2025 INSC 155

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1977 OF 2025

(ARISING OUT OF SPECIAL LEAVE PETITION (C) NO. 20519 OF 2024)

VINUBHAI MOHANLAL DOBARIA …APPELLANT

VERSUS

CHIEF COMMISSIONER OF INCOME TAX & ANR. …RESPONDENTS

J U D G M E N T

J.B. PARDIWALA, J.:

For the convenience of exposition, this judgement is divided into the following parts:

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1. Leave granted.

2. This appeal arises from the judgment and order passed by the High Court of Gujarat dated 21.03.2017 in Special Civil Application No. 5386 of 2017 (hereinafter referred to as "**the impugned order**") by which the High Court rejected the writ petition filed by the appellant herein and thereby upheld the order of the Chief Commissioner of Income Tax, Vadodara ("**Respondent No. 1**") dated 14.02.2017 rejecting the application preferred by the appellant-assessee for compounding of the offence under Section 276CC of the Income Tax Act, 1961 (hereinafter referred to as "**the Act**").

A. FACTUAL MATRIX

3. The appellant is an individual earning income by way of salary and also by way of share of profit of partnership firm engaged in the business of chemicals. He filed his income tax returns for the AY 2011-12 and 2013-14 on 04.03.2013 and 29.11.2014 respectively declaring his income to be Rs 49,79,700/- and Rs 31,87,420/- respectively. The due dates for the filing of returns for AY 2011-12 and 2013-14 were 30.09.2011 and 31.10.2013 respectively and as such there was delay on the part of the appellant in filing the return of income for the said assessment years.

4. On 27.10.2014, a show cause notice was issued to the appellant by the Commissioner of Income Tax - III, Baroda alleging violation of Section 276CC of the Act for the AY 2011-12. The notice stated that although the due date for filing the income tax return for the AY 2011-12 was 01.08.2011 yet the appellant had filed the same with delay on 04.03.2013. The notice further stated that after allowing for the credit of prepaid taxes, the appellant was liable to pay self-assessment tax of Rs. 0/- which however remained unpaid by the due date prescribed for the filing of return of income. In the last, the appellant was called upon to show cause as to why proceedings under Section 276CC of the Act should not be initiated against him. The contents of the said notice are extracted hereinbelow:

"Office of the Commissioner of Income Tax III

2nd floor, Aayakar Bhavan, Race Course Circle,

Baroda 390 007

No.BRD/CIT-III/HQ/Pros/17/2014-15

Date.27.10.2014

To,

Shri Vinubhai Mohanbhai Dobaria

B-2/203, Subhlaxmi Coop. Housing Society

Ankleshwar

PAN ACIPD4420D

Sir/Sirs,

Sub: Launching of prosecution under section 276CC of the income Tax Act, 1961 Chapter XXII of the I.T.Act 1961 regd.

On examination of records, it is seen that you have furnished your return of income for the assessment year 2011-12 declaring total income of Rs.49,79,700/- on 4.3.2013. Further, after allowing credit of prepaid taxes, you were liable to pay self assessment tax of Rs.0/- by due date of filing of return. Later, your return of income was processed under section 143(1) of the Act 20.3.2013 determining demand of Rs0/- out of which Rs.0 is still pending.

2. In this context, take notice and show cause as to why proceedings under section 276CC of the Act should not be initiated against you for failure to furnish returns of income after the expiry of the assessment year. You may attend either personally or through representative duly authorized on 11.11.2014 at 12.30 p.m. If you fail to attend, it would be presumed you have nothing to say in the matter and this office shall proceed in the matter accordingly.

Yours faithfully

Sd/- S.R. Malik

Commissioner of Income Tax- III, Baroda"

5. The appellant replied to the aforesaid show cause notice along with the application for compounding in accordance with the Guidelines for Compounding of Offence, 2008 (hereinafter referred to as "**the 2008 guidelines**"). The application, along with application for compounding

the delay in filing of return of income for two other years came to be allowed by the Respondent No. 1 vide order dated 11.11.2014.

6. Thereafter, on 12.03.2015, the appellant received another show cause notice as regards launching of prosecution under Section 276CC of the Act for the AY 2013-2014 issued by the Commissioner of Income Tax, Vadodara - III. The notice stated that the appellant had furnished the return of income for AY 2013-14 declaring a total income of Rs. 31,87,420/- on 29.11.2014 and after allowing for the credit of prepaid taxes the appellant was liable to pay self-assessment tax of Rs. 2,78,740/-. The notice further called upon the appellant to show cause as to why proceedings under Section 276CC of the Act should not be initiated against him as he had filed his return of income after the expiry of the due date. The contents of the said notice are extracted hereinbelow:

"Office of the Commissioner of Income Tax,

Vadodara -3 Vadodara

2nd floor Aayakar Bhavan Race Course Circle,

Vadodara 7

No. BRD/CIT-3/HQ/Pros/17-B/2014-15

Date.12.3.2015

To,

Shri Vinubhai Mohanbhai Dobaria
303/C/16, Tulsi Kunj Society,
Near Marathi School, GIDC,
Ankleshwar
PAN ACIPD4420D

Sir/Sirs

Sub: Launching of prosecution under section 276CC of the Income Tax Act, 1961 Chapter XXII of the I.T.Act, 1961 A.Y.2013-14 reg.

On examination of records, it is seen that you have furnished your return of income for the assessment year 2013-14 declaring total income of Rs.31,87,420/- on 29.11.2014. Further, after allowing credit of prepaid taxes, you were liable to ay self assessment tax of Rs.2,78,740/- by due date of filing of return. Later, your return of income was processed under section 143(1) of the Act on 5.1.2015.

2. In this context, take notice and show cause as to why proceedings under section 276CC of the Act should not be initiated against you for failure to furnish returns of income before expiry of the assessment year. You may attend either personally or through representative duly authorized on 19.3.2015 at 11.30 a.m. If you fail to attend, it would be presumed that you have nothing to say in the matter and this office shall proceed in the matter accordingly.

Yours faithfully
Dr. Banwari Lal
Commissioner of Income Tax
Vadodara -3 Vadodara"

7. The appellant replied to the aforesaid notice along with an application for compounding as per the Guidelines for Compounding of Offence, 2014 (hereinafter referred to as "**the 2014 guidelines**"). In his reply, the

appellant stated that he had filed the return of income belatedly because necessary funds were not available with him to enable him to pay the assessed amount of tax. He further stated that the delay in filing of the return of income was neither deliberate nor wilful.

8. By an order dated 14.02.2017 passed under Section 279(2) of the Act, the Respondent No. 1 rejected the compounding application of the appellant. The Respondent No. 1 took the view that the case of the appellant was not fit for compounding as a committee comprising of Principal CCIT Gujarat, CCIT Vadodara, DGIT (Investigation) Ahmedabad and the CCIT - II Ahmedabad in the minutes recorded of the meeting dated 25.01.2017 had opined that the assessee had filed his return of income for AY 2013-14 after the show cause notice for the offence under Section 276CC for offence during AY 2011-12 had already been issued. Therefore, as per the committee, the offence committed by the appellant under Section 276CC for the AY 2013-14 would not be covered by the expression "first offence" as defined in the 2014 guidelines. The relevant part of the said order is extracted hereinbelow:

> *"The case is not found to be fit case for compounding as the Committee comprising of Pr. CCIT Gujarat and CCIT, Vadodara DGIT (Investigation) Ahmedabad and the CCIT 2 Ahmedabad, competent to consider the assessee's petition, in its minutes of the meeting held at Ahmedabad*

on 25.1.2017 found that the Pr. CIT-3, Vadodara had issued show cause notice for initiating proceedings under section 276CC of the Act on 27.10.2014 for the AY.2011-12. The assessee filed his return of income for the A.Y.2013-14 on 29.11.2014 as against the due date for filing of return on 31.10.2013, after issuance of such show cause notice for A.Y. 2011-12. Accordingly, taking into consideration the definition of "First Offence" as specified in the Board's guidelines for compounding offence dated 23.11.2014, as well as the opinion obtained from the Board vide F.No.285/20/2014-IT (Inv.)/340 dated 15.9.2014 in the case of Chandra Knee Clinic P. Ltd. the committee unanimously opined that, the offence of similar nature committed by the assessee for A.Y.2013-14 cannot be compounded, as it does not fall within the definition of "First Offence". Thus, the committee rejected compounding petition for A.Y.2013-14.

In view of the above facts, compounding petition filed by the assessee for A.Y.2013-14 is rejected."

9. The appellant challenged the aforesaid order passed by the Respondent No. 1 before the High Court of Gujarat by way of Special Civil Application No. 5386 of 2017. The appellant, who was the petitioner before the High Court, contended that his compounding application had been rejected by Respondent No. 1 solely on the ground that the offence alleged to have been committed by the appellant of belated filing of the return of income for AY 2013-14 was not covered by the expression "first offence" as defined in the 2014 guidelines. The appellant further submitted that the show cause notice for the initiation of prosecution issued under Section 276CC of the Act for AY 2013–14 was issued on

12.02.2015 whereas he had already filed the return of income for the said assessment year on 29.11.2014, that is, much before the issuance of show cause notice on 12.02.2015 and therefore it could not be said that it was not the first offence. It was also contended by the appellant that the respondent had erroneously computed the date of issuance of show cause notice for AY 2011-12 for the purpose of holding that the appellant had committed the offence post that date. Lastly, it was argued by the appellant that the 2014 guidelines are only general guidelines and are not in the nature of strict law and thus are to be construed accordingly. The appellant submitted that the general nature of the guidelines was also suggested by the heading "offences generally not to be compounded" used in the said Guidelines.

10. However, the High Court rejected the Special Civil Application of the appellant *vide* the impugned judgment and order dated 21.03.2017 taking the view that the contention of the appellant was based on a misreading of the Clause 8(ii) of the 2014 guidelines. The High Court held that although the show-cause notice for AY 2011-12 was issued on 27.10.2014, yet the appellant filed the return of income for the AY 2013-14 on 29.11.2014 and thus could be said to have committed the offence under Section 276CC of the Act for the AY 2013-14 after the show cause notice for the AY 2011-12 had already been issued. It was

further observed by the High Court that the circumstances surrounding the delay in the filing of return of income by the appellant were not required to be considered in detail by the compounding authority and the same would be considered during the course of the trial. The relevant observations made by the High Court are extracted hereinbelow:

> *"**4.0** [...] However, on the other hand, it is the case on behalf of the petitioner assesee that for AY 2013-14 the show cause notice under Section 276 CC of the Act was issued on 12.03.2015 and prior thereto the return of income for AY 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 câuse 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 AY 2013-14 was issued on 12.03.2015 and prior thereto the return of income was filed for AY 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 AY 2011-12, the show cause notice was already issued under Section 276 CC of the Act on 27.10.2014 for non filing of return before due*

date (for AY 2011-12) and despite the same for the subsequent years i.e. for AY 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 AY 2013-14. Thus, it cannot be said that in AY 2013-14 it can be said to be the "first offence" committed by the assessee. Under the circumstances, the respondent no.1 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.

5.0. *Now, so far as submission on behalf of the petitioner that while rejecting the compounding application submitted by the petitioner, respondent no.1 has not properly appreciated and / or considered the reason for not filing the return of income by petitioner before due date is concerned, at the outset, it is required to be noted that it has nothing to do with the compounding application. It is required to be noted that while considering the application for compounding, merits is not required to be considered as is to be considered in trial.*

6.0. *Now, so far as reliance placed upon the decision of the Madras High Court in the case of K. Inba Sagaran (supra) relied upon by the learned advocate for the petitioner-assessee is concerned, the said decision shall not be applicable to the facts of the case on hand, more particularly, while considering the compounding application. In the case before the Madras High Court, three different complaints for the offence under Section 276CC of the Act for AY 1991-92, 1992-93 and 1993-94 though were filed and numbered separately, were clubbed together in one case and the learned Magistrate passed the orders holding the accused guilty under Section 276CC on three counts. The question arose whether the offence for which accused was charged were distinct or separate and not in any way inter-related and when each offence had no connection with other, joinder of charges would become bad in law or not and to that it has been observed and held by the Madras High Court that framing of charge was defective and violative of Sections 218 and 219 of the Code of Criminal Procedure and as judgment*

was rendered only in one case and there was no finding of guilt recorded as regards two other cases, the Madras High Court has observed that error committed by the trial Court was of such grave nature that it had caused prejudice to accused and therefore, in that view of the matter, conviction and sentence passed by the lower Court has to be set aside. Therefore, the said decision shall not be applicable to the facts of the case on hand.

7.0. *Now, so far as reliance placed upon the decision of the Delhi High Court in the case of Sport Infratech (P) Ltd (supra) relied upon by the learned advocate for the petitioner is concerned, the said decision also shall not be applicable to the facts of the case on hand.*

8.0. *Even the learned advocate for the petitioner has requested not to observe anything on merits and therefore, we refrain from observing anything on merits, more particularly, the reasons given by the petitioner assessee for not filing return of income before due date, even for AY 2013-14.*

9.0. *In view of the above and for the reasons stated above, the impugned order passed by the respondent no.1 rejecting the compounding application submitted by the petitioner cannot be said to be either illegal or contrary to the Guidelines, we see no reason to interfere with the same. In view of the above and for the reasons stated above, present petition fails and same deserve to be dismissed and is accordingly dismissed."*

11. In such circumstances referred to above, the appellant is here before this Court with the present appeal.

B. SUBMISSIONS ON BEHALF OF THE APPELLANT

12. Mr. Tushar Hemani, the learned Senior Counsel appearing for the appellant, submitted that an offence as contemplated under Section 276CC of the Act is committed upon the failure of the assessee in furnishing the return of income within the due date as contemplated under Section 139(1) of the Act. He submitted that whether the assessee had filed a belated return of income, that is, after the expiry of the due date or not, is immaterial and the point in time when the offence under Section 276CC is committed is the date immediately following the due date for furnishing the return of income as prescribed under Section 139(1) of the Act. Thus, for the AY 2013-14, the appellant could be said to have committed the offence on the date immediately following the due date for filing of returns for the AY 2013-14. Hence the date for commission of the offence under Section 276CC for the AY 2013-14 would be 01.11.2013 as the due date for filing the returns for AY 2013-14 was 31.10.2023. He emphasised on the fact that the actual date of filing the belated return is of no consequence for the purpose of an offence under Section 276CC as otherwise an assessee who has missed filing the return before the due date for a given assessment year would never file a belated return and the offence would never be committed.

13. He further submitted that as per the 2014 guidelines, the expression "first offence" means offence committed prior to the issuance of show cause notice seeking to initiate prosecution as that is the earliest point in time when the assessee is put to notice about the offence alleged to have been committed by him. Once an assessee is put to notice, all offences alleged to have been committed thereafter are not compoundable. However, offences committed prior to the date when the assessee is put to notice, would be treated as constituting the "first offence" and hence would be compoundable. He submitted that in the facts of the present case, two show cause notices were issued against the appellant by the respondent authorities, one for AY 2011-12 issued on 27.10.2014 and the other for AY 2013-14 issued on 12.03.2015. He argued that the High Court erroneously relied upon the actual date of filing of return of income for the AY 2013-14 to hold that the offence for the said assessment year was committed after the first show cause notice in respect of AY 2011-12 had already been received. He submitted that it is not the date of actual filing of the belated return of income but the date immediately following the due date for filing of return for the given assessment year which should be considered while determining whether the offence is a "first offence" as per the 2014 guidelines.

14. After explaining the factual position as aforesaid, he submitted that as the offence under Section 276CC of the Act could be said to have been committed on 01.11.2013, therefore, it could be said that the same was committed before the first show cause notice seeking to initiate prosecution for the AY 2011-12 was issued against the appellant. Thus, even for the AY 2013-14, the offence committed by the accused under Section 276CC would come within the scope of the expression "first offence" as it is defined in the 2014 guidelines.

15. In such circumstances referred to above, the counsel prayed that there being merit in his appeal, the impugned order passed by the High Court be set aside and the respondent authorities be directed to accept the compounding application moved by the appellant.

C. SUBMISSIONS ON BEHALF OF THE RESPONDENTS

16. Mrs. Monica Benjamin, the learned counsel appearing for the Revenue, submitted that the offence under a particular provision of the Act, for a specific assessment year, can only be committed once for that assessment year. She further submitted that the objective of the 2014 guidelines has never been to compound the same offence every year with no limit on the number of years for which it may be compounded.

17. Referring to Clause 8 of the 2014 guidelines, she submitted that the said Clause prescribes a limit after which both category of offences, that is, A and B, are not to be generally compounded, by laying down that Category A offences will not be generally compounded after the third offence and Category B offences will not be generally compounded after the first offence.

18. In response to the contention of the appellant that more than one offence under Section 276CC of the Act can be compounded if all such offences were committed before the issuance of the first show cause notice for prosecution in relation to any of those offences, she submitted that if the aforesaid submission is accepted then it would defeat the very intent and purpose of the 2014 guidelines, as the said Guidelines are not meant to benefit habitual and repeat offenders intending to circumvent the provisions of the Act.

19. She further submitted that the issuance of a show cause notice is not a prerequisite for recognising a first offence under the 2014 guidelines. As per the meaning of the expression "first offence" as defined in the 2014 guidelines, a first offence can also be said to have been committed when such an offence has not been detected by the Department but has been voluntarily disclosed by the applicant by filing a compounding

application. In view of this, the counsel argued that the issuance of a show cause notice could not be said to be a prerequisite for the recognition of a first offence.

20. In furtherance of the aforesaid submission, she submitted that the appellant could be said to have disclosed the commission of offence for both AY 2011-12 and 2013-14 by belatedly filing his returns on 04.03.2013 and 29.11.2014 respectively for both the years, that is, after the due dates prescribed for filing the returns for these years had expired. She submitted that it was only after such a late filing of returns by the appellant that the Department became aware of both the offences and issued the respective show cause notices for the same. Thus, merely because a show cause notice was not issued by the Department due to non-detection that an offence under Section 276CC had been committed, the same cannot be construed as absolving the assessee from the fact that he had already committed an offence and disclosed the same by filing the return of income belatedly.

21. She submitted that by virtue of delayed filing of the return of income for AY 2011-12, the appellant had disclosed the commission of his first offence prior to the due date of filing return for AY 2013-14. Therefore, as the offence under Section 276CC of the Act for the AY 2013-14 was

committed after the disclosure of the offence under Section 276CC for the AY 2011-12, hence the offence for the AY 2013-14 could not be said to be covered within the meaning of the expression "first offence" as defined in the 2014 guidelines.

22. Placing emphasis on a letter dated 29.09.2017, she submitted that in the said letter the appellant had admitted committing the second offence and having made such an admission, he cannot be permitted to retract from it at this stage.

23. The counsel further submitted that Clause 4 of the 2014 guidelines stipulates that compounding of offences is not a matter of right and therefore a hyper-technical view should not be taken by the Court while interpreting the 2014 guidelines and only such an interpretation which furthers the underlying intention behind the guidelines should be adopted.

24. She further submitted that the appellant's reading of the definition of the expression "first offence" under Clause 8 of the 2014 guidelines could be termed as erroneous for the reason that it conveniently overlooks the latter part of the definition which provides that the offences that have gone undetected by the Department but have been

voluntarily disclosed by the applicant would also be covered under the definition of the expression "first offence".

25. In the last, the counsel prayed that this Court may not allow the appellant to take advantage of his own wrongs. She prayed that the impugned judgment of the High Court may not be disturbed and the appeal be dismissed.

D. ISSUES FOR CONSIDERATION

26. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions fall for our consideration:

a. Whether an offence under Section 276CC of the Income Tax Act, 1961 could be said to have been committed on the actual date of filing of return of income or on the day immediately after the due date for filing of returns as per Section 139(1) of the Act?

b. What is the meaning of the expression "first offence" appearing in Clause 8 of the 2014 guidelines?

c. What amounts to voluntary disclosure for the purpose of Clause 8 of the 2014 guidelines?

d. Whether the 2014 guidelines are mandatory or directory in nature?

E. ANALYSIS

i. Section 276CC of the Income Tax Act, 1961

27. Chapter XXII of the Act deals with offences and prosecutions and consists of Sections 275A to 280D. Section 276CC of the Act *inter-alia* provides that if a person fails to furnish the return of income which he is required to furnish under sub-section (1) of Section 139 of the Act, then he shall be punishable with:

a. Rigorous imprisonment for a term ranging between six months to seven years along with fine in cases where the amount of tax which would have been evaded if the failure of the person had not been discovered is more than twenty-five hundred thousand rupees; and

b. Rigorous imprisonment for a term ranging between three months to two years and with fine - in any other case.

28. Section 276CC of the Act as it stood at the relevant point in time is reproduced hereinbelow:

> *"276CC. Failure to furnish returns of income.—*
>
> *If a person wilfully fails to furnish in due time the return of fringe benefits which he is required to furnish under sub-section (1) of section 115WD or by notice given under sub-section (2) of the said section or section 115WH or the return of income which he is required to furnish under sub-section (1) of section 139 or by notice given under clause (i) of sub-section (1) of section 142 or section 148 or section 153A, he shall be punishable,—*
>
> > *(i) in a case where the amount of tax, which would have been evaded if the failure had not been discovered, exceeds twenty-five hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;*
> >
> > *(ii) in any other case, with imprisonment for a term which shall not be less than three months but which may extend to two years and with fine:*
>
> *Provided that a person shall not be proceeded against under this section for failure to furnish in due time the return of fringe benefits under sub-section (1) of section 115WD or return of income under sub-section (1) of section 139—*
>
> > *(i) for any assessment year commencing prior to the 1st day of April, 1975; or*
> >
> > *(ii) for any assessment year commencing on or after the 1st day of April, 1975, if—*
> >
> > > *(a) the return is furnished by him before the expiry of the assessment year; or*
> > >
> > > *(b) the tax payable by such person, not being a company, on the total income determined*

> *on regular assessment, as reduced by the advance tax, if any, paid, and any tax deducted at source, does not exceed three thousand rupees."*

29. Sub-clause (b) of clause (ii) of the proviso to Section 276CC was substituted by the Act No. 23 of 2019 with effect from 01.04.2020. The said sub-clause, as it stands after the amendment, is reproduced hereinbelow:

> *"(b) the tax payable by such person, not being a company, on the total income determined on regular assessment, as reduced by the advance tax or self-assessment tax, if any, paid before the expiry of the assessment year. and any tax deducted or collected at source, does not exceed ten thousand rupees."*

30. The proviso to the aforesaid provision prescribes certain cases in which proceedings under the provision would not be initiated and *inter alia* stipulates that for the assessment years commencing after 1st day of April, 1975, no proceedings under Section 276CC shall lie against any person for the failure to furnish return of income in due time if the return is furnished by him before the expiry of the said assessment year. It further provides that for the assessment years commencing from 01.04.1975, no proceedings shall be initiated under the provision if the tax payable by the person, not being a company, does not exceed ten thousand rupees.

31. Section 276CC punishes the wilful failure by the assessee in furnishing the following types of returns in due time:

    a. Return of fringe benefits which he is required to furnish under sub-section (1) of section 115WD or by notice given under sub-section (2) of the said section or section 115WH; or

    b. Return of income which he is required to furnish under sub-section (1) of section 139 or by notice given under clause (i) of sub-section (1) of section 142 or section 148 or section 153A.

32. In the case at hand, we are only concerned with the failure of a person in furnishing, in due time, the return of income which he is required to furnish under Section 139. Hence, it is also necessary to advert to the relevant portions of Section 139 of the Act as well and they are reproduced below:

> *"**139. Return of income.—**(1) Every person,—*
> *(a) being a company or a firm; or*
> *(b) being a person other than a company or a firm, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax,*
> *shall, on or before the due date, furnish a return of his income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed :*
>
> *xxx xxx xxx*

(4) Anyperson who has not furnished a return within the time allowed to him under sub-section (1), may furnish the return for any previous year at any time before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

xxx xxx xxx

8) (a) Where the return under sub-section (1) or sub-section (2) or sub-section (4) for an assessment year is furnished after the specified date, or is not furnished, then whether or not the Assessing Officer has extended the date for furnishing the return under sub-section (1) or sub-section (2), the assessee shall be liable to pay simple interest at fifteen per cent per annum, reckoned from the day immediately following the specified date to the date of the furnishing of the return or, where no return has been furnished, the date of completion of the assessment under section 144, on the amount of the tax payable on the total income as determined on regular assessment, as reduced by the advance tax, if any, paid, and any tax deducted at source: Provided that the Assessing Officer may, in such cases and under such circumstances as may be prescribed, reduce or waive the interest payable by any assessee under this sub-section.

Explanation 1.—For the purposes of this sub-section, "specified date", in relation to a return for an assessment year, means,—

> *(a) in the case of every assessee whose total income, or the total income of any person in respect of which he is assessable under this Act, includes any income from business or profession, the date of the expiry of four months from the end of the previous year or where there is more than one previous year, from the end of the previous year which expired last before the commencement of the assessment year or the 30th day of June of the assessment year, whichever is later;*
>
> *(b) in the case of every other assessee, the 30th day of June of the assessment year. [...]"*

33. Section 139(1) *inter alia* provides that every person shall, on or before the due date, furnish a return of his income during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed. Sub-section (4) of Section 139 provides that if a person has failed to furnish the return of income within due time prescribed under sub-section (1), then he may furnish the return for any previous year at any time before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

34. To fully understand the import of Section 276CC of the Act, it is necessary to understand the meaning of the expressions "wilfully fails" and "in due time" used in the said provision respectively. This Court in ***Prakash Nath Khanna v. CIT*** reported in **(2004) 9 SCC 686** was called upon to look into the scope and meaning of the expression "in due time" appearing in Section 276CC of the Act and whether it refers to the time period referred to in Section 139(1) or the time period referred to in Section 139(4). This Court, after discussing the various methods of statutory interpretation, took the view that the legislative intent behind Section 276CC, undoubtedly, was to restrict the meaning of the expression "in due time" used in the said provision to the time period referred to in Section 139(1) and not to the time period referred to in

Section 139(4). Explaining the meaning of the expression "wilful failure", the Court observed that the same has to be adjudicated factually by the trial court dealing with the prosecution of the case. The Court further observed that by virtue of Section 278E, the trial court has to presume the existence of culpable mental state and it would be open to the accused to plead the absence of the same in his defence. The relevant observations made by the Court are reproduced hereinbelow:

> *"**13.** It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed, not as theorems of Euclid", Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See Lenigh Valley Coal Co. v. Yensavage [218 FR 547] .) The view was reiterated in Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama [(1990) 1 SCC 277 : AIR 1990 SC 981] and Padma Sundara Rao v. State of T.N. [(2002) 3 SCC 533]*
>
> ***14.** In D.R. Venkatachalam v. Dy. Transport Commr. [(1977) 2 SCC 273] it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.*

15. *While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd. [(2000) 5 SCC 515]) The legislative casus omissus cannot be supplied by judicial interpretative process.*

16. *Two principles of construction — one relating to casus omissus and the other in regard to reading the statute as a whole — appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in Artemiou v. Procopiou [(1966) 1 QB 878 : (1965) 3 All ER 539 : (1965) 3 WLR 1011 (CA)] (All ER p. 544 I), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result", we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in Luke v. IRC [1963 AC 557 : (1963) 1 All ER 655 : (1963) 2 WLR 559 (HL)] where at AC p. 577 he also observed : (All ER p. 664 I) "This is not a new problem, though our standard of drafting is such that it rarely emerges."]*

17. *The heading of the section or the marginal note may be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to discern the*

legislative intent. In CIT v. Ahmedbhai Umarbhai and Co. [1950 SCC 94 : AIR 1950 SC 134] after referring to the view expressed by Lord Macnaghten in Balraj Kunwar v. Jagatpal Singh [ILR (1904) 26 All 393 : 31 IA 132 : 1 All LJ 384 (PC)] it was held that marginal notes in an Indian statute, as in an Act of Parliament cannot be referred to for the purpose of construing the statute. Similar view was expressed in Board of Muslim Wakfs, Rajasthan v. Radha Kishan [(1979) 2 SCC 468] and Kalawatibai v. Soiryabai [(1991) 3 SCC 410 : AIR 1991 SC 1581] . Marginal note certainly cannot control the meaning of the body of the section if the language employed there is clear. (See Nandini Satpathy v. P.L. Dani [(1978) 2 SCC 424 : 1978 SCC (Cri) 236 : AIR 1978 SC 1025] .) In the present case as noted above, the provisions of Section 276-CC are in clear terms. There is no scope for trying to clear any doubt or ambiguity as urged by learned counsel for the appellants. Interpretation sought to be put on Section 276-CC to the effect that if a return is filed under sub-section (4) of Section 139 it means that the requirements of sub-section (1) of Section 139 would stand complied with cannot be accepted for more reasons than one.

18. *One of the significant terms used in Section 276-CC is "in due time". The time within which the return is to be furnished is indicated only in sub-section (1) of Section 139 and not in sub-section (4) of Section 139. That being so, even if a return is filed in terms of sub-section (4) of Section 139 that would not dilute the infraction in not furnishing the return in due time as prescribed under sub-section (1) of Section 139. Otherwise, the use of the expression "in due time" would lose its relevance and it cannot be said that the said expression was used without any purpose. Before substitution of the expression "clause (i) of sub-section (1) of Section 142" by the Direct Tax Laws (Amendment) Act, 1987 w.e.f. 1-4-1989, the expression used was "sub-section (2) of Section 139". At the relevant point of time the assessing officer was empowered to issue a notice requiring furnishing of a return within the time indicated therein. That means the infractions which are covered by Section 276-CC relate to non-furnishing of return within the time in terms of sub-*

section (1) or indicated in the notice given under sub-section (2) of Section 139. There is no condonation of the said infraction, even if a return is filed in terms of sub-section (4). Accepting such a plea would mean that a person who has not filed a return within the due time as prescribed under sub-section (1) or (2) of Section 139 would get benefit by filing the return under Section 139(4) much later. This cannot certainly be the legislative intent.

19. *Another plea which was urged with some amount of vehemence was that the provisions of Section 276-CC are applicable only when there is discovery of the failure regarding evasion of tax. It was submitted that since the return under sub-section (4) of Section 139 was filed before the discovery of any evasion, the provision has no application. The case at hand cannot be covered by the expression "in any other case". This argument though attractive has no substance.*

20. *The provision consists of two parts. First relates to the infractions warranting penal consequences and the second, measure of punishment. The second part in turn envisages two situations. The first situation is where there is discovery of the failure involving the evasion of tax of a particular amount. For the said infraction stringent penal consequences have been provided. Second situation covers all cases except the first situation elaborated above.*

21. *The term of imprisonment is higher when the amount of tax which would have been evaded but for the discovery of the failure to furnish the return exceeds one hundred thousand rupees. If the plea of the appellants is accepted, it would mean that in a given case where there is infraction and where a return has not been furnished in terms of sub-section (1) of Section 139 or even in response to a notice issued in terms of sub-section (2), the consequences flowing from non-furnishing of return would get obliterated. At the relevant point of time Section 139(4)(a) permitted filing of return where return has not been filed within sub-section (1) and sub-section (2). The time-limit*

was provided in clause (b). Section 276-CC refers to "due time" in relation to sub-sections (1) and (2) of Section 139 and not to sub-section (4). Had the legislature intended to cover sub-section (4) also, use of the expression "Section 139" alone would have sufficed. It cannot be said that the legislature without any purpose or intent specified only sub-sections (1) and (2) and the conspicuous omission of sub-section (4) has no meaning or purpose behind it. Sub-section (4) of Section 139 cannot by any stretch of imagination control operation of sub-section (1) wherein a fixed period for furnishing the return is stipulated. The mere fact that for purposes of assessment and carrying forward and to set off losses it is treated as one filed within sub-section (1) or (2) cannot be pressed into service to claim it to be actually one such, though it is factually and really not by extending it beyond its legitimate purpose.

22. *Whether there was wilful failure to furnish the return is a matter which is to be adjudicated factually by the court which deals with the prosecution case. Section 278-E is relevant for this purpose and the same reads as follows:*

> *"278-E. Presumption as to culpable mental state.—(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.*
>
> *Explanation.—In this sub-section, 'culpable mental state' includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact.*
>
> *(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability."*

> ***23.*** *There is a statutory presumption prescribed in Section 278-E. The court has to presume the existence of culpable mental state, and absence of such mental state can be pleaded by an accused as a defence in respect to the act charged as an offence in the prosecution. Therefore, the factual aspects highlighted by the appellants were rightly not dealt with by the High Court. This is a matter for trial. It is certainly open to the appellants to plead absence of culpable mental state when the matter is taken up for trial."*
>
> (Emphasis supplied)

35. What is discernable from the aforesaid decision is that an offence under Section 276CC could be said to have been committed as soon as there is a failure on the part of the assessee in furnishing the return of income within the due time as prescribed under Section 139(1) of the Act. Subsequent furnishing of the return of income by the assessee within the time limit prescribed under sub-section (4) of Section 139 or before prosecution is initiated does not have any bearing upon the fact that an offence under Section 276CC has been committed on the day immediately following the due date for furnishing return of income.

36. Thus, the appellant is right in his contention that the point in time when the offence under Section 276CC could be said to be committed is the day immediately following the due date prescribed for filing of return of income under Section 139(1) of the Act, and the actual date of filing of the return of income at a belated stage would not affect in any manner

the determination of the date on which the offence under Section 276CC of the Act was committed.

37. This can also be discerned from Section 139(8) of the Act which reads as follows:

> "*Where the return under sub-section (1) or sub-section (2) or sub-section (4) for an assessment year is furnished after the specified date, or is not furnished, then whether or not the Assessing Officer has extended the date for furnishing the return under sub-section (1) or sub-section (2), the assessee shall be liable to pay simple interest at fifteen per cent per annum, reckoned from the day immediately following the specified date to the date of the furnishing of the return or, where no return has been furnished, the date of completion of the assessment under section 144, on the amount of the tax payable on the total income as determined on regular assessment, as reduced by the advance tax, if any, paid, and any tax deducted at source: Provided that the Assessing Officer may, in such cases and under such circumstances as may be prescribed, reduce or waive the interest payable by any assessee under this sub-section.*"

38. A perusal of the aforesaid provision makes it clear that irrespective of whether the return of income is filed by an assessee after the specified date or is not furnished at all, the assessee shall be liable to pay simple interest at the rate 15% reckoned from the day immediately following the specified date notwithstanding the fact that the Assessing Officer has extended the date for furnishing of return.

39. Accepting the contention of the respondents would mean that the commission of an offence under Section 276CC is made contingent upon the filing of the actual belated return by an assessee. This could never have been the intention of the legislature in enacting the provision as such a reading would mean that no assessee would file a return of income after the due date has expired and despite such failure would be able to escape any liability under Section 276CC of the Act.

40. Having discussed the scope of Section 276CC and the ingredients required to constitute an offence under the said provision, the next question that falls for us is whether the appellant could be said to have committed an offence under Section 276CC of the Act and if yes, then whether the appellant is entitled to the benefit of compounding of the offence under the relevant compounding guidelines.

41. The due-date for filing the return of income for the AY 2011-12 was 30.09.2011. The appellant filed his return with delay on 04.03.2013. Hence, as the return was filed beyond the due date for filing the return, an offence under Section 276CC could be said to have been committed by the appellant *prima facie*.

42. Similarly, the due date for filing the return of income for the AY 2013-14 was 31.10.2013, whereas the appellant filed the return for the said year on 29.11.2014. Hence, the appellant once again breached the requirement of Section 276CC and thus committed an offence as defined under the said provision.

43. Even otherwise, it has not been disputed by the appellant that an offence under Section 276CC was committed by him for AYs 2011-12 and 2013-14 respectively, and he had preferred compounding applications for both the assessment years. While his compounding application for the AY 2011-12 came to be allowed, his compounding application for the AY 2013-14 was rejected by Respondent no. 1 and the rejection was upheld by the High Court *vide* the impugned order.

44. In view of the dictum laid in ***Prakash Nath Khanna*** *(supra),* the date for commission of both of these offences would be the day falling immediately next to the due date for filing of return, that is 01.10.2011 for AY 2011-12 and 01.11.2013 for the AY 2013-14.

45. The pertinent question that now arises is whether the offences committed by the appellant under Section 276CC of the Act could be said to be compoundable under the relevant provision of the Act read

with the appropriate compounding guidelines issued from time to time. At the outset it is important to ascertain the compounding guidelines which would be applicable for the purpose of adjudication of the compounding application made by the appellant.

46. The 2014 guidelines superseded the 2008 guidelines and came into effect from 01.01.2015. Clause 2 of the 2014 guidelines provided that all compounding applications received on or after 01.01.2015 shall be decided in accordance with the 2014 guidelines whereas all applications received prior to 01.01.2015 would be governed by the 2008 guidelines which came into effect on 16.05.2008.

47. In the case at hand, the compounding application for the AY 2011-12 was made on 11.11.2014 and thus would be governed by the 2008 guidelines. As the compounding application for the AY 2013-14 was preferred by the appellant on 19.03.2015, hence it would be governed by the 2014 guidelines. Since the present appeal is only concerned with the compounding application for the AY 2013-14, hence we are limiting our discussion to the 2014 guidelines. However, as the compounding guidelines are framed to guide the exercise of power of compounding conferred upon the CCIT and DGIT under Section 279(2) of the Act,

hence we deem it appropriate to first examine the provisions of the Act before discussing the guidelines.

ii. Provisions pertaining to compounding of offences

48. Section 279 of the Act is reproduced hereinbelow:

> *"**279. Prosecution to be at instance of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.—***
>
> *(1) A person shall not be proceeded against for an offence under section 275A, section 275B, section 276, section 276A, section 276B, section 276BB, section 276C, section 276CC, section 276D, section 277, section 277A or section 278 except with the previous sanction of the Principal Commissioner or Commissioner or Commissioner (Appeals) or the appropriate authority:*
>
> *Provided that the Principal Chief Commissioner or Chief Commissioner or, as the case may be, Principal Director General or Director General may issue such instructions or directions to the aforesaid income-tax authorities as he may deem fit for institution of proceedings under this sub-section.*
>
> *Explanation.—For the purposes of this section, "appropriate authority" shall have the same meaning as in clause (c) of section 269UA.*
>
> *(1A) A person shall not be proceeded against for an offence under section 276C or section 277 in relation to the assessment for an assessment year in respect of which the penalty imposed or imposable on him under section 270A or clause (iii) of sub-section (1) of section 271 has been reduced or waived by an order under section 273A.*

(2) Any offence under this Chapter may, either before or after the institution of proceedings, be compounded by the Principal Chief Commissioner or Chief Commissioner or a Principal Director General or Director General.

(3) Where any proceeding has been taken against any person under sub-section (1), any statement made or account or other document produced by such person before any of the income-tax authorities specified in clauses (a) to (g) of section 116 shall not be inadmissible as evidence for the purpose of such proceedings merely on the ground that such statement was made or such account or other document was produced in the belief that the penalty imposable would be reduced or waived, under section 273A or that the offence in respect of which such proceeding was taken would be compounded.

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."

49. Sub-section (1) of Section 279 of the Act provides that any prosecution for the commission of an offence under Sections 275A, 275B, 276, 276A, 276B, 276BB, 276C, 276CC, 276D, 277, 277A or 278 of the Act respectively cannot be launched except with the previous sanction of the Principal Commissioner or Commissioner or Commissioner (Appeals) or the appropriate authority. The proviso to Sub-section (1) of Section 279 empowers the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or Director

General to issue appropriate directions to the authorities specified in sub-Section (1) for the initiation of prosecution.

50. Sub-section (2) of Section 279 empowers the Principal Chief Commissioner, the Chief Commissioner, the Principal Director General and the Director General to compound any offence defined under Chapter XXII of the Act, either before or after the initiation of proceedings.

51. While interpreting the nature of the power conferred upon the Principal Chief Commissioner under Section 279, this Court in ***Union of India v. Banwari Lal Agarwal*** reported in **(1998) 7 SCC 652** held that sub-section (2) of the provision is enabling in nature and cannot be construed as allowing the assessee to demand compounding as a matter of right. The relevant observations are reproduced hereinbelow:

> *"7. We further find that sub-section (2) of Section 279 is a provision which enables the Chief Commissioner or the Director General to compound any offence either before or after the institution of proceedings. There is no warrant in interpreting this sub-section to mean that before any prosecution is launched, either a show-cause notice should be given or an opportunity afforded to compound the matter. The enabling provision cannot give a right to a party to insist on the Chief Commissioner or the Director General to make an offer of compounding before the prosecution is launched."*

52. The effect and scope of the Explanation to Section 279, which was inserted *vide* the Finance Act, 1991 (Act 2 of 1991) was explained by this Court in the case of ***Y.P. Chawla v. M.P. Tiwari*** reported in **(1992) 2 SCC 672**. It was observed therein that the Explanation serves as a proviso to Section 279(2) of the Act, meaning thereby that the exercise of power under this section by the Commissioner must adhere to the periodically issued instructions by the Board. The Explanation grants the Board the authority to issue orders, instructions, or directions concerning the proper composition of offences under Section 279(2) and explicitly allows for directives requiring prior approval from the Board. The Court observed that when Section 279(2) is read alongside the Explanation, it becomes clear that the Commissioner must follow the instructions given by the Board when exercising discretion under this section. The relevant observations made therein are reproduced hereinbelow:

> *"2. Whether the Central Board of Direct Taxes, (the Board) under Section 119 of the Income Tax Act, 1961 (the Act) can issue instructions to control the discretion of the Commissioner of Income Tax under Section 279(2) of the Act, to compound the offences, is the short question for our consideration.*
>
> *xxx xxx xxx*
>
> *9. This Court in Navnitlal C. Javeri v. K.K. Sen, Appellant Assistant C.I.T. [(1965) 1 SCR 909 : AIR 1965 SC 1375 : (1965) 56 ITR 198] , Ellerman Lines Ltd. v. C.I.T. [(1972) 4 SCC 474 : 1974 SCC (Tax) 304] and in K.P. Varghese*

v. ITO [(1981) 4 SCC 173 : 1981 SCC (Tax) 293] has held that circulars issued by the Central Board of Direct Taxes under Section 119(1) of the Act are binding on all officers and persons employed in the execution of the Act even if they deviate from the provisions of the Act. The High Court has discussed these judgments in detail and has distinguished them on plausible grounds. It is not necessary for us to go into this question because the legal position has altered to the advantage of the Revenue by the introduction of an Explanation to Section 279 of the Act by the Finance Act (2 of 1991) which has been made operative with effect from April 1, 1962. The Explanation is as under:—

> *"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."*

10. The Explanation is in the nature of a proviso to Section 279(2) of the Act 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) of the Act and further specifically provides that directions for obtaining previous approval of the Board can also be issued. Reading Section 279(2) along with the Explanation, there is no manner of doubt that the Commissioner has to exercise the discretion under Section 279(2) of the Act in conformity with the instructions issued by the Board from time to time."

iii. Guidelines for Compounding of Offences under Direct Tax Laws, 2014

53. The Guidelines for Compounding of Offences under Direct Tax Laws, 2014 were issued by the Central Board of Direct Taxes, Department of Revenue, Government of India in supersession of the previous guidelines which were issued on 16.05.2008. These guidelines were one in line of many guidelines which were issued by the Central Board of Direct Taxes from time to time to provide guiding principles for the exercise of the power conferred by section 279(2) of the Act which allows compounding of offences by the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General either before or after the institution of proceedings.

54. Paragraph 2 of the 2014 guidelines specifies the date from which the guidelines would come into force and also the applications which would be governed by it. Paragraph 3 stipulates the authorities who are authorised to compound the offences in exercise of the power conferred under Section 279(2).

55. Paragraph 4 of the 2014 guidelines provides that compounding of offences is not a matter of right of the assessee. However, the offences

may be compounded by the competent authority upon satisfaction that the eligibility conditions prescribed in the 2014 guidelines are being fulfilled and keeping in view factors like the conduct of the assessee, nature and magnitude of the offence, and of course the facts and circumstances of each case. Thus, what can be discerned from Paragraph 4 is that while it stipulates that the eligibility conditions prescribed in the guidelines are to be satisfied necessarily, the ultimate discretion to compound the offence(s) or not has to be guided by factors which include the conduct of assessee, nature and magnitude of the offence and the unique facts of each case.

56. Paragraph 5 of the 2014 guidelines provides that the guidelines would not be applicable for the compounding of any prosecution initiated under the Indian Penal Code, 1860 and the same can only be withdrawn under Section 321 of the Code of Criminal Procedure, 1973.

57. Paragraph 6 of the guidelines provides two categories of offences which can be compounded - category A and category B offences. Category A offences include the offences defined under Sections 276, 276B 276BB, 276DD, 276E, 277 and 278 of the Act respectively. Whereas Category B offences include the offences defined under Sections 275A, 275B, 276, 276A, 276AA, 276AB, 276C(1), 276C(2), 276CC, 276CCC,

276D, 277, 277A, 278 of the Act respectively. Thus, the offence involved in the case at hand being one under Section 276CC of the Act would be governed by the rules applicable to the compounding of Category B offences.

58. Paragraph 7 of the 2014 guidelines prescribes certain eligibility conditions which have to be satisfied by the applicant before his application for compounding can be accepted by the competent authority. The conditions, as prescribed under the guidelines, are reproduced hereinbelow:

> *"**7. Eligibility Conditions for compounding:***
>
> *The following conditions should be satisfied for considering compounding of an offence :-*
>
> *i. The person makes an application to the CCIT/DGIT having jurisdiction over the case for compounding of the offence(s) in the prescribed format (Annexure-1)*
>
> *ii. The person has paid the outstanding tax, interest, penalty and any other sum due, relating to the offence for which compounding has been sought.*
>
> *iii. The person undertakes to pay the compounding charges including the compounding fee, the prosecution establishment expenses and the litigation expenses including counsel's fee, if any, determined and communicated by the CCIT/DGIT concerned.*
>
> *iv. The person undertakes to withdraw appeal filed by him, if any, in case the same has a bearing on the offence sought to be compounded. In case such appeal has mixed*

grounds, some of which may not be related to the offence under consideration, the undertaking may be taken for appropriate modification in grounds of such appeal."

59. Paragraph 8 of the guidelines prescribes offences which are generally not to be compounded under the compounding guidelines. It provides that a Category A offence which is sought to be compounded by an applicant in whose case compounding was allowed in the past in an offence under the same section for which the present compounding application has been made on three occasions or more shall not be compounded. Secondly, it prescribes that category B offences will not be generally compounded other than the first offence as defined in the guidelines. A "first offence" has been defined by Paragraph 8 as follows:

"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;

OR

Offence not detected by the department but voluntarily disclosed by a person prior to the filing of application for compounding of offence in the case under any Direct Tax Acts. For this purpose, offence is relevant if it is committed by the same entity. The first offence is to be determined separately with reference to each section of the Act under which it is committed."

60. A perusal of the reproduced portion of Paragraph 8 shows that the expression "first offence" has been defined under the compounding guidelines as any offence committed:

    a. Prior to the date of issuance of any show cause notice for prosecution in relation to the said offence; or

    b. Prior to any intimation relating to prosecution by the department to the person concerned or prior to the launching of any prosecution, whichever is earlier.

61. Further, the expression "first offence" is also defined to include any offence which has not been detected by the Department, but has been voluntarily disclosed by a person prior to the filing of an application for compounding of offence in the case under any direct tax Acts. Clause 8 further clarifies that the first offence would be determined separately with reference to each section of the Act under which it is committed and it would be relevant only if it is committed by the same entity.

62. Paragraph 8 further prescribes certain additional categories of offences which are generally not to be considered for compounding. They are reproduced hereinbelow:

> *"iii. Offences committed by a person who, as a result of investigation conducted by any Central or State agency and as per information available with the CCIT/DGIT*

concerned, has been found involved, in any manner, in anti-national/terrorist activity.

iv. Offences committed by a person who, was convicted by a court of law for an offence under any law, other than the Direct Taxes laws, for which the prescribed punishment was imprisonment for two years or more, with or without fine, and which has a bearing on the offence sought to be compounded.

v. Offences committed by a person which, as per information available with the CCIT/DGIT concerned, have a bearing on a case under investigation (at any stage including enquiry, filing of FIR/complaint) by Enforcement Directorate, CBI, Lokpal, Lokayukta or any other Central or State agency.

vi. Offences committed by a person for which he was convicted by a court of law under Direct Taxes laws.

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.

viii. Offences committed by a person 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 disposition of such an application is not worked out'.

ix. Any other offence, which the CCIT/DGIT concerned considers not fit for compounding in view of its nature and magnitude."

63. Paragraph 9 of the 2014 guidelines empowers the Minister of Finance to relax the restrictions stipulated in Paragraph 8 of the guidelines for the purposes of compounding in a deserving case upon the consideration of a report from the Board on a petition made by an applicant.

64. Paragraph 10 of the 2014 guidelines prescribes the competent authority for the purpose of compounding an offence under the guidelines. Paragraph 11 provides for the compounding procedure.

65. Paragraph 12 provides for the compounding fee which would be applicable to the compounding of offences committed under specific provisions of the Act. Paragraph 12.4 prescribes the compounding fee applicable to offences committed under Section 276CC and is reproduced hereinbelow:

> *"**12.4 Section 276CC-** Failure to furnish returns of income.*
>
> *12.4.1 2% per month or part of a month of the tax and interest determined on assessment or reassessment, in relation to return of income that was required to be furnished under section 139(1) or section 142(1) or section 148 or section 153A/153C as the case may be, existing on the date of conveyance of compounding charges to the applicant, determined after rectification u/s 154 of the Act, if any and as reduced by the tax deducted at source and advance tax, if any, paid during the financial year immediately preceding the assessment year, reckoned from the date immediately following the date on which the return of income was due to be furnished to the date of furnishing of the return or where no return was furnished, to the date of completion of the assessment.*
>
> *12.4.2 Where, before the date of furnishing of the return or where no return was furnished before the date of completion of assessment, any tax is paid by the person u/s 140A, compounding fee shall be calculated in the manner prescribed above up-to the date on which the tax is so*

> *paid; and thereafter, the fee shall be calculated at the aforesaid rate on the amount of tax and interest determined on the assessment or re-assessment as the case may be, determined after rectification u/s 154 of the Act, if any, as reduced by the TDS, TCS, advance tax and tax paid u/s 140A before filing of the return of income or where no return was furnished from the date of completion of assessment or reassessment."*
>
> (Emphasis supplied)

66. A perusal of Paragraph 12.4 of the 2014 guidelines as reproduced hereinabove shows that the compounding fee to be levied in the case of an offence under Section 276CC is to be reckoned from the date immediately following the date on which return was due. This is in consonance with Section 139(8) of the Act and further fortifies the argument of the appellant that it is not the date of actual filing of belated return, but the date immediately following the due date for filing of return which is to be considered as the date of commission of the offence.

67. Paragraph 8 of the 2014 guidelines provides that a category B offence will generally not be compounded except when it is the first offence committed by the applicant. As discussed aforesaid, the offence committed by the applicant would be covered by the expression "first offence" if it is committed prior to:

a. Issuance of any show-cause notice for prosecution; or

b. Intimation relating to any prosecution by the Department to the applicant; or

c. Launch of any prosecution, whichever is earlier.

68. In the case at hand, the show cause notice for the initiation of prosecution for the AY 2011-12 was the earliest in time and hence what falls for our determination is whether the offence under Section 276CC for the AY 2013-14 could be said to have been committed before the show cause notice for initiation of prosecution for the AY 2011-12 was issued by the Department.

69. As discussed above, the show cause notice for the AY 2011-12 was issued to the appellant on 27.10.2014. However, the offence under Section 276CC of the Act could be said to have been committed on the dates immediately following the due date for furnishing the return of income for both these assessment years respectively. Thus, the offence for the AY 2011-12 could be said to have been committed on 01.10.2011 and the offence for the AY 2013-14 could be said to have been committed on 01.11.2013.

70. Therefore, it can be said without a cavil of doubt that both the offences under Section 276CC of the Act were committed prior to the date of issue of any show cause notice for prosecution.

71. It was submitted by the respondents that even if the offences committed by the appellant for AY 2011-12 and AY 2013-14 could be said to have been committed before the issuance of the show cause notice dated 27.10.2014, the appellant would still be covered by the subsequent part of the definition of "first offence" as the appellant had voluntarily disclosed the commission of the offences for the AY 2011-12 and 2013-14 respectively by filing belated return of income for the said assessment years. In other words, the respondents contended that the very act of filing belated return of income by the appellant amounts to voluntary disclosure of commission of offence for the purpose of Paragraph 8 of the 2014 guidelines which defines the expression "first offence". The latter part of the definition of the expression "first offence" reads as follows:

> *"Offence not detected by the department but voluntarily disclosed by a person prior to the filing of application for compounding of offence in the case under any Direct Tax Acts. For this purpose, offence is relevant if it is committed by the same entity. The first offence is to be determined separately with reference to each section of the Act under which it is committed."*

72. We find it difficult to agree with the contention advanced by the respondents that even if the appellant is not covered by the first part of the definition of the expression "first offence", he will still be covered by the latter half which is reproduced in the preceding paragraph. Paragraph 8 of the 2014 guidelines has defined a "first offence" in two different manners:

    a. *First*, all those offences which are committed by the assessee prior to a formal intimation of his liability for being prosecuted by the Department are to be treated as "first offence" and it shall be open to the assessee to pray for the compounding of such offences subject to other requirements being fulfilled.

    b. *Second*, any offence which is voluntarily disclosed by the assessee before its detection by the Department would also be treated as a "first offence".

73. The scheme that permeates Paragraph 8 of the 2014 guidelines allows only those offences to be treated as the "first offence" which are committed by the assessee either prior to a notice that he is liable to prosecution under the Act for the commission of such offences or those offences which are voluntarily disclosed by the assessee to the Department before they come to be detected. The latter part of the definition of the expression "first offence" is not to curtail the scope of

the first half but to expand its ambit by including those cases where the assessee comes forward on his own initiative and discloses the commission of the offence. The meaning as sought to be given by the respondents to Paragraph 8 of the 2014 guidelines would turn the very purpose of having a two-fold definition of "first offence" on its head and thus cannot be accepted for it would take away the incentive of coming forward and voluntarily disclosing the commission of offences from erring-assessees.

74. Voluntary disclosure for the purpose of Paragraph 8 of the 2014 guidelines has to be construed in a manner which ensures that such disclosure on part of the assessee saves the Department from the trials and tribulations of having to detect the commission of offence by the assessee by setting into motion its own machinery of detection of offences. Neither the filing of belated return of income by the assessee nor the making of an application for compounding of offence after a show cause notice has already been issued to the assessee fulfills this underlying idea of saving the Department from the inconvenience of detecting the offence. Even after a belated return of income is filed, the Department is still required to process the return, identify the cases wherein offences have been committed, issue show cause notices to the defaulting assessees and thereafter prosecute the offenders to recover

the dues and punish the offenders. A voluntary disclosure by the assessee before the stage of detection by the Department besides being economically viable also saves time and efforts on part of the Department and also ensures that the dues are recovered promptly.

75. The primary purpose of the prosecution provisions enshrined in Chapter XXII of the Act is to ensure the penalization of offenders adjudged guilty of tax evasion and other tax-related offenses, while simultaneously instilling a deterring effect in the minds of those who might contemplate circumventing the payment of lawful taxes. When an assessee voluntarily discloses the commission of an offence, he cannot be said to have the intention of evading payment of taxes.

76. The appellant submitted that the 2014 guidelines are directory in nature and the respondents could not have solely relied upon the guidelines to reject his application for compounding without taking into account the attendant extraordinary circumstances pointed out by the him as the cause for the commission of the offences. The appellant placed reliance on a decision of the Delhi High Court delivered in the case of ***Sports Infratech P. Ltd. & Anr. v. Deputy Commissioner of Income-tax*** reported in **2017 SCC OnLine Del 6543** in support of his submission.

77. In ***Sports Infratech*** *(supra),* the petitioner therein assailed the order rejecting its application for compounding of the offence under Section 276B of the Act. The application was rejected on the ground that the petitioner did not fulfil the criteria for consideration of its application as per the guidelines issued by the CBDT. Allowing the writ petition, the High Court observed that an application for compounding of an offence cannot be rejected without having regard to the specific facts of the case. The Court highlighted that the guidelines do not limit the authorities from exercising their discretion and therefore the authorities, while exercising their power under Section 279, are required to consider the objective facts in the application before it. The relevant observations from the said decision are reproduced hereinbelow:

> *"6. The learned counsel for the Revenue urges that the binding nature of the Board's instructions and guidelines is apparent from Explanation to section 279(3) which clarifies that the power to grant or refuse compounding is essentially discretionary and actually administrative. Therefore, the guidelines framed for its exercise under section 279 are binding upon all Revenue authorities including the Chief Commissioner. Learned counsel relied upon the Supreme Court decision in Asst. CIT v. Velliappa Textiles Ltd. (2003) 263 ITR 550 (SC) to highlight that compounding application cannot be concluded to as a matter of right but rather is subject to exercise of discretion. There is no quarrel with the proposition that power to accept a plea for compounding or refusal is essentially discretionary. The exercise, however, in each case is dependent upon the authority who has to apply his or her mind judiciously to the circumstances of each case. The rejection of the petitioner's application in this case is entirely routed on the Chief Commissioner's*

understanding of the conditions of ineligibility of para. 8(v) apply. In this court's opinion, that view was based upon an erroneous understanding of law. Whilst guidelines no doubt are to be kept in mind specially while exercising jurisdiction, they cannot blind the authority from considering the objective facts before it. In the present case the petitioner's failure to deposit the amount collected was beyond its control and was on account of seizure of books of account and documents, etc. But for such seizure, the petitioner would quite reasonably be expected to deposit the amount within the time prescribed or at least within the reasonable time. Instead of considering these factors on their merits and examining whether indeed they were true or not, the Chief Commissioner felt compelled by the text of para. 8(v). That condition, no doubt is important and has to be kept in mind, cannot be only determining. In the present case, the material on record in the form of a letter by the Superintendent of CBI also shows that a closure report was in fact filed before the competent court. Having regard to all these facts, this court is of the opinion that the refusal to consider and accept the petitioner's application under section 279(2) cannot be sustained. The impugned order is hereby set aside."

78. As we have discussed in the preceding parts of this judgment, Paragraph 4 of the 2014 guidelines specifies that compounding is not a matter of right of the assessee and the competent authority may allow the compounding application upon being satisfied that the applicant fulfills the eligibility conditions and keeping in mind the conduct of the applicant, nature and magnitude of the offence and the facts and circumstances of each case. Further, Paragraph 7 of the guidelines prescribes the eligibility conditions and Paragraph 8 provides those cases which are generally not to be compounded. Paragraph 9 carves

out an exception and empowers the Minister of Finance to relax the conditions laid down in Paragraph 8 of the 2014 guidelines and allow compounding in a deserving case.

79. A plain reading of the 2014 guidelines reveals that while it is mandatory that the eligibility conditions prescribed under Paragraph 7 are to be satisfied, the restrictions laid down in Paragraph 8 have to be read along with Paragraph 4 of the Act which provides that the exercise of discretion by the competent authority is to be guided by the facts and circumstances of each case, the conduct of the appellant and nature and magnitude of offence. Seen thus, it becomes clear that the restrictions laid down in Paragraph 8 of the guidelines are although required to be generally followed, the guidelines do not exclude the possibility that in a peculiar case where the facts and circumstances so require, the competent authority cannot make an exception and allow the compounding application.

80. We have also had the benefit of looking at the Guidelines for Compounding of Offences under Direct Tax Laws, 2019 and the Guidelines for Compounding of Offences under Direct Tax Laws, 2022 issued by the CBDT. In both the said Guidelines, the offence under Section 276CC has been made a Category A offence instead of a

Category B offence and is compoundable up to three occasions. Although this would not have any direct implication on the case at hand since the same is governed by the 2014 guidelines, yet what this indicates is that there is a clear shift in the policy of the Department when it comes to the compounding of offences under Section 276CC in particular and in making the compounding regime more flexible and liberal in particular.

F. CONCLUSION

81. For all the aforesaid reasons, we have reached the conclusion that the High Court fell in error in rejecting the writ petition filed by the appellant against the order passed by the Chief Commissioner of Income Tax, Vadodara rejecting the application for compounding. The offence as alleged to have been committed by the appellant under Section 276CC of the Act for the AY 2013-14 is, without a doubt, covered by the expression "first offence" as defined under the 2014 guidelines and thus the compounding application preferred by the appellant could not have been rejected by Respondent no. 1 on this ground alone.

82. The impugned order passed by the High Court as well as the order passed by the Chief Commissioner of Income Tax, Vadodara dated 14.02.2017 rejecting the compounding application of the appellant are hereby set aside.

83. The appellant shall prefer a fresh application for compounding before the competent authority within two weeks from the date of this judgment and the same shall be adjudicated by the competent authority having regard to the conduct of the appellant, the nature of the offence and the facts and circumstances of the case within a period of four weeks from the date on which the application is filed by the appellant.

84. The proceedings pending before the Trial Court shall remain stayed pending the decision of the competent authority on the compounding application of the appellant.

85. In the event the fresh compounding application of the appellant is accepted by the competent authority, the proceedings pending before the Trial Court shall stand abated. If the compounding application is rejected by the competent authority, then the trial shall continue and be brought to its logical conclusion.

86. The appeal is disposed of in the aforesaid terms.

87. Pending application(s), if any, shall stand disposed of.

……J.

(J.B. Pardiwala)

……J.

(Sanjay Karol)

New Delhi;

February 07th, 2025