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

***Decided on:- 14th September, 2018***

\+ CRL.M.C. 3385/2016 & Crl.M.A. 14338/2016, 1336/2017, 11516/2017

KARAN LUTHRA ..... Petitioner

Through: Mr. J.S. Bakshi & Mr. A.S. Bakshi, Advs.

versus

INCOME TAX OFFICER (ITO) ..... Respondent

Through: Mr. Zoheb Hussain, Sr. Standing counsel with Mr. Deepak Anand, Jr. Standing counsel for Revenue.

\+ CRL.M.C. 3390/2016 & Crl.M.A. 14350/2016, 1259/2017, 11517/2017

KARAN LUTHRA ..... Petitioner

Through: Mr. J.S. Bakshi & Mr. A.S. Bakshi, Advs.

versus

INCOME TAX OFFICER (ITO) ..... Respondent

Through: Mr. Zoheb Hussain, Sr. Standing counsel with Mr. Deepak Anand, Jr. Standing counsel for Revenue.

\+ CRL.M.C. 3407/2016

INCOME TAX DEPARTMENT ..... Petitioner

Through: Mr. Zoheb Hussain, Sr. Standing counsel with Mr. Deepak Anand, Jr. Standing counsel for Revenue.

versus

KARAN LUTHRA ..... Respondent

Through: Mr. J.S. Bakshi & Mr. A.S. Bakshi, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE R.K.GAUBA**

**ORDER (ORAL)**

1. The respondent in the first and second captioned petitions (the complainant) is the assessing authority in respect of the petitioner in the first and second captioned petitions (the accused), under the Income Tax Act, 1961. It appears to be an undisputed case that the petitioner had failed to submit his return of income-tax for assessment years (AY) 2003-2004, 2004-2005 and 2005-2006, within the time stipulated for the purpose, under Section 139 (1) of the Income Tax Act, 1961 (IT Act). In the wake of this fact and certain subsequent notices, including under Section 142 (1) and 148 of IT Act, prosecutions were launched by filing of criminal complaints, each alleging offence punishable under Sections 276 CC of IT Act having been committed qua different assessment years by him, they including criminal complaint no. 42/4 (respecting AY 2003-04), no. 41/4 (respecting AY 2004-05) and no. 43/4 (respecting AY 2005-06). The Additional Chief Metropolitan Magistrate (ACMM) took cognizance on each of the said criminal complaints and issued process summoning

him as accused. When the case reached the stage of consideration of the question of charge, in the wake of pre-charge evidence, the same was resisted. By separate orders passed in each case on 27.11.2015, the trial Magistrate repelled objections of the accused and ordered charge to be framed separately for each assessment year on the said complaint.

2. Orders framing charge were challenged by the accused in the court of Sessions by presenting petitions (Crl. Rev. 02/16, 01/16 and 03/16 respectively) which were decided by the revisional court by separate orders dated 14.05.2016.

3. In the complaints relating to AY 2004-2005 and 2005-2006, the resistance to the charge was repelled and the orders of the trial magistrate upheld. The third criminal revision petition i.e. CR 02/16 arising out of criminal complaint CC no. 42/4 pertaining to AY 2003-04, however, had a distinct fact-situation on the basis of which a slightly different nuanced argument had been raised by the accused which found favour with the revisional court. The said petition was allowed and the proceedings arising out of the criminal complaints were closed, the accused thereby being discharged.

4. The three petitions at hand invoke the inherent power and jurisdiction of this Court under Section 482 Cr.P.C. to bring a further challenge to the order of the revisional court, in the wake of complaint relating to AY 2003-04 by the complainant (assessing authority) and in the case of latter two periods AY 2004-05 and 2005-06 by the accused (assessee).

5. In the context of complaints relating to AY 2004-05 and 2005-06, questions arose as to whether the petitioner having availed of the remedy of revision should be allowed to have recourse to the petition at hand as a substitute for virtually a second revisional challenge or scrutiny which is clearly barred under Section 397 (3) Cr.P.C.

6. This Court in an almost similar fact-situation, taking note of the decisions of the Supreme Court reported as *Krishnan Vs. Krishnaveni, (*1997*) 4 SCC 241; Rajinder Prasad Vs. Bashir, (2001) 8 SCC 522* and *Kailash Verma vs. Punjab State Civil Supplies Corporation & Anr., (2005) 2 SCC 571* and following similar view taken by a learned single Judge of this Court in *Surender Kumar Jain vs. State & Anr., ILR (2012) 3 Del 99* in absence of a special case being made has earlier declined to interfere by the ruling (dated 03.07.2018) in Crl.M.C. 164/2018 *Ajay Maini vs. The State Govt. of NCT of Delhi & Ors.* in exercise of extraordinary jurisdiction under Section 482 Cr.P.C.

7. Be that as it may, the contentions of the petitioner accused in those matters have still been considered to find out as to whether there has been a miscarriage of justice in the consistent view taken by the two courts below in the context of the said two complaints.

8. Section 139 of the IT Act creates an obligation on the part of every person whose total income assessable during the previous year exceeds the maximum amount which is not chargeable to income-tax to furnish a return of his income on or before the prescribed date, in the prescribed form, duly verified in the prescribed manner, setting forth such other particulars as may be prescribed. The provision

contained in Section 142 of IT Act confers jurisdiction on the assessing officer to hold an inquiry before assessment and for such purposes to serve on the person concerned, who may or may not have furnished the return in terms of Section 139, a notice requiring him, *inter alia*, to furnish in writing and verified in the prescribed manner, information in such form and on such points or matters as the assessing officer may require. Section 148 further confers on the assessing officer the power and jurisdiction to issue notice to require information to be furnished in cases where the income appears to have escaped assessment.

9. Section 276 CC makes "*failure to furnish returns of income*", *inter alia,* in compliance of Section 139 (1) or Section 142 (1) or Section 148 of IT Act punishable. Though, by virtue of the proviso to the said clause, in relation to the assessment years commencing on or after 1st April, 1975, stipulating that a person shall not be proceeded against for such failure to furnish if the return had been furnished by him before the expiry of the assessment year or if the tax payable by him on the total income determined on regular assessment, as reduced by the advance tax, if any paid, and any tax deducted at source, does not exceed Rs. 3,000/-.

10. It is not even being disputed that the accused in the three afore-mentioned complaint cases had not submitted the returns of his income within the period stipulated in terms of Section 139 (1) for any of the three assessment years. It is shown by the evidence on record, as adduced during pre-charge evidence in each case, that notices had been issued under Section 142 (1) by the assessing officer and in spite

of even the said notices, the required information was not furnished within the period specified therein.

11. In the context of complaints relating to AY 2004-05 and 2005-06, the argument of the accused before the two courts below was that no amount of tax was due and rather a case was made out for excess tax paid to be refunded, the claim being of an amount of Rs. 16,074/- for AY 2004-05 and Rs. 24,715/- for AY 2005-06. It was a grievance of the accused that his reply to the show cause notice to such effect was not properly construed.

12. In the context of complaint for AY 2003-04, it was pointed out that notice under Section 142 (1) of IT Act (Ex.PW-2/4) had been followed by a fresh notice (Ex.PW-2/5) and since the said notice had not indicated any date by which compliance was to be made the assessee could not have been found to be in breach of the statutory obligation and, consequently, he could not be prosecuted for offence under Section 276 CC.

13. The afore-mentioned contentions of the assessee accused in the complaints relating to AY 2004-05 and 2005-06 were rejected by the ACMM and by the revisional court as well with reference, *inter alia*, to the decision of the Supreme Court in *Sasi Enterprises v. Assistant Commissioner of Income Tax (2014) 5 SCC 139*, noting that the offence under Section 276 CC stands committed upon the non-filing of the return and it is unrelated to the pendency of the assessment proceedings except for purposes of determination of the sentence that may be awarded. Reference was also made to the presumption raised

by virtue of the provision contained in Section 278 E of the culpable mental state.

14. The contention of the assessee accused, however, in the context of complaint relating to AY 2003-04 was accepted on the reasoning that the subsequent notice (Ex.PW-2/5) had called him upon to furnish the information for which no time was stipulated, such notice also being in exercise of power under Section 142 (1) and thus having superseded the previous notice (Ex.PW-2/4).

15. Following observations of the Supreme Court in *Sasi Enterprises* (supra) provide the answer to the contentions of the assessee:

> "*28. We have indicated that on failure to file the returns by the appellants, the Income Tax Department made a best judgment assessment under Section 144 of the Act and later show-cause notices were issued for initiating prosecution under Section 276-CC of the Act. The proviso to Section 276-CC nowhere states that the offence under Section 276-CC has not been committed by the categories of assessees who fall within the scope of that proviso, but it is stated that such a person shall not be proceeded against. In other words, it only provides that under specific circumstances subject to the proviso, prosecution may not be initiated. An assessee who comes within clause (ii)(b) to the proviso, no doubt has also committed the offence under Section 276-CC, but is exempted from prosecution since the tax falls below Rs 3000. Such an assessee may file belated return before the detection and avail the benefit of the proviso. The proviso cannot control the main section, it only confers some benefit to certain categories of assessees. In short, the offence under Section 276-CC is attracted on failure to comply with the provisions of Section 139(1) or failure to*

*respond to the notice issued under Section 142 or Section 148 of the Act within the time-limit specified therein.*

*xxx*

*"30. We also find no basis in the contention of the learned Senior Counsel for the appellant that pendency of the appellate proceedings is a relevant factor for not initiating prosecution proceedings under Section 276-CC of the Act. Section 276-CC contemplates that an offence is committed on the non-filing of the return and it is totally unrelated to the pendency of assessment proceedings except for the second part of the offence for determination of the sentence of the offence, the Department may resort to best judgment assessment or otherwise to past years to determine the extent of the breach. The language of Section 276-CC, in our view, is clear so also the legislative intention…."*

16. The offence under Section 276 CC of IT Act deals with failure to comply with the obligation under Sections 139 (1) or 142(1) or 148 of IT Act. Disobedience of each said provision of law itself constitutes a distinct offence. The offence under Section 276 CC, *prima facie*, stood constituted upon failure on the part of the assessee to furnish the return of income for the assessment year in question within the period prescribed in law. The notices by the assessing authority under Section 142 (1) were issued with the objective of facilitating best judgment assessment. The failure to abide by such notices would also constitute offence, distinct from the offence that had been earlier committed by virtue of breach of Section 139 (1). The assessment proceedings are not related to these criminal prosecutions. They may eventually have a bearing for the benefit of proviso to Section 276CC

to be invoked but not so as to inhibit continuation of the criminal process.

17. In the context of complaint relating to AY 2003-04, the evidence of complainant had shown disobedience of Section 139 (1) by failure on the part of the assessee to furnish the return of income. The notice under Section 142 (1) which had been served had also not been complied with. This added to the gravity and to the reasons for filing of the criminal prosecution. The subsequent notice (Ex.PW-2/5) cannot *prima facie* be read so as to supersede the previous notice (Ex.PW-2/4) particularly to have the effect of giving to the assessee indefinite period for compliance since that can never be the intention of the law or of the process issued thereunder. The fact that the assessee had subsequently furnished the return of income for AY 2003-04 on 24.10.2007 can also not take away from the fact that he had incurred the liability to be prosecuted earlier on account of failure to furnish the income-tax return within the stipulated period.

18. In the opinion of this Court, the revisional court took the correct view in the case of complaints relating to AY 2004-05 and 2005-06, but fell into error in the context of complaint relating to AY 2003-04. There was no case made out for discharge of assessee in the latter case.

19. For above reasons, the Crl.M.C. 3385/2016 and 3390/2016 are dismissed. The Crl.M.C. 3407/2016 is allowed. The impugned order dated 14.05.2016 of the revisional court in C.R. no 02/2016 is set aside. The order of the ACMM dated 27.11.2015 in that complaint

case (no. 42/4) stands restored. Consequently, the proceedings in the corresponding criminal case (no. 42/4) stand revived on the file of the trial court. The proceedings will continue in light of the directions in the above said order of the ACMM. The parties shall appear in the trial court on 15th October, 2018.

20. The petitions and the pending applications are disposed of in above terms.

**R.K.GAUBA, J.**

**SEPTEMBER 14, 2018**
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