IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.570 OF 2016

Kripa Sagar Das	]	..	Applicant
vs.			
CBI Through Spl. PP	]	..	Respondent

Mr.Pranil Sonawane a/w Ruchi Rajput and Raj Chaurasia, i/b KLS Legal for the Applicant.

Mr.H.S. Venegaonkar, for CBI.

Mr.S.R. Agarkar, APP for the State.

CORAM : BHARATI DANGRE, J

DATE : 04th September, 2023.

P.C.

1] The present Revision Application is filed being aggrieved by the order dated 29.07.2016, under which the learned Special Judge for the CBI has rejected the Application for discharge made by the present Applicant, being arraigned as Accused No.1 in CBI Special Case No.76/2011 and tried for the offence punishable under Section 120B, 201, 420, 468, 471 of the IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

2] Heard the learned counsel for the Applicant and the learned counsel for CBI.

The case of the prosecution which can be discerned from the charge sheet, is to the effect that after passing the order levying penalty upon the Respondent No.2, M/s.Taj Television(I) P. Ltd., under Section 271 (1)(c) of the Income Tax Act, and by levying the penalty of Rs.1,57,55,460/-, with the prior approval of his higher Authority i.e. Additional Commissioner of Income Tax Range 7 (3), on the very same day, the penalty proceedings were dropped.

It is also alleged that the accused moved a letter to the Additional Commissioner of Income Tax for approval of penalty and interpolated the figures of penalty in the current Demand and Collection Register .

In the wake of the aforesaid, the Applicant/Accused face charge that he had caused wrongful loss of Rs.1,57,55,460/- to the Government, which has resulted in wrongful gain to the Accused No.2.

3] My attention is invited to Section 274 of the Income Tax Act which contemplate the procedure for imposing the penalty under Chapter 11 and it stipulate that no order imposing the penalty shall be passed until and unless the Assessee is afforded a reasonable opportunity of hearing and sub section (2) of Section 274 also reads thus:

> "No order imposing a penalty under this Chapter shall be made (a) by the Income-Tax Officer, where the penalty exceeds ten thousand rupees; (b) by the Assistant Commissioner of Deputy Commissioner, where the Penalty exceeds twenty thousand rupees, except with the prior approval of the Joint Commissioner."

Section 271 stipulate various contingencies, where penalty could be levied on failure to furnish details, comply with the notices, concealment of income, resulting into evasion of the tax.

4] In the present case, from the charge-sheet it is revealed that the present Applicant, working as Deputy Commissioner of Income Tax, Range 7(3), issued a notice under Section 274 read with 271(1)(c) to Respondent No.2 asking to show cause as to why action should not be taken against it in the wake of the background that Income Tax return of M/s.Taj Television (I) Pvt. Ltd. for the annual year 2004-2005 was selected for compulsory scrutiny.

The ITO Ward 7(3)(4) of the Income Tax Department carried out the scrutiny, which resulted into passing of Assessment Order under Section 143(3) of the Income Tax Act. on 29.12.2006 reflecting the tax liability of Rs.3,94,21,630/- and net tax payable to the tune of Rs.1,38, 89,291/- . The liability said to have accrued due to the disallowance on account of ‘loss on decoders of Rs.2,25,07,808/-’ as claimed by Respondent No.2 in its IT Returns.

Being aggrieved, an Appeal was filed before the Commissioner of Income Tax (Appeals) -XXIII and on completion of the appeal proceedings, the CIT,XXIII passed an order on 20.04.2017 upholding the order of IT in respect of disallowance, on the ground of loss on decoders. This resulted in the proceedings being initiated for imposition of penalty and in pursuance to the notice that was issued by the present applicant working as Deputy Commissioner of Income Tax, a reply came to be submitted by Respondent No.2 on 19.06.2007 and 29.06.2007 and even filed.

This resulted in fresh notice being issued on 07.11.2007 and the Assessee appeared and informed that it had already filed a submission on 21.06.2007 and 03.07.2007 in response to the earlier show cause notice and the same may be considered for the purpose of penalty process.

5] On receipt of the submissions and on consideration of the stand of Respondent No.2, as projected through letters dated 19.06.2007 and

29.06.2007, the present Applicant arrived at a conclusion that Respondent No.2 has furnished inaccurate particulars of the income and defaulted within the meaning of Section 271(1)(c) and he was,hence, liable for imposition of penalty and hence , calculating the penalty as stipulated under the said provision, penalty of Rs.1,57,55,460/- as minimum penalty came to be imposed.

6] The said order under the signature of the Deputy Commissioner of Income Tax, i.e. the present Applicant also made the following noting :-

"Give notice of demand and challan accordingly ."

This order is passed with the approval of the Additional CIT, Range 7(3).

7] On the very same day, another order came to be issued by the Applicant, purportedly once again under Section 271(1)(c) of the IT Act and the shortest possible order reads thus :

> "In view of the Assessee's letter dated 14.11.07, 29.06.07 and 19.06.07, penalty proceedings u/s. 271(1)(c) are hereby dropped."

8] This resulted in the complaint being lodged and charge being levelled against the Applicant for committing an offence under Section 120-B , 201, 420, 468, 471 and also Section 13(2) read with 13(1)(d) of the PC Act and substantive offences thereof.

The Respondent specifically attributed the charge of committing a forgery to the Applicant by the following accusations :

> "f] That after passing the order of levy of penalty, Shri Kripa Sagar Das, DCIT, in order to obtain pecuniary advantage of Rs.1,57,55,460/- for M/s. Taj Television (I) Pvt. Ltd. fraudulently prepared another order dated 30.11.2007 for dropping the penalty

> proceedings against M/s. Taj Television (I) Pvt. Ltd. and removed his original letter to Addl. CIT for approval of Penalty. Penalty order for levy of Penalty of Rs.1,57,55,460/-, computation sheet and demand notice- all dated 30.11.2007 from the Income Tax file of M/s. Taj Television (I) Pvt. Ltd. and replaced them with new order dated 30/11/2007 for dropping of Penalty.
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> (g) That after 2-3 days, Shri Kripa Sagar Das, DCIT told Shri Shirish Benare that the Penalty Proceedings against M/s. Taj Television (I) Pvt. Ltd. has been dropped, and directed him to make necessary corrections in the Current Demand and Collection Register. The file of Assessee contained the order dated 30/11/2007 issued by Shri K. S. Das for dropping of Penalty Proceedings against M/s. Taj Television (I) Pvt. Ltd. On the basis of that order, Shri Shirish Benare altered the entry in Current Demand and Collection Register at Page No.152 Sr. no.10 by applying fluid and then overwriting it as dropped."

9] The learned counsel for the Applicant would submit that it was well within the power of the Applicant to invoke Section 271(1)(c) of the IT Act, 19671 as he was competent authority and since he had not finalized the action for levy of penalty, he decided to drop the proceedings initiated against the Assessee in the wake of their submissions found to be contained in the communications addressed in defence.

I am not impressed by the said submission as when one turn to the power vested in the Officer under Section 271(1)(c), I do not see any power of review vested in the same Officer. The submission of the learned counsel that the order passed by him on 30.11.2007 was draft order and no final order was ever passed by him, is falsified by statement of the superior authority i.e. the Additional CIT Range 7 recorded on 10.02.2011, where he has specifically stated as under :-

> "Page No.393 and 394 is the photocopy of Income Tax Computation Form and page No.395 is photocopy of demand notice U/s 156 of IT Act. On being asked I state that Shri K S Das, DCIT had sent a letter dated 30/11/2007 to me for levy of Penalty U/s 271(1)(c) alongwith a draft Penalty Order. Copy of the said letter is in this file at Page No.385. The said letter contains the signature of Shri K S Das. Thereafter, on the same day, I, vide my letter dated 30/11/2007 accorded my approval for levy of penalty of Rs.1,57,55,460/-. The copy of said approval letter is on page no.384 of this file. This photocopy contains the signature dated 30/11/2007 of Shri K S Das, which shows that the said approval was in the knowledge of Shri K S Das on 30/11/2007.
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> This file contains the order dated 30/11/2007 issued by Shri K S Das for dropping of Penalty Proceedings against M/s. Taj Television (I) Pvt. Ltd. The said order is on page No.382 of the file. This order contains the signature of Shri K S Das.
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> On being asked I state that I had approved the levy of Penalty of Rs.1,57,55,460/- on 30/11/2007. This file did not contain any material to show the reason for dropping the Penalty. Therefore Shri K S Das has dropped the Penalty without any reason. He did not send file to me before dropping the Penalty."

10] Apparently, when once the Penalty was approved by Mr.Shravan Kumar, the Superior Officer, and an order came to be passed under the signature of the Applicant under Section 271(1)(c), unless and until there was power to review the same, which necessarily would have been required to be done in the like manner i.e. with the approval of the superior authority and since the order which is passed dropping the proceedings initiated for imposition of penalty is without any reason, without the papers having been forwarded to the superior officer, I find sufficient justification in invoking the provisions of Section 13(2) read with 13(1)(d), alongwith the necessary sections of the Indian Penal Code.

Since the accusation levelled against the Applicant is about manipulating the record in an attempt to demonstrate that the original order under Section 271(1)(c) was never passed, even the offence of 420 IPC is involved. The material in the charge sheet do indicate the ingredients of the offences, and it cannot be said that there is no sufficient material to proceed against the present Applicant under the special case, in the wake of the charge sheet filed by the CBI.

Necessarily, I do not find any legal infirmity in the order passed by the learned Special Judge and by upholding the same, the Revision Application is dismissed.

9] Since by the order of this Court passed on 06.04.2017 , the trial in CBI Special Case No.76/2011 was stayed, the learned Special Judge is requested to expedite the trial and conclude it preferably within the period of one year from today, by giving utmost priority.

Needless to mention that the observations made are restricted only for the purpose of deciding the present Revision Application.

[BHARATI DANGRE, J]