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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.REV.P. 660/2013 & CRL.M.(BAIL) 2319/2013
ANIL SANGHI

..... Petitioner

Through: Mr. Puneet Mittal, Senior Advocate with
Ms. Vasudha Bajaj, Adv.

versus

INCOME TAX OFFICER

..... Respondent

Through: Mr. Ruchir Bhatia and Mr. Puneet Rai,
Advs. with Mr. Kailash Gautam, ACIT, Central
Circle-32, Delhi.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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23.01.2018

1. This petition impugns the judgment dated 13.11.2013 of the Appellate Court in Crl. Appeal No.89/2013 passed by the Additional Sessions Judge (Central), Delhi.
2. By judgment dated 15.05.2013, the Trial Court had convicted the appellant for offences punishable under sections 278B read with section 276C(1) and 277 of the Income Tax Act, 1961 ('the Act') and on 20.05.2011, he was sentenced to undergo Simple Imprisonment for a period of six months and to pay a fine of Rs.10,000/- and in default of payment of fine, to undergo further Simple Imprisonment for a period of one month.
3. The Appellate Court dismissed his appeal, but reduced the

quantum of fine to Rs.5,000/- each for offences punishable under section 276C(1) read with section 278B of the Act and under section 277 read with section 278B of the Act respectively, and in default of payment of fine, Simple Imprisonment for a period of one week for the aforesaid offence.

4. In this revision petition, the sentence was suspended on the very first day when the case was taken up for admission. Immediately thereafter, on 16.12.2013, the appellant applied for compounding of the offences. However, the said application was rejected by a one line communication dated 7.3.2014 which inter alia stated: *“Since the prosecution proceedings have already resulted in conviction, the CCIT (Central) has directed to convey that the compounding application, cannot be accepted at this stage and may be treated as rejected.”*

5. The appellant applied for compounding of the offence again on 21.11.2014 to which the respondent by a letter dated 16.12.2016 stated that:

“Sub.: Application for compounding u/s 279(2) for offences u/s 276C(1) and 277 of the Income-tax Act in terms of order dated 07/10/2015 passed by the Hon'ble High Court of Delhi in Crl.Rev.P.No. 660/2013 - Regarding –

I am directed to refer to your application dated 13/10/2015 filed in this office for compounding of the above mentioned offence.

2. In this regard, it is stated that prosecution in this case was filed against M/s Uikam Investment & Finance Pvt. Ltd. and against you (in the capacity of the Director

of the Company). Please clarify as to whether any compounding application has been filed by M/s Uikam Investment & Finance Pvt. Ltd.

3 It is also found that as per records, the following demands are outstanding against the company for the assessment year under consideration –

1. A.Y. 1997-98 Rs. 10,94,177/- [u/s 143(3)]

2. A.Y. 1997-98 Rs. 2,07,836/-[u/s 271(l)(c)]

The following demands for the A.Y. 1997-98 are also pending against you-

<i>A.Y. Period</i>	<i>Order u/s</i>	<i>Demand Raised</i>	<i>Date of Demand</i>	<i>Demand outstanding as on date</i>
<i>1997-98</i>	<i>143(3)</i>	<i>19,50,336/-</i>	<i>07/09/2005</i>	<i>19,50,336/-</i>
<i>1997-98</i>	<i>271(l)(c)</i>	<i>2,07,836/-</i>	<i>25/04/2007</i>	<i>2,07,836/-</i>

If the above mentioned demands have been paid, the proof of the same should be filed in this office on 28/12/2016. If these demands have not been paid, the same may be paid and the proof of the payment should be submitted in this office by 28/12/2016 to enable this office to process your application for compounding of offence.

4 You are also given an opportunity of being heard by CCIT(Central), New Delhi in his office on 28/12/2016 at 4 PM.”

6. The aforesaid monies demanded towards the outstanding amount was be paid by the appellant to the Income Tax Department; his communication dated 29.12.2016 sought an order of compounding

of the offence; but by an order dated 05.01.2017, the appellant was informed that his case could not be compounded because he already stood convicted. The reasoning is as under:

“4. The compounding application filed by Shri Anil Sanghi has been carefully considered in the light of the guidelines for compounding of offences issued by the Central Board of Direct Taxes vide F. No. 285/35/2013- IT(Inv.V) /108 dated 23/12/2014. In para 8.1 of these guidelines, various offences which are generally not to be compounded have been mentioned. In para 8(vi) of these guidelines, it has been mentioned as under:-

“offence committed by a person for which he was convicted by the court of law under direct tax law.”

Since Shri Anil Sanghi has been convicted by the court for offences u/s 275(C)(1) and 277 read with section 278B of the Income -tax Act, 1961, the offences cannot be compounded in the light of the CBDT's guidelines dated 23/12/2014. Therefore, the request of Sh. Anil Sanghi for compounding of offences is rejected.”

7. Mr. Puneet Mittal, the learned Senior Advocate for the appellant submits that i) the letter rejecting compounding of the offence is not sustainable in law, ii) nor is the impugned order. Apropos the latter, he submits that the impugned order of conviction failed to take into account that for an offence to be made out, the element of criminality has to be established; that the error is manifested in assumption of criminality on part of the appellant i.e. his wilfully concealing the interest amount from three persons, and not paying tax on the total amount of Rs.4,83,340/-; that it further

erred in proceeding to punish the appellant. The appellate order too considered the appellant's conduct as concealment of information. It reasoned as under:

“9. So as per accusation, the accused persons wilfully attempted to pay tax penalty and interest chargeable and payable, by not paying tax on Rs.4,83,340/- not accounted for during the assessment year 1997-98 and in this way by showing wrong income, false verification was made while filing income tax return on 12.11.97.

10. One of the arguments raised by learned counsel for appellants is that this income of Rs.4,83,340/- was not required to be disclosed in the income tax return as the accused persons were sure that this amount of interest would not be realized. Further, it has been submitted that the accused persons had switched over to cash accounting system on account of raid conducted by the Income Tax Department and even on this ground this income which had not actually accrued was not to be depicted in the income tax return.”

8. The appellant contends that the conviction is erroneous because it did not consider the accounting method followed by the appellant. In Schedule B of its Balance Sheet dated 31.03.1997, the appellant assessee had stated, that for preparation of its financial statement, the company generally followed the Mercantile System of Accounting and it recognised income and expenditure on accrual basis. Hence, revenue was recognised by the assessee in respect of insurance/other claims, interest, commission, etc. only when it was reasonably certain that ultimately collection of the same would be made. The assessee

had also disclosed:

“There was a search operation u/s 132 of the Income Tax Act, 1961 on the assessee on 11.07.96. Consequently balances in Citibank, New Delhi, Pertech Computers, New Delhi. Hamco Mining & Smelting Ltd., New Delhi and Altos India Ltd., New Delhi, seized totalling to Rs. 3,30,30,527/- on 20/09/96 by the Income Tax Department.”

9. In terms of the assessee's adopted system of accounting, it is argued that since the appellant was not reasonably certain that the interest would ultimately be calculated on the aforesaid amount of Rs.4,83,340/-, therefore, there was no occasion to disclose any such amounts having accrued or been received. The appellant also relies upon the accounting standard (AS 9- Revenue Recognition) issued by the Institute of Chartered Accountants apropos Revenue Recognition. Clause 9 of which reads as under:

“9. Effect of Uncertainties on Revenue Recognition.

9.1 Recognition of revenue requires that revenue is measurable and that at the time of sale or the rendering of the service it would not be unreasonable to expect ultimate collection.

9.2 Where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising claim e.g. for escalation of price, export incentive, interest etc., revenue recognition is postponed to the extent of uncertainty involved. In such cases, it may be appropriate to recognise revenue only when it is reasonably certain that the ultimate collection will be made. Where there is no uncertainty as to ultimate collection revenue is recognised at the time of sale or rendering of service even though payments are made by instalments.

9.3 When the uncertainty relating to collectability arises subsequent to the time of sale or the rendering of the service, it is more appropriate to make a separate provision to reflect the uncertainty rather than to adjust the amount of revenue originally recorded.

9.4 An essential criterion for the recognition of revenue is that the consideration receivable for the sale of goods, the rendering of services or from the use by others of enterprise resources is reasonably determinable. When such consideration is not determinable within reasonable limits, the recognition of revenue is postponed.

9.5 When recognition of revenue is postponed due to the effect of uncertainties, it is considered as revenue of the period in which it is properly recognised”.

10. From the above, it is evident that wherever there is a lack of certainty regarding the ultimate collection of revenue, its recognition is postponed to the extent of uncertainty involved and amounts would be subsequently open to taxation only when the collection is made.

11. In the present case, although the return was filed on an accrual basis, the revenue was booked on realisation basis, in terms of the aforesaid accounting standards, and this method of accounting was duly disclosed in the ITR itself, especially, in Schedule B. In the circumstances, it could neither be implied nor concluded that there was a deliberate concealment or false declaration before the Income Tax Authorities.

The appellate order reasoned:

“17. Learned counsel for the appellants has contended that when raid was conducted by income Tax Department oil the premises of appellant company on 11.07.1996, instructions were issued by the Income lax to the borrowers not to make any

payment to the appellants. So it has been urged that in view of such instructions issued by the Income Tax Department/officers, the borrowers did not make any payment towards interest due from them and as such appellants could not be held liable for commission of any such offence.

Learned counsel for the respondent has not denied that raid was conducted on the appellants company on 11.07.1996 (but the submission is that appellant did not prove on record that any instructions were issued by Income Tax Department/officer 10 the borrowers directing them to stop making payment to the appellants.

Learned counsel for the appellants submits that, the accused-appellants took steps before the Trial Court to bring on record such notice, issued by the Income Tax Department to the borrowers but no such document was produced on record.

The contention is that on account non-production of record by the Income Tax Department, adverse inference should have been drawn by the court against the respondent.”

12. The impugned order further reasoned that there was a concealment of income tax because the appellant knew the import of the tax returns having been filed, therefore he should have taken steps to see that whatever information was furnished in income tax returns was correct and that nothing was being concealed therefrom. It relied upon the judgment in **K.P. Builders vs. CIT** 2004 Income Tax reports Vol. 268 page 562 which held that: “concealment” habitually comprises with it, the element of mens rea. Since the Director did not disclose the income by way of interest from the borrowers, it cannot be said that it was a mere omission not amounting to “concealment”.

13. The court is unable to see how the judgment in ***K.P. Builders*** (supra) supports the conclusion which the impugned order has arrived at because, concealment in the present case, would be only when there was reasonable certainty of the ultimate collection of the financial claim. Furthermore, the reasoning is flawed because it does not take into account the appellant's contention that in terms of the accounting standard employed by them, income tax would be payable on monies only when it was realized. The appellant had disclosed that it employed the Mercantile System of Accounting and as per the applicable clause 9 of Accounting Standard – Revenue Recognition, it could not take cognition of revenue from its creditors because, such possible revenue as interest, was not measurable i.e. there was lack of reasonable certainty of its ultimate collection. All the requisite information had been disclosed. There was no concealment of information. As a corollary therefore, there could be no *mens rea* to conceal. The accounting system was to be kept in mind and appreciated. There could be no presumption of *mens rea*. Consequently, the impugned orders of conviction and punishment cannot be sustained.

13. In view of the above, the orders of conviction and punishment are erroneous and are accordingly set aside. The petition is allowed.

NAJMI WAZIRI, J

JANUARY 23, 2018/acm