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

% Judgment p*ronounced on: 6th April, 2015*

\+ **Crl. M.C. No.1100/2015 & Crl. M.A. No.4098/2015**

SHRAVAN GUPTA ..... Petitioner

Through Mr.Sandeep Sethi, Sr.Adv. & Mr.Chetan Sharma, Sr.Adv. with Mr.Akhil Sachar, Mr.Gurmehar Singh Sistani, Mr.Yudhister Singh & Mr.Amit Gupta, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX (ACIT) ..... Respondent

Through Mr.Sanjay Kumar, Adv. with Mr.Kamal Sawhney, Adv.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present petition has been filed by the petitioner under Section 482 Cr.P.C. seeking quashing of the sanction/authorization dated 10th February, 2015 granted by the Commissioner of Income Tax (Central-I), the complaint No.CC/91/14 dated 12th February, 2015 preferred by the respondent through Dr.Surjeet Singh, ACIT, Central Circle 02 before the Court of Additional Chief Metropolitan Magistrate and the order dated 27th February, 2015 passed by the Additional Chief Metropolitan Magistrate.

2. The following prayer is made:

> "A. Call for the records of the Criminal Complaint No. 100/4/15 dated 12.02.2015 titled "ITO Versus Shravan Gupta" instituted by the Respondent herein and pending before the Court of Sh. D.K. Sharma, Ld. ACMM (Spl. Acts), Tis Hazari Courts, New Delhi and after examining the same, quash the said Complaint and the proceedings pending before the Ld. ACMM; and
>
> B. Quash/set aside the Order dated 27.02.2015 passed in the abovementioned Criminal Complaint No. 100/4/15 dated 12.02.2015 titled "ITO Versus Shravan Gupta" instituted by the Respondent herein and pending before the Court of Sh. D.K. Sharma, Ld. ACMM (Spl. Acts), Tis Hazari Courts, New Delhi, whereby the petitioner has been summoned by the Trial Court; and
>
> C. Quash/set aside the Sanction/Authorization dated 10.02.2015 granted by the Commissioner of Income Tax (Central-I) for the commencement of prosecution against the petitioner."

3. When the petition was listed on 20th March, 2015 the learned counsel for the respondent was present and he made his submissions for some time. He was asked to file the reply. However, he submitted that he would make his submissions on the next date. When the matter was taken up on 23rd March, 2015, both the parties made their submissions and the order was reserved. As the matter was coming up before the trial court on 24th March, 2015, the personal appearance of the petitioner was exempted till the order is pronounced by this Court.

4. The brief facts as per the petition are that the petitioner by letter dated 17th November, 2011 had disclosed a foreign bank account which existed with the HSBC Private Bank, Geneva, Switzerland to the Director of Income Tax (Investigation-II). The peak amount lying in the said account during the year ending 31st March, 2007 was around US$ 1.3 million. The account was closed in the year 2007.

5. The petitioner's statement was recorded on 24th November, 2011 and 9th December, 2011 under Section 131 of the Income Tax Act. 1961 (hereinafter referred to as the "Act"). The Deputy Commissioner of Income Tax, Central Circle-7 issued a notice dated 9th July, 2012 to the petitioner under Section 148 of the Act. The petitioner filed the return of income on 14th August, 2012 declaring the peak balance of the said foreign bank account amounting to Rs. 6,48,76,162/-for the assessment year 2006-07 and Rs. 27,94,163/- for the assessment year 2007-08.

6. The respondent issued notices under Section 142(1) of the Act dated 2nd May, 2013, 12th June, 2013, 11th July, 2013, 20th August, 2014 and 15th December, 2014 calling upon the petitioner to furnish details of the foreign bank account i.e. bank statement/transaction details. The petitioner responded to the same by replies dated 22nd July, 2013, 5th August, 2013, 24th October, 2013, 19th December, 2013, 20th February, 2014 and 27th October, 2014.

7. The statement of the petitioner was recorded on oath on 5th January, 2015 by the complainant Dr.Surjeet Singh ACIT, it was accepted by the petitioner that he had voluntarily disclosed his foreign

bank account with HSBC Private Bank, Geneva, Switzerland by letter dated 17th November, 2011. The respondent issued a Show Cause Notice dated 7th January, 2015 under Section 279 (1) read with 276D of the Act informing the petitioner to launch prosecution for alleged wilful failure to produce accounts and documents in terms of notices under Section 142 (1) of the Act. The petitioner was directed to file a reply to the Show Cause Notice dated 7th January, 2015 on or before 19th January, 2015. The petitioner in response to the Show Cause Notice dated 7th January, 2015 furnished a reply dated 19th January, 2015.

8. The petitioner in compliance to the notices issued under Section 142(1) of the Act and in furtherance to the reply dated 19th January, 2015 sent another reply dated 9th February, 2015 whereby it was stated that the petitioner with great difficulty had been able to obtain the copy of the bank statement of the Account Number 12119836 at HSBC, Private Bank, Geneva, Switzerland for the entire period of operation of the said Account. This position was again reiterated by reply dated 11th February, 2015 which was received by the respondent on the same date. Accordingly, the petitioner in response to the notices issued under Section 142(1) of the Act had allegedly furnished the Statement of Account for the entire period of operation of the account at HSBC, Private Bank, Geneva, Switzerland.

9. The Commissioner of Income Tax (Central-I), New Delhi on 10th February, 2015 authorized Dr. Surjeet Singh, ACIT, Central Circle 02,

Income Tax Department, New Delhi to institute a Criminal Complaint under Section 276-D of the Act for the assessment year 2006-07. The respondent through Dr. Surjeet Singh, ACIT, Central Circle 02, Income Tax Department, New Delhi filed a Criminal Complaint dated 12th February, 2015 under Section 276-D of the Act.

10. It is necessary to reproduce the sanction/authorization dated 10th February, 2015 under Section 279(1) of the Act for initiating the action against the petitioner. The extract of the same reads as under:

> "OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME (CENTRAL-1) NEW DELHI
>
> SANCTION/AUTHORIZATION UNDER SECTION 279(1), OF THE INCOME TAX ACT FOR A.Y. 2006-07
>
> 1. WHEREAS Sh. Shravan Gupta is being assessed to tax by the Assessing Officer of Income Tax, Central Cir, 02, New Delhi by virtue of order u/s 127 of the I.T. Act.
>
> 2. AND WHEREAS Shravan Gupta filed letter dated 17.11.2011 duly signed by him surrendering peak of his account with HSBC, Geneva/Zurich, Switzerland around US$1.3 million, which was not disclosed by him in his original return of income.
>
> 3. AND WHEREAS statement u/s 131 of the I.T. Act was recorded wherein, he has stated that the bank account was opened on reference by the Royal Family of Sultan of Oman and initially US$1.1 million were deposited and the last balance was US$1.2 million or US$1.3 million at the close of the said bank account in 2007.
>
> 4. AND WHEREAS the case was re-opened and the assessee has filed his return in response to notice u/s 148

of I.T. Act declaring peak balance of his said foreign bank account amounting to Rs.64876162/-.

5. AND WHEREAS several notices u/s 142(1) of the I.T. Act were issued and served asking details of his said foreign bank account, the assessee has filed several replies but has not furnished the required details. The search was also conducted on 19.06.2014.

6. AND WHEREAS a show cause notice for launching of prosecution u/s 276-D of the I.T. Act, u/s 279 (1) of the I.T. Act was issued by me, giving opportunity of being heard, but the assessee has filed reply dated 19.01.2015, which was duly considered by me and I found the same unsatisfactory.

The assessee has referred to the circular dated 24.04.2008 stating that the appeal against order u/s 271(1)(b) of the I.T. Act is pending before the CIT (A). The said circular only provided that the cases where the penalty has been confirmed upto I.T. A.T. must be proceeded for prosecution, it does not in any way imply that those cases where the above condition have not been satisfied cannot be proceeded. No penalty u/s (1)(b) of the I.T. Act was levied for non-compliance of notice u/s 142(1) of the I.T. Act dated 15.12.2014. Non-initiation of penalty proceedings does not lead to presumption that the default was for sufficient reason. Non-initiation of penalty proceedings in a case cannot be equated with a case where the penalty proceedings were initiated.

The assessee has surrendered the peak credit in foreign bank account, it clearly shows that he is in possession of the complete details of his said account including bank statements etc. which he has wilfully not furnished.

7. AND WHEREAS from the perusal of records placed before me, I am satisfied and am of the opinion that the assessee has wilfully not furnished the required details as

per Notice U/s 142 (1) of the IT Act and has thus committed offence punishable u/s 276-D of the I.T. Act 1961.

8. AND THEREFORE I, Meeta Nambiar, Principal Commissioner of Income Tax, (Central-1), New Delhi in exercise of the power vested in me u/s 279(1) of the I.T. Act 1961 do hereby accord Sanction and Authorize Dr.Surjeet Singh, ACIT, Central Cir.2, New Delhi to initiate prosecution proceedings u/s 276-D of the Income Tax Act 1961 for A.Y. 2006-07 against Sh.Shravan Gupta, 44A, Amrita Shergil Marg, New Delhi-110003 at my instance in the Court of Competent Jurisdiction."

11. The Additional Chief Metropolitan Magistrate has passed the following order on 27th February, 2015 which reads as under:

"Complainant examined himself in pre-summoning evidence as CW-1 and pre-summoning is closed by him vide separated statement.

Heard on the point of summoning. Perused the record. The present complaint has been filed U/s 276D with the allegation that the proposed accused vide his letter dated 17.11.2011 dully signed by him disclosed having Bank Account in Switzerland and also surrendered the peak of his account with HSBC, Jeneva, which income was not disclosed in his original return. Upon his disclosure, his statement was recorded on 24.11.2011 wherein he admitted having the bank account in the said bank and having transactions in the year 2006-2007. Accordingly, case was reopened U/s 147 of the IT Act and a notice U/s 158 of the IT Act was issued dated 09.07.2012. In response to the said notice, accused filed his return of income declaring the peak balance in the said foreign bank account. However despite various notices U/s 142 (1) of the IT Act dated 02.05.2013, 12.06.2013, 11.07.2013,20.08.2014 &15.12.2014 calling details of the said foreign bank account including statement since

beginning till date and account opening form etc. for the purposes of completion of assessment, though replies were sent by him but no details was furnished of the said foreign bank account. A show cause notice dated 07.01.2015 was sent but reply was not found satisfactory. Hence, the present complaint.

The complaint alongwith documents and from the testimony of CW-1, there is sufficient material on record disclosing the commission of offence u/s 276D, r/w Section 278E of Income Tax Act as the details of the account opening and transaction therein the foreign bank account will be specifically in the knowledge of accused who being the account holder will be having the relevant information but he failed to provide the details willfully.

Complainant has moved an application seeking exemption from his personal appearance and submitted that he is a public servant and remain busy in discharging his official duties. In these circumstances complainant is exempted through his counsel Sh. Brijesh Garg who has been appearing in the court and looking after the case filed by the complainant till further orders.

Accused be summoned on filing of PF and RC/speed post/courier as well as through the office of the complainant."

12. It appears that the petitioner in compliance with notices issued under Section 142(1) of the Act and in furtherance to the reply dated 19th January, 2015 sent another reply dated 9th February, 2015 whereby it was stated that with great difficulty the petitioner had been able to obtain the copy of the bank statement of the Account Number 12119836 at HSBC, Private Bank, Geneva, Switzerland for the entire period of operation of the said account and again a letter dated 11th February, 2015 was sent in which the reference of letter dated 9th

February, 2015 was mentioned. The said letters and bank statement furnished by the petitioner have not been discussed in sanction even no reference is given.

13. Learned counsel appearing on behalf of the respondent has not denied the fact that the said letter dated 11th February, 2015 was received by the department. However, he was not sure whether the reply dated 9th February, 2015 was received although copy of the reply was shown by Mr.Sethi Senior counsel which contained the office stamp of the respondent on the office copy of the said letter.

14. The argument of Mr.Sandeep Sethi, learned Senior counsel of the petitioner, is that CIT (Central-I) infact has without considering the reply dated 9th February, 2015, along with which copy of the bank statement was enclosed, and suppressing the same, filed a criminal complaint under Section 276-D of the Act for the assessment year 2006-07 and on 10th February, 2015 the authorization was granted under Section 279(1) of the Act.

15. Mr.Sethi also submits that at the time of sanction/authorization to file the criminal complaint against the petitioner, the department was fully aware that all the details of the account have been sent/disclosed. His simple argument is that the petitioner wants to pay the entire tax of the disclosed amount at HSBC, Private Bank, Geneva, Switzerland, without any condition as the petitioner just wants to get rid of any notice of prosecution of the respondent. It is also stated by Mr.Sethi that the department has now all the information of account. It may assess the tax thereon. The same

would be deposited by the petitioner without any further delay. He submits that since the details were available with the department, the question of filing the criminal complaint against the petitioner does not arise.

16. Learned counsel appearing on behalf of the respondent, submits that there is a total non-compliance/non-cooperation on behalf of the petitioner when the notices under Section 142(1) of the Act were issued on 2nd May, 2013, 12th June, 2013, 11th July, 2013, 20th August, 2014 and 15th December, 2014.

17. His submission is that the department did not have the knowledge about the reply dated 9th February, 2015 at the time of filing the complaint otherwise in the sanction letter the factum of the reply ought to have been considered. He suggested that letter dated 11th February, 2015 might have come to the appropriate desk after one or two days at that time as the criminal complaint was already filed on 10th February, 2015.

18. There is no dispute that if action as per law is required to be taken against the petitioner under the said provision for non-compliance, the said is always available with the respondent who also be entitled to receive all taxes and penalties from the petitioner as per law.

19. I am also agreeable with the learned counsel for the respondent that in case there is non-compliance of the said notices under Section 142(1) of the Act, the requisite action in accordance with law had to

be taken against the petitioner who would be entitled to contest the same in accordance with law. However, it is also a matter of fact that the criminal proceedings have been initiated by the respondent against the petitioner on the basis of the sanction issued by the department on 10th February, 2015 and in case the grounds of the sanction are read, it is evident that the reply sent by the petitioner contains the copy of the bank statement filed for the period has not been mentioned/ discussed in the same.

20. Even otherwise assuming for the sake of the argument that the reply dated 9th February, 2015 was not put up before the appropriate officer, when the sanction was issued, it is the admitted position that the said complaint was filed on 12th February, 2015 when the letter dated 11th February, 2015 was admittedly received by the department. The factum of receipt of the said letter is not mentioned in the complaint. Assuming for the sake of the argument that even the said letter was not placed at the appropriate desk till 12th February, 2015 as counsel for the respondent mentioned to the court that usually any letter filed at the counter is received by the appropriate desk within two days, but in the present case, the pre-summoning evidence in the above said matter was recorded on 27th February, 2015. At least on that date, the department had full knowledge of the contents of the two letters dated 9th February, 2015 and 11th February, 2015. The statement of Dr.Surjeet Singh does not contain the details of receipt of the said replies/letters. It was also not disclosed in the statement that the petitioner has already sent the

bank statement for the entire period as alleged by the petitioner. It is not denied by the respondent's counsel that the letter dated 11th February, 2015 contains the reference and details of letter dated 9th February, 2015, where the statement of bank account was enclosed. It is also not denied by the respondent that when the pre-summoning evidence was recorded, the said documents were not in the possession of the respondent. Learned counsel for the respondent has confirmed to the Court that the statements of bank accounts have already been received for the purpose of assessing the tax, which were not furnished by the petitioner. Thus, it is apparent that while recording the statement of the complainant and passing the summoning order dated 27th February, 2015, all the facts were not available with the trial Court otherwise the Court might have asked the respondent to produce the same and to consider the replies dated 9th February, 2015 and 11th February, 2015 before passing the summoning order or the respondent ought to have sought prayer for amendment in the sanctioning letter. The same has not happened in the present case.

21. Under these circumstances, the order dated 27th February, 2015 passed in Criminal Complaint No.100/4/15 dated 12th February, 2015 titled "ITO Versus Shravan Gupta" whereby the summoning order has been passed, is liable to be quashed on technical reason.

22. The respondent is at liberty to issue fresh sanction against the petitioner after considering the replies filed by the petitioner on 9th February, 2015 and 11th February, 2015 and would be entitled to

initiate proceedings if so desires on failure of compliance of various letters issued under Section 142(1) of the Act. The petitioner at the same time would be entitled to contest the said proceedings in accordance with law.

23. The present petition is accordingly disposed of.

(MANMOHAN SINGH)
JUDGE

APRIL 06, 2015