**(2011) 11 DEL CK 0186**

**In the Delhi High Court**

**Case No :** Criminal Rev. P. No. 36 of 2011

Arun Kumar Bhatia and Another — APPELLANT

Vs

Vijay Kumar and Others — RESPONDENT

**Date of Decision :** 02-11-2011

**Acts Referred:**
Income Tax Act, 1961 — Section 139, 139(8), 140, 276CC, 276D

**Citation :** (2011) 10 AD 347

**Hon'ble Judges :** Suresh Kait, J

**Bench :** Single Bench

**Advocate :** Sanjeev Sachdeva and Mr. Praveen Chauhan, Mr. Amol Sinha, Mr. Anshum Jain and Mr. Prnam Mehta, for the Appellant; Sanjiv Rajpal, Senior Standing Counsel for Income Tax/R -1., for the Respondent

**Final Decision :** Allowed

# Judgement

Suresh Kait, J.

Crl.M.A.755/2011(delay)

For the reasons explained, delay of 125 days is condoned.

Criminal M.A. stands disposed of.

1. Issue notice.

2. Mr.Sanjiv Rajpal, Senior Standing Counsel for Income Tax accepts notice on behalf of respondent No.1.

3. With the consent of counsel for parties, matter is taken up for disposal.

4. Vide the instant petition, the petitioner has assailed the order dated 10.05.2010 and 02.11.2010 passed by learned ACMM; New Delhi.

5. Mr.Sanjeev Sachdeva, learned Senior Advocate for the petitioners submits that the respondent No.1 filed a complaint case u/s 276CC of the Income Tax Act,

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/arun-kumar-bhatia-and-another-...

1961 for the assessment year 1981-82 against both the petitioners besides two other accused persons.

6. Admittedly, both the petitioners were the directors at the relevant time in the company under the name and style of M/s.S. N. Bhatia & Company Private Limited. Shri S. N. Bhatia was and is the managing director of said company.

7. The allegations against the accused persons are as under:-

3. That as per the information available on the record, during the previous year ending on 31-7-1980 and relevant to the assessment year 1981-82, accused Nos.2 to 4 were the directors of accused No.1. They were exercising all powers to control and the day to day business of accused No.1. They were also signing and filling documents on behalf of accused No.1. They were, thus, incharge of and responsible to accused No.1 for the conduct of its day to day business.

8. Mr.Sanjeev Sachdeva, learned Senior Advocate for the petitioners submits that as per the provisions of Section 140(c) of the Income Tax Act, 1961, it is the managing director of the company who is responsible for signing of the returns to be filed u/s 139 of the Income Tax Act, 1961. The clause (c) to Section 140 the Income Tax Act, 1961 reads as under:-

(c) In case of a company, by the managing director thereof, or where for any unavoidable reason such managing director is not able to sign and verify the return, or where there is no managing director, by any director thereof;

9. Learned counsel further submits, both the petitioners are the son of the managing director of the company Shri S. N. Bhatia, therefore, whole world cannot be prosecuted under these provisions. u/s 140 of the Income Tax Act, 1961, the liability to file the return is of the managing director and if the managing director is not able to file the return for any reason, then the liability shifts to the director. In the present case, the case of the prosecution is not of that nature, therefore, the managing director was able to file the return, if he fails to do so, then he only can be held liable u/s 140 of the Income Tax Act, 1961.

10. Mr.Sanjeev Sachdeva, learned Senior Advocate has relied upon the decision of Calcutta High Court in National Insurance Co. Ltd. Vs. Commissioner of Income Tax, wherein it has been held as under:-

We have considered the rival contentions. In our view, none of the contentions raised by Mr.Bhattacherjee has any substance. Section 140(c) provides that in the case of a company the return of income shall be signed by the managing director thereof, or where for any unavoidable reason such managing director thereof, such managing director is not able to sign and verify the return, by any director thereof. Thus, it is obligatory on the company to have its return signed and verified by the managing director thereof and only a case where for any unavoidable reason such managing director is not able to sign and verify the return, can any other director of the company sign and verify the return. In the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/arun-kumar-bhatia-and-another-… 

case the return which was originally filed had been verified by one Niranjan Kanodia, general manager of the assessee-company. Since this verification was not in accordance with the provisions of Section 140(c) of the Act, the income tax Officer addressed a letter dated February 28, 1979, to the managing director of the assessee-company drawing his attention to the provisions of Section 140(c). He, further pointed out that in case the managing director was unable to sign the return due to any unavoidable reason the return of income could be signed by another director. In the said letter, the income tax Officer requested the managing director of the company to let him know whether he was prevented from signing the verification on February 14,1978, due to any unavoidable reason. He further pointed out that if there was no such cause, the return of income would be invalid and in that event a duly signed and verified return should be filed.

11. Learned Senior Advocate for the petitioners further relied upon a decision rendered by this Court in S.N.P. Punj Vs. Dy. Commissioner of Income Tax, Special Range 15, wherein it has been observed as under:-

6. Learned Counsel for the petitioners submitted that when there was no dispute about the factum of arbitration award, which was also made rule of the Court by orders of this Court dated 17.3.1988, it was clear that the petitioners ceased to have any concern with the said firm with effect from 7.8.1987. It is submitted that the learned ASJ in the impugned order failed to appreciate that when the petitioners were no more partners in the firm with effect from 7.8.1987, they could not be treated as in-charge of and responsible for the conduct of the business of the firm and, therefore, cannot be deemed to be guilty of the offence. It was also submitted that the impugned order failed to consider or appreciate that the complainant itself specifically alleges that "at present accused No. 8 i.e. Shri V.P. Punj has been signing relevant papers on behalf of the accused No. 1 and has been filing the documents on behalf of the accused No. 1 during the proceedings relevant for the assessment years 1988-89". Even the complainant admitted that it was the accused No. 8 who was in-charge of the affairs of the firm, as it is admitted in the complaint itself that he is associated with the firm since March 1988. In view thereof, he submitted, there was no prima facie case. Strong reliance was placed on judgment and order dated 22.1.1992 passed by this Court in Crl. Writ Petition No. 482/1991. That was a case where similar prosecution launched by the respondent in respect of M/s. Punj Sons Pvt. Ltd. for failure to file the return was challenged under similar circumstances and this Court had quashed the proceedings on the ground that in the complaint nothing was stated as to how the petitioners were in-charge of the affairs of the company and mere reproduction of the words used in the section was not sufficient. He submitted that even in the instant complaint the complainant had not stated as to in what manner the petitioners were in-charge of and responsible for the firm in the conduct of its business in the year 1988. He argued that even when this order was specifically produced and relied upon by the petitioners at the time of arguments before the learned ASJ, he failed to

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/arun-kumar-bhatia-and-another-… 

consider the impact thereof. It was also argued that the accused No. 4 was, in fact, more than 75 years of age besides being sick and as per Circular dated 7.2.1991, the prosecution could not have been initiated against him. It was also submitted that in any case the courts below failed to consider or appreciate that the alleged offences are compoundable but no opportunity was given to the petitioners to exercise any such right as per the guidelines for compounding issued by the Government. Learned Counsel also submitted that for the assessment year 1988-89, the Revenue has charged the interest u/s 139(8) of the Act for late filing of return by M/s.Dayagen in the complaint filed by the respondent. When the Revenue levies interest u/s 139(8), it must be presumed that the Revenue has extended the time for filing the return beyond the prescribed period after satisfying that it is a case for extension of time. Therefore, no criminal prosecution can be launched or continued after charging the interest u/s 139(8) as it is an implied extension of time to file the return of income. Therefore, no question of willful default in filing the return of income arises in the present case. The prosecution of the petitioners is liable to be quashed on this ground alone. Reference in this regard is made to a decision of the Supreme Court in CIT v. M.Chandra Sekhar. It is submitted that following the aforesaid decision of the Supreme Court, the Calcutta High Court in Gopalji Shaw Vs. Income Tax Officer, "D" Ward and Others, , had held that having charged interest u/s 139(8) of the Act there is a presumption that the ITO has extended the time for filing the return beyond the period of limitation, hence, the prosecution for late filing of return after charging the interest u/s 139(8) is liable to be quashed. The aforesaid judgment of the Supreme Court was further followed in Commissioner of Income Tax, A.P. and Additional Commissioner of Income Tax, A.P. Vs. M/s. M.J. Daveda (dead) by Lrs. and D. Krishnamurthy, .

8. After hearing the counsel for the parties, I am of the view that these petitions warrant to be allowed in view of the Division Bench judgment dated 22.1.1992 in Crl.W.P. No. 482/1991. That case also related to the non-filing of the return by M/s. Punj Sons Pvt. Ltd., which was also a company jointly owned by the same family members, that was also subject matter of the award dated 7.8.1987. Prosecution against the said company was also launched on the same ground and under the same provisions, namely for non-filing of the return for the assessment year 1988-89. As per the award, this company had also fell into the share of Group No. 2 and persons belonging to Group No. 1 had, on the basis of the said award, challenged the prosecution launched against them and submitted that they were not responsible for the affairs of the company. Insofar as the plea based on award dated 7.8.1987 is concerned, the Division Bench categorically stated that it was not going into that aspect as it relates to the defense of the petitioner, meaning thereby that such a defense based on facts could be gone into only at the stage of trial. However, the petition was allowed on the ground that nothing was stated in the complaint which would indicate as to how the said directors (petitioners thereon belonging to the Group No. 1, as in the instant case) were in-charge of the affairs of the company. The order passed is brief and

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/arun-kumar-bhatia-and-another-... 

it would be apposite to reproduce the same in entirety:

Rule D.B.

The petitioners herein are being prosecuted u/s 276-CC/276-D read with Section 278-B of the income tax Act. In para 2 of the complaint, it is stated as under:

That the accused No. 1 is a Company and during the period relevant to the assessment year 1988-89, accused No. 2 to 8 were the Directors of accused No. 1 and they were in charge of and responsible to the company for conduct of its business. The accused No. 9 is presently the Chairman of accused No. 1. Accused No. 9 has been signing relevant papers on behalf of accused No. 1 and has been filing the documents on behalf of the company during the proceedings relevant to the assessment year 1988-89. The offences, which are the subject matter of this complaint, have been committed with the consent and connivance of accused No. 9 and are also attributable to the neglect on part of accused No. 9 also.

The main objection of the petitioners is that even though the company was incorporated in 1954, the petitioners totally came out of it under an award dated 7th August 1987 which was made rule of the Court on 17th March 1988. The period for which the petitioners are being prosecuted for non-filing of return pertains to the year 1988-89 when according to the award, the petitioners had nothing to do with the company. We are not going into this aspect as this relates to the defense of the petitioners. But, we are of the view that the prosecution of the petitioners is unwarranted for the reason that there is no indication of any sort in the complaint as to how the petitioners were in charge and responsible to the company for the conduct of its business....Dinesh Verma and Anr., reported in income tax Reporter, Volume 169 of 1988, decided on 11th August 1987, has held that mere reproduction of the expression in Section 278-B in the complaint does not meet the requirements of law. The complainant is bound to provide indication, though not evidence as to in what manner a particular partner of the firm is supposed to be in charge of and responsible for the conduct of business. Mere reproduction of the words used in the Section is not sufficient.

We consider it to be good and valid law and since we find no indication in the complaint as to how and in what manner the petitioners were responsible and in charge for the conduct of business of the company, their prosecution is liable to be quashed.

Accordingly, we allow this petition and quash the complaint against the petitioners.

The interim order is recalled and the complaint shall proceed against others. The petition stands disposed of.

9. The position in the present case is identical. Except stating that the petitioners herein were in-charge of and responsible to the firm for conduct of its business, which amounts to reproduction of language of Section 278-B, nothing is attributed to the petitioners and it is not indicated as to how and in what manner

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/arun-kumar-bhatia-and-another-...

the petitioners were in-charge of the affairs of the firm. In fact, the case of the petitioners in the present petitions is a shade better inasmuch as in the complaint itself it is specifically averred that it is the accused No. 8 who was controlling the affairs of the firm and it was he who was corresponding with the income tax authorities. In view thereof, it is not necessary for me to go into the other issues raised by the petitioners. These petitions accordingly succeed on this ground. Summoning orders issued against the petitioners are quashed, the petitioners are discharged and the complaint qua them is dismissed.

12. Mr.Sanjiv Rajpal, learned Senior Standing counsel for Income Tax/respondent No.1 submits that the complaint case against the petitioners was filed way back in the year 1990 and the summons were issued vide order dated 14.09.1990 and thereafter on 24.11.1991 petitioners filed the Crl.(Misc.) Main No.969/1991 in this Court against the order dated 15.03.1991 passed by learned Trial Court and thereafter proceedings are going on in the Trial Court. Petitioners never raised this issue, therefore, the present petition be dismissed on delay and latches.

13. While, opposing the instant petition, Mr.Sanjiv Rajpal, learned Senior Standing Counsel fairly concedes that as on the date of filing the complaint before learned Trial Court against the petitioners, respondent No.3, herein namely Shri S. N. Bhatia, was above the age of 70 years and as per the circular dated 07.02.1991 issued by Central Board of Direct Taxes, no prosecution can be initiated against a person who is above the age of 70 years.

14. Mr.Sanjeev Sachdeva, learned Senior Advocate for the petitioners further submits that this plea was raised before the learned Trial Court, despite that charge against the petitioners have been framed vide order dated 10.05.2010. Thereafter, the petitioners moved an application for dropping of the charge against them, which was also rejected vide order dated 02.11.2010.

15. Admittedly, the petitioners were and are directors of the company. u/s 140 of the Income Tax Act, 1961, only the managing director of the company is responsible. The managing director was fully capable of filing the income tax return. The petitioners were not under obligation to file the return. Therefore, the complaint filed u/s 276CC of the Income Tax Act, 1961 against the petitioners is bad in law.

16. Due to the reasons and law discussed above, the orders dated 10.05.2010 and 02.11.2010 passed by learned Trial Court are liable to be set-aside.

17. Keeping the circular dated 07.02.1991 issued by Central Board of Direct Taxes into view, the complaint against the respondent No.3 is liable to be rejected.

18. Consequently, in the interest of justice, the complaint case filed by respondent No.1 u/s 276CC of the Income Tax Act, 1961 against the petitioners and respondent No.3, pending adjudication before the Trial Court is rejected and they are discharged from all the charges. Consequently, orders dated 10.05.2010

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/arun-kumar-bhatia-and-another-…

and 02.11.2010 are hereby set- aside.

19. Accordingly, Criminal Revision Petition 36/2011 stands allowed.

20. In view of above order, Criminal M.A.754/2011 for stay of proceedings renders infructuous and stands disposed of as such.

21. No order as to costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/arun-kumar-bhatia-and-another-…