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

\+ CRL.M.C. 1585/2018, CRL.M.A. 5751/2018

SHYAM SUNDER JINDAL .....Petitioner

Through: Mr. Prashant Mehta, Mr. Charanpreet Singh, Advs.

Versus

THE STATE (NCT OF DELHI) & ANR .....Respondents

Through: Mr. Satish Kumar, APP for State. Mr. Ruchir Bhatia, SSC, Mr. Anand Mann, JSC, Mr. Abhishek Anand, Advs.

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

O R D E R

% **06.08.2024**

1. The present petition has been filed under Section 482 Cr.P.C with the following prayer:

> *"(a) Quash the Complaint Case No. 185/4/2016 titled ITO VS. Shyam Sunder Jindal pending before the Court of Ld. ACMM, Tis Hazari Courts, Delhi; and/or*
>
> *(b) Quash the order dated 14.12.2015 of sanction under Section 279(1) of the Act for prosecution under Section 276C(1) read with Section 278E of the Act.*
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> *(c) Quash the order dated 14.12.2015 of sanction under Section 279(1) of the Act for prosecution under Section277 read with Section 278E of the Act.*
>
> *(d) Quash the order dated 14.12.2015 of sanction under Section 279(1) of the Act for prosecution under 276D read with Section 278E of the Act.*

(e) Such further or other order(s) be passed and/or direction be given as this Hon'ble Court may deem fit and proper."

2. Learned counsel for the petitioner submits that the respondent / Income Tax Department have filed a complaint bearing CC No. 185-4/2016 before the Ld. ACMM, Tis Hazari, Delhi under Section 276C(1), 276D and 277 of the Income Tax Act for the assessment year 2006-2007. Learned counsel submits that all these demands / additions have been raised by the Income Tax Department for which the prosecution has been set aside by this court in ITA 612/2017 dated 13.12.2023. As far as this proposition is concerned that has not been disputed by the learned counsel for the petitioner.

3. Learned counsel for the petitioner insist that since the demand/addition on the basis of which the prosecution has been filed and subsequently has already been set aside therefore the proceedings against the petitioner cannot be allowed to be continued and may be quashed.

4. Learned counsel for the Income Tax Department submits that the SLP is likely to be filed challenging the order in ITA 612/2017 dated 13.12.2023 very soon. It has been submitted that administratively it has been approved and presently it is lying with the legal and research department. Learned counsel submits that therefore, the matter may be adjourned. It has further been submitted that no prejudice is likely to be caused to the petitioner as the stay is operating against the department.

5. Be that as it may be, as of now, it is admitted position that vide order dated 13.12.2023, the Division Bench of this court in ITA 612/2017 has set aside the demand.

6. The facts in brief are that the Income Tax Department vide assessment order dated 27.02.2015 had made an addition of Rs. 69,07,414/- (Rupees Sixty-Nine Lakhs Seven Thousand Four Hundred Fourteen Only). The prosecution before the Special Court at Tis Hazari Courts, New Delhi were initiated on the pretext that this income was not disclosed by the petitioner. The Addition were made as the AO was of the view that the appellant / assessee had undisclosed deposit with a foreign bank that is HSBC Bank, Geneva.

7. Even at the cost of brevity, the perusal of the order of the Division Bench indicates that the genesis of the issue was that whether any incriminating material was recovered during the search conducted. After repeated adjournments, an officer of the department filed an affidavit which disclosed that the information based on which the impugned addition was made was available to the department "before the search action was conducted on 14.11.2011." that is the date before the search was conducted. The affidavit also disclosed that the appellant / assessee had taken the position that he did not maintain the subject amount with the Geneva Branch of HSBC Bank. A communication was addressed to the concerned Swiss Authority on 10.05.2012 followed by the reminder. However, no information was received. Thus, the Division Bench of this court was of the view that the respondent / revenue department did not secure any incriminating material qua the petitioner herein, in the course of search that was carried on 14.11.2011.

8. It has not been disputed that the addition was only in respect of the alleged bank deposit in HSBC Bank, Geneva. The Division Bench thus

relying upon ***CIT v.Kabul Chawla,*** *(2015)* 61 taxmann.com 412 (Delhi) and the judgment rendered by the Hon'ble Supreme Court in ***PCIT v. AbhisharBuildwell P. Ltd.,***(2023) 149 taxmann.com 399 (SC)set aside the order of the ITAT on 10.04.2014.

9. Thus as of now, the position is settled by the order of Division Bench of this court. The department till date has not filed any SLP. The perusal of the order sheets indicate that several adjournments have been taken on this ground. The court cannot keep the matter pending only on the pleas of the department that they are taking the legal course. Hence, this court has no other option but to allow the petition and quash the proceedings. However, in case on the SLP being filed and any order passed by the Apex Court, it will be implemented in accordance with law.

10. In view of the above Complaint Case No. 185/4/2016 titled *ITO VS. Shyam Sunder Jindal* pending before the Court of Ld. ACMM, Tis Hazari Courts, Delhi,order dated 14.12.2015 of sanction under Section 279(1) of the Act for prosecution under Section 276C(1) read with Section 278E of the Act, order dated 14.12.2015 of sanction under Section 279(1) of the Act for prosecution under Section277 read with Section 278E of the Act and order dated 14.12.2015 of sanction under Section 279(1) of the Act for prosecution under 276D read with Section 278E of the Act and all the other proceedings emanating therefrom are quashed.

DINESH KUMAR SHARMA, J

AUGUST 6, 2024/AR/DG..