IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 372 OF 2016

M/s. Cyret Technologies (India) Pvt. Ltd.
Pune .. Petitioners
v/s.
Chief Commissioner of Income Tax, TDS
Mumbai & Ors. .. Respondents

Mr. Mihir Naniwadekar a/w Mr. Rohan Deshpande i/b Ajay Kumar for the petitioners
Mr. Suresh Kumar for the respondents

CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE, J.J.
DATED : 23rd MARCH, 2018.

P.C.

1. At the request of the parties, the petition is disposed of finally at the stage of admission.

2. This petition under Article 226 of the Constitution of India challenges the order dated 26th February, 2015 (received on 6th January, 2016) passed by the Chief Commissioner of Income Tax under Section 279(2) of the Income Tax Act, 1961 (the Act). The impugned order rejects the petitioners' application for compounding under section 279 of the Act *inter alia* on the ground that the petitioners had not paid compounding fees in terms of the order sheet noting dated 26th

February, 2014. This the impugned order holds inspite of Notices dated 25th September, 2014 and 3rd February, 2015 being issued to the petitioner.

3. The grievance of the petitioners is that the order sheet noting dated 21st February, 2014 did record the statement of the petitioners' Director that he would make the payment of compounding fees on or before 12th March, 2014. This the petitioner admittedly failed to comply with. However, the petitioner states that there were good reasons for the same but they had no opportunity to explain the same. Further, in terms of the guidelines dated 16th May, 2008 issued by the Central Board of Direct Taxes, the method for the compounding of offences in terms direct following procedure to be adopted :-

> *"5.3 The compounding petition should be disposed of by the CCIT/DGIT as far as possible, within180 days of its receipt. In cases where compounding is accepted, the CCIT/DGIT will intimate the assessee the amount of compounding charges to be deposited. The assessee should pay the requisite compounding charges within 60 days receipt of such intimation from the department. On assessee's request, the CCIT / DGIT may extend this period.*

> *5.4 The CCIT/DGIT shall pass the order u/s 279(2) (as per specified format) as far as possible within 30 days of such payment. Where compounding charge is not deposited within the time allowed, the compounding petition may be rejected after giving the applicant an opportunity of being heard. The order of rejection, wherever required, shall be brought to the notice of the Court.*
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> *(emphasis supplied)*

The aforesaid instruction, it is submitted has not been followed by the Commissioner of Income Tax as no effective opportunity to explain non payment of the compounding fees given to the appellant.

4. In this case, it is stated by the petitioners that the Notices dated 25th September, 2014 and 3rd February, 2015 referred to in the impugned order dated 26th February, 2015 were not received by the petitioners. The Revenue does not dispute that the Notices dated 25th September, 2014 and 3rd February, 2015 addressed to its Mumbai office were not received by the petitioners. The petitioners point out that the Commissioner of Income Tax was aware of its Pune address to which the earlier notice leading to the hearing on 21st February, 2014 had taken place. In fact, the Commissioner of Income Tax had also served notices to the petitioners' Bombay office and the Pune office earlier and this had enabled the petitioner to attend the hearing on 21st February,

2014 consequent to the receipt of the notice at their Pune office, which is its registered office. It is not disputed by the Revenue that the notices dated 25th September, 2014 and 3rd February 2015 were not served upon the petitioner at its Pune address.

5. In the above view, as admittedly the instructions of CBDT dated 16th may, 2008 has not been followed, it would meet the ends of justice to quash and set aside the impugned order dated 26th February, 2015 of the Commissioner of Income Tax. The petitioners' application for compounding is restored to the stage when the order sheet noting on 21st February, 2014 was made by the Commissioner of Income Tax. The Revenue to now take further steps in accordance with law and as per procedure laid down by the CBDT in its above Circular dated 16th May, 2008 i.e. call upon the petitioners to explain the non-payment of compounding fees within the stipulated time.

6. Needless to state that the prosecution, which has been already launched is not being disturbed at this stage. It is made clear that the respondents would serve the notice upon the petitioners at their Pune office as reflected in the cause title of the petition. The notice should give sufficient time to enable the petitioners to present themselves for

hearing before the Commissioner of Income Tax. Thereafter, the Commissioner of Income Tax would dispose of the application for compounding of offence under Section 279(2) of the Act.

7. The petition is disposed of in the above terms. No order as to costs.

(SANDEEP K. SHINDE, J.) **(M.S. SANKLECHA, J.)**