**202 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**CRM-M No.30815 of 2014 (O&M)**
**Date of decision : September 25, 2018**

**M/s Yati Overseas Private Limited and others ....... Petitioners**

**Versus**

**R.S. Dudeja ....... Respondent**

**CORAM : HON'BLE MR. JUSTICE KULDIP SINGH**

**Present:-** Mr. Harkesh Manuja, Advocate for the petitioners.

Mr. Yogesh Putney, Advocate for the respondent.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

**<u>KULDIP SINGH J. (ORAL)</u>**

Present petition has been filed under Section 482 Cr.P.C. for quashing of complaint dated 30.03.2007 (Annexure P-1) filed by R.S. Dudeja, Assistant Commissioner of Income Tax, Circle Panipat, under Section 276-C/277 read with Section 278-B of the Income Tax Act, 1961 amended upto date and under Section 193 and 196 IPC as well as the summoning order dated 30.03.2009 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Panipat.

In the complaint, the allegations levelled against the petitioners are that they claimed some exemption under Section 80-1B of the Income Tax Act, which was found to be incorrect. Even despite issuing notice, the present petitioners tried to justify the said exemption by stating law, which was over ruled/superseded by the Delhi High Court. They also tried to rely upon the certificate of the Charted Accountant. In view of the said concealment, the penalty was imposed upon the petitioners and it was upheld by the CIT(A), Karnal. It was alleged that accused Nos.2 to 6 made willful attempt to evade tax of ₹3,38,148/- by claiming wrong/excess deduction under Section 80-1B of the Income Tax Act, amounting to ₹9,20,287/- and have committed the offence under the abovenoted Sections.

Learned counsel for the petitioners has contended that the said penalty was set aside by the Income Tax Appellate Tribunal, Delhi Bench (for short 'the Tribunal'), by holding that due to divergent views of the different High Courts, two views were possible. Therefore, it cannot be said that the assessees have concealed income or furnished inaccurate particulars. The order dated 17.04.2009 passed by the Tribunal was upheld by the Division Bench of this Court on 28.07.2010 (Annexure P-4).

Therefore, it is argued that the complaint is nothing but misuse the process of Court.

The said contention has been vehemently opposed on behalf of the Revenue and it has been argued that the concealment of income and penalty are two different things. Reliance has been placed upon the language of Section 276-C of the Income Tax Act. It is stated that a penalty has been setting aside but the concealment of income is there. Therefore, the accused-petitioners have been rightly tried under the abovenoted Sections.

I have considered the contentions of learned counsel for both the parties.

Section 276-C of the Income Tax Act provides as under:

"*2**76C. Wilful attempt to evade tax, etc.***

*(1) If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable,—*

*(i) in a case where the amount sought to be evaded exceeds [one hundred thousand rupees], with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;*

*(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to two years and with fine.*

*(2) If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine.*

*Explanation.—For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person—*

*(i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or*

*(ii) makes or causes to be made any false entry or statement in such books of account or other documents;*

> *or*
> *(iii) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or*
> *(iv) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.]"*

The language of the said Section shows that the evasion of tax, penalty or interest should be willful. Now, the question would arise whether there was willful attempt on the part of the petitioners to claim the exemption under Section 80-1B of the Income Tax Act. While examining penalty imposed upon the petitioners, the Tribunal (Annexure P-3) has observed as under:

> *" 8. We have duly considered the rival contentions and gone through the records carefully. There is no dispute on facts that assesses have disclosed complete details of their claims in the returns of income. The assesses have made their claims on the basis of advise given by the expert on the subject. The audit report and the cliam in necessary proforma were submitted alongwith the returns. From perusal of the record, it revealed that claim of the assessees were bona fide claim. There were large numbers of orderes at the end of the ITAT in favour of the assesses. The issue whether deduction under sec. 80-1B would be admissible on duty drawback, and DEPB is still a debatable issue. There are divergent opinion on this issue by the defferent Hon'ble High Court. The Hon'ble High Court is of the opinion that deduction under sec 80-1B would be admissible on duty draw back and DEPB. In the cases*

*of Lakhwinder Singh in ITA No.5169/Del/04 decided on September 28, 2005, then in the case of ACIT Vs. Sh. Vipin Sardhana in ITA No.5174/Del/04 decided on 17.06.2005 and again in the case of ITO Vs. Ess Kay Enterprises, ITAT delhi Benches have allowed the deduction to the assessee under sec. 80-1B on duty draw back. Hon'ble Punjab & Haryana High Court in the case of Liberty Shoes (supra) has held that deduction under sec. 80-1B would not be admissible to the assessee. The SLPs have been filed against the decision of Hon'ble Delhi High Court in the Hon'ble Supreme Court which are stand admitted as informed by the learned representative of the assessee. Thus, prima facie, it indicates that this issue was a debatable one. ---"*

Therefore, the Tribunal concluded as under:

*"---- In the present appeals also, two views were clearly possible which were supported by orders of the ITAT as well as decisions of Hon'ble High Courts. In such situation, it cannot be said that assesses have concealed income or furnished inaccurate particulars. The only allegation is that the assessesses have claimed deduction on DEPB and duty draw back under Section 80-1B which is not admissible to them."*

The order has since been upheld by the Division Bench of this Court. The order of the Tribunal shows that in fact, there were two views regarding the deduction under Section 80-1B of the Income Tax Act and it is a debatable issue. It was on this ground that the penalty has been set side. Once, it is found that there were two views possible to claim the deduction, it cannot be said that the claim under Section 80-1B of the Income Tax, Act was wrong or willful evasion. Once, it is found that the evasion is not willful, the prosecution under Section 276-C/277 read with Section 278-B of the Income Tax Act, 1961 amended upto date and under Section 193 and 196 IPC is not tenable in the eye of law.

Hence, the present petition is allowed. The complaint dated 30.03.2007 (Annexure P-1) filed by the Assistant Commissioner of Income Tax, Circle Panipat, filed under Section276-C/277 read with Section 278-B of the Income Tax Act, 1961 amended upto date and under Section 193 and 196 IPC as well as the summoning order dated 30.03.2009 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Panipat stands quashed.

**(KULDIP SINGH)**
**JUDGE**

**September 25, 2018**
sarita
Whether speaking / reasoned Yes
Whether Reportable: Yes