IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 17.02.2020

\+ **CRL.L.P. 263/2017 & Crl. M.A.No.7410/2017**

ASSISTANT COMMISSIONER OF INCOME TAX (ACIT) **..... Appellant**

Versus

V K GUPTA **..... Respondent**

Advocates who appeared in this case:

For the Appellant: Ms. Vibhooti Malhotra, Sr. Standing Counsel with Mr. Shailender Singh and Mr. Siddharth Manocha,

For the Respondent: Mr. Yogesh Jagia, Mr. Amit Sood, Mr. Rishabh Nangia and Ms. Sumedha Chadha.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The Revenue has filed the present petition impugning an order dated 28.11.2015 passed by the learned Special Judge – IV, (PC Act) CBI, Delhi, whereby the respondent's appeal against an order dated 26.06.2015 passed by the learned ACMM convicting the respondent of an offence punishable under Section 276CC of the Income Tax Act, 1961 (hereafter 'the Act'), was allowed and the respondent was acquitted of committing the said offence.

2. The revenue alleged that the respondent had willfully defaulted in filing a return pursuant to the notices issued under Section 153A of the Act and thus, committed the offence punishable under Section 276CC of the Act.

3. The aforesaid controversy arises in the following context:-

3.1 That search and seizure operations under Section 132 of the Act were conducted in respect of Standard Watch Group of Concerns. This included search in the premises occupied by the respondent and his brother – premises bearing no. S-511, Greater Kailash Part-II, New Delhi. The respondent and his brother S. K Gupta were residing in different floors of the same premises. Thereafter, on 21.04.2010, a notice under Section 153A of the Act was issued to the respondent calling upon the petitioner to furnish a return in respect "*of the company in which you are assessable for the Assessment Year 2008-09*" within sixteen days of the service of the said notice. Thereafter, a show cause notice dated 15.11.2010 was issued to the respondent. Subsequently, another notice dated 06.06.2011 (Ex.PW-1/5) under Section 153A of the Act was issued, calling upon the respondent to file a return of income in respect of "*the individual/company in which you are assessable for the Assessment Year 2008-09*" in the prescribed form within a period of fifteen days from the service of the said notice. This was followed by a show cause notice dated 11.08.2011, calling upon the respondent to show cause as to why action should not be taken against him for not filing the return as required. The respondent responded to the said notice and relying upon his response to the earlier

show cause notice (letter dated 12.10.2010, which was filed on 26.11.2010). He stated that the complete records relating to IT Returns including relevant data, photocopies and relevant documents were in possession of his brother, who was responsible for income tax compliances and filing of income tax returns for the whole family. The respondent further stated that there were certain disputes between his family and his brother (Shri Suresh Gupta) and the complete records had not been returned by Shri Suresh Gupta to him or his family. He stated that he had no copies of the earlier returns and/or related documents. However, he further stated that the return filed earlier be treated as a return in response to the notice under Section 153A of the Act.

3.2 The respondent contended that due to family disputes and unavoidable reasons, he did not have the details or copies of the returns. And, there was no malafide intention on his part for the non-compliance of the notices under Section 153A of the Act.

3.3 Subsequently on 14.12.2011, the respondent filed the requisite return in the prescribed form.

3.4 The Revenue filed a complaint under Section 276CC of the Act on account of failure on the part of the respondent to file return for the Assessment Year 2008-09, in compliance with the notice under Section 153A of the Act.

3.5 Subsequently, the assessment under Section 153A read with 143(3) of the Act was framed, assessing the total income at

₹25,97,13,590/- and a notice demanding ₹14,06,55,223/- was issued. Thereafter, a show cause notice was issued for offence punishable under Section 276CC of the Act.

3.6 The respondent was summoned and he pleaded not guilty and the complaint was set down for trial.

3.7 The respondent raised several defences, including (a) that the notices issued were vague; (b) there was no proper sanction for launching the prosecution; and (c) there was no willful default on the part of the respondent, as he did not have necessary documents for filing the return.

3.8 The learned MM did not accept the aforesaid contentions and convicted the respondent for committing an offence punishable under Section 276CC of the Act by an order dated 26.06.2015. Thereafter, by an order dated 29.06.2015, the respondent was sentenced to undergo simple imprisonment for a period of one year with a fine of ₹20,000/- and in default of payment of fine, to undergo simple imprisonment for a further period of fifteen days.

3.9 Aggrieved by the same, the respondent preferred an appeal, which was allowed by an order dated 28.11.2015 (which is impugned herein by the Revenue department).

3.10 The learned Special Judge (Appellate Court) did not accept the contention that the notices were vague or that the sanction for prosecution was not proper. However, the appellate court held that the

default committed by the respondent was not willful. The appellate court, essentially, accepted the respondent's contention that he did not have the necessary documents and although he had applied for the copies of the documents seized by the income tax authorities, the same were not supplied to him and therefore, his failure to file the return in response to the notice under Section 153A of the Act could not be held to be willful.

4. Ms Malhotra, learned counsel appearing for the Revenue contended that the appellate court had grossly erred in accepting that the respondent was not willful defaulter. She submitted that in terms of Section 278E of the Act, existence of a culpable mental state on the part of the accused is assumed. She submitted that, therefore, the failure to file the return would necessarily have to be assumed as willful, unless established to the contrary. She submitted that the respondent had not led any evidence to establish that the default was not willful and he had not pointed out any specific document that was not provided to him and had impeded his filing the return as required.

5. At the outset, it is relevant to observe that it is an admitted case that the copies of all the documents, which were seized during the search and seizure operations, were not provided to the respondent.

6. The respondent had sent a letter clearly stating that there were disputes between him/his family. And, his brother and his brother was responsible for income tax compliances for the whole family and was in possession of the necessary documents. The respondent had claimed

that the businesses were being conducted jointly under six companies. During trial, the LDC of Company Law Board deposed as a witness for defence (DW-2) and his testimony established that there were disputes between the respondent and his brother relating to the affairs of their companies in which businesses were carried out.

7. Concededly, the respondent had issued a letter dated 27.04.2010 requesting for inspection and copies of the seized material in reference to the notice under Section 158A of the Act. It is material to note that the request was not only for the material documents seized from the part of the premises occupied by the respondent, but also for the material seized during search, which also included the documents seized from the floor of the premises occupied by his brother. The respondent had also sought statement of various persons recorded during search. The said letter dated 27.04.2010 (Ex. DW-1/D), clearly indicates that the respondent specifically indicated that the said documents were required "*for the purpose of complying and preparing the returns*".

8. Ms Malhotra earnestly contended that several documents were provided to the respondent and had referred to the noting on the letter dated 18.08.2009 (Ex.PW-2/2), which indicated that copies of VA-1 to VA-17 had been received by the representative of the respondent. She contended that in the circumstances, it was incumbent on the respondent to specify which particular document was required by him and further establish that non-receipt of that document had prevented him from filing the return.

9. The said contention is unpersuasive. The respondent had sent a letter (Ex.PW-2/1) dated 12.09.2009, requesting for copies of the seized material. The noting on the said material indicates that the respondent was asked to pay a sum of ₹500/- to the PRO Income Tax Department, CR Building, New Delhi. Admittedly, the respondent had paid the said amount and communicated the same by a letter dated 18.08.2009 (Ex.PW-2/2). It appears from the noting that copies of certain documents (VA-1 to VA-17) were provided to the representatives of the respondent. However, it is not disputed that copies of all material/ documents seized during the search and seizure operations were not provided to the respondent. Admittedly, the respondent was also not provided the copy of the *panchnama* in respect of the documents seized from the premises occupied by his brother. More importantly, it is not disputed that that the respondent had sent several letters, including letters dated 27.04.2010 (Ex. DW-1/D) and 20.05.2010 (Ex. DW-1/C), seeking copies of the documents for the purpose of filing the returns. But copies of all the documents seized had not been provided to the respondent.

10. The contention that the respondent was further required to specify the document which was required by him for filing the return, to rebut the presumption of culpable mental state, is unpersuasive. The returns for the relevant assessment year had already been filed in due course. The respondent was now called upon to once again file the return pursuant to the allegedly incriminating material seized during the search and seizure operations. Plainly, in the circumstances, it would

be necessary for the respondent to examine all material documents seized during the search and seizure operations before filing the return. The respondent had already indicated his difficulty in doing so in view of the family disputes and had requested for inspection and copies of all documents seized during the raid.

11. In the given circumstances, the appellate court had concluded that the respondent's failure to file the return at the material time could not be considered as willful.

12. This Court finds no fault with the trial court's view. Undeniably, it is a plausible one and, therefore, warrants no interference by this Court.

13. The petition is, accordingly, dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

FEBRUARY 17, 2020
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