IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-18597-2017
Date of Decision: February 28, 2020

M/s Anubhuti Cold Chains Pvt. Ltd. and others

.......Petitioners

Versus

Assistant Commissioner of Income-Tax Circle-4, Chandigarh

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Ms. Radhika Suri, Sr. Advocate, with
Mr. M.S. Kanda, Advocate, for the petitioners.

Ms. Urvashi Dugga, Sr. Standing Counsel,
for the respondent-Income Tax Department.

Harnaresh Singh Gill, J.

The present petition under Section 482 Cr.P.C. has been filed for quashing of complaint dated 29.03.2017 (Annexure P-1) under Section 276-D read with Section 278-B of the Income-Tax Act, 1961 (hereafter referred to as the 'Act') for the Assessment Year 2014-15, and the summoning order dated 30.03.2017 (Annexure P-2) on the ground that the same does not disclose commission of any offence punishable under the aforesaid Sections of the Act.

As per the facts of the present case, petitioner No.1 filed its returns of income for the Assessment Year 2014-15 on 29.11.2014, declaring income of Rs.99,10,030/- after claiming deduction of Rs.22,97,280/- in Chapter-VI-A, but the case of the petitioner was selected for scrutiny and a notice under Section 143(2) of the Act was issued on 24.09.2015. The notice under Section 143(2) and another notice under Section 142(1) of the Act was issued on 09.11.2016 asking the petitioner to produce the cash book. The Accountant produced the same produced on 27.12.2016. It is reflected from the noting sheets dated 27.12.2016 that the Accountant took back the cash book and accordingly, summons were sent to the Managing Director to produce the cash book on 28.12.2016, which was received by Parveen, servant, as Rajinder Garg was not present and thereafter, the Assessing Officer passed an ex-parte assessment order on 29.12.2016.

It is further the case of the petitioner that a notice under Section 133(6) of the Act was issued to furnish cash book on 17.02.2017 and the same was submitted on 21.02.2017 under due acknowledgment. Despite the assessee's having produced the cash book on 27.12.2016 and again on 21.02.2017, a show cause notice for prosecution under Section 276-D of the Act was issued on 23.02.2017 for non-production of the cash book. A specific reply was filed by the assessee that there was no reason on the part of the assessee to evade production of cash book. Similar notice was issued to petitioner No.2, Managing Director and petitioner No.3, former Director even though he had resigned in April 2015.

As per the stand taken by the respondent-the Assistant Commissioner of Income-Tax, the summons under

Section 131 of the Act were issued and were served through a person working in the house and during assessment proceedings under Section 143(3) of the Act, notice under Section 142(1) dated 09.11.2016 was issued to the assessee and was duly served and the assessee was asked to submit the cash book. The case was fixed for 17.11.2016 and on the said date, the Authorized Representative (A.R.) of the assessee appeared but did not submit the cash book and the matter was adjourned to 22.11.2016 but on the said date also, none had appeared. The Authorized Representative of the assessee appeared on 23.11.2016 but did not submit the cash book. After so many dates, the Authorized Representative of the assessee and the Accountant appeared and produced the cash book on 27.12.2016 and it was found that the assessee had made several purchases, freight payments etc. of more than Rs.20,000/- in a day in cash. The assessee was also asked to show whether or not these were covered by exception to Section 40A(3) of the Act given in Rule 6 DD.

It is further the case of the Revenue that during the proceedings in the evening of 27.12.2016, attended by the Authorized Representative of the assessee, he was informed that the cash book had been taken away by them without permission. He was asked to appear on 28.12.2016 with cash book, but nobody appeared. The Authorized Representative was telephonically asked to return the cash book, but to no avail. Repeated attempts to contact them had failed as their phones were found switched off. Thereafter, summons under Section

131 were issued at 11.00 A.M. on 28.12.2016 to the Managing Director and The Accountant to attend office at 3.00 P.M. on the same day, but Managing Director refused to accept notice and the notice was accepted by one Parveen, who works in the house of the Managing Director. Thus, the order under Sections 144/143(3) of the Act was passed on 29.12.2016. Even as per the Assessment Year 2014-15, there were two Directors of the Company, namely, Rajinder Garg and Jai Bansh Khan. Thus, both the Directors are liable for the acts of commission and omission.

I have heard the learned Senior Counsel for the petitioner, the learned Senior Standing Counsel for the Revenue and with their able assistance, have gone through the case file.

Before proceeding further, it would be just and appropriate to extract Section 276-D of the Act, as under:-

> "**Failure to produce accounts and documents.**
>
> **276D.** If a person willfully fails to produce, or cause to be produced, on or before the date specified in any notice served on him under sub-section (1) of section 142, such accounts and documents as are referred to in the notice or wilfully fails to comply with a direction issued to him under sub-section (2A) of that section, he shall be punishable with rigorous imprisonment for a term which may extend to one year and with fine."

The provisions entailing the offence under Section 276-D would come into force if a person willfully fails to produce the accounts and the documents. As per the record and order dated 27.12.2016, the cash book was produced and it was noted that the Accountant had inadvertently taken it back and again the cash book was received by the officer on 21.02.2017, whereas show cause notice under Section 276-D of the Act was issued on 23.02.2017.

As far as petitioner No.3 – Jai Bansh Khan is concerned, he had resigned as Director in April, 2015 and had not been involved in day to day affairs of the Company. Form DIR-12 indicates that Jai Bansh Khan had not been associated with the Company w.e.f. 10.04.2015.

Section 131 of the Act is reproduced as under:-

"**Power regarding discovery, production of evidence, etc.**

131. (1) The Assessing Officer, Deputy Commissioner (Appeals), Joint Commissioner, Commissioner (Appeals), Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and the Dispute Resolution Panel referred to in clause (*a*) of sub-section (15) of section 144C shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely :—

(*a*) discovery and inspection;

(*b*) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;

(*c*) compelling the production of books of account and other documents; and

(*d*) issuing commissions.

(1A) If the Principal Director General or Director General or Principal Director or Director or Joint Director or Assistant Director or Deputy Director, or the authorised officer referred to in sub-section (1) of section 132 before he takes action under clauses (*i*) to (*v*) of that sub-section, has reason to suspect that any income has been concealed, or is likely to be concealed, by any person or class of persons, within his jurisdiction, then, for the purposes of making any enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under sub-section (1) on the income-tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other income-tax authority.

(2) For the purpose of making an inquiry or investigation in respect of any person or class of persons in relation to an agreement referred to in Section 90 or Section 90A, it shall be competent for any income-tax authority not below the rank of Assistant Commissioner of Income-tax, as may be notified by the Board in this behalf, to exercise the powers conferred under sub-section (1) on the income-tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before it or any other income-tax authority.

(3) Subject to any rules made in this behalf, any authority referred to in sub-section (1) or sub-section (1A) or sub-section (2) may impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this Act :

Provided that an Assessing Officer or an Assistant Director or Deputy Director shall not—

(*a*) impound any books of account or other documents without recording his reasons for so doing, or

(*b*) retain in his custody any such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner or Principal Director or Director therefor, as the case may be."

Learned Senior Counsel appearing for the petitioners contends that in the instant case, the facts on record do not decipher that any order was passed or direction given for retention of the cash book. Thus, once there was no willful failure to produce the books of accounts, the impugned proceedings initiated are not tenable in the eyes of law. It is further stated that as per the settled law, when the facts on record do not disclose commission of any offence, the proceedings are liable to be quashed by this Hon'ble Court under its inherent criminal jurisdiction under Section 482 Cr.P.C.

In support of her assertions, the learned Senior counsel for the petitioners has relied upon the judgment of the Supreme Court in Rajeshwar Tiwari & Others Vs. Nanda Kishore Roy, Criminal Appeal No. 779 of 2007 decided on 19.8.2010; Alpic Finance Ltd. Vs. P. Sadasivan and another, (2001)3 SCC 513; Pepsi Foods Ltd. and another Vs. Special Judicial Magistrate and others, (1998)5 SCC 749 and Som Mittal Vs. Government of Karnataka, JT 2008(2) SC 41 and the judgment of the Delhi High Court in Shravan Gupta Vs. Assistant Commissioner of Income Tax (ACIT), Manu/DE/1079/2015.

On the other hand, learned Senior standing counsel for the respondent argues that the facts on record clearly point out an apparent willful failure on the part of the petitioners in not producing the cash book. It is further argued that even though the cash book had been produced on a given day, the same had been taken back by the Accountant of the petitioners without any authority or consent of the officials/officers of the respondent. It is thus, contended that there is not only non compliance of Section 142(1) of the Act, but there is huge contradictions in the stands taken by the petitioners at different level. It is further argued that the recast and reprinted cash book given under Section 133(6) of the Act on 21.02.2017 was not in compliance with the provisions of Section 142(1) of the Act.

In support of her contentions, learned counsel for the respondent has relied upon the judgment of the Supreme Court in P.Jayappan Versus S.K. Perumal, 1984 AIR SC 1963-149 ITR 696; judgments of this Court in M/s Telu Ram Versus ITO, 145 ITR 111 (P&H) and Surjit Engineering Works & Others and Versus ITO,2010 ITR 547 (P&H) and the judgment of the Madhya Pradesh High Court in R.G. Aggarwal and others Versus Union of India, 210 ITR 617.

In Pepsi Foods Ltd.'s case (supra) while relying upon its previous decisions in the other judgments referred to above, the Hon'ble Supreme Court while setting aside the order passed by the High Court held that if there is no substance in the allegations in the complaint, then the High Court would be well within its right to quash the proceedings. The observations made by the High Court that at the stage of taking cognizance by the Magistrate, it cannot be said that the allegations in the complaint are so absurd and inherently improbable on the basis of which no prudent man can ever reach a just conclusion that there exists no sufficient ground for proceedings against the accused, were set aside.

It is settled law that when in face of the facts on record, no offence is made out, continuing with the criminal proceedings, is nothing but an abuse of process of law.

In the instant case, when cash-book was produced on 27.12.2016, no order or direction was given for its retention under Section 131(3) of the Act. Moreover, the prosecutions under Section 276-D can only be launched on willful failure to produce the books of the accounts. In this case, the same were produced on 27.12.2016 and on 21.02.2017 with due acknowledgment. Thus, there was no violation under Section 131 of the Act which entails penalty proceedings under Section 272-A of the Act. Notice under Section 142(1) of the Act stands complied. The petitioners were issued a warning notice in the summons under Section 131 of the Act with the stipulation that non compliance will entail penalty.

Clause (d) of Section 272A(1) of the Act, which came into effect w.e.f. 1.4.2017, reads as under:-

> "S.272A(1). If any person, -
>
> (a) to (c) xx xx xxx
>
> (d) fails to comply with a notice under sub-section (1) of Section 142 or sub-section (2) of Section 143 or fails to comply with a direction issued under sub-section (2A) of Section 142."

The case in hand did does not fall within the ambit of Section 272A(1)(d) of the Act as there is no willful non production of cash books. Admittedly, the cash book had been produced on 27.12.2016 and 21.02.2017, whereas the show cause notice was issued to the petitioners on 23.02.2017. Thus, even before the said show cause notice, the cash book had been produced. The issue that the cash book produced subsequently was worth reliance or not is to be seen in the assessment proceedings, but the same cannot be made basis for initiating criminal prosecution against the petitioners. The judgments relied upon by the learned counsel for the respondent are not applicable to the facts of the present case.

Thus, in view of the totality of the facts and circumstances of the present case coupled with the law laid down by the Hon'ble Supreme Court in Pepsi Foods Ltd.'s case(supra), the impugned complaint and the summoning order dated 30.03.2017, are hereby quashed.

Allowed in the above terms.

February 28, 2020 **(HARNARESH SINGH GILL)**
ds **JUDGE**

Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No