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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.M.C. 1395/2022

DR. K.V. SUBBARAO .....Petitioner

Through: Ms. Rebecca John, Senior Advocate with Mr. Rajat Jain, Mr. Pravir Singh, Advocates

versus

DEPUTY COMMISSIONER OF INCOME TAX .....Respondent

Through: Mr Shlok Chandra, Sr Standing Counsel for ITD, Ms Priya Sarkar, Jr Standing Counsel for ITD, Ms.Madhavi Shukla, Jr Standing Counsel for ITD, Mr Sudarshan Roy, Advocate for ITD

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

O R D E R

% **10.07.2024**

1. The Petitioner has approached this Court for setting aside the Order dated 02.02.2022, passed by the learned ACMM, Tis Hazari Courts and for quashing of criminal complaint which has been initiated against PHI Seeds Limited and other officers of the PHI Seeds Limited for an offence under Section 276C read with Section 277, 278B, 278E of the Income Tax on the ground that the company had filed incorrect assessments in order to evade tax. The primary issue in the present Petition is as to whether the sanction Order or the Complaint is maintainable against the Petitioner or not.

2. Material on record indicates that the complaint relates to Assessment

Year 2000-2001. The returns on self assessment was filed on 22.11.2000. A notice under Section 148 of the Income Tax Act was sent to the company and subsequent returns were filed on 22.04.2003. A re-assessment order is passed on 27.09.2004.

3. The Petitioner though joined the company as a Production Operations Manager on 05.07.2001 but the fact that he had joined as the Production Operations Manager does not show that he was in any way related to the preparations for filing of the returns. The Petitioner became the Alternate Director of the company on 03.10.2003 which, as the record indicates, is after the second return was filed, i.e., 22.04.2003 and he became a Director on 20.09.2004.

4. Material on record also indicates that after becoming a Director, an application under Section 154 of the Income Tax Act has been filed 20.12.2004, when the Petitioner was a full time Director and further material on record indicates that he had given some power of attorneys authorizing certain persons to represent the company on 06.09.2004.

5. The short question which arises is on the facts as placed whether an offence under Section 276C of the Income Tax Act can be made out against the Petitioner on the material available on record.

6. Sections 276C, 277 and 278B of the Income Tax Act reads as under:-

> ***"276C. Wilful attempt to evade tax, etc.-***
>
> *(1)If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable,-*

(i) in a case where the amount sought to be evaded exceeds one 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;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

(2) If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the Court, also be liable to fine.

Explanation. - For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person-

(i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or

(ii) makes or causes to be made any false entry or statement in such books of account or other documents; or

(iii) wilfully omits or causes to be omitted any

relevant entry or statement in such books of account or other documents; or

(iv) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.]"

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False statement in verification, etc.

277. *- If a person makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable,-*

(i) in a case where the amount of tax, which would have been evaded if the statement or account had been accepted as true, exceeds one 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;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.]

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[Offences by companies.

278B. *(1) Where an offence under this Act has been committed by a company,* ***every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence*** *and shall be liable to be proceeded against and punished accordingly:*

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

[Explanation. - For the purposes of this section,-

(a) "company" means a body corporate, and includes-

> *(i) a firm; and*
> *(ii) an association of persons or a body of individuals whether incorporated or not; and*
>
> *(b) "director", in relation to-*
>
> *(i) a firm, means a partner in the firm;*
> *(ii) any association of persons or a body of individuals, means any member controlling the affairs thereof.]"*

7. A perusal of Section 278B of the Income Tax indicates that every person who, at the time of the offence, is in charge of the company and responsible for the conduct of the business of the company as well the company shall be deemed to be guilty.

8. At this juncture, it is relevant to reproduce the portions of the complaint under Section 200 CrPC. Paragraph 3 and 16, implicating the Petitioner herein, reads as under:-

> *"3. That the original return for A.Y. 2000-01, filed on 22.11.2000 (which was signed on 18.11.2000 at Chennai by Sh. K S Subbaish S/o Sh. M. Suddalaikannu as director) in part IV column 6 discloses respondent no.2 & 3 to be persons responsible for affairs of the company. That respondent no.4 has signed the return filed on 22.04.2003 in response to the notice u/s 148 thereby again concealing the facts from revenue department and not truthfully disclosed that profit from the industrial undertaking at Uppal at Hyderabad were almost Rs.4,55,77,328/- for A.Y. 2000-01 and perpetuated the fraud by misrepresentation made before income tax authorities. The respondent no.5 Dr. K V Subbarao is another director, who has signed the*

power of attorney on 06th September 2004 authorizing several persons to represent the company. Thus respondent no.5 is also alongwith other person incharge and responsible for day to day business of accused no.1. In absence of any board resolution placed before the revenue authorities, respondents are collectively and severally responsible and hence guilty u/s 278B and their culpable state of mind u/s 278E of IT Act for the offences committed u/s 276C(1)/277 of the Act as alleged hereunder is to be presumed.

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16. The assessee had filed a return thereby furnishing false claims regarding his agriculture income having manipulated to hoodwink the revenue authority and thus attempted to conceal his true income and pay tax thereon. ***That the accused company and its directors as mentioned in the return of income (accused 2 and 3) who were responsible for managing the affairs of the accused no.1 deserve to be tried and be punished u/s 276C(1)/277, 278B & 278E for the offences alleged herein.*** *"* (emphasis supplied)

9. A perusal of aforesaid Paragraph 16 indicates that the primary offence is only directed against accused No.2 and 3, who according to the complaint were responsible for managing the affairs of the accused No.1 and deserves to be tried and be punished for offences under Sections 276C(1)/277, 278B & 278E of the Income Tax Act. There is no averment that the Petitioner was responsible for managing the affairs of accused No.1.

10. The learned CIT while granting sanction cannot expand the complaint and the allegation in the complaint is primarily against the A-2 and A-3 and not against the Petitioner, who has been arraigned as A-5. The fact that after becoming Director, the Petitioner had signed certain power of attorneys

authorizing persons to represent the company would not make the company liable for the offence under Section 276C, 278 of the Income Tax Act.

11. In view of the above, since the material on record does not disclose any offence committed by the Petitioner, who was arraigned as A-5, for the purpose of the offence under Section 276C, this Court hereby quashes the complaint only *qua* the Petitioner.

12. It is made clear that any observation made in this order is only limited to the issue as to whether the Petitioner, who accused No.5, is to be proceeded against for the offence under Section 276C.

13. The petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JULY 10, 2024
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