

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.16498 of 2014

Arising Out of PS.Case No. -52 Year- 2013 Thana -ECONOMIC OFFENCES, BIHAR District-
PATNA

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1. Sonali Autos Private Limited, Dangi Complex, National Highway-30, New By Pass, Anisabad, through one of its Director Sri Abhishek Kumar, S/O Sri Bidhan Chandra Roy, aged about 33 Years, resident of Mahavir Nagar Colony, Beur Jail Road, Beur, Anisabad, Post Office- Anisabad, Police Station- Gardanibagh, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Commissioner of Income Tax, TDS Circle, Patna.
3. The Deputy Commissioner of Income Tax, TDS Circle, Patna.

.... Opposite Party/s

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Appearance:

For the Petitioner : Mr. Ajay Kumar Rastogi, Advocate

For the Opposite Party No.1 : Mr. Nawal Kishore Prasad, APP

For the Opposite Party Nos.2 & 3: Mrs. Archana Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 02-08-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 15.05.2013 passed by the Special Judge, Economic Offences, Patna, in Complaint Case No.52-C of 2013 by which the learned Special Judge has taken cognizance of the offence under Section 276 B of the Income Tax Act, 1961 (hereinafter to be referred as “Act”).

2. Prosecution has been launched against the petitioner on the basis of complaint filed by Sri Ajay Jadeja, Deputy Commissioner of Income Tax, TDS Circle, Patna, alleging therein that Accused No.1 Sonali Auto Pvt. Ltd. with its registered office at Dangi Complex, NH 30, New Bye Pass, Anisabad, Patna, filed its



TDS return in respect of Tax deducted at source on different nature of payment from its Patna Office at Patna having TAN-PTNS00778S. As per scheme of Section 276-B of the Act and the details available on the ITD system, the list of cases/deductors, who have failed to pay to the credit of Central Govt. the tax deducted by them has been obtained by the complainant.

3. From perusal of TDS return filed by the accused, it has been gathered by the complainant that TDS amounting to ₹1,43,029/- had not been deposited in time to the credit of Central Govt. for financial year 2009-2010. Thus, there was delay of 481 days without any reasonable cause.

4. The delay in filing e-TDS is covered by prosecution under Section 276 B of the Act for the failure on the part of deductors to deposit the TDS to the credit of Central Govt.

5. Accused Nos.2, 3 and 4 are the day to day in charge of the conduct of business of Accused No.1. Accused Nos. 2, 3 and 4 had full knowledge regarding non payment of TDS for the financial year 2009-10 and have committed offence under Section 276 B read with 278 B of the Act and the accused have rendered themselves liable for punishment under Section 276 B of the Act.

6. The Commissioner of the Income Tax (TDS), Patna, considering the facts involved in the case, accorded sanction



under Section 279(1) of the Act for launching prosecution for the offence committed by the accused under Section 276 B of the Act. An original copy of the order under Section 279 (1) of the Act has been attached with the complaint filed by the complainant.

7. The learned Special Judge, Economic Offences, Patna, on the basis of the aforesaid complaint filed by the complainant took cognizance against the petitioner-Company and its three Directors for the offence under Section 276 B of the Act.

8. It has been submitted on behalf of the petitioner that sanction accorded by the Opposite Party No.2 on 31.03.2013 under Section 279 of the Act for launching prosecution against the petitioner under Section 276 B of the Act is mechanical and contrary to the instructions issued by the Central Board of Direct Taxes (hereinafter to be referred as “CBDT”),

9. The petitioner-company is involved in business of motor vehicle under the name and style of Sonali Autos and derives its income from the same. The petitioner has been filing its return of income for the purpose of the Act and paying requisites taxes thereupon at all material times. The Act provides for three modes of collection of taxes; (i) direct levy, (ii), levy by deduction at source and (iii) by collection at source. The ordinary method of collection is direct collection of the tax from an assessee. Deduction of tax at



source is provided for in certain specified cases. Section 192 to 195 of the Act and Section 196 A to 196 D of the Act provide for levy by deduction of tax at source. The person, who is bound to deduct and has failed to deduct the tax may be treated as 'assessee' in default under Section 201 of the Act and will be liable to penalty under Section 221 or 271 C read with section 273 B of the Act. As soon as the tax is deducted at source by the person responsible to make payment, the liability of an assessee to pay that tax gets discharged and it is responsibility of the person, who has deducted tax at source, to deposit the same with the government. The tax has to be deposited at the time of crediting payment and the amount so deducted has to be paid over to the Central Government before the 7th day of the month following the month in which the said deduction was made.

10. The petitioner in the financial year 2009-2010 made certain payments on various dates, totaling to ₹12,25,144/- towards interest (other than 'interest on securities') and commission and while crediting the said sums, duly deducted tax at source to the tune of ₹1,43,029/- under Section 194 A and 194 H of the Act respectively.

11. Due to oversight on the part of the Accountant, who was appointed to deal with the Accounts and Income Tax matters, the petitioner could not deposit the aforesaid sum of



₹1,43,029/- with the Central Government within the specified time limit. Subsequently, at the time of audit of Books of Accounts in August, 2010, this mistake was noticed by the Statutory Auditors of the petitioner-company. The petitioner out of total amount of ₹1,43,029/- so deducted under Section 194 A and 194 H of the Act, paid a sum of ₹41,029/- on 07.09.2010 and thereafter paid Rs.1,02,000/- on 20.09.2010. Owing to the delay in payment, the petitioner while paying the said sum also deposited interest amounting to ₹23,595/- as required under Section 201 (1A) of the Act.

12. Provisions of Section 201 (1A) of the Act provides for payment of tax deducted along with interest at the rate of 1.5% for every month or part of the month on the deducted amount from the date on which Tax was deducted to the date on which tax was actually paid. The petitioner, accordingly, has deposited interest of ₹23,595/- on the delayed payment of TDS.

13. All of a sudden, at a very belated stage, Opposite Party No.2 granted sanction to Opposite Party No.3 under Section 279(1) of the Act on 31.03.2013 for launching prosecution under Section 276 B of the Act against the petitioner and its Directors. After a lapse of three years from the date of payment of dues (tax + interest), a Complaint Petition (Annexure-1) was filed by the



complainant before the Special Judge, Economic Offences, Patna, on 14.05.2013, *inter alia*, alleging the default pertaining to financial year 2009-10 under Section 276 B of the Act and in respect of which cognizance has been taken by the impugned order.

14. Section 278 AA of the Act postulates an express bar on punishment under Sections 276 A, 276 AB or 276B of the Act if an assessee proves that there was reasonable cause for such failure. The main objective of prosecution provisions contained in Chapter XXII of the Act is to punish the offenders found guilty of tax evasion and other tax related offences and to install fear of law in the minds of those, who may even contemplate evading payment of legitimate taxes. Instant prosecution has been launched against the petitioner with a view to spite the petitioner considering that amount of ₹1,43,029/- and the period of default are not substantial after lapse of period of three years from the date of payment of due taxes along with interest thereon under Section 201 (1A) of the Act.

15. Counsel for the petitioner has further submitted in para 6 to the reply to the Counter Affidavit that launch of the prosecution against the petitioner under Section 276 B of the Act is mechanical and contrary to the instructions bearing F. No.255/339/79-IT (Inv.) dated 28.05.1980 issued in this regard by CBDT, wherein, it is mentioned that prosecution under Section 276



B of the Act should not normally be proposed when the amount involved and/or the period of default is not substantial and the amount in default has also been deposited in the meantime to the credit of the government. No such consideration will, of course, apply to levy of interest under Section 201 (1A) of the Act. Copy of the aforesaid instruction has been annexed as Annexure-1 to the reply to Counter Affidavit.

16. Counsel for the petitioner has finally submitted that the instant prosecution is mechanical and contrary to the instructions issued by the CBDT and is wholly unsustainable in law. Reasonable cause would mean a cause which prevents a reasonable man of ordinary prudence acting under normal circumstances, without negligence or inaction or want of bonafides. Oversight on the part of the Accountant, who was appointed to deal with the Accounts and Income Tax matters, cannot be termed as anything but a reasonable cause and such defaults are often committed in due course of business.

17. Counsel for the petitioner has relied on the decision of this Court dated 30.12.2009 passed in Cr. Misc. No.36697 of 2007, wherein, this Court was pleased to quash the order taking cognizance on the ground that due tax along with interest had been paid.



18. Counsel for the petitioner has further submitted that in similar situation in the case of *Bee Gee Motors & Tractors Vs. ITO (P & H)* reported in *[1996] 218 ITR 155 (P & H)*, Hon'ble Punjab & Haryana High Court was pleased to quash the criminal complaint when the amount and/or period of default was not substantial and when the prosecution came to be launched after a number of years from when the default was committed.

19. Counsel for the petitioner has further relied on the decision of Madhya Pradesh High Court {Indore Bench} in the case of *Vijay Singh Vs. UOI* reported in *[2005] 278 ITR 467 (MP)*.

20. Counsel for the Income Tax Department has appeared. She has submitted that by making payment of TDS amount along with interest will not exonerate the petitioner from the liability of Section 276 B of the Act. She has further submitted that petitioner had deducted tax at source to the tune of ₹1,43,029/- under Section 194 A and 194 H of the Act respectively for the financial year 2009-10, but did not deposit the aforesaid sum with the Central Government within the specified time limit.

21. Having heard argument of both sides and on perusal of the materials on record, it appears that it is admitted position that the petitioner deducted tax at source at the rate of ₹1,43,029/- for the financial year 2009-10, but did not deposit the



same with the Central Government within the specified time limit. It is also admitted position that subsequently out of total amount of ₹1,43,029/- so deducted under Section(s) 194A and 194 H of the Act, the petitioner paid a sum of ₹41,029/- on 07.09.2010 and thereafter paid a sum of ₹1,02,000/- on 20.09.2010. The petitioner also deposited interest of ₹23,595/- as required under Section 201 (1A) of the Act owing to the delay in payment of the aforesaid amount.

22. Copy of the instructions bearing F. No.255/339/79-IT (Inv.) dated 28.05.1980 issued by the CBDT has been annexed by the petitioner as Annexure-1 to the reply to the Counter Affidavit, wherein, it is mentioned in clause (g) that prosecution under Section 276 B of the Act should not normally be proposed when the amount involved and/or the period of default is not substantial and the amount in default has also been deposited in the meantime to the credit of the government. No such consideration will, of course, apply to levy of interest under Section 201 (1A) of the Act.

23. In the instant case, admittedly, the petitioner has deposited the amount of ₹1,43,029/- along with interest of ₹23,595/- on various dates in the year 2010. Allegation against the petitioner is that the petitioner did not deposit amount of ₹1,43,029/- duly deducted at source for the financial year 2009-10 within specified



time with the Central Government, but the aforesaid amount has been deposited by the petitioner along with interest on various dates in the year 2010 when the mistake was noticed by the petitioner at the time of audit of Books of Accounts in 2010. Prosecution has been launched against the petitioner after the lapse of three years on 14.05.2013 as a consequence of sanction order passed under Section 279 (1) of the Act (Annexure-3) on 31.03.2013, in contravention of the instructions bearing F. No.255/339/79-IT (Inv.) dated 28.05.1980 issued by the CBDT in this regard.

24. Section 278 AA postulates an express bar on punishment under Section(s) 276 A, 276 AB or 276 B of the Act, if an assessee proves that there was a reasonable cause for such failure.

25. Section 278 AA of the Act is reproduced herein below:

“278AA. Punishment not to be imposed in certain cases.--- Notwithstanding anything contained in the provisions of section 276 A, section 276 AB, [or section 276 B], no person shall be punishable for any failure referred to in the said provisions if he proves that there was reasonable cause for such failure.”

26. The petitioners have stated in the petition that the aforesaid tax could not be deposited within time due to oversight on the part of the Accountant, who was appointed to deal with the



Accounts and Income Tax matters. This mistake was detected at the time of audit of Books of Accounts by the Statutory Auditors of the petitioner-company in August, 2010. Thereafter, the petitioner immediately deposited the amount of tax along with interest in the year 2010 itself. Section 278 AA of the Act specifically says that no person shall be punished for any failure referred to under the said provisions if the assessee proves that there was reasonable cause for such failure. Reasonable cause would mean a cause which prevents a reasonable man of ordinary prudence acting under normal circumstances, without negligence or inaction or want of bonafides.

27. Oversight on the part of the Accountant, who was appointed to deal with Accounts and Income Tax matters, can be presumed to be a reasonable cause for not depositing the tax within time. The petitioner immediately after noticing the aforesaid defects by the Statutory Auditors of the petitioner-company deposited the amount of ₹1,43,029/- along with interest amounting to ₹23,595/- as required under Section 201(1A) of the Act in the year 2010 itself. Instant prosecution has been launched against the petitioner on 14.05.2013 after lapse of about three years from the date of deposit of due tax along with interest by the petitioner under Section 201(1A) of the Act, which is contrary to the instructions bearing F. No.255/339/79-IT (Inv.) dated 28.05.1980 (Annexure-1 to the



Counter Affidavit) issued by the CBDT in this regard.

28. Moreover, Section 278 AA of the Act clearly states that no person for any failure referred to under Section 276 B of the Act shall be punished under the said provisions if he proves that there was reasonable cause for such failure.

29. This Court on the basis of explanation submitted by the petitioner, as mentioned above, is of the view that the petitioner has been able to prove the reasonable cause for not depositing the aforesaid tax amount within the specified time limit.

30. In view of such, this Court is of view that continuance of the criminal proceeding against the petitioner is mere harassment to him and abuse of process of the Court.

31. Accordingly, the order dated 15.05.2013 passed by the Special Judge, Economic Offences, Patna, in Complaint Case No.52-C of 2013 taking cognizance of the offence under Section 276 B of the Income Tax Act, 1961, along with entire criminal proceeding against the petitioner is hereby quashed.

32. This application is, accordingly, allowed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	30-06-2017
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