merits.

In detail

Facts

- The taxpayer¹, an individual, made an application for compounding of offences under section 279(2) of the Income-tax Act, 1961 (the Act) with the Principal Chief Commissioner of Income-tax (Principal CCIT). The complaint for prosecution was filed before the criminal court ten years before the filing of the application for compounding by the taxpayer.

- In response to the said application by the tax payer, the Income-tax department determined the amount of compounding charges and the amount was required to be paid by the taxpayer in view of para 11(v)² of the revised guidelines for Compounding of Offences issued by CBDT dated 23 December, 2014.
- As the application for compounding of offence was pending with the Principal CCIT and had not been considered on merits till date, the taxpayer filed a writ petition before the HC on the ground that payment

of compounding charges was exorbitant and without authority of law.

- While the writ was pending before the HC, the Principal CCIT declined the taxpayer's application on the ground that there was an inordinate delay of ten years in filing of application of compounding of offences in view of para 8(vii)³ of the revised guidelines for Compounding of Offences issued by CBDT dated 23 December, 2014.

Issues before the High Court

- Whether para 8(vii) of the

¹ (W.P.(C) 6825/2016)

² The competent authority shall pass the compounding order within 30 days of payment of compounding charges. Where compounding charge is not deposited within the time allowed, the compounding application may be

rejected after giving the applicant an opportunity of being heard. The order of rejection shall be brought to the notice of the Court immediately through prosecution counsel in the cases where prosecution had been instituted.

³ 8. Offences not generally compounded (vii) Offences committed by a person for which complaint was filed with the competent court 12 months prior to receipt of the application for compounding

CBDT's revised guidelines sets a limitation of period for filing application for compounding of offences?

- Whether the levy of compounding charges before considering the compounding of offences application on merits was without any authority of law.

Revenue's contentions

- Rejection of the application for compounding was not on the ground to pay compounding fee but on the ground of delay in filing of application.
- For the justification of levy of compounding fee in advance, the Revenue relied on the ruling of the Apex Court⁴, wherein in view of Explanation 1 of section 279 of the Act, it has been held that CBDT has powers to issue instruction to authorities in the matter of compounding of offences.

High Court's ruling

Delay in filing application for compounding

- Para 8(vii) of the revised guidelines issued by CBDT does not stipulate a limitation of period of filing of application for compounding of offence. The guidelines sets out only "*Offences generally not to be compounded*". It gives discretion to the competent authority to reject a compounding application on certain grounds. One cannot resort on this para to prescribe a period of limitation for filing an application for compounding.

- The object of compounding provisions was to provide an opportunity in case of non-serious offences that have been pending. This was in the interest of both the public and tax department. Therefore, some discretion has been vested in the tax department to compound offences. Accordingly, the guidelines of the CBDT have to be understood in this context.
- Therefore, the order passed by the Principal CCIT rejecting the application of compounding of the taxpayer was not sustainable and was set aside. .

On payment of compounding fee prior to considering the application on merits

- Nothing in section 279 or Explanation 1 thereunder, permitted the CBDT to prescribe such onerous and irrational procedures which runs contrary to the very object of section 279.
- The CBDT could not arrogate to itself, the power to insist on a pre deposit of compounding fee, even without considering the application.
- The department could not on the strength of para 11(v) of the revised guidelines of the CBDT reject an application for compounding, either on the ground of limitation or on the ground that such application was not accompanied by compounding fee, which was not paid prior to the application being considered on merits.

Takeaways

- The department has considered para 11(v) in isolation without resort to clause (iii) of the said para, of the revised guidelines issued by the CBDT which provides that compounding charges are required to be paid where compounding application is found acceptable by the competent authority. The competent authority shall then intimate the amount of compounding charges to the taxpayer requiring it to pay within the prescribed time. Para (v) provides that application may be rejected in a situation in which the compounding charges determined under para (iii) are not paid within the time prescribed.
- Although in a different context, in a recent decision, by Delhi HC⁵ it has been held that although guidelines issued by the CBDT are to be considered while exercising jurisdiction over compounding applications; however, such guidelines cannot prevent the authority from considering the objective facts before it.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

⁴ [1992] 195 ITR 607 (SC)

⁵ [2017] 391 ITR 98 (Delhi)

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