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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decision delivered on: 25.09.2023

+ **W.P.(C) 2457/2023**

ANSAL BUILDWELL LTD.

..... Petitioner

Through: Mr Satyen Sethi, Advocate.

versus

CHIEF COMMISSIONER OF INCOME TAX (TDS)
& ORS.

..... Respondents

Through: Mr Puneet Rai, Sr Standing Counsel
with Mr Ashvini Kumar, Ms Madhavi
Shukla, Standing Counsels along with
Mr Nikhil Jain, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL)

1. On the previous date, i.e., on 27.02.2023, after hearing learned counsel for parties, we had etched out the broad contours of the case. Thus, for the sake of convenience, the relevant parts of the order dated 27.02.2023 are set forth hereafter:

“2. This writ petition is directed against the order/communication dated 19.01.2023 passed by the respondents/revenue.

2.1 Via the impugned order/communication, the application preferred by the petitioner-company for compounding of offence(s), according to Mr Satyen Sethi, who appears on behalf of the petitioner, has not been satisfactorily disposed of.

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3. To be noted, the impugned order/communication vis-a-vis Financial Year (FY) 2016-17 has imposed compounding fee at the rate of 5% of the amount of tax in default.

4. Mr Sethi says, that as per the Guidelines for Compounding of Offences under Direct Tax Laws, 2019 [in short "Guidelines"], the offence attributed to the petitioner being a category 'A' offence, the compounding fee ought to have been calculated at the rate of 3%.

4.1 For this purpose, our attention has been drawn by Mr Sethi to Annexure P-19 appended on page 155 of the case file. In particular, Mr Sethi has drawn our attention to paragraphs 6, 6.1(i), 8, 8.1(i), 8.2, 8.2.1 and 13, 13.1, 13.1.1(ii).

5. In sum, it is Mr Sethi's argument, that the petitioner has been prosecuted under Section 276B of the Income Tax Act, 1961 [in short, "Act"], which is a category 'A' offence, and since an application for compounding was preferred for the first time i.e., was the "first occasion", the compounding fee, as per provisions of the Guidelines referred to above, should have been calculated at the rate of 3%.

6. We may note, that besides this, Mr Sethi has also submitted, that while one out of the four directors of the petitioner-company i.e., one Mr Gopal Ansal was responsible for running the affairs of the petitioner-company, the other three directors i.e., Mr Subhash Verma, Mr Suresh Kumar Gupta and Mrs Ritu Ansal were not in charge of and/or responsible for conducting the business of the petitioner-company.

6.1 We are told by Mr Sethi, that against the total compounding fee calculated via the impugned order i.e., Rs.1,37,82, 370/-, Rs.91,13,275/- has been deposited.

7. Mr Sethi does concede, that even if the compounding fee is calculated at the rate of 3%, and the other three directors are included in that calculation, certain additional amounts will have to be deposited.

8. We may note, that the charge levelled against the petitioner-company was that it failed to deposit tax collected at source. The prosecution qua the petitioner was intended to be launched vis-à-vis the said offence. It was at that stage, that the petitioner-company moved an application for compounding the offence(s). The sanction for prosecution, concededly, has already been given. However, orders qua the aforementioned directors under Section 2(35) of the Act were passed on 27.09.2019.

9. Mr Sethi, at this stage, says that an application for revocation of sanction has been filed, pursuant to an order passed under Section 2(35) of the Act.



10. We are *prima facie* of the view, that since a common application was filed for compounding fee vis-a-vis FYs 2016-17, 2017-18 and 2018-19 for the first time, this would, perhaps, fall within the ambit and scope of the expression “first occasion”.

10.1 Therefore, the petitioner, according to us, may be right in saying that the compounding fee has to be calculated at the rate of 3% and not 5% of the amount of tax in default.

11. Furthermore, if the petitioner ultimately succeeds, then the prosecution cannot proceed further, which is also the mandate of Section 279 of the Act.

12. The matter requires further examination.

13. Mr Sethi says, that he would deposit an additional amount, albeit, calculated at the rate of 3% on the amount of tax in default, by taking into account the offence(s) committed by all the four directors, for the three FYs i.e., FYs 2016-17, 2017-18 and 2018-19.

14. Mr Sethi says, that this additional amount will be deposited within the next 10 days.

15. Issue notice.

15.1 Mr Puneet Rai, learned senior standing counsel, accepts notice on behalf of the respondents/revenue.

15.2 Mr Rai will revert with instructions, on whether the respondents/revenue will close their attempt at prosecuting the aforementioned four directors, if the additional amount towards compounding fee, as indicated above, is deposited.

16. In case instructions are received to resist the petition, a counter-affidavit will be filed before the next date of hearing.

17. List the matter on 25.09.2023.

18. In case the additional amount towards compounding fee, as observed above, is deposited by the petitioner-company, there shall be a stay on the operation of the impugned order/communication till further directions of this Court”.

2. Mr Satyen Sethi, learned counsel, who appears for the petitioner-company, informs us that the additional amount, *albeit* at the rate of 3% of the amount of tax in default by taking into account the offence(s) committed by all four Directors concerning the three Financial Years i.e. 2016-17, 2017-18 and 2018-19, has been deposited.

3. Mr Puneet Rai, learned senior standing counsel, who appears on behalf of respondents/revenue, affirms this position.



4. Furthermore, Mr Sethi says that the additional amount deposited is Rs.19,78,556/-.
5. It is also Mr Sethi's contention that inclusive of the said amount, the total amount deposited towards the compounding fee is Rs.1,21,78,044/-.
6. On being queried, Mr Sethi says that he has instructions to convey to the court that if compounding of offences is ordered, the petitioner-company does not intend to challenge the directions issued for depositing the additional amount issued *via* order dated 27.02.2023.
7. To be noted, no counter-affidavit has been filed, as would be evident from the extract of the order dated 27.02.2023.
8. In our view, since a common application had been filed for the aforementioned FYs for the first time, it would fall within the expression "first occasion", as indicated in the guidelines for compounding of offences under Direct Tax Laws, 2019.
9. Therefore, in our view, the compounding fee should have been calculated at the rate of 3%, and not at 5%.
10. Given this position, we are inclined to set aside the impugned communication dated 19.01.2023.
11. It is ordered accordingly.
12. Respondents will thus pass the necessary orders compounding the offences, in view of the fact that the entire compounding fee has been paid.
13. The writ petition is disposed of, in the aforesaid terms. Interim order dated 27.02.2023 shall stand vacated.
14. Consequently, the pending interlocutory application shall stand closed.



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15. Parties will act based on the digitally signed copy of the order.

(RAJIV SHAKDHER)
JUDGE

(GIRISH KATHPALIA)
JUDGE

SEPTEMBER 25, 2023/as

Click here to check corrigendum, if any