



2025:DHC:9332



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

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*Date of decision: 16<sup>th</sup> October, 2025*

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**CRL.L.P. 705/2019****INCOME TAX OFFICER, WARD 74(3) NEW DELHI**5<sup>th</sup> Floor, Ayakar Bhawan

District Centre Laxmi Nagar,

Delhi 110092

.....Petitioner

Through: Mr. Rishabh Nangia, Advocate.

versus

**M/S GREAT INDIAN NAUTANKI CO. PVT. LTD**

Basement right side office , E-311 Daya

Tower, Main Vasant Kunj Road , Mahipalpur

New Delhi - 110037

.....Respondent

Through: Miss Asiya Khan, Advocate.

**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)****CRL.L.P. 705/2019**

1. Criminal Leave to Appeal under Section 378(4) of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.PC'*) has been filed on behalf of the Petitioner, against the Order of acquittal dated 14.08.2019 of learned Addl. Sessions Judge (Central District), Tis Hazari Courts, New Delhi. Hence, the Leave to Appeal is sought.

2. For the reasons stated in the Leave Petition, the same is allowed and



disposed of accordingly.

**CRL.A...../2025 (to be numbered)**

3. A Criminal Appeal under Section 378(2) Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*) has been filed to challenge the Judgment of the Ld. ASJ dated 14.08.2019 in Criminal Appeal No.17/2019 whereby the Conviction of the Respondent Company for the offence under Section 276B read with Section 278B Income Tax Act, 1961 (*hereinafter referred to as "IT Act"*) and Sentenced to fine of Rs.25 lakhs by the Ld. ACMM vide his judgement dated 17.12.2018, has been set aside.
4. The ***facts in brief*** are that a Complaint through Pushpa Rawat Income Tax Officer was filed in the Court of Ld. ACMM under Section 276B read with Section 278B IT Act pertaining to Financial Year 2012-13.
5. Accused No.1 M/s Great India Nautanki Company Pvt. Ltd., a Private Limited Company had deducted certain Tax Deducted at Source (**TDS**) amount for the relevant Assessment Year 2012-13 in accordance with the provisions of the IT Act, but failed to deposit the same in the Government Account within the prescribed period.
6. The Ld. ACMM dispensed with the Summoning Evidence as the Complainant was a Government servant and summoned the Respondents. The Ld. ACMM examined ***CW1 Pushpa Rawat*** Income Tax Officer, who proved the Complainant Ex.CW1/1. The Sanction Order is Ex.CW1/2 and the details of the Tax deducted during the Financial Year is Ex.CW1/4. The Show Cause Notices with proof of service were collectively Ex.CW1/5.
7. ***CW2 Harish Chander*** produced the file of the Respondent for non-deposit of TDS for the Financial Year 2012-13 and the Traces module of the IT Department.



8. **CW3 Kanuj Sehra** who was posted as Income Tax Officer, Ward No.74(3), New Delhi from 06.05.2016 to 22.05.2017 deposed that his Predecessor in interest Mr. Harish Chander had handed over the files including that of Respondent to him. He had passed the Order under Section 2(35) of the IT Act, Ex.CW1/8 holding *Sumit Arora, Principal Officer of the Company* liable for the offence under Section 279B IT Act.

9. After recording the pre-charge evidence of the aforesaid witnesses, *Charges under Section 276-B read with Section 278-B IT Act were framed* against the Respondent No.1 Company and Shri Sumit Arora, Director of the Company vide Order dated 26.02.2018.

10. The Order of framing of Charge was challenged before the Court of Sessions which *vide* Order dated 02.06.2018, discharged Shri Sumit Arora, Director of the Company.

11. After post Charge evidence, statement of Respondent No.1 Company through Authorized Representative was recorded under Section 313 Cr.P.C, wherein all the incriminating evidence put to him, was denied and it was asserted that the Company has been falsely implicated in this case.

12. The Ld. ACMM after considering the entire evidence and *vide* Judgment dated 09.10.2019 held the **Respondent Company guilty** under Section 276B read with Section 278B of the IT Act for deducting the TDS for the Financial Year 2012-13 and not depositing it in the Government account.

13. *The Respondent was sentenced vide Order dated 17.12.2018 with a sentence of fine of Rs.25 lakhs, by the Ld. ACMM.*

14. Aggrieved by the said Conviction and Sentence, an Appeal was preferred before the Court of Sessions which *vide* judgment dated



14.08.2019, held that no offence was made out since the TDS along with fine stood deposited. **The respondent was accordingly acquitted.**

15. *Aggrieved the Department has preferred the present Appeal.*

16. The ***grounds of challenge*** are that the Ld. Sessions Judge has failed to appreciate that the Ld. Trial Court after examining all the facts, evidence and circumstances had concluded that the Respondent had failed to show any reasonable cause for delay in depositing the TDS. Furthermore, the Respondent had not examined any defence evidence to show the bonafide or the genuine difficulty in timely deposit of TDS.

17. The Ld. ASJ has relied upon the statement of the Respondent Company under Section 313 Cr.P.C without any corroborative material documentary evidence. The Ld. Sessions Judge fell in error in relying upon solely on the statement under Section 313 Cr.P.C and acquit the Respondent. The Statement under Section 313 Cr.P.C is not any evidence and that too cannot be considered as a defence. *The Impugned Judgment dated 14.08.2019 acquitting the Respondent, is liable to be set aside.*

18. The Appellant has placed reliance on Madhumilan Syntex and Ors. vs. Union of India and Ors. AIR 2007 SC (148), Standard Chartered Bank and Ors. Vs. Directorate of Enforcement & Ors. (2005) 4 SCC 530 and Shaw Wallace and Co. Ltd. vs. Commissioner of Income Tax (2004) 136 Taxman 346 Cal. in its support.

19. ***Learned Counsel on behalf of the Respondent, which is represented by an IRP since the Company is in liquidation, had argued*** that the Company is not in any position to deposit the alleged fine. Moreover, no offence has been committed by the Company and the Ld. ASJ had rightly appreciated the facts to acquit the Company.



**Submissions heard and record perused.**

20. The Complaint against the Respondent Company was filed under Section 276B Income Tax Act which reads as under:

***“[276B. Failure to pay tax to the credit of Central Government under Chapter XIID or XVIIB. - If a person fails to pay to the credit of the Central Government, - the tax deducted at source by him as required by or under the provisions of Chapter XVIIB; or the tax payable by him, as required by or under, - sub-section (2) of section 115-0; or the second proviso to section 194B, he shall be punishable with rigorous imprisonment for a term which shall not be less than three months, but which may extend to seven years and with fine]”***

21. The TDS amount deducted in a month has to be deposited on or before 7<sup>th</sup> day of the subsequent month in terms of the IT Act and rules made thereunder. Ex.CW1/4 proves that Respondent had committed default in timely deposit of TDS amount of Rs.1,28,94,348/- during the Financial Year 2012-13 showing the details of the tax deducted. The Ld. ACMM concluded that the document and the evidence on record reflected a delay in deposit of TDS ranging from 4-15 months. The Respondent also had not disputed that there was delay in deposit of TDS amount. The offence as provided under Section 276B is, therefore, shown to have been committed.

22. However, **Section 278AA IT Act** provides that *notwithstanding anything contained in the provisions of Section 276A, 276AB or Section 276B or Section 276BB, no person shall be punishable for any failure referred in the said provisions if he proves that there was reasonable cause for such failure.*

23. The entire case now hinges on whether the Respondent was able to give any reasonable cause for the delay, which is not denied. In the



Statement under Section 313 Cr.P.C, the Accused Company through its Director Sumit Singhal, took the defence of the *bad financial condition of the Company* on account of which the TDS could not be deposited in time and was ultimately deposited after the availability of funds and interest.

24. The Ld. ACM had rightly observed that aside from a bald assertion about the financial condition, no cogent evidence had been led by the Respondent in proof thereof. Pertinently, no witness was examined by the Respondent Company nor any documents placed on record to explain the alleged financial condition of the Company.

25. The onus to prove special circumstance of bad financial condition was on the Respondent to dispel the absolute liability imposed by a Company under Section 276B of IT Act. The best evidence to establish this defence was to produce the documentary evidence to reflect the poor financial condition, which it has miserably failed to do.

26. In this regard, it is also pertinent to observe that there was a delay of 4-15 months, in deposit of TDS. This shows that the Respondent was functioning and had the financial capacity to pay, though delayed by 4 months to 15 months. There is no circumstance brought forth by the Respondent to show that there existed any reasonable cause in depositing the TDS with delay. The bald assertion in the Statement of Accused under S.313 cannot be considered as a defence proven in terms of S. **278AA IT Act**, so as to entitle the Respondent to an Acquittal.

27. The Respondent miserably failed to establish its defence under Section 278AA of IT Act. The Ld. ACMM in the Impugned Judgment dated 17.12.2018 was right in holding the Respondent guilty for the offence under Section 276B IT Act for not depositing the TDS for the Financial



Year 2012-13 in time, despite deducting it in the Government Account within the prescribed period.

28. The *other ground* as agitated by the Respondent which needs to be considered, is the *quantum of fine imposed upon the Respondent*. The Ld. ACMM had sentenced the Company to a fine of Rs.25 lacs under Section 276B IT Act. However, it is not in dispute that the entire amount along with compensatory interest of Rs. 22,095,859/- has already been deposited by the Respondent. Considering that it is a technical offence and the Respondent has already deposited the entire amount along with the compensatory interest, and that the Company is facing Liquidation proceedings, reflecting its poor financial status, further imposition of fine is not merited in the given circumstances.

29. The Judgment of the Ld. ASJ dated 14.08.2019 setting aside the Judgment of Ld. ACMM dated 17.12.2018 is, therefore, erroneous and based on wrong appreciation of facts and is hereby, set aside. The Sentence of fine of Rs.25 lacs, as imposed by learned ACMM, is hereby modified and the Respondent Company is sentenced to admonition.

30. The Appeal along with pending Applications is accordingly, disposed of.

**(NEENA BANSAL KRISHNA)**  
**JUDGE**

**OCTOBER 16, 2025**

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