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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 26th November, 2018

+ CRL.M.C. 239/2015

JAY POLYCHEM INDIA LTD. & ANR. Petitioners

Through: Mr. Vishal Gohri, Adv.

Versus

ASSISTANT COMMISSIONER OF INCOME TAX....

Respondent

Through: Mr. Sanjay Kumar & Mr.
Asheesh Jain, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. On the criminal complaint (CC no. 81/2004) instituted by the respondent on 27.10.2014, the Metropolitan Magistrate, by his order dated 03.11.2014, took cognizance of the offence under Section 276 CC read with Section 278 B of Income Tax Act, 1961 (IT Act) and issued summons to the petitioners calling them upon to appear as accused. By the petition at hand, the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) is invoked to assail the said summoning order primarily on the ground that the proceedings are in the nature of abuse of the process of law, there having been no breach of the provisions of law so as to constitute an offence under Section 276 CC, the income tax return

(ITR) for the relevant assessment year (AY) 2012-13 corresponding to the financial year 2011-2012 having been submitted on 19.03.2014, there being a case made out as per the claim of the petitioners, for refund, rather than any income tax liability.

2. The facts lie in a very narrow compass. It is an admitted case of the petitioners that the ITR for the AY 2012-13 was required to be submitted in terms of Section 139 (1) of IT Act on or before 30.09.2012. The law would permit such ITR to be submitted in the extended period upto the close of the assessment year i.e. upto 31.03.2013. The respondent had issued a notice on 02.11.2012, in terms of Section 142 (1), calling upon the petitioners to furnish the return for AY 2012-13 on or before 20.11.2012. Yet, there was no compliance. The respondent levied penalty under Section 271 (1) (b) of IT Act vide order 22.10.2013 for non-compliance of the notice dated 142 (1). The ITR was eventually filed on 19.03.2014.

3. Be that as it may, the cause of action for filing the complaint in the above nature was pleaded with reference to the breaches committed in compliance with the requirement of law under Section 139 (1) and in compliance of notice under Section 142 (1).

4. The prime contention of the petitioners is with reference to the provision contained in Section 139 (4) of IT Act. The said clause, as it stood prior to its amendment w.e.f. 01.04.2014, permitted any person who had not furnished a return under Section 139(1), or within the time allowed under Section 142(1), to make compliance by furnishing the return for any previous year at any time before the expiry of one

year from the end of relevant assessment year or before the completion of assessment whichever is earlier.

5. Dealing with similar issues, as indeed the effect of proviso to Section 276 CC, the Supreme Court in a ruling reported as *Sasi Enterprises v. Assistant Commissioner of Income Tax (2014) 5 SCC 139*, observed thus:-

“25. Section 276-CC applies to situations where an assessee has failed to file a return of income as required under Section 139 of the Act or in response to notices issued to the assessee under Section 142 or Section 148 of the Act. The proviso to Section 276-CC gives some relief to genuine assessee. The proviso to Section 276-CC gives further time till the end of the assessment year to furnish return to avoid prosecution. In other words, even though the due date would be 31st August of the assessment year as per Section 139(1) of the Act, an assessee gets further seven months' time to complete and file the return and such a return though belated, may not attract prosecution of the assessee. Similarly, the proviso in clause (ii)(b) to Section 276-CC also provides that if the tax payable determined by regular assessment as reduced by advance tax paid and tax deducted at source does not exceed Rs 3000, such an assessee shall not be prosecuted for not furnishing the return under Section 139(1) of the Act. Resultantly, the proviso under Section 276-CC takes care of genuine assessee who either file the returns belatedly but within the end of the assessment year or those who have paid substantial amounts of their tax dues by pre-paid taxes, from the rigour of the prosecution under Section 276-CC of the Act.

26. Section 276-CC, it may be noted, takes in sub-section (1) of Section 139, Section 142(1)(i) and Section 148. But, the proviso to Section 276-CC takes in only sub-section (1) of Section 139 of the Act and the provisions of Section

142(1)(i) or 148 are conspicuously absent. Consequently, the benefit of the proviso is available only to voluntary filing of return as required under Section 139(1) of the Act. In other words, the proviso would not apply after detection of the failure to file the return and after a notice under Section 142(1)(i) or 148 of the Act is issued calling for filing of the return of income. The proviso, therefore, envisages the filing of even belated return before the detection or discovery of the failure and issuance of notices under Section 142 or Section 148 of the Act”.

6. Similar contentions were raised before this Court in a batch of matters led by Crl.M.C. 3385/2016 *Karan Lutra vs. Income Tax Officer* decided on 14.09.2018 and taking note of the decision in *Sasi Enterprises* (supra), this Court held as under:-

“16. The offence under Section 276 CC of IT Act deals with failure to comply with the obligation under Sections 139 (1) or 142(1) or 148 of IT Act. Disobedience of each said provision of law itself constitutes a distinct offence. The offence under Section 276 CC, prima facie, stood constituted upon failure on the part of the assessee to furnish the return of income for the assessment year in question within the period prescribed in law. The notices by the assessing authority under Section 142 (1) were issued with the objective of facilitating best judgment assessment. The failure to abide by such notices would also constitute offence, distinct from the offence that had been earlier committed by virtue of breach of Section 139 (1). The assessment proceedings are not related to these criminal prosecutions. They may eventually have a bearing for the benefit of proviso to Section 276CC to be invoked but not so as to inhibit continuation of the criminal process”.

7. In the present case, there was a breach even in compliance with the notice under Section 142 (1), which by the same logic as indicated above, constitutes distinct offence.

8. There is no merit in the contentions raised in the petition. The same is dismissed.

R.K.GAUBA, J.

NOVEMBER 26, 2018

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