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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgement Delivered on : 03.01.2017

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W.P.(C) 3397/2016

SPORTS INFRATECH PVT. LTD. & ANR Petitioners
Through: Mr. Aditya Nayyar, Adv.

Versus

DEPUTY COMMISSIONER OF INCOME
TAX(HQRS) Respondent
Through: Mr. Sanjay Kumar and Mr. Dileep
Shivpuri, Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

S. RAVINDRA BHAT (ORAL)

1. The petitioner is aggrieved by an order of the Chief Commissioner of Income Tax under Section 279(2) of the Income Tax Act, 1961 rejecting its application whereby relief of compounding of the offence under Section 276B had been sought.

2. Facts are not denied; the petitioner had omitted to deposit amounts deducted as tax, from the sums payable under various contracts. These contracts were entered into by it, towards services rendered in connection with the Commonwealth Games, 2010. The amount in question i.e. the delayed payment was to the tune of Rs.70,06,803/-. The petitioner was proceeded with and apparently a complaint for the offence prescribed under Section 276B was filed. It

was in these circumstances that the petitioner sought for compounding of the offence under Section 279(2). Its application was rejected; by the impugned order. The Chief Commissioner inter alia reasoned as follows:

“The case is not found to be fit for compounding as the applicant does not fulfil criteria no. 13 of application proforma. In the applicant’s case the CBI has conducted search operations on the premises on 08.04.2011 and as a consequence of this the company was black listed by the Central Public Works Department and Delhi Development Authority. Opportunities of being heard were provided by the A.O. and by the undersigned before deciding the application & facts on record have been considered carefully. The applicant does not fulfil the eligibility conditions for consideration of its case for compounding as per para 8(v) of Board’s guidelines dated 3.12.2014. Hence, the compounding application is not acceptable which is rejected hereby.”

3. The Chief Commissioner appears to have formed the opinion that the compounding was not permissible in view of the guidelines issued by the Central Board for Direct Taxes imposed especially in view of para 8(v) thereof. For convenience it would be necessary to extract para 7 and para 8 of the said guidelines which are as follows:

“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.

- 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.*

8. Offences generally not to be compounded:

- i. A Category 'A' offences 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 has been requested, on 3 occasions or more.*
- ii. A Category 'B' offence other than the first offence as defined herein below:*

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 the 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.

- 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 Law, 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, Lakayukta or any other Central or State*

agency.”

4. The petitioner contends that the view taken by the Chief Commissioner cannot be sustained for the reasons that the ongoing investigations have culminated in a closure report. In support of this contention, reliance is placed upon the letter from Superintendent of Police, CBI's letter of 11.08.2015, written to it. That letter reads as follows:

“11.8.2015

To,

*The Director,
Sports Infratech Pvt. Ltd.
204, Old Industrial Estate,
Phase-III,
New Delhi.*

Sub: Status on case (RC 3(A)/2011/AC-III/CBI/New Delhi) of M/s. Sports Infratech Pvt. Ltd. (formerly known as Jubilee Sports Technology (India) Pvt. Ltd.

Sir,

May please refer to your letter No. SIPL/2015-16/30 dated 05.08.2015 on the subject cited above.

In this regard, it is intimated that closure report was filed before the Court of Special Judge, Patiala House, New Delhi and the next date of hearing in the matter is 19.10.2015.”

5. It is also contended that the Chief Commissioner fell into error in holding that para 8(v) of the guidelines constituted a bar for consideration of the application without having regard to the facts of the case. The petitioner submits that the obligation to deposit the TDS amount arose on 19.09.2011, 27.09.2011 and 29.09.2011. Prior to these in April, 2011, material including its books of accounts and

documents were seized by the CBI and had not been released so as to enable to make necessary TDS payment. Under these circumstances, the petitioner faced genuine difficulties which prevented it from complying with the provisions of law. In completely ignoring these facts and in rejecting its application, the Chief Commissioner acted in error of jurisdiction.

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 *Assistant Commissioner, Assessment II, Bangalore and Others vs. Velliappa Textiles Ltd. and Another* [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 petitioner's failure to deposit the amount collected was beyond its control and was on account of seizure of books of accounts 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.

7. The Chief Commissioner is hereby directed to consider the relevant facts and pass necessary orders in accordance with law within six weeks after granting a fair opportunity to the petitioner in that regard. The petition is allowed in the above terms.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

JANUARY 03, 2017/acm