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19.07.2022
Ct.21
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CRR 2092 of 2009
With
IA No. CRAN 1/2010 (Old No. CRAN 627/2010)

In Re: - An application under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973.

And

In the matter of: M/s. Price Water House Coopers Pvt. Ltd.

.... Petitioner

Mr. Milon Mukherjee,
Mr. Biswajit Manna,
Mr. Aritra Bhattacharya
...for the Petitioner

Mr. Dibashis Basu
...for Union of India

This is an application for quashing of the complaint case being no. C-13360 of 2009 under Sections 276C (1) and 277 read with Section 278B of the Income Tax Act, 1961.

It appears that the relevant transaction relates to the assessment year 2000-2001 for which an assessment was made by the Income Tax Department under Section 173 (3) of the Income Tax Act, 1961. Upon reassessment a penalty of Rs.27,37,689/- was imposed upon the petitioner and the present criminal prosecution was also instituted against the petitioner.

The said penalty order was ultimately challenged before the Hon'ble Supreme Court by the petitioner/assessee and the Hon'ble Supreme Court by the judgment and order passed in Civil Appeal No. 6924/2012 allowed the appeal holding, inter alia, as follows:-

> “17. Having heard learned counsel for the parties, we are of the view that the facts of the case are rather peculiar and somewhat unique. The assessee is undoubtedly a reputed firm and has great expertise available with it. Notwithstanding this, it is possible that even the assessee could make a "silly" mistake and indeed this has been acknowledged both by the Tribunal as well as by the High Court.
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> 18. The fact that the Tax Audit Report was filed along with the return and that it unequivocally stated that the provision for payment was not allowable under Section 40A(7) of the Act indicates that the assessee made a computation error in its return of income. Apart from the fact that the assessee did not notice the error, it was not even noticed even by the Assessing Officer who framed the assessment order. In that sense, even the Assessing Officer seems to have made a mistake in overlooking the contents of the Tax Audit Report.
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> 19. The contents of the Tax Audit Report suggest that there is no question of the assessee concealing its income. There is also no question of the assessee furnishing any inaccurate particulars. It appears to us that all that has happened in the present case is that through a bona fide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The calibre and expertise of the assessee has little or nothing to do with the inadvertent error. That the assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the present, does not mean that the assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income.
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> 20. We are of the opinion, given the peculiar facts of this case, that the imposition of penalty on the assessee is not justified. We are satisfied that the assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars.”

Mr. Dibashis Basu, learned advocate appearing for the Income Tax Department fairly submits that in view of the order passed by the Hon’ble Supreme Court, there is no justification to continue with the present criminal prosecution.

Accordingly, the complaint case being no. C-13360 of 2009 under Section 276C (1) and 277 read with Section 278B of the Income Tax Act, 1961, pending before the 7th Metropolitan Magistrate, Kolkata stands quashed.

C.R.R. 2092 of 2009 and IA No. CRAN 1/2010 (Old No. CRAN 627/2010) are disposed of.

Let urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Kausik Chanda, J.)