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

+ W.P.(C) 8577/2019

VARUN SOOD

..... Petitioner

Through: Mr. Sachit Jolly, Mr. Rishabh Malhotra, Ms. Disha Jham and Mr. Devansh Jain, Advs.

versus

ASST. COMMISSIONER OF INCOME TAX CIRCLE - 74(1),
NEW DELHI & ANR. Respondents

Through: Mr. Puneet Rai, Mr. Ashvini Kumar and Mr. Rishabh Nangia, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

15.02.2024

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1. The petitioner has approached this Court assailing the impugned order dated 20 June 2019 as well as a corrigendum dated 24 July 2019 passed by the first respondent holding the petitioner as the “Principal Officer” of the company for the purposes of initiating prosecution under Section 276B of the Income Tax Act, 1961 [“Act”].

2. When the writ petition was originally entertained on 07 August 2019, the Court had passed an interim direction staying the operation of the impugned orders referred to above. The petitioner, thereafter was issued a further communication dated 08 August 2019 holding him to be the “Principal Officer”. The communication dated 08 August 2019 was stayed by the Court by its order dated 21 August 2019. During the pendency thereof, a subsequent show cause notice



also came to be issued on 30 September 2019 under Section 279(1) read with Section 276B(a) of the Act. The Court while considering CM Appl. No. 44757/2019 on 11 October 2019 restrained the respondents from taking further action. It is these interim orders which have continued upon the writ petition.

3. For the purpose of adjudication of the present petition we deem it apposite to notice the following facts. The petitioner was appointed as the Chief Executive Officer [“CEO”] of M/s Healthfore Technologies Ltd. on 01 January 2016. The petitioner is thereafter stated to have been appointed as its Managing Director [“MD”] on 02 May 2017. He asserts that he resigned from the position of MD on 01 March 2018. It is further alleged that although he held the office of CEO and MD, he was not in charge of any finance or tax related matters pertaining to the company in question.

4. On 11 December 2018, the petitioner was served with the first of the various show cause notices referred to above, treating him to be the “Principal Officer” and asking him to show cause in respect of a default by the company to deposit TDS for Financial Years [“FY”] 2016-17 and 2017-18 within the stipulated statutory period.

5. The petitioner responding to the said notice on 19 December 2018 pointed out that he was appointed as the MD only on 02 May 2017 and had resigned from that post on 02 March 2018. In view of the aforesaid, it was asserted that he could not be possibly held to be the person responsible for FY 2016-17 at least. Insofar as the other FY in question is concerned, it was submitted that he was not connected with or in charge of the accounting or financing activities pertaining to the company in question and therefore the respondents had illegally treated him to be the “Principal Officer”.

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6. Originally, the order of 20 June 2019 passed by the respondents had proceeded on the basis that no reply had been submitted. However, when it was pointed out that this stand would be factually incorrect, a corrigendum came to be issued on 24 July 2019 and where ultimately the respondents held as follows: -

“Please refer to the order u/s 2(35) of the I.T.Act,1961/248 dated 20.06.2019.

It has come to the notice of the undersigned that the above order mentioned in para 4 of page no. 1, *"In response to the show cause nobody appeared and no reply submitted"* and declared **Sh. Varun Sood**, to be the **"Principal Officer"** within the meaning of sub-section 35 of section 2 of the Act being connected with management or administration of the deductor assessee (company) for the purpose of initiation of the proceedings as per the provisions of Section 276B of the IT Act, 1961 against the assessee deductor. However, the reply was submitted by Sh. Varun Sood dated 19.12.2018, 26.06.2019, 12.07.2019 & 16.07.2019 and the same have been considered. It is found that he joined as CEO from January 2016 and assumed the role of Managing Director from May, 2017 of Mis Healthfore Technologies Ltd.

As per clause (b) of section 2(35) of I. T. Act, 1961 any person connected with the management or administration of the company, upon whom the Assessing Officer has served a notice of his intention of treating him as the principal officer can be held as principal officer. **Sh. Varun Sood, Managing Director** is the Director of the company. All major decisions are taken in the company under his consent. In this capacity he is certainly associated with management and administration of the company. The company has been involved in TDS default by not depositing TDS within the prescribed time period. Thus **Sh. Varun Sood, Managing Director** is the responsible person for the purpose of deduction and deposition of TDS in Govt. Account.

In view of the foregoing, he is held to be the **"Principal Officer"** within the meaning of sub-section 35 of section 2 of the Act being connected with management or administration of the deductor assessee (company) for the purpose of **initiation of the proceedings as per the provisions of Section 276B of the IT Act, 1961** against the assessee deductor.”

7. As is manifest from a reading of the impugned orders, especially the corrigendum dated 24 July 2019, the respondents appear

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to have proceeded on the assumption that any person who has been served a notice embodying an intent to treat that person as a “Principal Officer” would be sufficient for the purposes of Section 2(35) of the Act.

8. It becomes pertinent to note that Section 2(35) is framed in the following terms: -

“2. Definitions.—In this Act, unless the context otherwise requires,—

(35) “principal officer”, used with reference to a local authority or a company or any other public body or any association of persons or any body of individuals, means—

(a) the secretary, treasurer, manager or agent of the authority, company, association or body, or

(b) any person connected with the management or administration of the local authority, company, association or body upon whom the Assessing Officer has served a notice of his intention of treating him as the principal officer thereof;”

9. As is evident from a reading of that provision, clause (a), insofar as a company is concerned provides that the Secretary, Treasurer, Manager, or Agent thereof would be liable to be treated as the “Principal Officer”. Clause (b), however, speaks of a person connected with the management or administration of the company being liable to be treated as the “Principal Officer”.

10. In our considered opinion merely because a person holds an office in a corporate entity would not be sufficient to place that individual in clause (b). The intention of the respondent to treat an individual as the “Principal Officer” must be based on it being satisfied that the person was connected with the management or administration of the company.

11. While the respondents have referred to additional material in



the counter affidavit and which clearly does not find notice or mention in the impugned orders in support of their contention that the petitioner was correctly identified as the “Principal Officer”, we find that those averments and assertions clearly travel far beyond what was alleged and asserted in the notices issued originally.

12. It is in the aforesaid backdrop that Mr. Jolly draws our attention to the language employed in Section 2(35)(b) of the Act and Section 141 of the Negotiable Instruments Act, 1881, to contend that while construing *pari materia* provisions, the Supreme Court has clearly held that for the purposes of an individual being tried, it is mandatory for the respondents to establish that the person was in fact connected with the management and administration of the company. Mr. Jolly sought to draw sustenance for the aforesaid submission from the judgment of the Supreme Court in **KPG Nair vs. Jindal Menthol India Ltd.** [(2001) 10 SCC 218] wherein the following was observed:

“8. From a perusal of Section 141, it is evident that in a case where a company committed offence under Section 138 then not only the company but also every person who at the time when the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company shall be deemed to be guilty of the offence and liable to be proceeded against and punished accordingly. It follows that a person other than the company can be proceeded against under those provisions only if that person was in charge of and was responsible to the company for the conduct of its business.”

13. Our attention was also drawn to the judgment rendered by the Karnataka High Court in a **A. Harish Bhat vs. Assistant Commissioner of Income Tax** [2019 SCC OnLine Kar 3998] where the following important observations came to be rendered:-

“It is clear that to treat any person as a Principal Officer, such person should be connected with the management or administration of the local authority/company or association or body. Such connection with the management or administration is the basis for



treating any person as a Principal Officer. Such connection has to be established or to be supported with substantial material to decide the connection of any person with the management or administration. Without disclosing the basis, no person can be treated as a 'Principal Officer' of the company recognising him as the Key Management Personnel of the company. The details of such information on the basis of which the Key Management Personnel tag is made, has to be explicitly expressed in the notice of the intention of treating any person as a Principal Officer by the AO. Neither in the show-cause notice nor in the order impugned, such connection of the petitioner with the management or administration of the company M/s Kingfisher Airlines Ltd. is established. The phrase 'Key management personnel' of the company has a wide connotation and the same has to be supported with certain material unless such connection is established, no notice served on the petitioner would empower the respondent authority to treat the petitioner as a Principal Officer."

14. In view of the aforesaid, we find ourselves unable to sustain the view as expressed by the respondents in the impugned order dated 20 June 2019, the corrigendum dated 24 July 2019 as well as the subsequent communications dated 08 August 2019 and 30 September 2019. In our considered opinion, the respondents would have to examine the issue afresh bearing in mind the response which had been submitted by the petitioner and upon due inquiry being made with respect to whether the petitioner could be said to be a person connected with the management or administration of the company in question. The answer to the question which stands posited in the backdrop of Section 2(35) would have to be examined afresh and in light of the observations appearing hereinabove.

15. We accordingly allow the instant with petition and set aside the impugned order dated 20 June 2019 as well as the corrigendum dated 24 July 2019. The matter shall stand revived from the stage of issuance of a notice under Section 2(35) of the Act and the same may be finalized upon affording due opportunity of hearing to the

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petitioner.

16. The interim stay on prosecution and consequential proceedings shall continue subject to the final decision that the respondent shall now take pursuant to the directions framed hereinabove.

YASHWANT VARMA, J.

PURUSHAINDR KUMAR KAURAV, J.
FEBRUARY 15, 2024/neha

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