



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

% Judgement delivered on: 03.09.2025

+ **W.P.(C) 16569/2023 & CM APPL.66783/2023**
SANGEET SETH PETITIONER
versus
CHIEF COMMISSIONER OF INCOME TAX AND ORS.
..... RESPONDENTS

Advocates who appeared in this case

For the Petitioner : Mr. Imran Ali with Ms. Aanchal, Advocate.
For the Respondent : Mr. Sanjay Kumar, Ms. Monica Benjamin,
Ms. Easha Kadian, Advocates

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT

V KAMESWAR RAO, J.

1. This petition has been filed with the following prayers:

*“A) Issue a Writ of Mandamus and/or Certiorari and direct the Respondent No. 1 to pass Compounding Order under Section 279(2) of the Income Tax Act, 1961 in terms of the Letter of Acceptance dated 29.01.2018, and thereby compound the criminal proceedings in CC No. 537821 of 2016 titled as 'Income Tax Office Vs. M/s Velvet Apple Hotel Pvt. Ltd.' pending before the Ld. ACCM (Spl. Acts), Central District, Tis Hazari Courts, Delhi, AND/OR
B) Issue a Writ of Mandamus and/or Certiorari and quash/ set aside the Letter dated 08.02.2019 issued by the office of the Respondent No. 1 since the same is illegal and arbitrary,..”*



2. In effect, the petitioner is seeking directions to the respondent not to pass a compounding order under Section 279(2) of the Income Tax Act, 1961 (the Act) in terms of the Letter of Acceptance dated 29.01.2018, and with a consequential prayer to compound the criminal proceedings in CC No. 537821 of 2016 titled as 'Income Tax Officer vs. M/s Velvet Apple Hotel Pvt. Ltd.' pending before the ACCM (Spl. Acts), Central District, Tis Hazari Courts, Delhi.

3. The facts as noted from the petition and so contended by the learned counsel for the petitioner are that the petitioner had failed to deposit Tax Deducted at Source ('TDS') of ₹ 6,11,820/- for the financial year 2009-10 in the account of the Central Government within the stipulated time period under the Act and deposited the said amount after delay of few months due to certain unavoidable circumstances and financial constraints which then resulted in the criminal prosecution proceedings.

4. According to him, the petitioner herein is the erstwhile director of the company which is now under liquidation and is being treated as the Principal Officer of the company, despite the fact the petitioner was never served with any notice for the same. According to him, for a default of TDS of ₹ 6,11,820/- which the petitioner had already paid a sum of Rs. 18,99,388/- (inclusive of TDS, interest on TDS, compounding charges at the rate of 3%, and penalty amount) till date in due compliance of the Letter of Acceptance for compounding dated 29.01.2018, the respondents are still prosecuting the petitioner. Surprisingly, vide the letter dated 08.02.2019 subsequently issued by the office of the respondent No. 1, the petitioner is being arbitrarily asked to pay further charges @ 5% instead of



3% for the purpose of compounding, which are in fact not payable.

5. He stated that earlier the petitioner had filed an application for similar purpose of compounding the offence of non deposit of TDS amount of ₹6,11,820/-. However, the said application was rejected by the respondent No. 1 vide its order dated 16.02.2016, since the petitioner was unable to deposit the compounding charges within the prescribed time period because of certain financial difficulties, the offence could not be compounded at this time.

6. Subsequently, after becoming financially capable the petitioner preferred another application dated 05.06.2017 for compounding of offence under Section 279(2) of Act (“Second Compounding Application”), which was duly accepted by the respondents vide Letter of Acceptance dated 29.01.2018.

7. He highlighted the fact that as per the guidelines issued by the respondents in the year 2014, since the petitioner had applied for compounding of the first offence but no such offence has been compounded earlier, the respondents could not have claimed compounding charges at 5%. He also stated that compounding charges at 5% would mean that the petitioner has to pay an amount of ₹ 8,22,133/-. The same is sought to be claimed on the ground that the petitioner has furnished wrong information in Column 10 of the Annexure A attached with the compounding application dated 05.06.2017 regarding a previous compounding calculated at the rate of 3%.

8. However, the case of the petitioner is that he had correctly answered



the said column as “no”. Since his first compounding application had infact been rejected and no compounding had taken place with respect to this offence. The respondent no.1 then contended that the compounding charges will be calculated at 5% because the petitioner had applied for compounding for the second time. However, the same is based on a misreading of the guidelines of 2014.

9. He seeks the reliefs as prayed for in the petition. On the other hand, Mr. Sanjay Kumar, learned counsel for the respondents would contest the prayers made in the petition by stating that the petitioner cannot take the benefit of his own wrong, having given false information against Column no. 10, that no application was earlier rejected. The same amounts to concealing information which could have been a relevant consideration for the competent authority in deciding the application.

10. In any case, it is his submission that as per the guidelines issued by the CBDT in the year 2014 which governs the issue in the case, this being the second application, the petitioner shall be liable to pay 5% as compounding charges and as such the claim of 5% of the respondents is justified.

11. He submitted that in any case, the request of compounding is not a matter of right but a discretion of the competent authority. The competent authority initially having exercised the discretion decided not to compound the offence, which was relevant consideration while deciding the second application. As per the guidelines issued by the CBDT, it is clear that for any subsequent application, the applicable rate for compounding will be



5% per month or part of a month of the amount of tax in default. According to him, the second application dated 05.06.2017 was initially wrongly allowed in favour of the petitioner at the rate of 3%, as compounding charges per month instead of 5% as the same is not in accordance with the guidelines. The communication sent thereafter which is impugned is to bring the compounding charges in conformity with the guidelines and as such the present petition filed by the petitioner is totally misconceived.

12. Having heard the learned counsel for the parties and perused the record, the only issue which arises for consideration is whether the respondents are justified in claiming compounding charges at 5% instead of 3% as was communicated to the petitioner initially vide Acceptance Letter dated 29.01.2018.

13. We have noted that the impugned communication dated 08.02.2019 reveals the following-

“ At Col No 1 of Annexure-A the name of Director/principal officer is written as Sangeet Singh, however the Form is verified by Shri Sangeet Seth in the capacity of a Director to this connection you are required to file an explanation regarding furnishing of different facts. You are also required to furnish the name of the co-accused /Principal Officer

2. At Col No. 10 of Annexure-A i.e. whether similar offence in the case of the applicat have been compounded earlier. If yes. how many times- you have written- ‘No’. However, the facts reveals that Acceptance letter was issued vide this office letter F.No.CCIT(TDS)/DLI/Compounding/2014-15/891 dated 19/20.03.2015 and your compounding application filed on 13.11.2014 was rejected due to non-payment of compounding charges Rs. 5,70,047/- vide order u/s 279(2) dated 16.02.2016 for the same financial year. Hence, wrong information were furnished by you in Annexure-A II is your subsequent application for compounding of offence and not the first one.

3. Due to furnishing of wrong information in col. 10 of Annexure-A, the compounding charges communicated to you @ 3% instead of 5%. Now the compounding charges have been calculated @5% which amounts to



Rs. 8,22,133/- The compounding charges already paid by you are of Rs. 4,89,979/-. Hence, the balance compounding charges Rs 3,32,154/- are still to be paid.

In view of the above facts, I am directed to convey you, if you want to get your offence committed u/s 276B & 278B be compounded, you are required to pay the balance compounding charges of Rs. 3,32,154/- within 15 days of receipt of this letter or by 22.02.2019.

I am further directed to request you to make sure that payment of the compounding charges are made against your Tan {DELV091199} and copy of the challan evidencing the payment of the compounding charges is to be furnished in this office on 22.02.2019 to enable this office to pass the order u/s 279(2) of the I.T. Act, 1961 for compounding the offence(s) as requested in your application. You are also directed to pay the outstanding demand, if any. I am further directed to state that in case of non-deposit of compounding charges within the prescribed time, your compounding application is liable to be rejected.”

14. The issue is no more *res intergra* in view of the judgment of this Court in **Maspar Industries Private Limited and Ors Vs. Chief Commissioner of Income Tax TDS and Ors**, Neutral Citation: (2023)333CTR(Del)10, wherein this Court had an occasion to consider Clause 12.1 of the guidelines for compounding of offence under Direct Tax Law, 2014 issued by the Department of Revenue, CBDT, Ministry of Finance, Government of India, dated 23.12.2014. The same reads as under:

“3% per month or part of a month of the amount of tax in default disclosed in the compounding application. After compounding of the said offence, if the same persons comes forward for compounding of such offence through any subsequent application, the applicable rate for compounding of such an offence will be 5% per month or part of a month of the amount of tax in default. The period of default for calculating compounding fee in the category shall be calculated from the date of deduction to the date of deposit of tax deducted at source as is done in respect of calculating interest under Section 201(1A). ”

15. This Court while interpreting the said stipulation made it clear under what circumstances the compounding charges will be 5% instead of 3%. We reproduce the same as under:



“This Court is of the opinion that the guidelines issued by the CBDT clearly stipulate that after compounding of the first offence, if the same person comes forward for compounding of another offence through any subsequent application, the applicable rate will be five percent instead of three percent. The Court is also of the view that the expression “after compounding of the said offence” means when the offence has been compounded, meaning thereby, not only the stage after the compounding order has been passed but also after the conditions stipulated in the said order have been complied with like payments. In fact, there is a rationale behind imposing a higher rate for subsequent offences as the respondents want to incentivize compliance and want the public to deduct TDS and pay to the Government ”

16. A reading of the aforesaid paragraph clearly reveals that 5% is only chargeable when the earlier offence has been compounded. This means that the compounding order should have been passed, and also the conditions stipulated in the said order should have been complied with (like payments), for the respondents to claim 5% charges on the second application, which necessarily has to be for a second offence.

17. As observed by this Court, the rationale behind imposing a higher rate for subsequent offences is to incentivise compliance and encourage the public to deduct TDS and make payments. In the present case, the case of the petitioner is that since the first application was rejected vide communication dated 16.02.2016, there is no question of a compounding order being passed or any payments thereof.

18. It is only in the eventuality that the application had been allowed, the offence was compounded and the charges applicable @ 3% was deposited, and the second application is for the purpose of a further offence, that 5% would become applicable. It is not such a case herein.

19. Hence, we are of the view that the submission made by learned



counsel for the petitioner is to be accepted. The letter dated 08.02.2019 is set aside.

20. In view of our decision, the respondents shall proceed in accordance with law, with regard to the compounding application and the criminal proceedings.

21. The petition is accordingly disposed of.

22. The pending application(s) having become infructuous, is dismissed.

V. KAMESWAR RAO, J

VINOD KUMAR, J

SEPTEMBER 03, 2025

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