



2025:DHC:4893



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

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Reserved on: 27th February, 2025

Pronounced on: 30th May, 2025

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CRL.REV.P. 507/2012

HARISH CHADHA

S/O LATE SH. H.C. CHADHA

3C/30, ROTHAK ROAD,

KAROL BAGH,

NEW DELHI

.....Petitioner

Through: **Mr. Salil Kumar Jha, Advocate.**

versus

STATE

.....Respondent

Through: **Mr. Nawal Kishore Jha, APP for
the State.**

**Mr. Shlok Chandra, Sr. Standing
Counsel with Ms. Naincy Jain, Jr.
Standing Counsel & Ms. Madhavi
Shukla, Jr. Standing Counsel for
Revenue.**

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The Criminal Revision Petition under Section 401 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*) has been filed by the Petitioner, Mr. Harish Chadha against the Order of the learned Additional Sessions Judge (ASJ) dated 09.08.2012 upholding the Conviction



vide Judgment dated 23.02.2012 and Order on Sentence dated 02.04.2012 of the Petitioner under Section 276(2) of the Income Tax Act.

Background of the present case:

2. ***Briefly stated***, the Petitioner, Harish Chadha (*hereinafter referred to as the 'Assessee'*) was engaged in the business of export of plastic items to Dubai, New York, US through State Trading Corporation, which he carried on for a period of three years from 01.04.1993 to 31.03.1996. He exhausted his pending Export Orders and no further orders were received nor did he continue his business.

3. During the period between 1993 to 1995 he advanced a sum of Rs.4,53,50,000/- by Account Payee Cheques in the name of Sh. Subhash Chand Kathuria (*hereinafter referred to as "SCK"*), his elder brother-in-law and in the name of his business Units namely:

- (i) M/s Anita International (named after the SCK's wife)
- (ii) M/s Yasha Overseas (named after SCK's daughter)
- (iii) Sh. Subhash Chander Kathuria (SCK) individual)

4. Form this amount, SCK paid Rs.2,90,48,005/- to various parties on behalf the Petitioner and net advance remaining with SCK and his businesses was Rs.4,24,45,195/-.

5. The Petitioner submitted that he was unable to pay his tax liability in year 1994-95. The Assessing Officer (AO) Circle 17 (I) recovered the demand of Rs.5,33,738/- for the Assessment Year 1994-95 from the bank account of SCK and his businesses, which in fact belonged to the Petitioner but were lying in the accounts of SCK.



6. The Petitioner submitted his Tax Audit Report for the Accounting Years ending on 31.03.1996, before the Income Tax Officer wherein the advances made to SCK and his businesses, were clearly reflected.

7. In order to recover the tax payable by the Petitioner, the Deputy Commissioner (Income Tax), Circle 17(1) issued summons dated 13.01.1999 directing SCK and M/s. Anita International to produce Account Books for the three Assessment Years from 1994 to 1997; Bank Statements for the relevant period; proof of filing Income Tax Returns and details of transactions with the Petitioner during this period. It was also stated in the Notice that in default, SCK would be liable to pay the penalty.

8. A Notice was also served under Section 226(3) of the Income Tax Act to them by the Department. SCK, however, failed to respond to the Notices. *M/s Anita International* responded after more than two years by its Letter dated 27.02.2001 along with the certificate of Chartered Accountant denying any liability whatsoever. *M/s Yasha Overseas* also responded to the Department, even though it was not served with any such Notice.

Assessment Proceedings:

9. The Income Tax Department filed a Complaint before the learned Metropolitan Magistrate against the Petitioner, Mr. Harish Chadha for defaulting in making payment of Income tax for the Assessment Year (AY) 1995-96.

10. It was asserted in the Complaint that the Petitioner had filed a Report accompanied by the Profit & Loss Account, Balance Sheet and Annexures on 31.10.1995, but no Returns were filed till 26.03.1999. As per his documents, he has earned a profit of Rs.4,05,81,265/- during the year 1995-96 in his



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Export business against the sales shown by him as Rs.3,44,92,089/-. He had also shown profit from licensing and interest from the FDRs, but had not filed any Report from the Chartered Accountant in Form No. 10CCA under Rule 18 BBA (3) to claim exemption under Section 80HHC. The Balance Sheet furnished by the Petitioner reflected that he had extended loans and advances of Rs. 6,21,70,763/-.

11. It was further stated in the Complaint that to verify the claims/documents of the Petitioner, Notices under Section 148 of the Income Tax Act were issued on 26.03.1999 to the parties which were referred to in the Balance Sheet furnished by the Assessee, Mr. Harish Chadha. Likewise, Notice under Section 148 of Income Tax Act was served upon him on 29.03.1999 in response whereof, he filed the Return for the year 1995-96 on 20.02.2001, wherein Rs.27,21,590/- was shown as net income.

12. A Notice under Section 143(2) / 142(1) Income Tax Act was issued to him. He appeared in person along with his Advocate and filed a written explanation. The Assessee was asked to furnish the details of purchases, sales, inventory, opening and closing of stock and justification for DP Rate and proof of export realisation in support of his claimed deductions under Section 80HHC of the Income Tax Act.

13. A Survey under Section 133A of the Income Tax Act was carried out on 30.10.1995. Finally on 07.03.2001, the concerned Income Tax Officer passed the Assessment Order for the year 1995-96. The Assessee did not file any Income Tax Returns after the Assessment Year 1996-97. He also failed to deposit any tax penalty or interest wilfully, which is an offence under Section 276C(2) read with Section 278(E) of the Income Tax Act.



14. Hence, the Commissioner, Income tax accorded sanction under Section 279 of the Income Tax Act on 15.03.2004, followed by filing of a Criminal Complaint by the Income Tax Officer.

15. The Petitioner was summoned as an accused on 31.03.2004, the matter was tried as Warrant Trial under Chapter 19 Cr.P.C. Pre-charge evidence of the Income Tax Authority was recorded wherein three witnesses were examined including the Complainant, Income Tax Officer.

16. The ***Charges were thereafter, framed on 27.01.2010 under Section 276C(2) read with Section 278E of the Income Tax Act.***

17. The *Post-Charge Evidence* was led which was followed by the *statement of the Petitioner under Section 313 Cr.P.C.* which was recorded on 28.04.2010, wherein he conceded that he was assessed by Income tax Authority for the year 1995-96 for which he filed Returns on 20.02.2001. He did not deny the service of Notice under Section 143(2) and Section 141(1) Income Tax Act apart from the service of summons of Survey under Section 131 of the Income Tax Act. He also accepted that the Assessment Order dated 07.03.2001 was passed against him for the year 1995-96.

18. The *Petitioner examined himself as DW-1*, wherein, he deposed that the profit earned by him on his export business from 1993-96 was under the name & style of M/s. Cruford, which was taken away by his co-brother, SCK about which he had sent this intimation to the Income Tax Authority while requesting them to recover his dues from him.

19. The learned Additional Chief Metropolitan Magistrate (ACMM) while considering the evidence as led by both the parties, convicted the



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Assessee/Petitioner under Section 276C(2) of the Income Tax Act and sentenced him accordingly.

20. Aggrieved by the said conviction and sentence by the learned ACMM, the Petitioner preferred the ***Criminal Appeal No. 42/2012*** before the learned ASJ.

21. The learned ASJ in the detailed Judgment dated 09.08.2012, considered all the rival contentions and all the defences as raised by the Petitioner which was essentially that the default was not wilful but because all his money had been put in the companies of his co-brother, SCK. The learned ASJ after referring to the evidence, concluded that the evasion of tax was wilful and upheld the Judgment of the learned MM.

22. Aggrieved by the said Order of learned ASJ, the present Revision Petition has been filed.

Grounds of challenge in the present Revision Petition:

23. The *impugned Order has been assailed on the ground* that the facts have not been appreciated correctly in the circumstances of the case. It was not been considered that out of the total tax liability of Rs. 38,13,620/- for the relevant period, the actual tax component amounted to only Rs. 10,75,636/-, while the remaining amount comprised of the interest accrued over the years. During this time, the Petitioner had been pursuing recovery of the entire liability from SCK under Section 226(3) of the Income Tax Act, as was done in the previous Assessment year 1994-95.

24. It has not been appreciated that large amounts had been advanced to SCK and to his different business Companies which is reflected in the Balance Sheets of the Petitioner for the relevant period. The entire Audit



Report has not been examined for it would have reflected that SCK himself in his personal capacity owed the Petitioner more than the sum payable by the Petitioner to the Income Tax Department.

25. The advances given by the Petitioner were returnable by the persons through whom the amount was given in case the purpose for which the advances are given, had not been fulfilled. In the Balance Sheet for 1995-96, the Petitioner had expected that the amounts advanced would be utilized for the purpose for which they had been advanced and thus, SCK and its Firms were not put in the list of Sundry Debtors.

26. It has not been considered that when Notices were sent to SCK and *M/s Anita International* to make available their books of accounts, SCK did not even Reply. Though *M/s Anita International* replied, but it was not Oath in terms of Section 226(3)(vi) of the Income Tax Act, and the Assessee has to be deemed to be in default, under Section 226(3)(x) Income Tax Act. The non-filing of the Affidavit with Reply to Notice by *M/s Anita International* has been held to be of no consequence which is contrary to the requirement of Section 226(3) of the Income Tax Act.

27. It is submitted that *mere inability to pay the tax does not amount to wilful default* so as to attract imposition of imprisonment and fine. It has not been considered that the Petitioner had made several representations before the Assessing Officer, Additional Commissioner of Income and the Commission of Income Tax with the request to recover the demands of the Assessment year 1995-96 out of the funds of the Petitioner lying with SCK.

28. Learned ACMM had faulted in the Order in observing that SCK was examined by the Authorities, when infact, he had even failed to respond to the



Notices, what to talk of his examination in the proceedings. However, such a major aberration in the Order of Ld. ACMM was given no importance by the learned ASJ who termed it to be a '*sheer inadvertence*' and of no importance.

29. Moreover, the learned ASJ erroneously observed that the Petitioner had taken no steps to recover the amount from SCK and his Firms, thereby implying that no such funds had been advanced and that the Petitioner had fabricated a story to evade tax. However, this observation fails to take into account that the Petitioner lacked documentary evidence to substantiate that SCK and his businesses were not liable to return the advances made to them. It has also not been duly appreciated that even the Notices issued to SCK were not complied with.

30. It is further submitted that the Petitioner could not have produced the records of SCK, as they were not in his possession and he could not have obtained them from the Income Tax Authorities. In fact, it was upto the Income Tax Department to seek these record or for the Court to call these records of SCK and his Firms but neither the Income Tax Department nor the Court, called for the records but erroneously placed the onus of adducing this evidence on the Petitioner.

31. It is further asserted that the learned ASJ has wrongly relied upon the Balance Sheet dated 31.03.1995 to observe that the Petitioner was holding a cash reserve of Rs.67,92,65,408/- and was in a position to pay the tax. The matter pertains to the Assessment year 1995-96 and as on 31.03.1996, the Balance Sheet of the Petitioner had a figure of Rs.12,58,151.99.

32. Furthermore, in the following Assessment Year of 1996-97, the Petitioner had a loss of over Rs.7,00,000/- and had to close his operations.



33. In the end, it is contended that the Petitioner had filed a Criminal Complaint against SCK before the learned MM for registration of FIR against him, but the learned MM rejected his Complaint by observing that the dispute was purely Civil in nature. The matter was carried by him in Appeal, but he did not succeed. Therefore, the presumption of the Court that no steps were taken by the Petitioner to recover his amount due from SCK, is wrong and erroneous.

34. It is, therefore, submitted that the Order of Conviction and Sentence of the learned ACMM, as upheld by the learned ASJ, is liable to be set aside.

Reply by the Respondent:

35. The ***Respondent/Department in its Reply*** has taken the *Preliminary objection* that the Order of the learned ASJ is well reasoned which has been made after taking into consideration all the facts and circumstances of the case. The total amount of tax with interest recoverable from the Petitioner for the relevant year was Rs.40,00,000/- approximately.

36. The Court had granted exemption to the Petitioner from paying the interest which was much more than the principal amount while granting him Bail, at which time as well he had pleaded his financial hardships. Again, the Petitioner cannot be permitted to seek extension of remaining principal amount of tax recoverable from him, as no Appeal was filed by him against the demand raised by the Revenue.

37. ***On merits***, all the contentions made in the Revision Petition have been denied. It is submitted that from a bare perusal of the documents it is evident that a concocted and a false story has been projected by the Petitioner to avoid his liability to pay tax. No action, admittedly, has been taken by the



Petitioner against SCK till date to settle the *inter se* dispute. It is very easy to avoid liability by merely saying that his assets have been taken away by X or Y and it cannot be expected that the Authority would chase X or Y person, while sparing the person who is actually liable to pay the tax.

38. The specific Replies to the Notices under Section 226(3) were given by *M/s Anita International* and *M/s Yasha Overseas*, the two Firms of SCK wherein they specifically stated that they were not holding money of the Petitioner. The contentions as raised by the Petitioner itself reflect that he was not sure of the nature of financial transactions entered between him and his co-brother. Therefore, it was a case of disputed business transactions and were not covered under the words “*any person who holds money as referred in Section 226 Income Tax Act*”.

39. The Petitioner despite being given an opportunity, failed to Summon the records of SCK to prove his defence, leading to an adverse inference against him under Section 114 of the Indian Evidence Act. It is submitted that there is no infirmity in the Impugned Order of learned ASJ.

40. Furthermore, as per the documents of the Petitioner, he himself had earned a profit of Rs.4,05,81,265/- during the year 1995-96 in the Export business against the Sales shown by him, of Rs.3,44,92,085/-. Also, he had shown profits from licencing and income from FDRs, but had not filed any Report of the Chartered Accountant in Form 10CCA under Rule 18BBA(3) to claim exemption under Section 80HHC. Despite the demand being raised for the tax for the year 1995-96 on 20.02.2001, the Petitioner has failed to make payment of the income tax.



41. Reliance has been placed on N.K. Jain vs. Union of India, 2002 (254) ITR 388 wherein it has been observed that it is for the accused to prove his defence which he can do either by cross-examining the prosecution witnesses or by leading defence evidence. Similarly, in the case of V.P. Punj vs. Asst. Commissioner of Income Tax, 2002 (253) ITR 369 the Co-ordinate Bench of this Court held that Income Tax Act does not differentiate between a natural or juristic person. From the Assessee's Reply to Show Cause Notice, it cannot be inferred that he has succeeded in proving his defence beyond reasonable doubt.

42. In the end, it is submitted that the failure of the Petitioner to pay income tax for the Assessment Year 1995-96 was indeed '*wilful*' and he has been rightly convicted and sentenced.

43. It is submitted that there is no merit in the Petition which is liable to be dismissed.

Rejoinder by Petitioner:

44. The ***Petitioner in his Rejoinder*** has reaffirmed his assertions as made in the Petition and controverted the assertions made in the Reply.

Submissions by the Parties:

45. *Learned counsel for the Petitioner* has addressed has addressed arguments on the lines of defence, as stated in the Petition. ***He has denied his liability to pay tax dues along with the interest amounting to Rs.38,13,620/-.*** *The main point of contention was that non-payment of tax by him was not wilful.*

46. *Written Submissions have been filed on behalf of the Respondent* wherein Respondent reiterated the defence as stated in their Reply.



47. **Submission heard and record perused.**

48. The Petitioner had been charged for the offence under Section 276C (2) of the Income Tax Act, for wilful evasion of payment of Income Tax for the Assessment year 1995-1996.

49. **Section 276C of the Income Tax Act, 1961** is reproduced as under, for reference:-

“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.**

50. The gravamen of this Section is that there should be “**Wilful attempt of an Assessee to evade the payment of Tax, penalty or interest to make the offence punishable.**”

51. **In the present case**, it is not in dispute that the Petitioner herein did not submit his Income-Tax Assessment for the Financial Year 1995-1996, though he filed his Auditors’ Report on 25.10.1996, which contained the names of the Debtors as on 31.03.1996. On account of default in paying the Income-Tax Returns for the AY-1995-1996, *Show Cause Notice* were admittedly served upon the Petitioner and thereafter, the Assessment Order dated 07.03.2001, was made for the Year 1995-1996 wherein his liability to pay the Income-Tax including the interest, was calculated as Rs.38,13,620/-. The Petitioner has not challenged any of these facts. **His defence was essentially that the failure to make the payment, was not ‘wilful’ but on account of his ‘financial constraints’.**

52. In the case of Sangeeta Exports Pvt. Ltd. vs. Union of India, 2008 V AD Delhi 461; Prem Dass vs. ITO, 1999 (236) Income Tax Reports 683; Jarnail Singh vs. ITO, 1989 (179) ITR 426, it has been held that the conviction under Section 276C of the Income-Tax Act, can be sustained **only if the evasion of Income-Tax is shown to be wilful**. Therefore, what needs to be ascertained is whether the default on the part of the Petitioner, was indeed wilful.

53. The **first defence** taken by the Petitioner was that though the demand was made against him, but the liability to pay the demand was of his



co-brother, Mr. SCK as his entire capital had been taken by his brother-in-law, Mr. SCK. He claimed that despite having informed the Income-Tax Department about this fact *vide* Letter dated 04.10.2001, no steps were taken to make an enquiry or to recover the amount from Mr. SCK.

54. This defence of the Petitioner gets contradicted by his own documents. His Auditors' Report dated 25.10.1996 contains the name of the Debtors as on 31.03.1996, but the name of SCK or any of his Firms/Companies, does not appear in the list of Debtors. It is evident from the submissions of the Petitioner that when he started his Export business for three years. He had transferred money to SCK as part of his business transactions, as is also reflected from his Auditors' Report. There whatever may have been the business dealings between the Petitioner and SCK, it is nowhere reflected that there were any amounts due from SCK to the Petitioner. The Investment made by the Petitioner with SCK, cannot be termed as a debt recoverable by the Petitioner. This is fortified by the fact that the name of SCK and his Firms/Companies, does not feature in the list of Debtors as on 31.03.1996. The claim of the Petitioner that this amount was due to him from Mr. SCK, is clearly not tenable.

55. In this context, it has been rightly observed by the learned ASJ in the impugned Order that the Petitioner himself was not sure of the nature of the financial transaction between him and SCK, his co-brother. At times, he stated that his co-brother was holding his money as if he has given him a loan, but at many of places, he has asserted that he has been cheated by SCK. As per the communications sent by the Petitioner to the Income-Tax Authority,



he had shown that his co-brother was supposed to supply him the goods *qua* the crores of Rupees given by him, but no such supply was made.

56. Learned ASJ in his impugned Order, therefore, concluded that there are contradictory claims being made by the Petitioner, which do not explain the exact nature of transactions and therefore, it was a case of disputed business transactions, which needed evidence to be established and proved. Such like transactions cannot be covered under the words “*any person who holds the money as referred to under Section 226 of the Income Tax Act.*”

57. This is further corroborated by the fact that there is no finite finding of any amount being due from SCK. Evidently, there were business transactions between the Petitioner and SCK under which money transfers had taken place. In case the Petitioner was claiming that it was the amount due to him from SCK, he needed some kind of better evidence to establish his assertions.

58. *Admittedly, no Civil Suit or other civil litigation was initiated by him for his alleged recovery of the amounts due to him.* Upon being confronted about this, his untenable reply was that he did not have money to pay for the Court fee or filing of a Civil Suit. This obviously cannot be considered as a tenable explanation especially when the involvement of money was to the tune of Rs.6 Crores.

59. Learned ASJ further noted that if his financial constraints were such, he never took any steps whatsoever to defend his indigency either by filing any *Insolvency Petition or taking any such steps.*

60. The claim of the Petitioner that his money was lying with SCK or the same would be recovered by the Income-Tax Authorities was, therefore, rightly rejected by the learned ASJ.



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61. In this regard, it is also pertinent to observe that Notice under Section 226 (3) of the Income –Tax Act was issued to Mr. SCK and also to *M/s Anita International*,. *This Company as well as*, M/s Yasha Overseas, another Company of SCK, gave their respective Reply that no money whatsoever was due from them to the Petitioner. In fact, M/s Yasha Overseas asserted that there was a sum of Rs.3.85 Lakhs due to it from the Petitioner. Likewise, M/s Anita International claimed that a sum of Rs.13.75 Lakhs due from the Petitioner. There is no evidence whatsoever led by the Petitioner, to show that he owed certain amounts from these persons, which could be attached or recovered by the Income-Tax Authorities.

62. Learned ASJ has thus, rightly noted that onus was on the Petitioner in the first instance to show that there was money due to him from these persons/Companies, which he could have established either by summoning the Records of SCK or of the other Firms or by adducing other evidence, which he has blatantly failed to do. It has been rightly noted that merely by making a bald assertion, the Petitioner could not have expected the Income-Tax Authorities to chase these persons and recover the money in case found due to the Petitioner. The responsibility was purely that of the Petitioner, which he has failed to discharge.

63. The Audit Reports and the documents reflected that he had earned a profit of Rs.4,05,81,265 during the year 1995-1996 and that he had also shown profits from licensing and interest from the FDRs. His own Statement reflected that he had the money in the year 1995-1996 and there was no reason for him to have not filed his Income-Tax Returns. He may have stopped his business in the year 1996 after doing the export business for three years, but



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that alone does not support any inference of financial indigency. Merely claiming financial inability, without providing any further explanation or evidence, holds no weight and is clearly untenable.

64. In the given circumstances, considering his business turn-over for the relevant period, it is established beyond reasonable doubt that the non-payment of Income Tax Returns for the AY- 1995-1996, was wilful and not on account of financial inability, as asserted by the Petitioner.

65. Learned ASJ has rightly upheld the conviction and the Sentence of the Petitioner under Section 276C (2) of the Income Tax Act. There is no merit in the present Petition, which is hereby, dismissed.

66. The Petition is disposed of accordingly along with pending Applications(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 30, 2025/RS/SV