

(2012) 02 DEL CK 0459

Delhi High Court

Case No: Criminal MC No. 583 of 2009

Dy. Commissioner of Income Tax

APPELLANT

Vs

General Sales Pvt. Ltd. and
Others

RESPONDENT

Date of Decision: Feb. 10, 2012

Citation: (2013) 351 ITR 410 : (2012) 211 TAXMAN 199

Hon'ble Judges: M.L. Mehta, J

Bench: Single Bench

Advocate: Sanjeev Rajpal and Mr. Karan Chaudhan, for the Appellant; Harish Gulati and Mr. Anindya Malhotra, Advocates for R-1, 3, 4, 5 and 7, Mr. Amit Kumar, Advocate for R-6, for the Respondent

Judgement

M.L. Mehta, J.

The present petition u/s 482 CrPC assails the order of learned ASJ dismissing the revision petition filed on behalf of DCIT vide order dated 1.9.2008, whereby the learned ASJ has affirmed the order of learned ACMM dated 8.10.2007 discharging the respondents.

2. The brief facts necessitating the present petition u/s 482 CrPC are that the Income Tax Department on the basis of some complaints by some approved trust/institutions that some persons were collecting donations in their names without authority and worked scrupulously aiding the donors in siphoning off the donated money back to them in dubious ways, after retaining a part of the alleged donation as commission. Search operation u/s 132 of the Income Tax Act (hereinafter referred to as "Act") were conducted by the Income Tax Authority on 13th September, 1983 at the residential premises of one Sh. Vipin Mehra and one Sh. Prem Prakash. The investigation revealed that the modus operandi adopted for this purpose was that the donations were purportedly made in the names of trusts and institutions which had been approved either for the purpose of weighted deduction u/s 35CCA and 35(1)(ii) of the Act.

3. In the present case, proceeds of one of the cheques were withdrawn by depositing it in third party account and the other by depositing it in bogus accounts. The accused company allegedly issued the cheque/bankers cheque in the sum of Rs. 25 lakhs in favour of two approved trusts/institutions namely (1) Hastimal Sancheti Memorial Trust, Poona (hereinafter referred to as "HSMT") of Rs. 10 lakhs and (2) Poona Medical Foundation, Poona (hereinafter referred to as "PMF") of Rs. 15 lakhs and subsequently got the cheques/bankers cheques encashed through bogus accounts.

4. The modus operandi in regard to the alleged donation of Rs. 10 lakhs was by issuing a special crossed "payee's A/c. only" cheque bearing number PWV 331524 dated April 28, 1983, drawn on Punjab National Bank, Kasturba Gandhi Marg, New Delhi, in favor of HSMT and the said cheque was signed by Respondent No. 2, N. R. Dongre, and Respondent No. 3, R. B. Sharma. The special crossing was, however, cancelled on this cheque under the signatures of Respondent Nos. 2 and 3 and the cheque was turned into a simple crossed one. This cheque was endorsed in favor of one India Investment Co. by one signing as Om Prakash in his alleged capacity as secretary of HSMT whereas there is no person by the name of Om Prakash connected with HSMT. The said endorsement in favor of M/s. India Investment Co. was confirmed by one Shri Vipin Kumar, proprietor of M/s. India Investment Co., and the proceeds of the said cheque were collected by New Bank of India, Chawri Bazar Branch, Delhi, and credited to the account of M/s. India Investment Co. on April 26, 1983. The said account in the name of M/s. India Investment Co. with New Bank of India, Chawri Bazar Branch, Delhi, was simultaneously opened on April 22, 1983, by the said Vipin Kumar in his capacity as the sole proprietor of the said concern. Vipin Kumar was an alias of co-accused Vipin Mehra (respondent No. 8) and he had been introduced to the bank by one Jaswant Rai, partner of M/s. Hari Kishan Jaswant Rai, 3751, Gali Lahey Wali, Chawri Bazar, Delhi, holder of account No. CA 49. There was another credit to the said account of M/s. India Investment Co. in respect of cheque for Rs. 5 lakhs drawn by one K. S. Karla, Chief functionary of M/s. Varun Enterprises and similarly endorsed in favor of the said M/s. India Investment Co. The said M/s. Varun Enterprises is a partnership in which major share is held by one Deepak Singh and Family (HUF) and Deepak Singh is the son-in-law of accused Charat Ram. The entire amount of Rs. 15 lakhs credited to the said account of M/s. India Investment Co. was withdrawn by bearer cheques between April 28, 1983, and May 2, 1983, by accused Vipin Mehra.

5. A different modus operandi was adopted in respect of the other alleged donation in the sum of Rs. 15 lakhs purportedly made in the name of P.M.F. and for this purpose, a banker's cheque bearing number F897240 dated June 29, 1983, was purchased from State Bank of Hyderabad, Kasturba Gandhi Marg, New Delhi, and consideration for the same was tendered by accused/ Respondent No. 1 company, through cheque bearing No. 236606 dated June 29, 1983. An application for the purchase of banker's cheque made to the bank was originally for the issue of

banker's cheque in favor of one M/s. Astra Commercial P. Ltd. but was subsequently modified under the signatures of accused Respondent No. 2, N. R. Dongre, and accused Vinod Singhanian, Respondent No. 7, and the bank was requested to issue the cheque in favor of P. M. F. The proceeds of the banker's cheque were collected by the State Bank of Patiala, Shradha Nand Marg, Delhi, and were credited to the bogus account in the name of P.M.F. On the same day, proceeds of another banker's cheque for Rs. 3 lakhs purchased by M/s. Astra Commercial P. Ltd., a sister concern of the company Respondent No. 1, were also credited to the account of P.M.G. An account in the name of P.M.F. was opened on August 13, 1983, and the account opening form was not signed notwithstanding the usual practice and requirement in that regard but a rubber facsimile which appeared to be of the signatures of Dr. Grand, Managing Trustee of P. M. F., was affixed. Accused Dosh Raj (now dead), was authorised to operate the said account even though never authorised by P.M.F. to open or operate any bank account on its behalf and he was a school teacher in New Delhi. The said account was opened at the behest of accused Prem Prakash, respondent No. 6, a close confidante and director of a number of companies belonging to the group indulging in such malpractice of fake donations. Prem Prakash and accused Vinod Singhanian, respondent No. 7, used to issue instructions to the bank prior to any withdrawal from the bank and all the withdrawals were by bearer cheques and the cash was collected either by accused Dosh Raj or by accused Vipin Mehra.

6. It is further alleged that the return of income of the company for the assessment year 1984-85 for which the accounting period ended on June 30, 1983, was filed on June 2, 1984, and the same was in the prescribed form and verification thereto was signed by accused R. B. Sharma, Respondent No. 3, in his capacity as one of the directors of the company. The return was accompanied by profit and loss account, balance sheet, etc., and the said documents were signed by accused persons, namely, Charat Ram (now dead), Respondent No. 2, N. R. Dongre, Respondent No. 3, R. B. Sharma, Respondent No. 5 and Subodh Verma, Respondent No. 5. The said profit and loss account of the company showed profit before taxation at Rs. 44,10,392 and that profit was computed without taking into account the aforesaid amount of the fake donations of Rs. 25 lakhs during the relevant previous year and the said amount of Rs. 25 lakhs was shown in the balance-sheet as "claims recoverable". The rebate in respect of the said bogus donations was not claimed in the return of income submitted on June 2, 1984, as the Department had by that time unearthed the indulging of the accused in the aforesaid nefarious activities by conducting raids, searches and seizure of various documents.

7. At the outset, the learned counsel for respondents objected to the maintainability of the petition submitting that though the petition was preferred u/s 482 Cr.P.C. but the petition, in fact, was a second revision against the order of MM discharging the respondents u/s 276-C of the Income Tax Act. He submitted that the second revision being barred u/s 397(3) Cr. P.C. was not maintainable in this Court.

8. There was, in fact, no dispute with regard to the proposition that there was statutory bar contained in section 397(3) Cr.P.C. for the second revision petition. The power of this Court and that of the Court of Sessions, so far as a revision is concerned, are concurrent. The intention of the Legislature u/s 397(3) Cr.P.C. is definite and the scheme therein is unambiguous and clear. Sub section (3) does not permit the repetition in exercise of jurisdiction of revision u/s 397(1) Cr.P.C. It curtails the chance availing second remedy and therefore, an unsuccessful revisionist in the court of Sessions cannot be entertained for the second time by the High Court. In fact, sub section (3) intends and aims to secure finality. The choice lies with the revisionist either to file revision directly in this Court or in the Sessions Court. Having availed the remedy by filing revision before the Sessions Court, one cannot be permitted to avail second chance to file revision in view of the bar of sub section (3) of section 397 Cr.P.C.

9. The issue regarding filing of petition before the High Court after having availed first revision petition before the Court of Sessions has come up before the Supreme Court and this Court repeatedly. While laying that section 397(3) Cr.P.C. laid statutory bar of second revision petition, the courts have held that High Court did enjoy inherent power u/s 482 Cr.P.C. as well to entertain petitions even in those cases. But, that power was to be exercised sparingly and with great caution, particularly, when the person approaching the High Court has already availed remedy of first revision in the Sessions Court. This was not that in every case the person aggrieved of the order of the first revision court would have the right to be heard by the High Court to assail the same order which was the subject matter of the revision before Sessions Court. It was all to depend not only on the facts and circumstances of each case, but as to whether the impugned order bring about a situation which is an abuse of process of court or there was serious miscarriage of justice or the mandatory provisions of law were not complied with. The power could also be exercised by this Court if there was an apparent mistake committed by the revisional court. Reference in this regard can be made to the judgments of the Supreme Court in [Madhu Limaye Vs. The State of Maharashtra](#), [State of Orissa v. Ram Chander Aggarwal](#), AIR SC 87, [Raj Kapoor and Others Vs. State and Others](#), [Kailash Verma Vs. Punjab State Civil Supplies Corporation and Another](#), .

10. The learned counsel for the respondents next submitted that the aforesaid amount of Rs. 25 lac was shown by respondents in their income tax returns for the assessment year 1984-85 as recoverable and not as donation and that the assessment was made by the Department and even the penalty proceedings u/s 271C were deleted. It was also submitted that in any case, the entries in the books of accounts, regularly kept in the course of business alone were not to be sufficient enough to charge any person in terms of provisions of Section 34 of the Evidence Act. In this regard, it was also submitted that the learned ASJ in the impugned order dated 1.9.2008 while dismissing the revision petition of the department also observed that the acts of the respondents at the most can be termed as preparation

and not an attempt to commit the offence and that since the preparation was not an offence under the Income Tax Act, no offence was made out against the respondents.

11. On the other hand, the contentions of learned counsel for the petitioner was that the return of the income tax for the assessment year 1984-85 was filed by the respondents on 2.6.1984, whereas the search was conducted on 13.9.1983. It was submitted in this regard that the respondents had sufficient time to manipulate their accounts in order to evade their liability and they had shown in the income tax return the aforesaid amount of Rs. 25 lac as recoverable. It was submitted that the findings of learned ASJ that it was only a preparation to conceal the income was apparently incorrect since the acts of respondents were squarely covered within the Explanations (i) and (iv) to Section 276C(2) of the Income Tax Act. It was also submitted that the respondents earlier challenged the order of summoning by way of filing a petition which was dismissed by this Court on 29.8.1986 whereby this court categorically recorded that on the averments made in the complaint prima facie case was made out against the respondents.

12. The above narrated facts clearly demonstrate the conduct of respondents. They clearly indicate the abnormal dealings and the procedure adopted. The said facts also point finger towards the guilt of respondent No. 1 and its functionaries. The respondents prima facie seem to have caused circumstances to exist which would have the effect of enabling respondent No. 1 to evade the income tax penalty or interest chargeable/ imposable under the Act. They also caused or made to cause false entries and statements in the books of accounts and other documents relating to the said donations to the trust which are false and contrary to their books of account, which is another document containing false entries and statements relating to the aforesaid donations. The fact of their having shown this amount in the balance sheet as recoverable was apparently nothing but manipulation. Consequently, the assessment made on the basis of income tax return filed on 2.6.1984 showing the amount as recoverable was nothing but consequence of such disclosure made by respondents. The Assessing Officer who assessed the income tax return of the relevant year was only to confine to his task of assessment as per the disclosure made in the income tax return. Since the amounts were shown as recoverable and the assessment was made thereon as such, consequently the penalty proceedings u/s 271(c) were naturally to be deleted. All these would have no relevance to the acts of omission and commission committed by respondents in the manner as indicated above.

13. With regard to the plea of respondents that the entries in the books of account kept in the course of business alone were not sufficient to charge any person with liability as per Section 34 of Evidence Act and also that it was at the most only preparation, the said contentions are untenable.

14. Both the courts below have failed to appreciate that the provisions of Income Tax Act, 1961 have overriding effect over the general criminal law of the land. The object of Income Tax Act is to prevent evasion of income tax and punish the offenders under Chapter XXII of the Act. As per explanation (iv) to Section 276 (c)(ii) of the Act, a willful attempt to evade any tax shall include a case where a person causes any other circumstances to exist which will have the effect of enabling such a person to evade tax imposable under the Act. Likewise the case would also be falling within deeming provisions of Clause (i) of explanations which provides the possession or control of books of accounts or other records containing false entries or statement as amounting to willful attempt to evade tax. The said clauses of Explanation are sufficient for continuation of the prosecution against the respondents under the Act. In the given facts and circumstances, the findings of learned ASJ that it was only a preparation is apparently ridiculous.

15. It is settled proposition of law that at the stage of framing of charges it is not obligatory for the Judge of trial to consider any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording of final guilt or otherwise of accused, is not exactly to be applied at the stage of deciding the matter u/s 227 and 228 of Cr.P.C. Further at this stage, the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, leading the court to think that there is ground for presuming that the accused has committed an offence is enough. Reliance in this regard is placed on State of Bihar v. Ramesh Singh, AIR 1997 SC 2018 , [R.S. Nayak Vs. A.R. Antulay and Another](#), and Kanti Bhadra Shah v. State of West Bengal, 2000 I Apex Decision (SC).

16. In view of my above discussion and having seen that the present case was at the stage of framing of charges, both the courts below have erred in discharging the respondents based on wrong interpretation of provisions of section 276C(ii) of the Income Tax Act. Consequently, both the orders have led miscarriage of justice. Both these orders are hereby set aside. The matter is remanded back to the Court of CMM, Delhi with direction to assign it to the court of competent jurisdiction. The parties are directed to appear before the CMM, Delhi on 24.02.2012 at 2.30 pm. Since the matter has already considerably delayed, the trial court is directed to expedite the conclusion of trial.

17. Nothing contained herein would amount to expression of opinion on the merits of the case.

18. The petition stands disposed of.