

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (LODGING) NO.35424 OF 2022

Hemant Nevandram Lalwani and Anr.

.. Petitioners

Vs.

Income Tax Officer (TDS)-1(3)(4), Mumbai & Ors.

.. Respondents

Mr. Shyam Walve, with Mr. Ninad Muzumdar and Ms. Amrita Saldanha, for
the Petitioners.

Mr. Suresh Kumar for the Respondents.

**CORAM : DHIRAJ SINGH THAKUR &
VALMIKI SA MENEZES, JJ.**

DATE : 28TH NOVEMBER, 2022.

P.C. :

1. A complaint u/s. 276B, r/w. section 278B of the Income Tax Act, 1961, relevant to the Financial Year 2016-17, has been filed and is pending before the Court of learned Additional Chief Metropolitan Magistrate's 38th Court at Mumbai. The said complaint has been filed against the company-Manik Industries, Mumbai and its Directors for their failure to deposit the Tax Deducted at Source, which was their obligation in terms of Section 204 of the Act. Failure to deposit the tax deducted at source entails prosecution in terms of section 276B, r/w. section 278B of the Act. However, the said offence can be compounded. Section 279(2) of the Act envisages compounding of such an offence by way of an application to be filed any time before or after institution of the proceedings before the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General.

2. The petitioners' case is that they have since filed an application, which is pending before the appropriate authority since 14th January 2020, on which no action has been taken till date; neither any reasons communicated to the petitioners. In the meantime, it is stated that the court below is proceeding with the matter and has issuedailable warrants.

3. Issue notice to the respondents. Mr. Suresh Kumar waives notice on behalf of the respondents.

4. Time is sought to file affidavit-in-reply; however, we feel that, considering the nature of the controversy, interest of justice would be best served by directing respondent no.3-Chief Commissioner of Income Tax-TDS or any other authority competent to decide the application, u/s. 279 of the Act, filed by the petitioners on merits within a period of three months from today and not later than 27th February 2023.

5. Till then, the proceedings pending before the trial court shall remain stayed.

6. Petition is disposed of in the above terms.

[VALMIKI SA MENEZES, J.]

[DHIRAJ SINGH THAKUR, J.]