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Y.P. CHAWLA AND ORS.

v.

M.P. TIWARI AND ANR.

MARCH 31, 1992

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[KULDIP SINGH AND R.M. SAHAI, JJ.]

Income-Tax Act, 1961:

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Ss.279(2) Explanation and 119(1)—Compounding of offence—Discretion of Commissioner of Income-Tax—Exercise of—Whether curtailed by guidelines laid down by the Central Board of Direct Taxes under Section 119(1) requiring the Commissioner of Income-Tax to obtain Board's approval before deciding compounding of offence and not to give any assurance before obtaining approval—Instructions issued by the Board—Whether binding on all officers and persons employed in the execution of the Act even if they deviated from provisions of the Act.

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The first respondent, Secretary and principal officer of a Company was prosecuted, along with Directors of the Company under Section 276-B of the Income Tax Act, 1961, on the charge that he had committed defaults in depositing the income tax deducted from the salaries of the employees of the Company during the assessment years 1970-80 to 1982-83. The second respondent, the Managing Director of another Company, was also prosecuted for the same offence.

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Both the respondents applied to the Commissioner, Income-tax, invoking his power under Section 279(2) of the Act as it stood prior to insertion of Explanation to the Section by Finance Act (2) of 1991, made operative with effect from April 1, 1962 and seeking composition of the offences against them.

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Meanwhile, the respondents filed two separate writ petitions before the High Court challenging the instructions No. 1307 dated March 11, 1980 issued by the Central Board of Direct Taxes under Section 119(1) of the Act providing guidelines for exercise of powers under Section 279(2) of the Act.

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The High Court allowed the writ petitions and quashed the instruc-

tions, on the ground that the circulars had substantially curtailed the powers of the Commissioner, in view of the instructions that the previous approval of the Board should always be obtained before deciding to compound an offence and that no assurance of any kind should be given to the assessee before obtaining approval, and that this was not the intention of the legislature when Section 279 of the Act was incorporated.

Allowing the appeals, by special leave, filed by the Revenue, this Court,

HELD: The Explanation to Section 279 of the Act inserted by the Finance Act (2) of 1991, which has been made operative with effect from April 1, 1962, 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 order, 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. [445D-E]

Navnitlal C.C. Javery v. Appellant Assistant to Commissioner of Income-tax, [1965] 1 SCR 909; *Ellermen Lines Ltd. v. Commissioner of Income-tax*, [1972] 4 S.C.C. 474 and *K.P. Varghese v. Income-tax Officer*, [1981] 4 S.C.C. 173, relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 207-208 of 1992.

From the Judgment and Order dated 30.11.90 of the Delhi High Court in Crl. Writ Petition Nos. 348 and 436 of 1987.

Altaf Ahmed, Additional Solicitor General, B.B. Ahuja and Ms. A. Subhashini for the Appellants.

P.C.Khanna, Ms. Ruchhi Khanna and Ms. Indu Goswamy for the Respondents.

A The Judgment of the Court was delivered by

KULDIP SINGH, J. Special leave granted.

B Whether the Central Board of Direct Taxes, (the Board) under Section 119 of the Income-tax Act, 1962 (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.

C M.P. Tiwari and M.L. Passi are the respondents before us in these appeals. M.P. Tiwari is the Secretary and principal officer of M/s. Hans Raj Gupta and Co. Pvt. Ltd. He along with other Directors of the said Company was prosecuted under Section 276-B of the Act on the charge that he committed defaults in depositing the income tax deducted from the salaries of the employees of the Company during the assessment years 1979-80 to 1982-83. M.L. Passi was the Managing Director of M/s. Inspi
D Auto Industry Pvt. Ltd. He was also prosecuted under Section 276-B of the Act for committing defaults in depositing the tax deducted at the source by the company.

E Both Tiwari and Passi, applied to the Commissioner, Income-tax, invoking his power under Section 279(2) of the Act and seeking composition of the offences against them. Section 279(2) of the Act as it was at the relevant time is as under:-

"The Commissioner may either before or after the institution of proceedings compound any such offences."

F Section 119(1) which empowers the Board to issue orders, instructions and directions for the proper administration of the Act is reproduced hereunder:-

G "119.(1) The Board may, from time to time, issue such orders, instructions and directions to other income-tax authorities as it may deem fit 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:

H Provided that no such orders, instructions of directions shall

be issued -

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(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 Deputy Commissioner (Appeals) or the Commissioner (Appeals) in the exercise of his appellate functions."

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The Board issued instruction No. 1317 dated March 11, 1980 under Section 119(1) of the Act providing guidelines for the exercise of power under Section 279(2) of the Act. The relevant part of the instructions is as under : -

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"B. CASES WHICH SHOULD NOT BE COMPOUNDED:

1. No compounding will be done if the assessee belongs to a monopoly or large industrial house or is a director of a company belonging to or controlled by such house.
2. Cases in which the prospects of a successful prosecution are good should not ordinarily be compounded.
3. Compounding will not be done in case of second and subsequent offences.

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C. CASES WHICH MAY BE COMPOUNDED:

1. Except in cases falling within category (1) and (3) of B above, compounding of an offence can be done with the consent of the Board, if the amount involved in the offence/default is less than Rupees one lakh.
2. Except in cases falling under categories (1) and (3) of B above, and category (1) of C, compounding may be done with the approval of the Minister, if, in view of developments taking place subsequent to the launching of the prosecution it is found, after consultation with the Minister of law, that the chances of conviction are not good.

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D. Notwithstanding anything stated in B, the Board may ap-

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A prove compounding in deserving and suitable cases involving hardship with the approval of the Minister."

B "6. While the above are only intended to provide broad guidelines to be followed before sending a proposal for compounding the previous approval of the Board should always be obtained before deciding the compounding of an offence. No assurance of any kind should be given to the assessee before obtaining the Board's approval."

C Tiwari and Passi, by way of two separate writ petitions, challenged the above quoted instructions before the Delhi High Court. The High Court allowed the writ petitions and quashed the instructions on the following reasoning :-

D "We have already produced some of the clauses of the instructions which on the face of it run counter to the provisions of the Act. This circular in our opinion has substantially curtailed the powers of the Commissioner of Income Tax, which are vested in him under Section 279 of the Act. In fact the decision of the Commissioner has ceased to be his decision and has become the decision of the board and/or that of the Minister, in view of the instructions that, "the previous approval of the Board should always be obtained before deciding to compound an offence." ".....No assurance of any kind should be given to the assessee before obtaining Board's approval."

F This was not the intention of the legislature when Section 279 of the Act was incorporated."

These appeals by way of special leave are by the Revenue against the judgments of the High Court.

G This Court in *Navnitlal C.C. Javery v. Appellant Assistant to Commissioner of Income-tax*, [1965] 1 SCR 909; *Ellermen Lines Ltd. v. Commissioner of Income-tax*, [1972] 4 S.C.C. 474 and in *K.P. Varghese v. Income-tax Officer*, [1981] 4 S.C.C. 173 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.”

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.

We allow the appeals, set aside the High Court judgments dated November 30, 1990 in both the cases and dismiss the writ petitions filed by Tiwari and Passi. No costs.

N.P.V.

Appeals allowed.