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

+ **CRL.L.P. 705/2018**

+ **CRL.L.P. 706/2018**

+ **CRL.L.P. 707/2018**

INCOME TAX OFFICER

.....Petitioner

Through: Mr. Vipul Agrawal SSC
with Ms. Sakshi Shairwal
& Mr. Akshat Singh,
JSCs.

Mr. Gaoraang Ranjan &
Ms. Harshita Kotru, Advs.

versus

BAL KISHAN JHA

.....Respondent

Through: Mr. V N Jha, Adv.
(through VC)

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **25.08.2025**

1. The present petitions are filed seeking leave to challenge the judgments dated 31.05.2018 (hereafter '**impugned judgments**') passed by the learned Additional Sessions Judge ('ASJ'), Central District, Tis Hazari Court, Delhi in Criminal Appeal Nos. 158/2018, 159/2018 and 160/2018 whereby the appeal filed by the respondent was allowed and he was acquitted of the offence under Section 276B of the Income Tax Act, 1961 ('IT Act').

2. Briefly stated, complaints were filed by the petitioner under Section 276B/278B of the IT Act against the respondent and the accused company in relation to Financial Years ('FY')

CRL.L.P. 705/2018 & connected matters

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2009-10, 2010-11, 2011-12. It is alleged that the accused company deducted TDS amounting to ₹4,41,730/- for FY 2009-10, ₹20,21,653/- for FY 2010-11, ₹5,06,998 for FY 2011-12 and failed to deposit the same in the government account as per Rule 30 of the Income Tax Rules. Accordingly, show cause notices were issued under Section 2(35) of the IT Act to the respondent by the assessing officer revealing his intention to treat the respondent as the “Principal Officer” as he was allegedly actively participating in the functioning of the affairs of the accused company. In the reply to the show cause notice by the accused company, it was asserted that the TDS with interest had been deposited.

3. The petitioner department eventually passed an order under Section 2(35) of the IT Act holding the respondent to be the “Principal Officer” and it was consequently recommended that proceedings as per Section 276B of the IT Act be taken against the respondent. Notices under Section 279(1) of the IT Act were also issued. The said notices were addressed to the respondent and one Atul Dav describing them to be the directors of the accused company, and the accused persons were granted an opportunity of being heard before launching prosecution. In the replies sent by the Chartered Accountant, it was informed that the accused company had undergone several financial setbacks, and that the accused company had already filed an application before the BIFR for declaring the accused company as a sick company. It was further asserted that the accused company had no intention in delaying the TDS payments, and that interests had also been paid by the accused company on the delayed payments.



Upon finding such replies as unsatisfactory, complaints were filed against the accused company as well as the respondent on the ground that they failed to comply with the mandatory statutory duty to deposit the TDS in the government account within the stipulated time.

4. In his defence, the respondent claimed that he was merely working as “Assistant Accounts Executive” in the accused company since 2009 and his duty, *inter alia*, pertained to data entry. It was further claimed that the respondent was neither a director nor a Principal Officer.

5. By judgments dated 10.01.2018, the respondent and the accused company being M/s Viraj Exports Pvt. Ltd. (hereafter ‘**accused company**’) were held guilty of the offence under Section 276B of the IT Act. The accused company was also held guilty of the offence under Section 278B of the IT Act. By order on sentence dated 14.03.2018, the respondent was sentenced to undergo simple imprisonment for a period of six months, and to pay a fine of ₹20,000 and in default of payment of fine to undergo simple imprisonment for one month.

6. The learned Trial Court noted that the notices were issued by the petitioner/department in regard to the alleged violation of Section 276B of IT Act for not depositing the TDS on time. It was noted that in the replies to the said notices, it was never specifically denied by the respondent that he was not the Principal Officer of the accused company.

7. By the impugned judgments, the learned ASJ in the appeals filed against the judgments dated 10.01.2018 acquitted the respondent of the charged offences. It was noted that it was



on the prosecution to establish the fundamental facts and such responsibility could not have been fastened on the respondent. It was noted that there cannot be any deemed liability upon the Director of the accused company and the same has to be specifically spelt out in the complaint as to in what manner the Director of the company is sought to be prosecuted for being responsible for the of conduct of the account.

8. The learned ASJ noted that the respondent was neither a director nor did he hold any position as described under Section 2(35) of the IT Act to fall within the category of “principal officer”. It was noted that no document had been adduced by the petitioner department to demonstrate that the respondent was concerned with the management or administration of the accused company. It was noted that any employee of accounts department, at middle level, without any extra material to point to the contrary cannot be assumed to be a person concerned with the management or administration. It was noted that the notice under Section 2(35) of the IT Act became erroneous as the respondent was never the director of the accused company.

9. The learned ASJ further noted that the notice had reached the accused company at its registered address and was replied to by some other authorised signatory which was not the respondent. It was noted that there existed no material from which it could be inferred that the respondent had ever received the notice. It was noted that the respondent was only an employee in the accounts department and that service on the accused company, by itself, cannot be said to be self-sufficient. It was further noted that the reply sent by the accused company failed to



disclose as to who was the “principal officer” at the relevant time. It was noted that mere silence on the aforesaid aspect cannot be taken as an admission on the part of the accused company.

10. The learned ASJ further noted that the petitioner was relying upon some screenshots taken from “CBN PAN based query” where the name of the respondent was appearing. It was, however, noted that the same did not by itself indicate that the respondent was personally responsible for deducting tax or the TDS. It was noted that even otherwise no attempt was made to collect Form No. 32 from the concerned Registrar of Companies which would make it manifest that the respondent was not the director of the accused company at any time.

11. The learned ASJ also considered the application filed by the petitioner filed under Section 391 of the CrPC to project a screenshot taken from a computer system that reflected that the respondent was the one responsible for the deduction of tax. It was noted that the said document was not supported by any certificate under Section 65B of the Indian Evidence Act, 1872. It was further noted that the said document was in existence much before the prosecution was contemplated despite which, the petitioner, in extreme carelessness, failed to display the same during the stage of investigation. Consequently, considering the aforesaid, the learned ASJ allowed the appeals filed by the respondent.

12. The petitioner is essentially aggrieved that the learned ASJ erroneously allowed the appeals filed by the respondent. The learned counsel for the petitioner submits that the respondent



failed to divulge as to who else was the “principal officer” if it were not him. He submits that in accordance with Section 2(35) of the IT Act, reply was given by the accused company, and in the said reply the status of the respondent either as a director of the accused company or one involved in the management of affairs of the accused company was not disputed.

13. He submits that even an accountant can be made liable for prosecution if he is found to be the person responsible for looking after the affairs of the company. He submits that the learned ASJ dismissed the application filed by the petitioner under Section 311 read with 391 of the CrPC without any reason. He submits that the said document was not brought forth earlier on account of carelessness, however, the same is instrumental in establishing that the respondent was the one responsible for deducting tax. He submits that such carelessness ought not to come in the way of finding the liability of the respondent.

14. Upon an analysis of the impugned judgments, it is apparent that the learned ASJ considered all the contentions raised by the petitioner. The only aspect that needs determination by this Court is whether the learned ASJ rightly allowed the appeals filed by the respondent.

15. It is pertinent to note that the respondent is sought to be implicated on the ground that he was allegedly the “principal officer” of the accused company. The term “principal officer” is defined under Section 2(35) of the IT Act in the following terms:

*“(35) “principal officer”, used with reference to a local authority or a company or any other public body or any association of persons or any body of individuals, means—
(a) the secretary, treasurer, manager or agent of the authority, company, association or body, or*



(b) any person connected with the management or administration of the local authority, company, association or body upon whom the Assessing Officer has served a notice of his intention of treating him as the principal officer thereof;”

16. In accordance with Section 2(35) of the IT Act, the term “principal officer” is employed with reference to the secretary, treasurer, manager or agent of the authority/company/association or body. The term also encapsulates any person connected with the management/administration of the company. In the present case, as is apparent from a perusal of the impugned judgments, but for the bald averments by the petitioner, nothing was brought forth to highlight that the respondent was concerned with the management or administration of the accused company in addition to being an employee of accounts department.

17. In order to attach a semblance of authority on the respondent, emphasis has been placed on the fact that in the reply to the show cause notice, the accused company did not comment on the aspect of the respondent not being the “principal officer” of the accused company. As rightly noted by the learned ASJ, the notice was sent to the accused company at its registered address, and the reply was given by the accused company through its authorised signatory which was not the respondent. Mere silence on the part of the accused company in its reply as to who was the principal officer does not tantamount to an admission on the part of the accused company.

18. Insofar as the screenshots in relation to the respondent being the authority for deducting tax at the accused company is concerned, it is undisputed that the said screenshot or any other material was never brought before the learned Trial Court so as



to give an opportunity to the respondent to rebut the same. As noted by the learned ASJ, the said document was even otherwise not supported with any certificate under Section 65B of the Indian Evidence Act, 1872. Further, the same was very much in existence even before the prosecution was contemplated. The present petitions pertain to deduction of TDS for the FYs 2009-10, 2010-11, 2011-12, however, the complaints were filed much later in the year 2016.

19. Much emphasis has been placed by the learned counsel for the petitioner on the fact that the said document could not be collected at the initial stage on account of carelessness, and that the same ought not to come in the way of finding the guilt of the respondent. This Court however does not find merit in the argument advanced by the petitioner. It needs no iteration that the Courts only ought to come to the rescue of such litigants who are vigilant and do not slumber over their rights. If such contentions are accepted by the Courts, it would be akin to opening a floodgate of litigations where litigants would be allowed to rekindle disputes even after decades on the premise of inadvertence or carelessness.

20. In view of the aforesaid discussion, this Court does not find any ground to interfere with the impugned judgments. The present petitions are accordingly dismissed.

21. A copy of this order be placed in all the matters.

AMIT MAHAJAN, J

AUGUST 25, 2025

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