IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

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CRM-M-15756-2015 (O&M).
Decided on: August 10, 2022.

Anil Kumar and another

...Petitioners

Versus

State of Punjab and another

…Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

PRESENT **Mr.Bhrigu Dutt Sharma, Advocate,**
for the petitioners.

Ms. Amarjit Kaur Khurana, DAG, Punjab,
for respondent No.1.

Mr. Vivek Sethi, Advocate,
for respondent No.2.

VINOD S. BHARDWAJ. J. (ORAL)

The instant petition has been filed under Section 482 of the Code of Criminal Procedure (hereinafter to be referred as 'Cr.P.C.') seeking quashing of order dated 04.05.2015, (Annexure P-6) whereby an application (Annexure P-4) filed by the petitioners for producing the additional evidence i.e. an order of rectification dated 27.03.1996 passed under Section 154 of the Income Tax Act, 1961 along with the receipts showing deposit of the tax in terms of the modification so ordered by the competent authority, had been dismissed.

2 The relevant extract of the application filed by the petitioner is reproduced hereinafter:-

> *2. "That the applicants have not committed any willful default regarding the alleged non-payment of tax rather, the order of tax demand became redundant and non effective vide proceeding dated 11.04.1994 on the basis of which assessment order was passed on 27.03.1996. The entire payment was made before that date. The details of which are given at the time of making the statement under section 313 Cr.P.C. No penalty of any nature was ever initiated against the assessee nor any penalty was imposed under section 140- A of Income Tax Act. The excess demand of tax was raised which was rectified under section 154 of Income Tax Act. The documents are required to be produced and for that the accountant/manager of the accused firm may kindly be ordered/allowed to appear before the court as defence witness.*
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> *3. That the applicant was under the impression that the complainant shall produce the entire record before the trial court, but the same has not been placed on the record. Although the entire record was available with the respondent which has not been placed by the respondent.*
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> *4. That the respondent is well aware of the record and it shall not cause any prejudice in case the*

appellants are allowed to lead and produce the additional evidence. The respondent may kindly be directed the produce the entire original record which is in their possession regarding the amount which is deposited by the appellants. The detail of which is as under:-

- *Rs.25,000/- deposited on 10.02.1994*
- *Rs.20,000/- deposited on 04.03.1994*
- *Rs.50,000/- deposited on 15.04.1994*
- *Rs.20,000/- deposited on 29.04.1994*
- *Rs.20,000/- deposited on 16.05.1994*
- *Rs.25,000/- deposited on 27.05.1994*
- *Rs 16,317/- deposited on 05.07.1994*
- *Rs 73,100/- deposited on 24.08.1994.*

The department/respondent is also in possession of order of rectification under section 154 of Income Tax Act, therefore, the department/respondent may kindly be directed to produce the entire record.

5. That the evidence mentioned above is required to meet the ends of justice and it shall not cause any prejudice to the department as the additional evidence prayed for to be produced is with regard to the record which is maintained by the department, the same is essential to meet the ends of justice."

3 He points out that response to the said application was filed by the respondent department and that in the said response, there is no denial to the order of rectification as well as the receipts, the details whereof were mentioned in the application itself.

4 The relevant extract of the reply so filed by the respondent department before the lower appellate Court is extracted as under:-

> *2. "That the contents of para No.2 of the application are not only wrong but are wrong even to the knowledge of the appellants. The appellants have tried to side track the whole issue and also misquoted and misinterpreted the provisions of Income Tax Act as contained in section 140 A regarding the self assessment and the amount so determined is to be deposited as per provisions of section 211 of the Income Tax Act.*
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> *That the appellants have filed the return of income for the assessment year of 1993-94 relevant of the accounting period 1992-93 on 20.10.1993 at Rs.4,12,810/- and the tax payable was Rs.2,29,400/-. The tax so determined was to be paid in the stipulated period as contained in the section 211 of the Income Tax Act alongwith the interest, if due. The Return was filed on 20.10.1993 and the tax was deposited at different dates after 12.02.1994. Thus it was a clear violation of the provisions of the Income Tax Act.*
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> *It is not a case of concealment of income for which a penalty under section 271 (1) (c) is provided but this is a case of non-compliance of the provisions of section 140-A and Section 211 of the Income Tax Act. The applicant refer to section 154 of the Income Tax Act which was misconceived. The provisions of Section 154 of the Income Tax Act pertains to rectification of any mistake. In the present case the appellants exhibited the order under section 154 of*

> *Income Tax Act which is Ex. DA. All the documents as referred to in the application are on the court file. The appellants wants to produce its Manager in defence, while the fact is that this very defence was taken when the accused were examined under section 313 Cr.P.C. but has failed to produce the Accountant/ Manager in defence. Thus the appellants are estopped to produce the above said witnesses in defence.*
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> *3. That the contents of para No.3 of the application are wrong. During the proceedings before the learned lower court all the relevant record was made available. The PWs were thoroughly examined and cross examined.*
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> *4. That the contents of the para No.4 of the application are not only wrong but are wrong even to the knowledge of the appellants. So called record was produced by the appellants even the order u/s 154 of the Income Tax Act Ex.DA was exhibited by the appellants. The appellants had all the opportunities to examine and cross examined the prosecution witnesses during the trial. Now at this stage asking for entire record without any specification is just an attempt to delay the proceedings."*

5 He contends that once the receipts as well as modification in the final order of assessment is not disputed, the Court ought to have taken the same into consideration and the petitioners ought to have been permitted to lead the said order and receipts as additional evidence. He further contends that in the response filed before the lower appellate Court, the authorities have stated that the entire record (including the record sought to be led in additional evidence) has been

adduced in evidence, however, the Department could not indicate the said record on the file. It is thus stated that the petitioners themselves reeled under the impression that the entire record would have been adduced. The Department has chosen to selectively submit the record instead of projecting the complete and correct picture. He contends that the order and its compliance shall have a bearing on the final outcome of the appeal preferred by the petitioners and shall not cause any prejudice or irreparable loss to the Department since the order as well as the deposit receipts have been generated by the department itself. He contends that since the receipts and documents have not been disputed in the response and the certified copies thereof can be tendered, the petitioners would not be required to lead any further evidence in support thereof.

6 Learned counsel appearing on behalf of Department - respondent No.2 contends that the application in question had been moved solely with an intent to delay the trial and at a highly belated stage. The explanation tendered regarding failure to lead such evidence earlier in point of time is not satisfactory. No valid reasons have also been given as to what precluded the petitioners from moving any such application along with appeal especially when the trial had already continued for a period of nearly 10 years before a judgment was passed against the petitioners. He further contends that instant application has been moved in the year 2015 when the appeal had remained pending for a period of nearly 9 years. It is thus vehemently contended that the matter has remained pending on account of frivolous application being

filed by the petitioners. However, on a pointed query, learned counsel could not point out as to what irreparable loss or prejudice is likely to ensue to the respondent No.2 in case the petitioners are permitted to tender the aforesaid documents in support of their case. He also fails to controvert the existence of the said documents since the response filed by the department does not substantiate any objection.

7 I have heard the learned counsel appearing on behalf of the respective parties.

8 Section 391 of the Code of Criminal Procedure, deals with the power of the appellate Court, to take further evidence. The same is extracted as under:-

> *"391. Appellate Court may take further evidence or direct it to be taken.*
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> *(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.*
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> *(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.*
>
> *(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.*

> *(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry."*

9 A perusal of the aforesaid shows that the only parameter prescribed for taking any additional evidence is that in case it is necessary for adjudication of the case. The administration of criminal justice is governed by an underlying principle of securing the ends of justice. Once the petitioners contend that the entire dues already stand deposited and that the Department does not suffer from any pecuniary loss and also show that the said documents had not been submitted by the Department whereas it was incumbent upon them to adduce the entire evidence to bring home the culpability of the petitioners in the aforesaid case. It further demonstrates that the prosecuting agency has not adduced the entire documentary evidence and had been selective in the submission of the evidence. The right of the petitioners to claim leading of additional evidence cannot be subjugated on the altar of delay especially when the said aspect can be duly compensated for.

10 The Hon'ble Supreme Court has held in the matter of ***Rajeswar Prasad Misra Vs. State of West Bengal and another, reported as AIR 1965 SC 1887***, that an additional evidence can also be recorded during appeal against conviction or acquittal. The aforesaid view was reiterated in the judgment of ***Bir Singh and others Vs. State of Uttar Pradesh, reported as AIR 1978 SC 59***. Further, it was held by the Hon'ble Supreme Court in the matter of ***State of Gujarat Vs. Mohan Lal Jitamalji Porwal and another, reported as AIR 1987 SC 1321*** that

additional evidence cannot be refused merely on the ground of delay when such evidence is necessary to promote justice.

The Hon'ble Supreme Court further held as under in the matter of ***Zahira Habibullah H. Sheikh and anr. Vs. State of Gujarat and others reported as (2004) 4 SCC 1587***:-

> *"The necessity of additional evidence arises when the Court feels that some evidence which ought to have been before it is not there or that some evidence has been left out or erroneously brought in. In all cases, it cannot be laid down as a rule of universal application that the Court has to first find out whether the evidence already on record is sufficient. The motive and quality of evidence on record is also relevant…….. It is not that the Court has to be satisfied that the additional evidence would be necessary for rendering a verdict different from what was rendered by the trial Court………*
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> *The question of admission of evidence initially or as additional evidence under Section 391 Cr.P.C. is distract from the efficacy, reliability and its acceptability for consideration of claims in the appeal on merits. It is only after admission, the Court should consider in each case whether on account of earlier contradiction before Court and the testimony allowed to be given as additional evidence, which of them or any part or parts of the depositions are credit worthy and acceptable, after a comparative analysis and consideration of the probabilities and probative value of the material for adjudicating the truth."*

11 In the present case, the aspect of delay has already become inconsequential inasmuch as the proceedings relate to the assessment year 1993-1994 for which the complaint in question was instituted in the year 1996. The matter remained pending before the trial Court for a period of nearly 10 years before a final judgment of conviction was passed. The appeal itself has now remained pending for nearly 16 years. The instant petition has also remained pending in this Court for a period of nearly 7 years. At no stage any application had been moved by the revenue Department seeking either vacation of the stay or for seeking expeditious disposal of the proceedings.

12 Apparently, no reference could also be made to substantiate the contention that the documents are already on record to any part of the trial Court order or the impugned order, that the said contention of the Department is actually correct. It could also not be disputed that the documents in question are generated by the Department itself and that they were always in possession or control of the said documents. No explanation has also been furnished as to why the said documents were not produced before the Court. It was incumbent upon the prosecution to reflect fairness in action. Even if a document is seemingly likely to extend any benefit to an accused, *albeit* remotely, the prosecution is supposed to produce the same before the Court. Formation of an opinion and adjudication thereupon is a function for the Court to perform after appreciation of the complete material.

13 Taking into consideration the settled principles of law noticed above and the fact that no irreparable loss and injury is likely to ensue and that the final order as well as the receipts qua the deposit of the modification in the final assessment are themselves generated by the respondent department, I deem it appropriate to allow the instant petition. Consequently, the impugned order dated 04.05.2015, passed by the learned Additional Sessions Judge, Jalandhar, is set aside. The petitioners are granted one opportunity to tender their evidence in the form of the receipts as well as the modified order of assessment passed under Section 154 of the Income Tax Act, by the competent authority subject to payment of costs of Rs.10,000/- to be paid to respondent No.2.

14 It is also made clear that in the event the revenue Department feels any necessity to lead evidence to controvert the same or dispute the same, it can always move appropriate application before the learned Additional Sessions Judge to lead evidence in rebuttal to the aforesaid document tendered by the petitioners and one effective opportunity shall be granted by the Court to the respondent – Department.

15 Noticing further that the matter has remained pending for an extraordinary long period of time, the parties are directed to appear before the lower appellate Court on 26.08.2022 or the date fixed prior to the aforesaid date. The exercise in relation to tendering of the additional evidence and the rebuttal evidence, if any, to be led by the respondent Department, shall be concluded expeditiously and preferably within a period of two months from the appearance of the parties. The

decision on the final appeal shall be taken expeditiously and preferably within a period of three months thereafter.

16 Petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

August 10, 2022
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No