2024:PHHC:034342

In the High Court for the States of Punjab and Haryana
At Chandigarh

CRM-M-10347-2024 (O&M)
Date of Decision:-5.3.2024

R.K.City Developers Private Limited & Others … Petitioners

Versus

Assistant Commissioner of Income Tax and others ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Pankaj Jain, Senior Advocate with
Mr. Divya Suri, Advocate for the petitioners.

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GURVINDER SINGH GILL, J.

1. The petitioners seek quashing of criminal complaint No. 50740 of 2023 (Annexure P-13) lodged under Section 276CC of the Income Tax Act, 1961 pertaining to the Assessment Year 2013-14, pending before the Court of Chief Judicial Magistrate, Ludhiana. The petitioners also assail order dated 1.12.2023 (Annexure P-15) vide which the petitioners have been ordered to be summoned.

2. The complaint in question was filed by the Assistant Commissioner of Income Tax under Section 276CC read with Section 278-B of the Income Tax Act, 1961 alleging therein that on 25.10.2018, a search and seizure under provisions of Section 132 of the Income Tax Act was conducted on the premises of M/s R.K.City Developers Private Limited, a body Corporate registered under Companies Act, 1956. Respondent No. 2 - Rakesh Kumar

and Respondent No. 3 – Satish Kumar are Directors of M/s R.K.City Developers Private Limited. Subsequently, a notice dated 24.5.2019 under Section 153A of the Income Tax Act, 1961 was issued to the accused calling upon them to file income tax return for the Assessment Year 2013-14 within a period of 30 days from the receipt of notice. However, the accused did not file its return within the prescribed period and nor did he communicate with the Assessing Officer. It was only on 19.12.2020 that the accused finally submitted its income tax returns. However, by the said period, a delay of 545 days had occurred.

3. The accused/Directors were granted opportunities to explain the delay and were issued show cause notices dated 16.12.2020, 18.2.2021 and 9.8.2023. Although, the accused had submitted its replies dated 19.12.2020 and 14.8.2023 but the explanations were not accepted by the income tax authorities. An assessment order dated 9.9.2021 was passed by the Assessing Officer and a demand of an amount of Rs. 2,93,12,370/- was raised with respect to Assessment Year 2013-14 which was to be payable within 30 days failing which simple interest @ 1% p.m. was payable. Penalty proceedings were also initiated under Section 271(1)(c) of Income Tax Act. A proposal for prosecuting the accused was made by the Deputy Commissioner of Income Tax to the Principal Commissioner of Income Tax, Central Ludhiana. Ultimately when sanction to prosecute the accused/petitioner was accorded, the instant complaint dated 30.11.2023 (Annexure P-13) was instituted against the petitioners. It is also alleged that the accused are habitual of concealing correct particulars of their income and furnished inaccurate particulars. Upon institution of the complaint, the

learned Chief Judicial Magistrate, Ludhiana found sufficient grounds to proceed against the accused/petitioners for having committed offences under Section 276CC read with Section 278B of the Income Tax Act and consequently ordered for summoning of the accused vide summoning order dated 1.12.2023 (Annexure P-15), which is assailed before this Court alongwith the complaint (Annexure P-13).

4. The learned counsel for the petitioners submitted that it is a simple case of delay in filing income tax return and that at best it is a case where the petitioners would be required to pay penal interest on account of the delay in filing the return, particularly when the delay cannot be said to be willful. The learned counsel submits that petitioner No. 2 - Rakesh Kumar lost his father on 19.7.2017 and at that time the company and the Directors were having some financial difficulties which was followed by onset of Pandemic COVID-19 and that under these circumstances, the petitioners were unable to file the income tax returns within the prescribed period. The learned counsel in order to hammer forth his aforesaid contentions regarding the delay in not being 'willful' presses into service a judgment of Madhya Pradesh High Court rendered in *Cri. Rev. No. 112 of 1992 - Narayan vs. Union of India* and order dated 10.1.2022 passed by Hon'ble Apex Court in a Miscellaneous Application No. 21 of 2022 filed in *Suo Motu Writ Petition (Civil) No.3 of 2020 in the matter Re: Cognizance for Extension of Limitation.*

5. This Court has considered aforesaid submissions.

6. Before proceeding further, it is apposite to refer to the bare penal provisions of the Act under which the petitioners are being prosecuted. Section 276CC of the Income Tax Act is reproduced herein-under :-

> **"Failure to furnish returns of income**.
>
> 276CC If a person wilfully fails to furnish in due time the return of fringe benefits which he is required to furnish under sub-section (1) of section - 115WD or by notice given under sub-section (2) of the said section or section-115WH or the return of income which he is required to furnish under sub-section (1) of section-139 or by notice given under clause (i) of sub-section (1) of section-142 or section-148 or section-153A, he shall be punishable,—
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> (i) in a case where the amount of tax, which would have been evaded if the failure had not been discovered, exceeds twenty-five hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;
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> (ii) in any other case, with imprisonment for a term which shall not be less than three months but which may extend to two years and with fine:
>
> Provided that a person shall not be proceeded against under this section for failure to furnish in due time the return of fringe benefits under sub-section (1) of section-115WD or return of income under sub-section (1) of section-139—
>
> (i) for any assessment year commencing prior to the 1st day of April, 1975; or
>
> (ii) for any assessment year commencing on or after the 1st day of April, 1975, if—
>
> (a) the return is furnished by him before the expiry of the assessment year; or
>
> (b) the tax payable by such person, not being a company, on the total income determined on regular assessment, as reduced by the advance tax, if any, paid, and any tax deducted at source, does not exceed three thousand rupees."

7. A perusal of the aforesaid provisions would indicate that in case there is a willful default on part of the assessee in filing the return, he is liable to be

proceeded against under the Act and could face penal consequences of rigorous imprisonment which could extend upto 7 years.

8. The word 'willfully', as existing in Section 276CC of the Income Tax Act could come to the aid of an assessee in case there is a justifiable explanation for the delay in filing the return. In the instant case, the contention of the petitioners that it was on account of demise of his father that the delay had occurred is not acceptable inasmuch as the petitioner No. 2 – Rakesh Kumar lost his father in the year 2017. Though, it could well be accepted that the petitioner No. 2 as well as other members of his family would have been in a state of bereavement for a couple of months but in the present case the notice in question calling upon the petitioners to pay the income tax in respect of the Assessment Year 2013-14 had been issued in the year 2019 i.e. after about 2 years of the demise of father of petitioner no. 2. Under these circumstances, the petitioner cannot avail any benefit on account of the aforesaid bereavement in the family in the year 2017.

9. As far as the onset of Pandemic COVID-19 is concerned, even if the benefit of the period when the entire world was fighting COVID-19 is extended to the petitioners in terms of order dated 10.1.2022 passed by Hon'ble Supreme Court i.e. the period between 15.3.2020 till 28.2.2022, still the delay in the present case would remain unexplained inasmuch as the notice under Section 153-A of the Income Tax Act had been issued on 24.5.2019 calling upon the petitioners to pay the income tax return within 30 days i.e. by 23.6.2019 whereas the return was actually filed only on 19.12.2020 i.e. after a delay of 545 days. No explanation was forthcoming as regards the period w.e.f. 24.6.2019 i.e. the day when period of 30 days stood expired, upto

20.3.2020 i.e. the date w.e.f. which the benefit of COVID had been granted by Hon'ble Supreme Court.6

10. As far as the judgment pressed into service by learned counsel for the petitioners i.e. *Narayan's case* (supra) is concerned, a perusal of the same would show that the delay was sought to be explained on account of the inability of the assessee to file the income tax return, being ill. In the cited case, the explanation regarding inability was supported by a medical certificate, which had not been challenged by anybody and had, thus, been found to be acceptable and consequently, it was held that the delay was not willful. However, as already discussed above, in the present case the petitioner has not been able to establish that the delay was not intentional or not willful.

11. Consequently, the case would fall within the ambit of provisions of Section 276CC read with Section 278-B of the Income Tax Act. This Court further finds that the summoning order even though not a very detailed one cannot be found to be erroneous in any manner in view of the facts and circumstances of the case.

12. There is no merit in the petition and the same is hereby dismissed.

5.3.2024 **(Gurvinder Singh Gill)**
kamal **Judge**

Whether reasoned/speaking Yes / No
Whether reportable Yes / No