

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

Date of Order: February 26, 2019

+ **CRL.M.C. 2859/2017 & CRL.M.A. 11859/2017**

ASHOK JAIPURIA

.....Petitioner

Through: Mr. Sidharth Luthra, Senior
Advocate with Mr. Pramod Kumar
Dubey, Mr. Saurabh Kumar, Ms.
Shivika Singh and Mr. Akshay
Sehgal, Mr. Karan Khaitan, Mr.
Adarsh Priyadarshin and Mr. A.T.
Patra, Advocates

Versus

TEJINDER KUMAR ACIT CENTRAL CIRCLE 19 INCOME
TAX DEPARTMENT

.....Respondent

Through: Mr. Deepak Anand and Mr. Zoheb
Hussain, Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. In a complaint under Sections 276-C(1) & 277 of the *Income Tax Act* for the Assessment Year 2002-03, respondent had filed an application for getting the present Assessing Officer examined as an additional witness and another application for filing additional documents. Both these applications have been allowed by trial court while observing as under:-

“The present complaint pertains to the undisclosed foreign bank accounts of the accused. It is to be kept in mind that it is always difficult for the concerned Indian

Authorities to obtain the particulars of such undisclosed foreign bank accounts. It takes time. The complainant i.e. Income Tax Department is having various wings and sections. The wing of Income Tax Department which has filed the present case, if was having the documents in question at the time of filing of the present complaint then it must have filed at that time. But as the complainant was not having the said documents, therefore, complainant wants to file the same now. I do not find any substance in the submissions of the Ld. Counsel for accused that the complainant has no tenable reasons to file the documents. I also do not find any substance in the submissions of the Ld. Counsel for the accused that it would cause prejudice to the accused if the complainant is allowed to file the additional documents at this stage. The case is at the stage of pre-charge evidence and accordingly, the accused will get all the opportunities to counter all the documents at every stage of trial.”

2. Revisional court vide impugned order of 7th June, 2017 has affirmed trial court order of 15th November, 2016.

3. Learned senior counsel for petitioner assails impugned orders on the ground that the Assessment Year is of 2002-03 and the documents sought to be placed on record are of the year 2009 and 2015 and no reason has been given in these applications by respondent as to why these documents could not be filed alongwith the complaint. Reliance is placed by petitioner's counsel upon Supreme Court's decision in *Sayeeda Farhana Shamim vs. State of Bihar and Another*, (2008) 8 SCC 218 to submit that the additional evidence has to be considered with caution and discretion has to be exercised judiciously for the advancement of cause of

justice and not to give a handle to complainant to harass the accused. It is submitted that complainant's witness has been already cross-examined by petitioner and at the charge stage, these applications have been filed with a view, not only to cause prejudice to petitioner, but also to delay the proceedings. Thus, it is submitted that the additional evidence sought to be led is based on the photocopy documents without originals being there and that the documents sought to be placed on record have no relevance to complaint pertaining to the year 2002-03. Thus, it is submitted that the impugned orders ought to be set aside.

4. On the contrary, learned counsel for respondent supports the impugned orders and submits that the additional evidence sought to be led is necessary for the proper adjudication of the complaint in question. He further submits that no prejudice is caused to petitioner as petitioner has the right to cross-examine the additional witness in respect of documents sought to be placed on record. It is pointed out that the information regarding the Assessment Year of 2002-03 was received in year 2009 and 2015 but it came to notice in the year 2015 and so, this petition deserves dismissal.

5. Upon hearing and on perusal of impugned orders and the decision cited, I find that the reasoning adopted by the trial court, as referred to above, does not suffer from any illegality or infirmity. There is no basis to come to a conclusion that respondent is adopting dilatory tactics or is in any way harassing petitioner. The additional evidence sought to be led appears to be for *bona fide* purpose and to substantiate the allegations made in the complaint. Petitioner does not suffer any prejudice as

petitioner has an opportunity to cross-examine the additional witness in respect of documents sought to be placed on record.

6. Finding no infirmity in the concurrent findings returned by the courts below, this petition and the application are accordingly dismissed while refraining to comment upon the merits of this case.

(SUNIL GAUR)
JUDGE

FEBRUARY 26, 2019

v

