



2025:DHC:4386



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:26.05.2025

+ **CRL.L.P. 288/2022**

INCOME TAX OFFICER WARD 73(2) NEW DELHI
.....Petitioner

versus

MKY CONSTRUCTIONS PRIVATE LIMITED AND
ANR. FORMERLY KNOWN AS ACTION BRIDGE GAP
CONSTRUCTIONS PVT. LTD. & ANR.

.....Respondents

+ **CRL.L.P. 289/2022**

INCOME TAX OFFICER WARD 73(2) NEW DELHI
.....Petitioner

versus

MKY CONSTRUCTIONS PRIVATE LIMITED AND
ANR. FORMERLY KNOWN AS ACTION BRIDGE GAP
CONSTRUCTIONS PVT. LTD. & ANR.

.....Respondents

+ **CRL.L.P. 290/2022**

INCOME TAX OFFICER WARD 73.2 NEW DELHI
.....Petitioner

versus

MKY CONSTRUCTIONS PRIVATE LIMITED AND
ANR. FORMERLY KNOWN AS ACTION BRIDGE GAP
CONSTRUCTIONS PVT. LTD. & ANR.

.....Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Puneet Rai, Sr. SC along with Mr.
Ashvini Kumar & Mr. Rishabh Nangia,
JSC.

For the Respondents : Mr. Sanjay Kumar, Adv. for R-2.



**CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN**

1. The present leave to appeal petitions are filed challenging the judgment dated 28.10.2021 (hereafter '**the impugned judgment**') passed by the learned Trial Court in CC Nos. 6212/2018, 6214/2018, 6215/2018, whereby the respondents were acquitted of the offences under Sections 276B read with Section 278B of the Income Tax Act, 1961 ('**IT Act**').

2. Since the factual matrix and legal issues involved in all three petitions are common, the petitions are being disposed of by this common order.

3. The petitioner is the Income Tax Officer, New Delhi. The complaints relate to failure to deposit Tax Deducted at Source (TDS) within the time prescribed under law. Each complaint pertains to a distinct financial quarter.

4. The petitioner alleged that the respondent company had deducted TDS but failed to deposit the same with the Central Government within the prescribed period.

5. CRL.L.P. 288/2022 relates to Complaint Case No. 6215/2018, which alleged that for the financial year 2015-16, the respondent company had made payment to various persons and had deducted Tax Deducted at Source (TDS) amounting to ₹68,78,256/- but failed to deposit the same to the credit of the Government Treasury, within the stipulated time as required under the IT Act.

6. CRL.L.P. 289/2022 relates to Complaint Case No.



6214/2018, concerning financial year 2014-15. In this instance, the respondent allegedly deducted TDS amounting to ₹1,59,72,437/- and did not deposit on time.

7. CRL.L.P. 290/2022 relates to Complaint Case No. 6212/2018, concerning financial year 2013-14, where the default amount was ₹2,01,34,235/-.

8. The delay in deposit of the tax led the petitioner to initiate a separate prosecution in line with departmental policy treating every quarterly default as a distinct offence.

9. Admittedly, the defaults were later remedied by depositing the amount which was deducted as Tax Deducted at Source with interest in the Government Treasury; however, the department proceeded with prosecution on the ground of initial failure.

10. By order dated 28.02.2019, the learned Trial Court framed charges for offence under Sections 276B read with Section 278B and 278E of the IT Act.

11. After considering the evidence and the material on record, the learned Trial Court dismissed all three complaints and acquitted the respondents. The operative part of the impugned judgment is reproduced hereunder :

“26. Further, again Section 278 AA of the Income Tax Act casts the burden on the accused to prove that there exists a reasonable cause for delayed payment. In statement u/s 313 Cr.P.C., it has been specifically pointed out by the accused who is representing the company also that there was financial crisis due to non-payment of money by the principal contractors and refund from income tax department. The same is also clarified by the accused in his defence evidence lead by him as DW-2. DW-2 Tarun Aggarwal in his defence evidence has specifically deposed that assessee i.e. accused is sub sub contractor of public sector contractors such as Niraj Cement



Structurals Limited. Dinesh Chandra R. Agrawal Infracon Pvt. Ltd.. ARSS Infrastructure Projects Ltd. And Bhopal Sanchi Highways Pvt. Ltd. and on the account of dues from the sundry debtors as on 31.03.2014, 31.03.2015 and 31.03.2016, accused company had suffered financial hardships. DW-2 has also relied upon the ledger copies of the various payments which was due towards accused company from the parent companies. It has been specifically pointed out by the accused while, deposing before the Court that M/s Niraj Cement Structurals Limited entered into an agreement with Governmnet of Haryana and the accused no.1 is a sub sub contractor of Niraj Cement Structurals Limited. It is deposed that the money was not paid by the M/s Niraj Cement Structurals Limited to the accused no.1 company to complete the contract in time, though, accused had to purchase the raw material and made payment to various contractors. The copy of agreement dt.15.04.2009 between the Haryana State Roads and Bridges Development Corporation Ltd. and Niraj J.M. Mhatre and the subcontractor was entered into between Niraj Cement Structurals Limited with the Accused no.1 Company and the Addendum of Sub-Contractor dt.21.08.2009 between the Niraj Cement Structurals Limited and the Accused no.1 Company was also relied upon.

27. *It is also pointed out that accused company had to receive a sum of Rs.13,14,37,120/- from Neeraj Cement Structurals Ltd., being the ultimate client/debtor for the road construction work executed by the accused company for the project of Haryana State Roads & Bridges Development Corporation Ltd. But the said payment has not been released to the accused company by Neeraj Cement Structurals Ltd. It is also pointed out that main contractor has initiated an Arbitration Proceedings before the Ld. Arbitrator as Haryana and the Arbitrator has passed an Award dated 16.10.2017 in favour of the main contracting Company and against the Haryana State Roads & Bridges Development Corporation Ltd. For a sum of Rs.14,79,36,410/- despite that the said amount was also not released. It is therefore point out that legally recoverable payments had not been released to the accused company which is the root cause for making the delayed payment of TDS by the accused company. It has also been pointed out that the income tax department itself has failed to refund for the financial year 2014-15 to the accused company on time, further in the year 2015-16 payment was received very late and for the year 2016-17, again it was received only in part. Accused no. 1 & 2 deposited the TDS alongwith interest thereon, from time to time by borrowing*



funds from its personal resources. By going through all the facts it is clear that due to non-payment of the funds by those companies there was financial hardships faced by the company.

28. It needs to be mentioned that these reasons, may be considered as reasonable cause as found stated in Section 278AA of Income Tax Act. Therefore, keeping in view the abovementioned discussions and from the evidence on record, it is clear that the assessee / accused has been able to show reasonable and sufficient cause that there were financial exigencies beyond its control which further got aggravated due to non-refund of the TDS amount leads to an unavoidable delay in payment of TDS. The facts shows that the aforesaid financial constraints could have prevented any other company to fulfill financial obligations in normal circumstances without negligence or inaction or for want of bonafides. Accordingly, the ingredients of Section 278 AA of the Income Tax Act stands satisfied and the accused no. 1 company M/s Action Bridge Gap Construction Ltd. as well as accused no. 2 Mr. Tarun Aggrawal are able to prove the existence of reasonable cause for non-payment of tax within the stipulated statutory period and are acquitted for the offences punishable u/s 276 B read with Section 278 B of the Income Tax Act.

29. Compliance of Section 437-A Cr.P.C. is made in the order-sheet.”

12. The learned Senior Standing Counsel appearing for the petitioner–Income Tax Department submitted that the respondents, being a company and its principal officer, were under a statutory obligation to deposit TDS deducted from payments made to third parties within the prescribed period.

13. He submitted that in each of the three cases, substantial TDS amounts—₹68,78,256/-, ₹1,59,72,437/-, and ₹2,01,34,235/- respectively—were deducted by the respondents but not deposited with the Government treasury within the stipulated time.

14. He submitted that the prosecution was sanctioned after due consideration of the respondents’ replies, which sought to justify



the delay on the ground of financial hardship and pending income tax refunds. However, these reasons were specifically rejected in the sanction order as untenable and not amounting to ‘reasonable cause’.

15. He submitted that the learned Trial Court erroneously accepted photocopies and vague justifications as sufficient evidence to acquit the respondents, holding that they had demonstrated a ‘reasonable cause’ under Section 278AA of the IT Act. It is contended that this interpretation dilutes the mandatory nature of TDS compliance and sets a precedent for evading statutory obligations.

16. He emphasized that once TDS is deducted, it becomes government property and cannot be withheld on the plea of financial difficulty. The deductor acts as a trustee of public revenue, and failure to deposit deducted TDS constitutes a serious economic offence.

17. *Per Contra*, the learned counsel for respondents submitted that the respondents had not disputed the fact of delay in depositing the TDS, but the entire case of the defence rested on the existence of a reasonable cause as contemplated under Section 278AA of the IT Act.

18. The learned counsel emphasized that the respondents were facing severe financial stress during the relevant financial years due to non-receipt of contract payments and outstanding receivables from government agencies, which led to an acute liquidity crunch. Despite these constraints, the respondents



eventually deposited the entire TDS amounts, *albeit* belatedly, along with applicable interest and late fees, even prior to the filing of the complaint.

19. He submitted that the learned Trial Court rightly appreciated the nature of evidence led by the defence, including correspondence with banks, letters to tax authorities seeking adjustment of refunds, and efforts to raise funds for TDS compliance.

20. The learned counsel pointed out that the complainant department failed to rebut or discredit the financial constraints pleaded by the respondents and did not produce any evidence to show that the delay was deliberate or with *mala fide* intent.

21. He contended that Section 278AA of the IT Act provides a statutory exception where genuine hardship is demonstrated, and the respondents had clearly discharged that burden.

22. Lastly, the learned counsel argued that interference with a well-reasoned order of acquittal is not warranted unless the findings are shown to be perverse or manifestly illegal, which is not the case here. Hence, the petitions seeking leave to appeal deserve to be dismissed.

23. It is trite law that this Court must exercise caution and should only interfere in an appeal against acquittal where there are substantial and compelling reasons to do so. At the stage of grant of leave to appeal, the High Court has to see whether a *prima facie* case is made out in favour of the appellant or if such arguable points have been raised which would merit interference.



The Hon'ble Apex Court in the case of ***Maharashtra v. Sujay Mangesh Poyarekar***: (2008) 9 SCC 475 held as under:

“19. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3) declares that no appeal “shall be entertained except with the leave of the High Court”. It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by sub-section (3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub-section (3) of Section 378 of the Code.

20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.

21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be “perverse” and, hence, no leave should be granted.”

(emphasis supplied)

24. The Hon'ble Apex Court in the case of ***Babu Sahebagouda Rudragoudar and Others v. State of Karnataka*** : 2024 INSC 320 discussed the scope of interference by an Appellate Court for reversing the judgment of acquittal. The relevant portion of the judgment is reproduced hereunder:

*“38. Further, in the case of **H.D. Sundara & Ors. v. State of Karnataka** [(2023) 9 SCC 581] this Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section*



378 of CrPC as follows: -

- “8.1. The acquittal of the accused further strengthens the presumption of innocence;*
- 8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappraise the oral and documentary evidence;*
- 8.3. The appellate court, while deciding an appeal against acquittal, after reappraising the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;*
- 8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and*
- 8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”*

39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

- (a) That the judgment of acquittal suffers from patent perversity;*
- (b) That the same is based on a misreading/omission to consider material evidence on record;*
- (c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.*

40. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.”

25. A perusal of the record discloses that in all three complaint cases—C.C. Nos. 6212/2018, 6214/2018, and 6215/2018—the learned Trial Court passed a common judgment dated 28.10.2021 acquitting the respondents primarily on the ground that the



respondents had satisfactorily demonstrated the existence of a 'reasonable cause' for the delay in depositing tax deducted at source (TDS), within the meaning of Section 278AA of the IT Act. The defence advanced by the respondents was that during the relevant assessment years, the company was undergoing an acute financial crisis, including non-receipt of substantial dues from clients, particularly government agencies, which led to a severe cash flow shortage and hindered timely TDS compliance.

26. At this juncture, it is relevant to extract Sections 276B and 278 AA of the IT Act, which read as under :

Section 276 B :- If a person fails to pay to the credit of the Central Government within the prescribed time, as above, the tax deducted at source by him, he shall be punishable with rigorous imprisonment for a term which shall be between 3 months and 7 years alongwith fine.

Section 278 AA:- Notwithstanding anything contained in the provisions of Section 276 A, Section 276 AB, or Section 276 B, no person shall be punishable for any failure referred to in the said provisions if he proves that there was reasonable cause for such failure.

27. It is germane to note that Section 278AA of the IT Act begins with a non-obstante clause, which specifically provides the intent of the Legislature that no person shall be punished for failure to comply with Section 276B if it is established that the failure occurred due to a reasonable cause. In effect, the existence of a reasonable cause operates as a statutory defence against prosecution.

28. In *Sonali Autos P. Ltd. v. State of Bihar : (2017) 396 ITR 636*, the Hon'ble Patna High Court interpreted the scope of



‘reasonable cause’ under Section 278AA of the IT Act and observed as under:

*"26. The petitioners have stated in the petition that the aforesaid tax could not be deposited within time due to oversight on the part of the Accountant, who was appointed to deal with the Accounts and Income Tax matters. This mistake was detected at the time of audit of Books of Accounts by the Statutory Auditors of the petitioner company in August, 2010. Thereafter, the petitioner immediately deposited the amount of tax along with interest in the year 2010 itself. Section 278 AA of the Act specifically says that no person shall be punished for any failure referred to under the said provisions if the assessee proves that there was reasonable cause for such failure. **Reasonable cause would mean a cause which prevents a reasonable man of ordinary prudence acting under normal circumstances, without negligence or inaction or want of bonafides.**"*

(emphasis supplied)

29. It is relevant to note that the respondents in their detailed reply dated 19.12.2017 (Ex. CW1/11) to the show cause notice dated 07.12.2017 (Ex.CW1/10) issued to them for non-depositing of TDS at the appropriate time had specified the financial crunches faced by them because of non-receiving of payments. The Trial Court meticulously examined the evidence presented, including letters addressed to the Income Tax Department, correspondences with banks, and documents suggesting outstanding payments receivable from government entities. These documents were adduced by the respondents to establish that the delay was not wilful or with an intent to defraud the revenue but was occasioned by *bonafide* financial hardship. Notably, it was also brought on record that the entire defaulted TDS amount, along with applicable interest and late fee under Sections 201(1A)



and 234E of the IT Act, had been remitted prior to the initiation of prosecution. However, after submission of the reply dated 19.12.2017, sanctioning order dated 27.12.2017 was passed by the petitioner authorities. It is abysmal to note that though para 3 of the sanctioning order recorded the submissions of the respondent company that it was facing financial crisis and delay in deposit of TDS was unintentional, yet the sanction to prosecute the respondent company and its Director was granted under Section 279 (1) of the IT Act.

30. Further, the testimony of CW-1, the Income Tax Officer, during cross-examination at the post-charge stage, is of considerable significance. He candidly admitted that the entire amount constituting the alleged TDS default had been deposited by the assessee even prior to the issuance of the show cause notice under Section 279 of the IT Act, 1961. This admission undermines the prosecution's narrative of wilful default and supports the respondents' claim that the delay in deposit was not motivated by any dishonest intent, but arose from circumstantial financial hardship.

31. The learned Trial Court, after carefully weighing this material fact, rightly concluded in the impugned judgment that the respondents' conduct reflected a responsible and remedial disposition. The respondents not only acknowledged the default but also took proactive steps to regularize it before the initiation of prosecution, thereby evidencing the absence of *mens rea*—a



critical ingredient in sustaining criminal liability under Section 276B of the IT Act.

32. The learned Trial Court further rightly observed that the financial difficulty stemmed from the fact that substantial, legally recoverable payments due to the respondent company from contracting parties had remained unpaid, resulting in a liquidity crunch. This root cause was adequately substantiated by the documents and explanations placed on record, and provided the reasonable cause envisaged under Section 278AA of the IT Act.

33. In this context, the learned Trial Court's finding that the default was not deliberate but compelled by external financial constraints is neither perverse nor legally infirm. Rather, it reflects a balanced application of the statutory framework that distinguishes between culpable inaction and excusable delay backed by *bona fide* efforts at compliance.

34. As noted above, Section 278AA of the IT Act carves out an express exception to penal liability under Section 276B of the IT Act, where the accused can establish a 'reasonable cause' for the failure to deposit TDS. The law recognises that punishment ought not to be imposed in circumstances where the breach, though technical, is not accompanied by culpable mental state and is otherwise explained with *bona fide* justification. The finding that the accused fell within this exception is a finding of fact rendered by the learned Trial Court after due appreciation of the evidence, both oral and documentary.



35. The petitioner authority has assailed the acquittal of the respondents on the ground that the documents relied upon by the respondents were unauthenticated or insufficient to discharge the burden under Section 278AA of the IT Act. However, the learned Trial Court did not accept this argument and instead looked at the totality of circumstances, including the company's financial disclosures, the pendency of income tax refunds, and the absence of any attempt to conceal the default.

36. It is well-settled that in a petition seeking leave to appeal against acquittal under Section 378(4) of the CrPC, interference is not warranted merely because the appellate court may have arrived at a different conclusion. The jurisdiction under Section 378(4) of the CrPC is invoked only where the findings of the learned Trial Court are perverse, manifestly illegal, or result in miscarriage of justice. Where two views are possible and the Trial Court has chosen one based on plausible reasoning and appreciation of facts, the appellate court ought not to interfere.

37. In the present case, the learned Trial Court has adopted a legally tenable interpretation of Section 278AA of the IT Act and rendered findings which are not only supported by the record but also resonate with the underlying objective of the provision—namely, to shield individuals from criminal prosecution where non-compliance is neither wilful nor *mala fide*. No perversity or material irregularity has been demonstrated by the petitioner.

38. The prosecution's case hinges more on the occurrence of default than on the requisite mental element necessary to sustain



2025:DHC:4386



conviction under Section 276B, read with Section 278E of the IT Act. However, the latter stands neutralized by the substantiated defence under Section 278AA of the IT Act.

39. Accordingly, this Court is not persuaded to interfere with the order of acquittal passed by the learned Trial Court. The present leave to appeal petitions are dismissed in the aforesaid terms.

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

AMIT MAHAJAN, J

MAY 26, 2025