



\$~75

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

+ **CRL.M.C. 5987/2024**

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

.....Petitioner

Through: Mr. Sanjay Kumar, Sr. Standing
Counsel and Ms. Easha, Jr. Standing
Counsel.

versus

SH. KISHAN LAL MADHOK

.....Respondent

Through: Mr. P. D. Gupta, Sr. Advocate with
Mr. Atul Gupta and Mr. Prashant
Saxena, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% **05.08.2024**

CRL.M.A. 22864/2024 (Exemption)

Allowed, subject to all just exceptions.

CRL.M.C. 5987/2024

1. The Petitioner has approached this Court challenging an Order dated 28.11.2023 passed by learned Additional Sessions Judge, Tis Hazari Courts, New Delhi in Criminal Revision No.160/2021 whereby the Court has upheld the Order discharging the Respondent for offences under Section 276C(1) and 277 of the Income Tax Act, 1961.
2. Material on record discloses that a complaint was filed in the Court of learned ACMM, Tis Hazari Courts, Delhi. The gravamen of the complaint is that the Respondent herein had not disclosed his deposits in HSBC Bank, Switzerland, which amounts to an attempt to evade tax, penalty and interest



thereon.

3. It is pertinent to mention that in the Appellate Proceedings, the Income Tax Appellate Tribunal *vide* Order dated 06.09.2021 after considering the orders of the Commissioner of Income Tax (Appeals) [*hereinafter called as the 'CIT (Appeals)'*] which had held in favour of the Respondent herein, observed as under:-

*“26. We have carefully examined the computation of income for A.Y 2007-08 and under the head 'income from other sources' at item L - "Other Income", the assessee has shown income of Rs. 2,23,68,007/-.' **Once the assessee has returned the undisclosed income and paid taxes thereon, in our considered opinion, there should not be any quarrel to bifurcate the disclosed amount in two A.Ys when tax rate in both the A.Ys is the same and there is no loss to the revenue. We are of the considered view that the revenue authorities should desist from such litigation.***

27. Considering the facts of the case in totality, as discussed hereinabove, as culled out from the records, and the relevant documentary evidences, we do not find any merit in bifurcating the income in two A.Ys when the assessee has paid taxes in A.Y 2007-08. Making the addition of same income in two AYs definitely amounts to double taxation. We, accordingly, direct the Assessing Officer to delete the addition in A.Y. 2006-07 amounting to Rs. 2,05,50,550/- and Rs.18,58,311.00 in F.Y 2007-08 also. Accordingly, the appeals of the assessee in ITA Nos. 6269 and 6268/DEL/2017 are allowed.

xxx

32. The short issue is that in all these appeals for the revenue relating to different A.Ys, the Assessing Officer was of the firm belief that the assessee must have



earned some interest on the balances in his bank account with HSBC, Geneva. The Assessing Officer assumed that in India a Savings Bank account holder earns interest at the rate of 4%, therefore, applying the same rate, the Assessing Officer made the impugned addition.

33. The first appellate authority in all the A.Ys in which the revenue is in appeal found that the assumption made by the Assessing Officer is baseless and deleted the addition.

xxx

36. On the facts mentioned hereinabove, we are of the considered opinion that the action of the Assessing Officer defies the taxability of concept of real income. The undisputed fact is that in the alleged sheets of bank deposits received from the French government under DTAC, there is no mention of any interest paid by the bank to the assessee. Therefore, it is illogical to compute interest and that too at the rate prevailing in India. Since there is no documentary evidence to support the presumption of the Assessing Officer, we do not find any reason to interfere with the findings of the ld. CIT(A).”

(emphasis supplied)

4. The said Order was carried further in appeal before this Court. The fact that the Respondent has been discharged in the complaint filed against him for offences under Section 276C(1) and 277 vide Order dated 28.06.2021 of the Income Tax Act was placed before this Court.

5. This Court *vide* Judgment dated 21.09.2022 in Pr. Commissioner of Income Tax-Central-02 v. Shri Krishan Lal Madhok, ITA 229/2022, considered the submission of the Assessee and noted that the Respondent has been discharged in the present proceedings and on the issue of assessment of



tax this Court had observed as under:-

“4. Having heard learned counsel for the parties, this Court is of the view that even assuming that the statement of the assessee is paramount and sacrosanct, then also there is no denial by the revenue authorities that the assessee has honoured his statement and offered Rs.2,23,68,000/- in his return of income for the Assessment Year 2007–08 and has paid taxes thereon.

5. Further, the peak credit had been calculated by the tax authorities and at the behest of the tax authorities, the assessee had offered the amount calculated by them in his income for the Assessment Year 2007–08 and paid taxes thereon, which return of income has been accepted by the Revenue.

6. Since the tax rate in both the Assessment Years i.e. 2006-07 and 2007-08 was same, this Court is of the view that if the present appeals are allowed and an amount of Rs.2,05,50,545/- is added to the assessee's income in the assessment year 2006-07, it would amount to double taxation, inasmuch as, the said amount is admittedly a part of the amount of Rs.2,23,68,000/- offered to taxation in the assessment year 2007-08. The learned predecessor Division Bench in PCIT(Central) Vs. Krishan Kumar Modi, 2021 SCC OnLine Del 3335 has held, “In our view of the aforesaid, the learned ITAT has rightly held that there could not be any dispute on the legal proposition that the very same amount cannot be taxed twice in the two assessment years”.

7. With respect to the reliance placed on the judgment in British Paints India Ltd. (supra) the same has no application to the facts of this case, as the said observations were made by the Supreme Court while rejecting a method of accounting adopted by the assessee which has the effect of masking the profits



earned in the relevant year; artificially shifting profits to next year and thus, making it difficult for revenue to assess the profits in the relevant year and thereafter.

*8. This is however, not the issue arising in the present proceedings as it is a case of one time declaration of income by the assessee. The amount offered for by assessee for taxation is also not in dispute. The dispute has arisen only with respect to the relevant assesment year. However, the ITAT has held that the said amount was declared at the behest of the revenue and the calcualtion of the peak credit was also at the behest of the tax authorities. There is no challenge to the said finding of the ITAT in the grounds of appeal.”
(emphasis supplied)*

6. Learned Counsel for the Petitioner contends that the very fact that the Respondent has not disclosed these accounts and the interest incurred on the deposit thereon amounts to an offence under Section 276(C)(1) of the Income Tax Act. He further contends that the Respondent in his statement made under Section 132 dated 20.08.2011 has voluntarily disclosed as to how this account was opened and operated. He states that retracting the statement was an afterthought.

7. *Per contra*, Learned Senior Counsel for the Respondent, who appears on advance notice contends that all these issues stand concluded by this Court and the ingredients of Section 276C(1) are not made out. He further contends that the Respondent honoured his statement and paid taxes for AY 2007-08.

8. Section 276C(1) of the Income Tax Act, 1961 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, or under reports his income,] under this



Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act....."

9. As per the aforesaid Section 276C(1) of the Income Tax Act, there should be a wilful attempt to evade the tax.
10. A perusal of the above would show that the CIT (Appeals), the ITAT and the High Court have decided the issue of tax and therefore the finding of the learned ACMM that there is no wilful attempt to evade tax does not warrant any interference by this Court under Section 482 CrPC.
11. The petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

AUGUST 5, 2024

hsk