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IN THE HIGH COURT OF DELHI: NEW DELHI

\+ **CRL. A. No.117/2011**

% Judgment delivered on 8th February, 2011

INCOME TAX OFFICER ..... APPELLANT

Through: Mr. Sanjeev Rajpal, Adv.

Versus

M/s. DELHI IRON WORKS (PVT.) LTD. ..... RESPONDENT

Through: Ex-parte

A.K. PATHAK, J.(ORAL)

For orders see Crl. A. No. 109/2011.

A.K. PATHAK, J.

FEBRUARY 08, 2011
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IN THE HIGH COURT OF DELHI: NEW DELHI

+ CRL. A. No.109/2011,CRL. A. No.110/2011
CRL. A. No.111/2011,CRL. A. No.112/2011
CRL. A. No.113/2011,CRL. A. No.114/2011
CRL. A. No.115/2011,CRL. A. No.116/2011
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Coram:
HON'BLE MR. JUSTICE A.K. PATHAK

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? Yes

A.K. PATHAK, J.(ORAL)

1. All the above Appeals are being disposed of together as not only the facts, but question of law raised therein is same.

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2. Respondent is a private limited company. Appellant filed nine complaints before the Additional Chief Metropolitan Magistrate (ACMM) praying therein that the respondent be summoned, tried and punished for the offence under Section 276-B of the Income Tax Act, 1961 (for short hereinafter referred to as "the Act"). Shri R.K. Das and Shri S.K. Das, Directors of the respondent were also arrayed as accused on the allegation that they being "Principal Officers" of the respondent were also liable to deduct and deposit the tax from the interest paid to different companies. In nutshell, it was alleged that the respondent and its Principal Officers had failed to deduct the tax at source (TDS) from the interest paid to M/s. Bhanamal & Co. (P) Ltd., M/s. Banwari Lal & Sons (P) Ltd. and M/s. Bhanamal Gulzari Mal (P) Ltd., and deposit the same with the Income Tax Department, within the prescribed period, thus, had committed offence punishable under Section 276-B of the Act.

3. After the trial, respondent had been convicted under Section 276-B of the Act by the ACMM in all the cases. Shri R.K. Das expired during the trial and proceedings against him stood abated. So far as Shri S.K. Das is concerned, he was acquitted on the technical ground of non-compliance of Section 2(35) of the Act. It was held that since no notice as

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envisaged under Section 2 (35) of the Act treating him as "Principal Officer" had been served upon him for launching the prosecution under Section 276-B of the Act, he cannot be convicted.

4. Respondent preferred Criminal Appeals before the Additional Sessions Judge, Delhi thereby challenging its conviction under Section 276-B of the Act, which have been allowed by the orders impugned in these Appeals. Respondent has been acquitted of the charge under Section 276-B of the Act on the ground that since notices qua the Director had been held defective, respondent can also not be convicted. It was further held that since no Individual Officer of respondent was held responsible for deduction of the tax and its deposit with the department within the prescribed period, respondent being a legal entity managed by its officers cannot be held responsible, consequently, respondent has been acquitted.

5. For the reasons to be detailed hereafter, I am of the view that Additional Sessions Judge was not right in acquitting the respondent merely because its Director Shri S.K. Das had been acquitted by the Trial Court on the ground of non compliance of Section 2(35) of the Act.

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6. At this stage, relevant it would be to refer to Section 194-A of the Act which reads as under:

> "**194-A. Interest other than "Interest on securities"**.-(1)Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than income {by way of interest on securities}, shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or y issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force:
>
> Provided that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (*a*) or clause (*b*) of section 44AB during the financial year immediately preceding the financial year in which such interest is credited or paid, shall be liable to deduct income-tax under this section.
>
> *Explanation.*—For the purposes of this section, where any income by way of interest as aforesaid is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.
>
> (3) xxxxxxxxxxxxxx
>
> (4) The person responsible for making the payment referred to in sub-section (1) may, at the time of making any deduction, increase or reduce the amount to be deducted under this section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct during the financial year."

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7. A perusal of the aforesaid provision clearly shows that it mandates the deduction of tax at source on the credit or payment of interest other than "interest on securities". Section 194-A (4) uses the expression "person responsible for making the payment".

8. Chapter XXII of the Act relates to offences and prosecutions. Any contravention of Section 194-A attracts penal consequences as envisaged under Section 276-B of the Act which reads as under:-

> "276-B. Failure to pay the tax deducted at source.- If a person fails to pay to the credit of the Central Government, the tax deducted at source by him as required by or under the provisions of Chapter XVII-B, he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine."

9. Section 278-B covered cases where offences were committed by Companies. The section reads as under:-

> "278-B. Offences by companies.-(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

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> Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.
>
> (2) xxxxxxxxxxxxxxxxxxxx"
>
> (emphasis supplied)

10. The expression "person responsible for paying" has been defined in Section 204 of the Act, which reads as under:-

> "Section 204: Meaning of "Person responsible for paying"-
>
> For the purposes of sections 192 to 194, section 194A, section 194B, section 194BB, section 194C, section 194D, section 194E, section 194EE, section 194F, section 194G, section 194H, section 194-I, section 194J and section 194K, 194L sections 195 to 203 and section 285, the expression "person responsible for paying" means –
>
> (i) In the case of payment of income chargeable under the head "Salaries" other than payments by the Central Government or the Government of a State, the employer himself or, if the employer is a company, the company itself, including the principal officer thereof;
>
> (ii) In the case of payments of income chargeable under the head "Interest on securities" other than payments made by or on behalf of the Central Government or the Government of a State; the local authority, corporation or company, including the principal officer thereof;
>
> (iia) In the case of any sum payable to a non-resident Indian, being any sum

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representing consideration for the transfer by him of any foreign exchange asset, which is not a short-term capital asset, the authorised dealer responsible for remitting such sum to the non-resident Indian or for crediting such sum to his Non-resident (External) Account maintained in accordance with the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder;

(iii) In the case of credit, or, as the case may be, payment of any other sum chargeable under the provisions of this Act, the payer himself, or, if the payer is a company, the company itself including the principal officer thereof."

(emphasis supplied)

11. A conjoint reading of Sections 194-A (4) and 204(iii) of the Act makes it clear that in case of a company, the company itself, including the "Principal Officer" of the company would be responsible to deduct the tax at source and deposit the same with the department. In case of contravention of Section 194-A company itself besides it "Principal Officer" would be liable for prosecution.

12. Section 2(35) of the Act defines "Principal Officer". The Secretary, Manager, Treasurer or Agent of a company are "Principal Officer" in terms of Section 2(35)(a) of the Act. Apart from them, any other person connected with the management or administration of a company to whom notice is served by the assessing officer treating him as the

"Principal Officer" would also fall within the ambit of definition of "Principal Officer" in view of Section 2(35)(b) of the Act. Thus, if the Income Tax Officer seeks to prosecute the Director along with the company for an offence punishable under Section 276-B of the Act, then he has to issue a notice under Section 2(35)(b) of the Act to such Director expressing his intention to treat him as "Principal Officer" of the company.

13. In this case, Director Sh. S.K. Das was arrayed as an accused in the capacity of "Principal Officer" of the company but without issuing any notice under Section 2(35) of the Act. Even in the notice issued to the company it was not mentioned that the department intended to treat Shri S.K. Das as "Principal Officer" of the company. Only for this reason, Shri S.K. Das had been acquitted treating the notice issued to the company as defective qua Shri S.K. Das. That would not mean that respondent could also have been acquitted.

14. A company is not a natural person but "legal" or "juristic" person. But that would not mean that it is not liable to prosecution under the Act. In **Standard Chartered Bank vs. Directorate of Enforcement (2005) 8 SCC 530**,

Supreme Court held that juristic person is also subject to criminal liability under the relevant law. Only thing is that in case of substantive sentence, the order is not enforceable and juristic person cannot be ordered to suffer imprisonment. Other consequences, however, would ensue, that is, payment of fine etc. Accordingly, in my view Additional Sessions Judge was not right in holding that since Director of the company had been acquitted for non-service of notice under Section 2(35) of the Act, respondent was also entitled to acquittal.

15. In **Greatway (P) Ltd. & Ors. Vs. Asstt. CIT [1993] 199 ITR 391(P&H)**, Punjab & Haryana High Court has held that in the absence of appointment of a "Principal Officer" by issuing a notice by the department, the prosecution, if any, could only be launched against the company.

16. For the foregoing reasons, I am of the view that Additional Sessions Judge has committed an illegality by holding that respondent company was entitled to acquittal for the offence punishable under Section 276-B of the Act since its Director Shri S.K. Das had been acquitted for non-compliance of notice under Section 2(35) of the Act. Impugned order is set aside and the orders of conviction and sentence passed by the ACMM-02 (North) Delhi are restored.

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17. Appeals are disposed of in the above terms.

A.K. PATHAK, J.

FEBRUARY 08, 2011
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