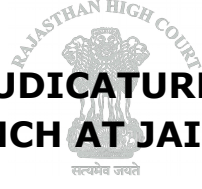




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D.B. Civil Writ Petition No. 11431/2018

1. M/s Fortune Infovision Pvt. Ltd., 452, Gali No. 03, Raja Park, Jaipur Through Abhishek Ghai, Principal Officer And Director Of The Company.
2. Sh. Abhishek Ghai, Director M/s Fortune Infovision Pvt. Ltd., 4, Jawahar Nagar, Jaipur.
3. Sh. Rohit Ghai, Director M/s Fortune Infovision Pvt. Ltd., 4, Jawahar Nagar, Jaipur,.
4. Ms. Pooja Mangla, Director M/s Fortune Infovision Pvt. Ltd., 28, Mayur Vihar, Mathura U.p..

----Petitioners

Versus

1. Commissioner, Of Income Tax, TDS, Jaipur, Ncr Building, Statue Circle-Scheme, Jaipur
2. The Income Tax Officer, TDS-2, Jaipur.

----Respondents

For Petitioner(s) : Mr. P.K. Kasliwal with
Mr. Priyesh Kasliwal
For Respondent(s) : Mr. Shantanu Sharma with
Mr. Parth Vashishtha

**HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MR. JUSTICE MANEESH SHARMA**

Order

18/03/2025

AVNEESH JHINGAN, J. (ORAL)

1. This writ petition is filed challenging order for sanctioning of prosecution proceedings for liability of Rs.79,893/-.
2. The brief facts of the case are that the petitioner No.1 for the assessment year 2014-15 was liable to deduct for Tax Deduction at Source (T.D.S.) from the payments made to the other companies and to deposit it. There was a delay in deposit of the T.D.S., but was deposited alongwith 18% interest after a delay upto ten months. The notice dated 23.02.2018 issued



under Section 279(1) of the Income Tax Act, 1961 (for short 'the Act of 1961'), was responded to the petitioner-company. It was stated that the business activity of the petitioner No.1 relates to e-commerce transactions and due to delay on the part of the companies like Amazon, Naaptol & Ebay etc. in submitting the bills by which T.D.S. to be deducted could be quantified.

2.1 The Commissioner, Income Tax (T.D.S.), Jaipur passed impugned order was granting sanction to prosecute petitioner No.1 and directors of company. Reliance was place upon the decision of the Supreme Court in the case of **Madhumilan Syntex Ltd. & Ors. versus Union of India & Ors.** reported in **(2007) 11 SCC 297**, to hold that in case of failure to comply with the procedures stipulated in the statute, appropriate action can be taken under the Act.

3. There cannot be a quarrel with the proposition that penal proceedings cannot be initiated merely because it is lawful to do so, unless the conduct of the assessee is malicious or contumacious. Reference be made to the decision of the Supreme Court in the case of **Hindustan Steel Ltd. versus State of Orissa** reported in **(1969) 2 SCC 627**.

4. This petition is pending since year 2018 and the interim protection was granted in favour of the petitioners and there is no prosecution launched till date. Even otherwise, the explanation given by the petitioners was neither doubted nor rejected. The case in hand is not of TDS not being deducted and deposited. It is undisputed that before issuance of show cause notice, the T.D.S. was deposited voluntarily by the petitioner-company along with the interest. The delayed compliance of provision of deducting and depositing TDS stand alone shall not suffice for grant of prosecution sanction.



5. In the facts & circumstances, no case is made out for prosecution against the petitioner. Accordingly, the impugned order is set aside. The present writ petition is allowed.

(MANEESH SHARMA),J

(AVNEESH JHINGAN),J

SAHIL SONI /185

Whether Reportable: Yes