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

\+ W.P.(C) 15352/2022

GLOBAL VISA SERVICES PVT. LTD. & ANR. .....Petitioner
Through: Mr. Nischay Kantoor, Adv.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX, DELHI-04 & ORS. .....Respondents
Through: Mr. Gaurav Gupta, SSC with Mr. Shivendra Singh & Mr. Yojit Pareek, JSCs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **21.08.2024**

1. The writ petitioner is aggrieved by the manner in which its application for compounding under Section 276CC of the **Income Tax Act, 1961**[1] has come to be disposed of. The said application itself pertained to **Assessment Years**[2] 2011-12 to 2015-16.

2. It is the case of the writ petitioner that it had submitted an application for compounding on 15 February 2018 and thus prior to the **Guidelines for the Compounding of Offences under Direct Tax Laws, 2019**[3] coming into force. We note that the 2019 Guidelines were issued in terms of a communication of 14 June 2019. In terms of the express stipulations contained in that communication itself, those guidelines were to come into effect from 17 June 2019 and be applicable to all applications for compounding which may be received

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[1] Act
[2] AY
[3] 2019 Guidelines

on or after the aforesaid date.

3. It is the case of the writ petitioners that since its application for compounding had been made on 15 February 2018 itself, it would be the **Guidelines for Compounding of Offences under Direct Tax Laws, 2014**[4] which would govern.

4. For the purposes of disposal of the present writ petition we deem it apposite to notice the following essential facts. On 31 January 2018 the first respondent issued a **Show Cause Notice**[5] referable to Section 276CC read along with Section 278B calling upon the first writ petitioner to show cause why prosecution be not launched consequent to its failure to file a return under Section 139(1) for the period AY 2011-12 to AY 2015-16. This was followed by an identical notice issued to the petitioner no.2 on 09 February 2018.

5. Insofar as the first petitioner is concerned it is stated to have filed its response on 08 February 2018. The petitioner no.2 also responded to the notice of 09 February 2018 by furnishing a response on 15 February 2018. It is the case of the writ petitioners that alongwith the aforesaid response, they had duly submitted applications seeking compounding. This becomes manifest from the averments made in paragraph 7 of the writ petition which are reproduced hereinbelow:

> "**7.** That, on 15.02.2018, the Petitioners filed their response in respect of the aforesaid notices, whereby reference was made to submissions made earlier vide letters dated 08.02.2018 and it was highlighted that that return could not be filed in the impugned years due to personal financial losses and family issues. Further, vide the said letter itself, application for compounding was filed for AY 2011-12 to AY 2015-16 by the Petitioners. Against the question at Serial No.8 of the Application as to 'Whether the Applicant has paid the amount

[4] 2014 Guidelines
[5] SCN

> of tax, interest, penalties and any other sum due relating to the offence', the Petitioners stated 'TDS was already deducted under the provisions of Income Tax Act, 1961. And hence interest and penalties were not payable.'"

6. Complaints subsequently came to be instituted against the petitioners in the Tis Hazari District Courts on 09 March 2018. This was followed by notices under Section 148 of the Act which came to be issued on 30 March 2018.

7. While the aforesaid application for compounding remained pending, the new 2019 Guidelines came into force in terms noted hereinabove. The petitioner while following up its original application of 15 February 2018 is stated to have moved the respondents yet again in terms of a letter of 24 September 2020. It was the aforesaid letter which was ultimately processed and accepted by the respondents on 19 July 2022.

8. It was asserted by the writ petitioners that the amount of INR 2,61,92,125/-, the deposit of which was claimed as a condition precedent for accepting the prayer for compounding, was wholly arbitrary since the same had been computed in accordance with the 2019 Guidelines and more particularly paragraphs 12.1, 12.2 and 13.4.1 thereof. The petitioner asserted that in terms of the 2014 Guidelines which would apply the amount of compounding fee could not have exceeded INR 2.24 lakhs. The petitioner is also stated to have raised this objection in terms of a letter which came to be submitted for the consideration of the respondents. However, those objections ultimately came to be disposed of in terms of a communication dated 20 October 2022.

9. As we peruse the aforesaid order it becomes apparent that the respondents have proceeded on the premise that the compounding

application was made for the first time on 24 September 2020. The aforesaid order does not even allude to or notice the original applications which had been made on 15 February 2018. We also take note of the fact that the filing of the original application on 15 February 2018 is not disputed by the respondents. In view of the aforesaid and the clear stipulations contained in the 2019 Guidelines, it would be the erstwhile compounding guidelines which would apply. This since it is the stated case of the respondents that the 2019 Guidelines would have applied only to applications made or received after 17 June 2019.

10. In view of the aforesaid, we allow the instant writ petition and call upon the respondents to compute the compounding charges liable to be paid by the writ petitioner in accordance with the 2014 Guidelines, treating the application to have been first made on 15 February 2018.

11. Subject to the aforesaid computation exercise being completed and the petitioner depositing the compounding charges, the application may be processed further and disposed of in accordance with law.

12. In case there be any challenge which the petitioner may be constrained to mount in respect of the amount which may be ultimately computed, we reserve its right to take appropriate action as permissible in law.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 21, 2024/kk