

**(1999) 12 MAD CK 0079**

**In the Madras High Court**

**Case No :** Criminal Appeal No's. 249 to 277 and 279 to 288 of 1990 23  
December 1999

INCOME TAX OFFICER

APPELLANT

Vs

SAKHTI FINANCE LTD.

RESPONDENT

**Date of Decision :** 23-12-1999

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 173  
General Clauses Act, 1897 — Section 21  
Income Tax Act, 1961 — Section 269T, 276DD, 276E, 278B

**Citation :** (2001) 1 LW(Cri) 308 : (2000) 109 TAXMAN 376

**Hon'ble Judges :** V. Bakthavatsalu, J

**Bench :** Division Bench

**Advocate :** T. Sivanandan for the Revenue and M. Ravindran, for the Assessee and, for the Appellant;

## Judgement

1. All these appeals are preferred by the Income Tax Officer, Coimbatore, against the order of acquittal passed by the learned Judicial Magistrate No. 1, Coimbatore. The first accused is Sakhti Finance Limited, represented by N. K. Pai. The second accused is the Chief Executive and President of the Company and third accused is the General Manager. But, in the cases relating to C.A. Nos. 279 of 1990 to C.A. No. 288 of 1990, the Company and second accused N. K. Pai alone are impleaded as accused.

2. The complaint relating to C.A. No. 249 of 1990 and connected cases are filed u/s 276E, read with section 278B, of the Income Tax Act, 1961. The complaint relating to cases C.A. Nos. 279 of 1990 to C.A.No.288 of 1990 are filed u/s 276DD, read with section 276B, of the Act.

3. It is the case of the appellant/complainant that the first accused violated section 269T by repayment of loan otherwise than by account payee cheque and that they violated section 269SS by accepting deposits of Rs. 10,000 otherwise than by account payee cheque. The names of the drawee and date of cheque and

amount involved in the cheque which relates to C.A. No. 249 of 1990 to C.A. No. 267 of 1990 and C.A. No. 269 of 1990 to C.A. No. 277 of 1990 are shown in the table below:

TABLE 1

Appeal Number

Name of the Drawee

Date of cheque

Amount

C.A. No. 249/90

Kumari

13-10-1987

42,404.00

C.A. No. 250/90

Veda

15-10-1987

31,687.00

C.A. No. 251/90

Murali

15-10-1987

26,406.00

C.A. No. 252/90

Francis

15-10-1987

42,482.00

C.A. No. 253/90

Peter

13-10-1987

26,610.00

C.A. No. 254/90

Aruna

15-10-1987

47,740.00

C.A. No. 255/90

Mathu

15-10-1987

26,406.00

C.A. No. 256/90

A. Doss

13-10-1987

26,610.00

C A. No. 256/90

A. Doss

13-10-1987

42,420.00

C.A. No. 257/90

Micheal

13-10-1987

42,420.00

Micheal

13-10-1987

26,610.00

C.A. No. 258/90

Valli

13-10-1987

33,774.00

C.A. No. 259/90

Balu

15-10-1987

31,828.00

C.A. No. 260/90

Victoria

15-10-1987

26,415.00

C.A. No. 261/90

Rapeeta

13-10-1987

26,396.00

C.A. No. 262/90

Paul

15-10-1987

26,629.00

C.A. No. 263/9

Fathima

13-10-1987

26,396.00

C.A. No. 264/90

Pauline

15-10-1987

40,136.00

C.A. No. 265/90

Pauline

15-10-1987

40,136.00

C.A. No. 266/90

Ramu

15-10-1987

42,451.00

C.A. No. 267/90

Lazar

13-10-1987

29,552.00

C.A. No. 269/90

Stephen

13-10-1987

42,451.00

C.A. No. 270/90

Arul

16-10-1987

42,492.00

C.A. No. 271/90

John

15-10-1987

26,629.00

John

15-10-1987

42,451.00

C.A. No. 272/90

Sahul

15-10-1987

28,518.00

C.A. No. 273/90

James

13-10-1987

26,386.00

A. James

13-10-1987

42,404.00

James

13-10-1987

27,674.00

James

13-10-1987

26,386.00

C.A. No. 274/90

Uma

13-10-1987

47,758.00

C.A. No. 275/90

Joseph

15-10-1987

26,629.00

Joseph

15-10-1987

42,451.00

CA No. 276/90

Mary

15-10-1987

45,451.00

C.A. No. 2,77/90

Baskar

15-10-1987

42,451.00

Baskar

15-10-1987

42,451.00

The names of the depositors, amount received in cash and date of receipt of cash which relates to C. A. No. 279 of 1990 to C. A. No. 288 of 1990 are given in the table below :

TABLE II

Appeal Number

Name of the Depositors

Date of receipts of cash

Amount

C.A. No. 279/90

Nanamball

19-05-1985

10,000.00 (in cash)

C.A. No. 280/90

Mahadevan

18-11-1985

10,000.00 (in cash)

02-12-1985

10,000.00 ")

C.A. No. 281/90

Balu

10-02-1986

10,000.00 (cash)

C.A. No. 282/90

Balasubramaniam

17-09-1985

50,000.00 (cash)

C.A. No. 283/90

Santhanalakshmi

06-03-1986

10,000.00 (cash)

C.A. No. 284/90

Ganesan

13-09-1985

25,000.00 (cash)

C.A. No. 285/90

Saraswathi

13-09-1985

25,000.00 (cash)

C.A. No. 286/90

Lokanaidu

08-02-1986

10,000.00 (cash)

C.A. No. 287/90

Valasala Menon

03-01-1986

10,000.00 (cash)

C.A. No. 288/90

Sethumadhavan

23-01-1986

15,000.00 (cash)

4. The case of the complainant in the first batch of appeals is that when the residential premises of one James, Michael and others were searched, it was noticed that the first accused issued by way of repayment of loan to the drawee noted in the column under cheque and that as it is in violation of section 269T, after issuing summons and conducting enquiry, the complaint is filed.

5. It is the case of the complainant in the second batch of appeals that when the residential premises of one James was searched, it was noticed that the accused accepted deposits of Rs. 10,000 or more otherwise than under account payee cheque and that, therefore, they are liable to be punished u/s 276DD.

6. On the side of the complainant, two witnesses were examined and on behalf of the accused N. K. Pai has been examined as D.W. I.

7. It is not disputed by the accused that they issued cross cheque and that they received cash from the depositors noted in the above columns. The trial court on a consideration of the materials has held that accused 1 to 3, in the cases covered under C.A. No. 249 and connected cases, violated the provisions of the Act, i.e., section 269T. But the trial court acquitted the accused on the ground that section 276E penal provision was deleted with effect from 1-4-1989 and that, therefore, the Court is not empowered to punish the accused. For coming to such a conclusion, the trial court relied upon a decision in Rayala Corpn. (P.) Ltd. v. Director of Enforcement AIR 1970 SC 494.

8. In the cases covered under C.A. Nos. 279 to 288 of 1990, the trial court has given a finding that the second accused joined the first accused company only on 14-9-1987 and that, therefore, no liability can be fastened on the second accused for the offence occurred prior to 14-9-1987. The trial court has also acquitted the accused in the above cases, on the ground that the penal provision was not in force with effect from 1-4-1989. The trial court delivered the judgment in all the cases on 31-7-1989. Aggrieved by the said order of acquittal, the Income Tax department have come forward with these appeals.

9. It is contended by the learned counsel for the appellant, Thiru Sivanandam, that all the complaints were instituted on 12-9-1988, i.e., before coming into force of the new provision and that for the offences committed during the existence of penal provision, the repeal or omission of section 276E or section 276DD would not affect the proceedings and that sections 6 and 6(a) of the General Clauses Act would apply to all these cases. It is further contended that the trial court has not properly applied the principle laid down by the Supreme Court in *Rayala Corpn. (R) Ltd.*'s case (supra). The learned counsel for the appellant contended that the omission of the penal provision with effect from 1-4-1989 will not affect the pending cases.

10. Repelling the above contentions, the learned senior counsel for the respondent, Thiru. M. Ranvindrana, contended that in cases of omission, section 6 of the General Clauses Act will not apply, since there is no saving clause in the amended provision and that the penal provision is omitted without any condition and that, therefore, the principles laid down by the Supreme Court in *Rayala Corpn. (R) Ltd.*'s case (supra) would squarely apply to these cases and that, therefore, the accused cannot be punished for the offence under a particular provision which was omitted.

11. Before proceeding further to give a finding on the crucial points involved in these cases, it would be relevant to extract the provisions of the Act. Section 269SS of the Act states that after 30-6-1984, no person shall take or accept from other person any loan or deposit otherwise than by account payee cheque or account payee bank draft, if the amount is Rs. 10,000 or more. The amount of Rs. 10,000 is enhanced to Rs. 20,000 with effect from 1-4-1989. Section 276DD of the Act provides penalty for violation of section 269SS. As per the above provision, the person who accepts or takes amount in contravention of section 269SS shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to pay fine equal to the amount of such loan or deposits. The above provision, i.e., section 276DD, was omitted with effect from 1-4-1989 under the Direct Tax Laws (Amendment) Act, 1987. Criminal Appeal Nos. 279 to 288 of 1990 are covered by the above provisions.

12. Section 269T of the Act states thus :

"Mode of repayment of certain deposits.-(1) No company (including a banking company), Co-operative society or firm shall repay to any person any deposit

otherwise than by an account payee cheque or account payee bank draft where the amount of the deposit, or where the amount of the deposit is to be repaid together with any interest, the aggregate of the amount of the deposit and such interest, is tell thousand rupees or more:"

Section 276E of the Act provides penalty for violation of section 269T of (lie Act. As per the above section, if a person repays any deposit, otherwise than in accordance with the provisions of section 269T, he shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to pay fine equal to the amount of such deposit. The above provision, i.e., section 276E, is also omitted with effect from 1-4-1989 as per the Direct Tax Laws (Amendment) Act, 1987. In the place of the above omitted sections new provisions are inserted now. As per the new provisions, section 271D, which came into effect from 1-4-1989, the person who accepts, takes any loan or deposits in contravention of section 269SS of the Act, shall be liable to pay by way of penalty a sum equivalent to the amount of loan or deposits. No punishment is provided under this new section. Similarly, for contravention of section 269T, a new provision is inserted u/s 271E. As per the above section, the person who contravenes section 269T shall be liable to pay by way of penalty a sum equivalent to the amount of deposit so repaid. Sub-section (2) to the above section empowers only the Deputy Commissioner to impose penalty. Relying upon the above provisions, the learned counsel for the respondents contended that the provision which imposes punishment has been completely omitted and that, therefore, the accused cannot be convicted under the old provisions. As already stated, the trial court relies upon a decision ill Rayale Corpn. (P.)Ltd."scase (supra) for acquitting the accused.

13. Now, the question that arises for consideration is, whether the proceedings pending before the trial court under the old provisions would be affected by the omission of those sections with effect from 1-4-1989. For proper appreciation of the rival contentions, it would be useful to refer to section 6 of the General Clauses Act. Section 6 of the Act reads thus:-

"Effect of repeal-Where this Act, or any Central Act or regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) to A \* \* \* \* \*

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;"

The learned counsel for the appellant contended that the decision in Rayala Corpn. (P.) Ltd."s case (supra) would not apply to the facts of this case. I see there is considerable force in the above contention of the appellant.

14. It is seen from the facts of the case in the above decision that the complaint

was filed on 17-3-1968 under sections 4(1),5(1)(e) and section 9 of the Foreign Exchange Regulation Act and rule 132A(2) of the Defence of India Rules, which was punishable under rule 132A(4) of the Rules. It is seen that rule 132A(4) was omitted with effect from 30-3-1965. It is seen that the complaint was filed on 17-3-1968 after rule 132A(4) of the Defence of India Rules was omitted. Relying upon the above facts, the Apex Court has held thus:

"The argument of Mr. Sen was that, even if there was a contravention of rule 132A(2) by the accused when that rule was in force, the act of contravention cannot be held to be a "thing done or omitted to be done under that rule", so that, after that rule has been omitted, no prosecution in respect of that contravention can be instituted. He conceded the possibility that, if a prosecution had already been started while rule 132A was in force, that prosecution might have been competently continued. Once the Rule was omitted altogether, no new proceeding by way of prosecution could be initiated even though it might be in respect of an offence committed earlier during the period that the rule was in force. We are inclined to agree with the submission of Mr. Sen that the language contained in clause 2 of the Defence of India (Amendment) Rules, 1965 can only afford protection to action already taken while the rule was in force, but cannot justify initiation of anew proceeding which will not be a thing done or omitted to be done under the rule but a new act of initiating a proceeding after the rule had ceased to exit. On this interpretation, the complaint made for the offence under rule 13 2A(4) of the D. I. Rs., after 1-4-1965 when the rule was omitted, has to be held invalid." (p. 502)

In this case, complaint was filed long before the omission of the sections with effect from 1-4-1989. On the facts of the above case, the Apex Court has held that the complaint made for the offence under rule 132A(4) after 1-4-1965 when the rule was omitted has to be held invalid. As the provision, which relates to complaints filed in these appeals, was omitted after institution of the complaint, the above reported decision of the Apex Court will not apply to the facts of this case. Therefore, I am unable to accept the contention of the accused that the decision of the Apex Court in Rayala Corpn. (R) Ltd."s case (supra) would apply to the facts of this case.

15. Another decision relied on by the accused in State of Punjab v. Mohar Singh AIR 1955 SC 84 also will not apply to this case. It is seen from the facts of the above case that the Ordinance was promulgated on 3-3-1948 and the said Ordinance was repealed by Act 12 of 1948 re-enacting all the provisions of the repealed Ordinance. In the above case, prosecution was launched on 13-5-1950. It is held in the above decision that the prosecution was started against the accused u/s 7 of the Act and not under corresponding provisions of the Ordinance and that the offence was committed at the time when the Act was not in force and, therefore, it is held that no man could be prosecuted or punished under a law which came into existence subsequent to the commission of the offence(Emphasis supplied). All that is held in the above decision is that section 6

of the General Clauses Act has no application when a statute, which is of a temporary nature, automatically expires by efflux of time and the Ordinance in the present case was a temporary statute, but, it is admitted that the period during which it was to continue had not expired when the repealed Act was passed. Regarding the applicability of section 6 of the General Clauses Act, the Apex Court has held thus:

"Whenever there is a repeal of an enactment, the consequences laid down in section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal, there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention." (p. 88)

The Apex Court has also emphatically observed that section 6 of the General Clauses Act cannot be ruled out when there is repeal of an enactment followed by a fresh legislation. Hence, I hold that the above reported decision will not strengthen the contention of the respondents.

16. The learned counsel for the respondents relies upon a Full Bench judgment of the Punjab High Court in *National Planners Ltd. Vs. Contributories etc.*, . The question that arose for reference in the above case is as follows:

"... it is open to a District Judge in whose Court a winding-up proceeding was pending before the Act of 1956 came into force to retain the said proceeding in his Court and to pass judgment thereon in accordance with the provisions of the Act of 1913.. . ." (p. 232)

In the above decision, it is further held thus :

It is a well-settled rule of common law that when an action is brought under a statute which is afterwards repealed, the Court loses jurisdiction of the suit pending under the repealed Act and is unable to deliver judgment thereon, The effect of the repealing statute is to obliterate it as completely from the record of the Parliament, as if it had never been passed by the Parliament; and it must be considered as a law that never existed except for the purposes of those actions which were commenced, prosecuted and concluded whilst it was an existing law." (p. 230)

It is further seen from the above decision that the effect of repealing statute would not affect the actions which were commenced, prosecuted and concluded while it was an existing law. In another decision relied on by the respondents' counsel in *Patiram Jain and Others Vs. Union of India (UOI) and Others*, , it is held thus:

"Sections 276DD and 276E of the Income Tax Act, 1961, were deleted with effect from 1-4-1989 without any saving clause. Since sections 276DD and 276E of the Income Tax Act were deleted without any saving clause, no prosecution could be

launched for the offences under those sections after the same were deleted and nothing was contained in the Act that the prosecution could continue for the past act of any party." (p. 409)

It is seen from the facts of the above case that a show-cause notice was issued on 14-2-1991 to the firm for launching prosecution under sections 276DD and 276E of the Act and again another show-cause notice was issued on 11-3-1991 for launching prosecution under sections 276DD and 276E. Relying upon the above facts, the Court has held that after deletion of the above two sections, prosecution against the petitioner could not be launched on 18-2-1992. The Court has categorically held that there was no saving clause after omission of these two sections from the Act and that incident which occurred prior to the omission could not be a basis for prosecution thereafter. The Court has also relied upon a decision in Rayala Corpn. (P.) Ltd.'s case (supra), wherein it is held that prosecution launched on 17-3-1968 after rule 132A(2) was omitted by the Defence of India (Amendment) Rules, 1965, is illegal. It is, thus, apparent that the facts of the above case are clearly distinguishable from the facts of this case, since all the complaints were instituted and trial commenced before 1-4-1989. The above reported decisions relied on by the learned counsel for the respondents would not strengthen his case in any way.

17. It is clear from the catena of decisions that when a particular section is repealed or omitted, the proceedings already instituted and commenced would not be affected by omission or repeal unless different intention appears.

18. The learned counsel for the appellant has invited my attention to a judgment of this Court in C.A. Baloo and another Vs. Union of India and others, . It is clearly held in the above decision that mere use of the word "omit" instead of 'repeal' by the Legislature cannot be taken to show its intention to exclude the application of section 6. The facts of the above case will show that the accused filed an application u/s 482 of the Code of Criminal Procedure, 1973, to quash the proceedings. The learned Judge after referring to the decisions including Rayala Corpn. (P) Ltd.'s case (supra) has held thus:

"...The principle enacted in section 6 that, unless a contrary intention appears, the repeal of an Act would not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed, would apply to a repeal of one of the sections of the Income Tax Act, 1961. With effect from 1-4-1989, section 271D of the Income Tax Act, 1961, had been introduced while omitting section 276DD with effect from the same date. Section 271D, as it stands now, imposes only a penalty for violation of section 269SS and prosecution for such violation had been done away with. From the insertion of the new section while omitting the earlier section, it is not possible to gather a contrary intention that the Legislature desired that prosecutions which were permissible u/s 276DD of the Act and already initiated before the insertion of the new section, were to be erased or obliterated." (p. 545)

It is seen from the facts of the above case that cases were instituted in the year 1985 by the Income Tax department. The Court has held that the prosecutions were initiated in the year 1985 when section 276DD was in force. New section 271D came into force with effect from 1-4-1989. Therefore, the Court has held that the petitioners will not be liable to pay penalty u/s 271D, since it was introduced only on 1-4-1989 and that prior to that date when that law was not in statute book, they cannot be proceeded against and that if a prosecution also cannot be launched under the then existing section 276DD, the resultant position would be that there can be neither a prosecution nor a penalty proceeding against the petitioners and that this certainly could not have been the intention of the Legislature. I am in respectful agreement with the above view taken by a learned Single Judge of this Court. Therefore, it cannot be contended by any stretch of imagination that since the penal provision was omitted with effect from 1-4-1989, the proceedings instituted and trial commenced before the said date are taken away by the omission of the said section. I hold that the repeal or omission shall not affect the previous operation of the section so repealed. I also agree with the view taken by the learned Single Judge that repealing the provision is the same as omitting it.

19. The learned counsel for the appellant relies upon a decision in *Amrit Lal and Company and Others Vs. Income Tax Officer*, . It is held in the above decision that section 276DD was omitted with effect from 1-4-1989, but the contravention was alleged to have been made by the petitioner in the year 1988 and that prima facie it was open to the Income Tax Officer to launch prosecution in respect of the acts or omissions committed during the period the provisions of repealed or unamended sections were operative. It is seen that the complaint in the \*above case was filed after 15-3-1990. The question is whether the complaint filed after 1-4-1989 for the alleged offence under the omitted provision cannot be decided in these cases. The question that arose for consideration in these appeals is whether the accused can be punished in pending proceeding initiated prior. to 1-4-1989 for offence u/s 276DD or 276E after 1-4-1989 when the above provisions were omitted.

20. The decision relied on by the appellant's counsel in *Kazi Lhendup Dorji v. Central Bureau of Investigation* 1994 SCC 873 relates to interpretation of section 21 of the General Clauses Act. In the above decision, it is held thus:

"Section 21 of the General Clauses Act does not confer a power to issue an order having retrospective operation. Even proceeding on the basis that section 21 of the General Clauses Act is applicable to an order passed u/s 6 of the Act, an order revoking an order giving consent u/s 6 of the Act can have only prospective operation and would not affect matters in which action has been initiated prior to the issuance of the order of revocation. The impugned notification withdrawing the consent has to be construed in this light. If thus construed, it would mean that investigation which was commenced by CBI prior to withdrawal of consent under the notification had to be completed and report

submitted u/s 173 Cr. P.C. and it was not affected by the withdrawal of the consent."

In GENERAL FINANCE CO. AND ANOTHER Vs. ASSISTANT COMMISSIONER OF Income Tax., , the Punjab and Haryana High Court has held that prima facie it was open to the Assistant Commissioner to launch prosecution in respect of acts or omissions committed during the period the provisions of the repealed sections were operative.

21. In *Isher Dass v. State of Haryana* 1993 Supp. (1) SCC 644, which is the case arising under the Essential Commodities Act, it was contended that the control order passed was for a short period and the prosecution could not be continued after the expiry of the period. But the Apex Court has held that the offence committed has to be tried in spite of the expiry of the period and that mere expiry of the period does not make any difference. On a careful perusal of the judgment, I have no hesitation in holding that the omission or the penal provisions with effect from 1-4-1989 will not affect the pending proceedings which were instituted when the omitted provisions were operative.

22. It is no doubt true that the penal provision provides punishment for contravention of the rules. But, in the amended provision, no imprisonment is provided. On the other hand, only levy of penalty equal to the amount of deposit is provided. As already stated, original sections 269SS and 269T are not in the statute book now. In the above circumstances, it cannot be said that the amended provision would express different intention. On the date of launching prosecution, no proceedings can be instituted u/s 271D, the new provision. Therefore, I hold that section 6 of the General Clauses Act will clearly apply to this case and, I hold that the finding of the trial court that the Court is not empowered to punish the accused u/s 276E or 276DD cannot be sustained. I hold that the trial court has committed error in acquitting the accused by relying upon the judgment of the Supreme Court in *Rayala Corpn. (R) Ltd.*'s case (*supra*).

23. The trial court acquitted the accused who were involved in C.A. Nos. 279 to 288 of 1990 on other grounds also. The complaint relating to the above cases were filed only against the Company and N. K. Pai. The second accused has been examined as D.W 1. He has stated in his evidence that he joined the first accused company on 14-9-1987. He has also filed Ex. D5 joining report dated 14-9-1987. The said fact has not been denied by the complainant in cross-examination. In the sworn statement given by D. W. 1 before the Income Tax Officer, he has stated that his father, S.N. Pai, was looking after the affairs of the Company prior to his appointment. P.W 2 has admitted in cross-examination that D.W 1 joined the first accused company on 14-9-1987. It is seen from the complaint that the complaint is filed against the first accused represented by N. K. Pai, who is also impleaded as second accused. Relying upon the above facts, the trial court has held that no liability can be fastened on the second accused, since he joined the first accused only on 14-9-1987. As P.W 1 himself has

admitted that the second accused joined the company on 14-9-1987, I fail to understand as to how he is liable to answer the claim of the complainant for the receipt of amount in cash in the year 1985-86. It is, thus, seen that on the date of receipt of the cash from the depositors noted in Table No. 2, DW 1, the second accused, was not in charge of the affairs of the first accused company. It is, thus, clear that the first accused is not represented by the officer who was representing the affairs of the company on the date of receipt of cash amount. Therefore, the trial court has rightly acquitted the accused on the above ground. Even though the finding of the trial court that the accused have to be acquitted, since the penal provision was omitted with effect from 1-4-1989, is vitiated, the acquittal of the accused on other ground has to be upheld. Therefore, I hold that these appeals, i.e., C.A. Nos. 279 to 288 of 1990 have to be dismissed.

24. It is, thus, seen from the above discussion that the order of the trial court that the Court is not empowered to impose punishment since the penal provision was omitted is vitiated by grave infirmity. But in the cases covered under CA No. 249 and Batch Table H, the accused cannot be convicted for violation of the above provision, since other aspect of the case was not considered by the trial court. The Chief Manager of the first accused company gave statement to the Income Tax Officer stating that at the request of James, cheques were crossed and endorsements were made as Co. and that since James is a heavy investor, he was accommodated. The second accused has stated in statement Ex. P-5 that a Circular was issued on 6-4-1985 to all the officers of the company regarding the mode of taking or accepting deposits. The second accused, as D.W 1, has stated in his evidence that whenever a customer comes and wants to make a deposit with them, they would ask him to fill up the prescribed application form and he pays the amount in cheque or draft, they issue him a temporary receipt of the amount and it is only after getting payment realised in the companies account that they would issue the deposit receipt and that in the case of customers who are elderly, sick and illiterate, they use to send their staff along with them to the bank to help them to get necessary pay orders. Regarding repayment of deposits, he has stated that till July 1987, repayments of deposits were made by the Head Office at Coimbatore and that after July 1987, the company issued a circular authorising Branch Officers to make repayment and that Nagarajan, qualified Chartered Accountant, was solely responsible for all the accounts during the period of transaction. The accused have offered some explanation before the Income Tax Officer and also in evidence as to why account payee cheque was not given. Though, the trial court has discussed the above evidence it has not given any finding that explanation offered by the accused was not acceptable. Even though, in paragraph 18 of the judgment, the trial court has observed that depositors and James were not examined as witnesses, the trial court has held that the accused contravened section 269T.

25. The accused who contravenes section 276DD or section 276E cannot be convicted if he proves that there was reasonable cause for such failure. Section 278AA came into force with effect from 10-9-1986. The crossed cheques which

are the subject-matter of C.A. Nos. 249 to 277 of 1990 relate to the year 1987. But the above section 276DD and section 276E are omitted with effect from 1-4-1989. It is, thus, clear that till 1-4-1989, section 276DD and section 276E were in the statute book. If that is so, the accused cannot be convicted if he proves that there was reasonable cause for such failure. By virtue of section 278AA, which was in force at the time of the institution of the complaint, the accused has got a right to establish that there was reasonable cause for failure. The above aspect of the case was not considered by the trial court. It is not the case of the prosecution that Income Tax was evaded and proper returns were not furnished by the accused. PM. 2 has also admitted that the amounts, the subject-matter of crossed cheques, are entered in the account books of the first accused. As already stated, even though the accused have let in evidence to prove that there was reasonable cause for issuing crossed cheque, the trial court 4.S not given any finding on the above aspect. Therefore, the accused cannot be convicted for violation of section 276E or section 276DD.

26. Now, the question is whether it is desirable to remit the matter to the trial court for fresh disposal or cases covered under table 1. As already stated, the amount involved in all these cheques were already brought in the account books of the company. The offence alleged against the respondents is a technical offence. The occurrence is said to have taken place in the year 1987. It is not stated that the accused evaded Income Tax. In the above circumstances, it is neither prudent nor desirable to remit the case to the trial court after a lapse of 13 years. For the reasons stated above, I hold that though the order of acquittal passed by the trial court in C.A. No. 249 batch cannot be sustained, the matter cannot be remitted to the trial court for fresh disposal for considering the other aspect of the case after a lapse of 13 years. As the proceedings against the accused are pending from the year 1987, and as the penal provision was subsequently deleted from the statute book, I feel it is not just and proper to remit the matter to the trial court for fresh disposal.

27. From the facts discussed above, the following findings are given

- (1) The omission of sections 276DD and 276E of the Act with effect from 1-4-1989 will not affect the proceedings already initiated by the Income Tax department.
- (2) It is open to the Court to impose punishment on the accused, notwithstanding the fact that penal provision was deleted. before the date of the judgment.
- (3) The order of acquittal passed by the trial court in cases which are the subject-matter of C.A. No. 279 to C.A. No. 288 of 1990 have to be upheld.
- (4) The finding of the trial court, in cases relating to C.A. No. 249 batch (Table I), that the Court is not empowered to impose punishment since the penal provision is deleted is set aside. As the trial court has not given finding on other aspect of the case and as it is not desirable to remit the matter to the trial court for fresh

disposal after a lapse of 13 years, no further directions are given for remitting the cases.

28. For the reasons stated above, all the criminal appeals are disposed of accordingly.