

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.533 of 2007

ORDER:-

This revision case is directed against the orders of the learned Special Judge for Economic Offences, Hyderabad, in CrI.M.P.No.99 of 2007 in C.C.No.10 of 2006, dated 28-02-2007, under Section 239 Cr.P.C., for discharging them of the offences alleged under Sections 276-C, 276 and 278-B of the Income-Tax Act (for short 'the Act').

2. During the pendency of the proceedings, the 2nd petitioner/A.2 died. Petitioner/A.1 is the Company and 3rd petitioner/A.3 is its Chairman.

3. The respondent/the Assist Commissioner of Income-tax, Circle-II(3), Hyderabad, filed the complaint alleging that the petitioners/accused have wilfully attempted to evade the payment of income-tax, by knowingly making an incorrect claim of depreciation of Rs.19,80,000/- on non-existing assets viz., Solar Equipment worth Rs.39,60,000/- and the show cause notices were issued to the accused Company and its Directors and they were also given an opportunity of being heard. The explanations given by them do not bring any material to show that there was no wilful attempt on their part to evade the tax; on the other hand it clearly shows that the accused Company and its Directors with an intention to evade tax, submitted a false return and the same was signed and verified by Sri Satyanarayana. As a matter of fact, the return filed by the accused Company on 30-11-1995 was accepted by the Department under Section 143(1)(a) of the Act and virtually the assessment has become final and the attempt of the assessee to evade the payment of tax on the sum claimed as depreciation knowingly and incorrectly has succeeded. However, on account of

certain investigations by the Income Tax Department the fact relating to non-existence of the assets and incorrectness of the depreciation claimed by the accused was detected. Thereafter the accused Company was constrained to file a second return withdrawing the claim of depreciation of the non-existing assets claimed earlier. Further the said second return was not a valid one under the law and subsequently the Assessing Officer reopened the assessment and brought the income to tax on which the accused Company evaded the payment of tax in the original return. Thus, the above acts of the assessee Company show wilful attempt on its part to evade the tax. As such the accused Company has committed offence punishable under Section 276-C of the Act.

That A.2 – C.Satyanarayana made a false verification on 30-11-1995 in the return of income. He knew the declaration to be false and by falsely verifying the return thus committed an offence under Section 277 of the Act.

That A.2 – C.Satyanarayana and ac – G.Nagabhushana Rao, being Managing Director and Chairman (Director) respectively, have overall control over the affairs of the Company. They had decision making authority for the financial matters and were responsible for conducting the business of the accused Company. They had certified the annual accounts of the accused No.1 on 04-09-1995 knowing fully well that the alleged solar equipment worth Rs.39,60,000/- did not exist, but still included it in the Fixed Assets leading the claim of depreciation of non-existing assets. Therefore, they are liable to be punished under Section 278-B read with Section 276C of the Act, for the offences committed by the Company.

4. The contention of the petitioners/accused is that the income-tax returns for the year 1995-96 was filed by showing the NIL

income, that during the said year, the petitioners' Company had erected the solar water heating equipment by spending an amount of Rs.44,42,129/-, that in the return filed on 30-11-1995, the Company claimed depreciation and therefore the income was shown as NIL. The said return was accepted and subsequently on coming to know the correct position of law and on the advice of the Chartered Accountant, a revised return was filed and a tax of Rs.4,77,513/- was paid after claiming various deductions. The Income-tax Department has accepted the revised return and the assessment order was passed. The Income-tax Department initiated penalty proceedings and levied a sum of Rs.9,10,800/- as penalty by the order of the Assessment Officer dated 15-03-2001. The Company preferred an appeal before the Commissioner of Income-tax which was dismissed. They also filed an appeal before the Income-tax Appellate Tribunal, Hyderabad, which was also dismissed. Thereafter, the petitioners approached the High Court of Andhra Pradesh by filing ITT Appeal No.230 of 2005. Pending of the proceedings, the respondent/complainant initiated criminal proceedings against the petitioners/accused alleging that they have wilfully evaded the tax.

5. It is further submitted that by Judgment, dated 06-12-2007, a Division Bench of the High Court allowed the ITT Appeal by setting aside the penalty proceedings. In view of the said orders of the Division Bench and in view of the well settled legal position that all the penalty proceedings have been set aside, continuing the criminal prosecution cannot be allowed. In support of this contention, learned Counsel appearing for the petitioners/accused relied upon several decisions of different High Courts, in which it is consistently held that penalty based on the alleged concealment of income or attempt to evade tax if set aside by the competent

authority, criminal prosecution on the alleged evasion or wilful attempt to evade tax cannot be sustained. Suffice it, however, to refer to a decision of the Supreme Court reported in **K.C.BUILDERS AND ANR. V. THE ASSISTANT COMMISSIONER OF INCOME-TAX (2004) 2 SCC, 731**). The Supreme Court in the said decision laid down that once penalties imposed on the assessee under Section 271(1)(c) of the Act are cancelled, prosecution of the assessee for an offence under Section 276-C for wilful evasion of tax cannot be proceeded with thereafter and that quashing of the prosecution is automatic.

6. The contention of the respondent is that *prima facie* there is case against the petitioners/accused to proceed and the trial Court has considered all the aspects and dismissed the discharge petition. Only during the course of trial, it will be known as to whether the petitioners/accused have committed any offence or not.

7. From the above narration of facts, what is evident is that the petitioners' Company has filed the income-tax return for the assessment year 1995-96 on 30-11-1995 disclosing NIL income. They claimed depreciation on the solar equipment acquired by it. Subsequently, on 04-05-1998 a revised return was filed declaring total income of Rs.4,77,510/- giving up its claim of depreciation on the solar equipment. The revised return was accepted by the Deputy Commissioner of Income-tax and an order was passed on 16-03-2001 under Section 143(3) of the Act determining the tax payable as under:-

Total Income Returned	Rs.4,77,510/-
Tax thereon	Rs.1,43,253/-
Surcharge	<u>Rs. 21,488/-</u>
	Rs.1,64,741/-
Add.Interest u/s.234-B	Rs.2,19,051/-
u/s.234-C	<u>Rs. 12,187/-</u>

Total

Rs.3,95,979/-

8. The said tax together with interest has been paid. However, the Department initiated proceedings under Section 271(1)(c) of the Act and imposed penalty of Rs.9,10,800/- being 100% of the tax evaded. The explanation offered by the assessee was rejected.

The assessee filed an appeal before the Commissioner of Income-tax and the same was dismissed on 22-08-2002 upholding the penalty proceedings. An appeal before the Income-tax Appellate Tribunal, Hyderabad, was filed which was dismissed. The assessee/petitioners/accused has filed ITT Appeal230 of 2005 and by Judgment dated 06-12-2007, a Division Bench of our High Court allowed the said appeal holding that the question as to whether the assessee has concealed his income or has deliberately furnished inaccurate particulars thereof is essentially a finding of fact which has to be spelt out by way of recording the satisfaction of the Assessing Officer as required under Section 271(1) of the Act. It was further observed that in the absence of such a finding in the assessment order no penalty proceedings can be initiated.

9. As stated above, in view of the well settled legal position, once the penalty proceedings initiated by the Department have been set aside, prosecution of an assessee on the self-same facts cannot be allowed to continue. In the decision of the Supreme Court referred to supra, the points for consideration are (a) whether a penalty imposed under Section 271(1)(c) of the Income-tax Act and prosecution under Section 276-C of the Income-tax Act are simultaneous? (b) Whether the criminal prosecution gets quashed automatically when the Income-tax Appellate Tribunal which is the final Court on the facts comes to the conclusion that there is no concealment of income, since no offence survives under the Income-tax Act thereafter? The Supreme Court held that once the

penalties are cancelled on the ground that there is no concealment, quashing of prosecution under Section 276-C of the Act is automatic and that once the finding of concealment and subsequent legal penalties under Section 276(1)(c) of the Act has been struck down by the Tribunal, the Assessing Officer has no other alternative except to correct his order under Section 154 of the Act as per the directions of the Tribunal. It was also observed that the Assistant Commissioner of Income-tax cannot proceed with the prosecution even after the order of concealment has been set aside by the Tribunal and when the Tribunal has set aside the levy penalty the criminal proceedings against the appellants cannot survive for further consideration.

10. Applying the above decision to the facts of the case in hand, it is held that since the penalty proceedings have ultimately been set aside by a Division Bench of our High Court, the criminal proceedings against the petitioners/accused cannot survive. Therefore, the petitioners are entitled to discharge.

11. In the result, the Criminal Revision Case is allowed and the petitioners are discharged for the offences under Sections 276-C, 276 and 278-B of the Income Tax Act in C.C.No.10 of 2006 on the file of the Special Judge for Economic Offences, Hyderabad.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K.Jaiswal, J

October, 2015

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