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

% *Date of Decision : 12.12.2024*

+ **W.P.(C) 16701/2024 & CM APPL. 70662/2024**

SUMIT BHARANA

.....Petitioner

Through: Mr. Tanmay Nagar, Mr. Surinder
Sinha & Ms. Shamli Verma,
Advocates.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Ms Saroj Bidawat, SPC for UOI.
Mr Ruchir Bhatia, SSC, Mr Anant
Mann, JSC and Mr Abhishek Anand,
Advocate.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

VIBHU BAKHRU, ACJ. (ORAL)

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 28.05.2024 (hereafter *the impugned order*) rejecting the petitioner's application for compounding of the offences under Section 276B and 278B of the Income Tax Act, 1961 (hereafter *the Act*).

2. The petitioner states that he was a director of the respondent no.5 company at the material time. He had received the show cause notice dated 30.06.2016 under Section 2(35) of the Act for the financial year (FY) 2012-13 and 2013-14, calling upon the petitioner to show cause as to why he should not be considered as the principal officer of the respondent no.5 company and the prosecution under Section 276B of the Act not be launched against him for defaults in depositing the Tax Deducted at Source (TDS).



3. The petitioner responded to the said show cause notice *inter alia*, asserting that the respondent no.5 company had deposited the TDS for the FY 2012-13.

4. The concerned Income Tax Authority passed an order dated 12.07.2016 declaring the petitioner to be the principal officer of respondent no.5 company for FY 2012-13 and 2013-14. Thereafter, the respondents initiated the proceedings for prosecuting the petitioner for default in depositing the TDS for the relevant period.

5. On 18.10.2016, the CC No.541060/2016 captioned *Income Tax Officer v. M/s Adel Landmarks Limited & Others* was filed before the learned ACMM and summons were issued to the respondent no.5 as well as the petitioner in the said case. In the meanwhile, the proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC) commenced in respect of respondent no.5 before the National Company Law Tribunal (NCLT). On 03.02.2019, the learned ACMM (Special Court) framed the charges under Section 276B read with Section 278B and 278E of the Act against the petitioner and respondent no.5. However, thereafter the proceedings in respect of the respondent no.5 were stayed pursuant to the moratorium under the IBC.

6. The petitioner filed an application for compounding of the offences, however the said application was rejected by the impugned order.

7. A plain reading of the impugned order indicates that the same was rejected as the main accused (respondent no.5 – M/s Adel Landmark Limited) had not filed any application for the compounding of the offences



before the competent authority [Chief Commissioner of Income Tax (TDS)] as the said authority was of the view that the petitioner's application for compounding could not be considered on a stand alone basis.

8. The Central Board of Direct Taxes (CBDT) has recently, on 17.10.2024, issued fresh guidelines for compounding of the offences under the Act. It is relevant to refer to paragraph no.11 of the said guidelines, which are reproduced below:-

“11. Co-accused and Abettor-Section 278B (Offences by companies) and Section 278C (Offences by Hindu undivided families)

11.1 Where an offence under this Act has been committed by a Company or HUF as defined in section 278B or 278C of the Act, an application for compounding may be filed separately or conjointly by the main accused i.e., Company, or HUF and/or any of the person(s) deemed to be guilty of the offence under section 278B or 278C of the Act, to be referred as “Co-accused” for the purpose of compounding under these guidelines. The Competent Authority may decide the application accordingly subject to the payment of compounding charges as per these guidelines.

11.2 It is again clarified that in cases of offences by a company or HUF, the main accused or co-accused may apply separately or conjointly. On payment of compounding charges for the offence as determined under these guidelines, by any one of them separately or jointly, the Competent Authority shall compound the offences of the main accused as well as all the co-accused, vide an order u/s 279(2) of the Act.

11.3. For the purpose of depositing compounding charges, co-accused under Section 278B or 278C



of the Act may deposit the charges under his PAN for the relevant financial year of the offence for which compounding is sought.

11.4 In case liability of a company for an offence committed prior to the commencement of the corporate insolvency resolution process ceases due to the provisions of section 32A of the Insolvency Bankruptcy Code (IBC), it is clarified that prosecution proceedings against the co-accused can still continue. In such a case, the compounding application and payment of compounding charges can be made by the co-accused and/or the main accused company.”

9. It is apparent from the above that the co-accused are now entitled to apply separately for compounding of the offences.

10. The learned counsel appearing for the Revenue states on instructions that the impugned order may be set aside and the parties be remanded to the competent authority to consider it afresh in the light of the guidelines dated 17.10.2024. The said course commends to us.

11. We accordingly set aside the impugned order and remand the matter to the competent authority to decide afresh in the light of the current guidelines.

12. The petition is disposed of in the aforesaid terms. Pending application is also disposed of.

VIBHU BAKHRU, ACJ

TUSHAR RAO GEDELA, J

DECEMBER 12, 2024

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Click here to check corrigendum, if any