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

\+ W.P.(C) 8017/2022 & CM APPL. 24378/2022

TECHNOPAK ADVISORS PVT. LTD.

..... Petitioner

Through: Mr.Ramesh Singh, Sr.Adv with Mr.Sumit K.Batra, Mr.Manish Khurana, Ms.Priyanka Jindal and Ms.Manya, Advs.

versus

COMMISSIONER OF INCOME TAX (TDS), DELHI-2

..... Respondent

Through: Mr.Sanjeev Menon, Jr.SC for Mr.Zoheb Hossain,. Sr.SC.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON’BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **20.02.2024**

1. The instant writ petition has been preferred seeking the following reliefs:-

> “(a) Issue an appropriate writ/order or direction to Respondent to set aside/ quash all the notices, letters, communications issued by the Income Tax Department culminating out of alleged TDS default by the Petitioner company after the approval of Resolution Plan by the NCLT on 08.02.2021, including but not limited to the following:
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> - Notice under Section 279(1) of the Act dated 13.04.2022 bearing DIN 40/DEL/13042022/00146;
> - Notice under Section 279(1) of the Act dated 07.04.2022 bearing DIN 40/DEL/ 07042022/ 00152;
> - Notice under Section 279(1)' of the Act dated 31.03.2022 bearing DIN 40/DEL/ 31032022/00112;
> - Notice under Section 279(1) of the Act dated 23.03.2022 bearing DIN 40/DEL/ 23032022/ 00261;
> - Communication dated 14.01.2022 bearing reference No.4012022/00146/ CD 693/7;
> - Order dated 30.03.2022 passed by the DCIT under Section 201(1)/201(1A) of the Act bearing DIN DEL/C/276/1/30032022/00302;
> - Letter dated 23.11.2021 bearing F.No. ACIT/Circle-76(1)/

Prosecution/ 2020-21/ 452/21 regarding alleged failure of the Petitioner company to pay tax to the central government for FY 2016-17;

- Letter dated 23.11.2021 bearing F.No. ACIT/ Circle- 76(1)/ Prosecution/ 2020-21/ 452/22 regarding alleged failure of the Petitioner company to pay tax to the central government for FY 2012-13;
- Letter dated 23.11.2021 bearing F.No. ACIT/ Circle-76(1)/ Prosecution/ 2020-21/ 452/23 regarding alleged failure of the Petitioner company to pay tax to the central government for FY 2014-15;
- Communication dated 02.12.2021 issued by the Income Tax Department regarding the proceedings under Section 201(1)/ 201(1A) of the Act for FY 2015-16

  (b) Issue an appropriate writ/order or direction to Respondent Income Tax department to not to initiate any kind of proceedings culminating out of TDS defaults for the time period prior to approval of Resolution Plan by the NCL T on 08.02.2021;

(b) Issue an appropriate writ/order or direction to Respondent/ Income Tax department to not to initiate any kind of proceedings culminating out of TDS defaults for the time period prior to approval of Resolution Plan by the NCLT on 08.02.2021;
(c) Pass any such appropriate order(s) as this Hon'ble Court 31 may deem fit in the facts and circumstances of the present case."

2. The petitioner was originally aggrieved by the enforcement of liabilities towards non-deduction of tax against it, in the backdrop of the petitioner having taken over the erstwhile corporate debtor in terms of a Resolution Plan which came to be approved by the National Company Law Tribunal ["**NCLT**"].

3. Taking note of the principal challenge the Court had bearing in mind the *'clean slate'* principle restrained the respondents from enforcing any monetary liability towards failure to deduct tax at source. The aforesaid position is also not disputed by Mr. Menon, learned counsel for the respondents.

4. We are thus only left to consider the aspect of prosecution and which the petitioner faces by virtue of the provisions of Section 276B

Income Tax Act, 1961 ["**Act**"].

5. Undisputedly, the petitioner was part of the erstwhile management and would thus not have the benefit of the protective umbrella as constructed by Section 32A of the Insolvency and Bankruptcy Code, 2016. However, we find that the punishments which are spoken of in Section 276B of Act are neither inevitable nor liable to be levied even where there may be a reasonable or justifiable explanation for a failure to deduct tax.

6. This is evident from Section 278AA of the Act which reads as follows:-

> "278AA. Notwithstanding anything contained in the provisions of section-276A, section-276AB, or section-276B, no person shall be punishable for any failure referred to in the said provisions if he proves that there was reasonable cause for such failure."

7. It would thus be evident that it would be open for the writ petitioner to establish before the respondents that there was *'reasonable cause'* behind its failure to deduct TDS in terms of the provisions of the Act.

8. Since that right stands statutorily conferred and saved in terms of the aforenoted provision, we leave it open to the writ petitioner to proceed on the aforesaid lines before the respondents. All rights and contentions of the respective parties are kept open.

9. The writ petition shall stand disposed of on the aforesaid terms.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 20, 2024/MJ