

\$~116-118

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

116

+ W.P.(C) 6634/2022 & CM APPLs.20147-20148/2022  
M/S MASPAR INDUSTRIES PRIVATE LIMITED & ORS.

..... Petitioners

Through: Mr. Ramesh Singh, Sr. Advocate with  
Mr. Saurabh Chaudhary and  
Ms. Anne, Advocates.

Versus

CHIEF COMMISSIONER OF INCOME TAX TDS & ANR.

..... Respondents

Through: Mr. Zoheb Hossain, Sr. Standing  
Counsel with Mr. Vipul Agarwal and  
Mr. Parth Semwal, Advocates.

117

+ W.P.(C) 6635/2022 & CM APPLs.20149-20150/2022  
M/S MASPAR INDUSTRIES PRIVATE LIMITED & ORS.

..... Petitioners

Through: Mr. Ramesh Singh, Sr. Advocate with  
Mr. Saurabh Chaudhary and  
Ms. Anne, Advocates.

Versus

CHIEF COMMISSIONER OF INCOME TAX TDS & ANR.

..... Respondents

Through: Mr. Zoheb Hossain, Sr. Standing  
Counsel with Mr. Vipul Agarwal and  
Mr. Parth Semwal, Advocates.

118

+ W.P.(C) 6636/2022 & CM APPLs.20151-20152/2022  
M/S MASPAR INDUSTRIES PRIVATE LIMITED & ORS.

..... Petitioners

Through: Mr. Ramesh Singh, Sr. Advocate with  
Mr. Saurabh Chaudhary and  
Ms. Anne, Advocates.

Versus

CHIEF COMMISSIONER OF INCOME TAX (TDS) & ANR.

..... Respondents

Through: Mr. Zoheb Hossain, Sr. Standing  
Counsel with Mr. Vipul Agarwal and  
Mr. Parth Semwal, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

**HON'BLE MR. JUSTICE DINESH KUMAR SHARMA**

**ORDER**

%

**27.04.2022**

Present writ petitions have been filed challenging the orders dated 11<sup>th</sup> February, 2022 passed by the Respondent No.1, Chief Commissioner of Income Tax (TDS) and the Orders dated 31<sup>st</sup> July, 2017 under Section 2 (35) of the Income Tax Act, 1961 (for short 'Act') pertaining to the Financial Years 2013-14, 2014-15 and 2015-16 passed by the Respondent No.2, Assistant Commissioner of Income Tax, Circle 75 (1), Delhi.

Mr.Ramesh Singh, learned senior counsel for the Petitioners states that Respondent No.1 vide impugned order has compounded the offences pertaining to late deposit of Tax Deducted at Source (TDS) committed by the Petitioners herein under Section 279(2) of the Act at the rate of five per cent compounding charges. He states that levying compounding charges at

the rate of five per cent instead of the usual rate i.e., three per cent is in contravention of the Circular dated 23<sup>rd</sup> December, 2014 issued by the Department of Revenue, Central Board of Direct Taxes, Ministry of Finance, Government of India.

Learned senior counsel for the Petitioners states that Respondent No.1 had imposed a higher rate since it has treated the proceeding as a second compounding application, which is unsustainable since the Petitioners had preferred only a single compounding application in respect of each of the three Financial Years. He states that the higher rate of five per cent could be levied only if the petitioner did not comply with the conditions mentioned in the compounding order and filed a second compounding application with regard to the same financial year.

Learned senior counsel for the petitioners further states that the impugned order imposes compounding fee at the rate of ten per cent of the compounding charges payable by the main accused i.e., Petitioner No.1 Company on Petitioner Nos. 2 to 5 instead of just confining it to Mr. Rakesh Kumar by treating him as Principal Officer of the Petitioner No.1 Company for the Financial Years 2013-14, 2014-15 and 2015-16. He points out that it was only Mr. Rakesh Kumar, who was the Principal Officer of Petitioner No.1 Company in terms of Section 2(35) of the Act and, therefore, the only person who was in charge of and responsible to Petitioner No.1 Company in terms of Section 278B of the Act.

Learned senior counsel for the petitioners emphasises that the impugned compounding order pertaining to the Financial Years 2013-14, 2014-15 and 2015-16 is completely at variance with the compounding order

for the Financial Year 2012-13 thereby making the impugned order arbitrary and unsustainable.

*Per contra*, Mr. Zoheb Hossain, learned counsel for the respondents-revenue has drawn this Court's attention to Clause 12.1 of the Guidelines for Compounding of Offences under Direct Tax Laws, 2014 issued by the Department of Revenue, Central Board of Direct Taxes, Ministry of Finance, Government of India, dated 23<sup>rd</sup> December, 2014. The relevant portion of Clause 12.1 reads as under :-

**“12.1 Section 276B- Failure to pay the tax deducted at source.**

**Section 276BB- Failure to pay the tax collected at source.**

*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 person 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).”*

He states that in the present case, in accordance with the aforesaid clause, the petitioners' first compounding application for the Financial Year 2012-13 was allowed at the rate of three per cent and the subsequent applications for compounding were allowed at the rate of five per cent per month.

Mr. Hossain, learned counsel for the Revenue, further states that he needs some time to obtain instructions as to why ten per cent compounding charge has not been levied on the main accused i.e., Mr. Rakesh Kumar alone.

Having heard learned counsel for the parties, this Court is of the view that compounding of offences cannot be taken as the matter of right. It is for the law and authorities to determine as to what kind of offences should be compounded, if at all, and under what conditions. (*See: Vikram Singh vs. Union of India & Ors. (2018) 401 ITR 307*)

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 per cent instead of three per cent. This 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.

Since, in the present case, the petitioners company is a ‘repeat offender’, this Court is of the view that the respondents are entitled in law to impose a higher compounding fee i.e. five per cent instead of three per cent. Accordingly, the first submission advanced by learned senior counsel for the petitioner is rejected.

However, as regards the second submission that compounding fee is payable only by the main accused by treating Mr. Rakesh Kumar as the Principle Officer instead of all the Directors of the petitioners, this Court is of the view that matter requires examination especially in view of the fact that in the Year 2012-13 the compounding fee was levied only on one Director (Mr. Aman Gulati) and not on the other Directors.

This Court is also of the view that if the Chartered Accountant who had represented the petitioner before the Commissioner did not have a power of attorney or a vakalatnama in his favour at the time when he had filed the written submission, the Commissioner should have given time to the authorized representative to file the power of attorney/Vakalatnama instead of levying the compounding charge on all the Directors.

To await instructions, list on 18<sup>th</sup> May, 2022.

In the mean time, the petitioners are directed to pay compounding charge, as mentioned in the order dated 11<sup>th</sup> February, 2022, within two weeks, except the amounts mentioned qua Mr. Aman Gulati, Sh. Abhinav Mahajan, Sh. Rajesh Mahajan and Sh. Pranab Mahajan.

**MANMOHAN, J**

**DINESH KUMAR SHARMA, J**

**APRIL 27, 2022**  
**AS**