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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.L.P. 693/2015, CRL. M.A. 15204/2015

INCOME TAX OFFICER (ITO) ..... Petitioner

Through: Mr. Asheesh Jain, Senior Standing Counsel with Mr. Ajit Sharma and Mr. Adnan Siddiqui, Advocates.

versus

JASJIT SINGH ..... Respondent

Through: Mr. Kapil Goel and Mr. Sandeep Goel, Advocates.

\+ CRL.L.P. 694/2015

INCOME TAX OFFICER (ITO) ..... Petitioner

Through: Mr. Asheesh Jain, Senior Standing Counsel with Mr. Ajit Sharma and Mr. Adnan Siddiqui, Advocates.

versus

SANJAY SAWHNEY ..... Respondent

Through: Mr. Kapil Goel and Mr. Sandeep Goel, Advocates.

\+ CRL.L.P. 695/2015

INCOME TAX OFFICER (ITO) ..... Petitioner

Through: Mr. Asheesh Jain, Senior Standing Counsel with Mr. Ajit Sharma and Mr. Adnan Siddiqui, Advocates.

versus

NARESH KUMAR JAGGI ..... Respondent

Through: Mr. Kapil Goel and Mr. Sandeep Goel, Advocates.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% **05.07.2018**

The petitioner seeks leave to appeal against the impugned order dated 03.03.2015 whereby their motion to prosecute the respondents under section 276CC of the Income Tax Act, 1961 ('the Act') was dismissed. Its rationale for doing so is as under:-

> *" 18. From bare perusal of this section it is clear that assessment or re-assessment of income of any other person u/s 153C of the Act than the person searched, will be made in accordance with the provisions of the section 153A. As per section 153A(1), the AO has to issue notice calling for the return of income in respect of six assessment years immediately preceding the assessment year relevant to the previous year in which search was conducted and assessed or re-assessed the total Income of the assessee. In this case search was conducted on 19.02.2009 and the AO had the jurisdiction over the case of the accused on 05.06.2009 when the case was centralized and thus the assessment order ought to have been made u/s 153C of the Act and not under section 143(3) of the Act. On this ground alone present complaint for prosecution of the case u/s 276CC of the Act is not maintainable. Furthermore, vide order dated 05.11.2014 bearing no. ITA Nc.1436/D/2012, the learned ITAT while allowing the appeal filed by the accused, held the impugned assessment order Ex.PW1/13 illegal as the same was not passed u/s 153C of 'the Act and quashed the assessment order and thus the substratum of filing of present prosecution for non-compliance of section 139' of the Act has also gone as there is no demand of tax as on date exceeding Rs.3000/-.*
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> *19 .The accused has taken one more specific stand that since the TDS certificate from the deductor M/s Koutons Limited has not been issued and therefore, return could not be filed in time. The basic provisions of the TDS is mentioned in Chapter-XII of the Act. From the bare perusal of TDS provisions, it is clear that the responsibility is on the part of the payer to deduct TDS and if they fails to deduct or deduct but fails to deposit or fails to issue the TDS certificate then*

under the Act, deductor will be liable for penalty or prosecution for the offence, initially, the complainant filed the present complaint against the accused treating him as Indian citizen and later on on the appeal filed by the accused, accused was/is being treated as NRI. Section 195 of the Act talks about the person responsible for paying to NRI and their duty to deduct income tax on the payments made to NRI at the rate in force. Throughout the case, the stand of the accused is that the TDS could not be filed in time due to non-Issuance of TDS by the deductor and this fact was explained to the AO by the accused in his reply. Despite that AO did not bother to investigate the matter properly and present complaint appears to have been filed without any field Investigation.

20. In view of the aforesaid legal provisions mentioned above, It is clear that wilful failure to furnish the returns u/s 276CC required to be furnished, shall be punishable only if the tax payable by him on the total income determined on regular assessment as reduced by advance tax, if any, paid, and any tax deducted at source, does not exceed Rs.3000/-. However, from the aforesaid discussions, it is clear that the AO has erred in judging the nature and category of the case and wrongly issued notice u/s 142(1) of the Act and framed assessment order u/s 143 of the Act while the case of the accused is exclusively covered u/s 153C of the Act and not under section 143(3) of the Act. Thus, the notice u/s 142(2) of the Act issued to the accused is illegal and not maintainable under the law and after quashing of the assessment order as well as holding notice u/s 142(1) of the Act by the Appellate Authority, no question of non-compliance of the provisions of section 139 of the Act or notice u/s 142(1) of the Act survive at all and in such circumstances, accused can not be held liable for the offence u/s 276CC of the Act.

21. Keeping in view the facts and circumstances of the case and aforesaid discussions, this court is of the considered opinion that the complainant has failed to prove the case against the accused beyond reasonable doubt. The present *complaint is not maintainable u/s 276CC of the I.T. Act. The complaint is, therefore, dismissed. Accused is acquitted for the offence punishable u/s 276CC of the Income Tax Act. His bail bond stands cancelled. Surety stands discharged. Original documents, if any, be returned to the rightful claimant after endorsement cancelled thereupon. Accused is directed to furnish fresh bail bond in terms of section 437A Cr.P.C. File be consigned to the record room after due compliance."*

In other words, section 276CC of the Act would be attracted only when the assessee fails to furnish the return as required in law, and if the tax payable on the total income determined on the regular assessment, as reduced by the advance tax, if any paid and the tax deducted at source, did not exceed Rs. 3,000/-, i.e. a demand for tax ought not to have exceeded Rs. 3,000/-. In the present case no such demand exists. Insofar as the qualifying condition to bring the respondents to the ambit of the mischief contempted under section 276CC of the Act is not there, they cannot be prosecuted. Furthermore, the accused were erroneously prosecuted for non-compliance under section 139 of the Act instead of under section 153C of the Act and the resultant illegal order was quashed by the ITAT. Therefore, when there was no breach of provisions of section 139 and section 276 CC of the Act, there could be no prosecution under the latter section.

The Court does not find any reason to interfere with the impugned order. No case is made out for grant of leave. Accordingly, the petitions, alongwith Crl.M.A. No.15204/2015, are dismissed.

NAJMI WAZIRI, J

JULY 05, 2018
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