

(1977) 02 MAD CK 0021

In the Madras High Court

Case No : Criminal Revision Case No. 44 of 1974, Criminal Revision Petition No. 43 of 1974 and Criminal M.P. No. 4813 of 1976

M.R. Pratap

APPELLANT

Vs

V.M. Muthukrishnan, Income Tax Officer

RESPONDENT

Date of Decision : 04-02-1977

Acts Referred:

Companies Act, 1956 — Section 197A, 2(24)

Income Tax Act, 1961 — Section 2(2), 2(20), 2(24), 2(35), 271(1)

Citation : (1977) 110 ITR 655

Hon'ble Judges : Ratnavel Pandyan, J

Bench : Single Bench

Advocate : N.C. Raghavachari, for the Appellant; C.K. Venkatanarasimhan, Special Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Ratnavel Pandyan, J.—The first accused in C.C. No. 4445 of 1973 on the file of the Chief Presidency Magistrate, Egmore, has preferred

this revision petition against the order of the said Magistrate in Crl. M.P. No. 481-A/73 dated November 28, 1973, praying that the said order

may be set aside. The petitioner-accused has also filed another petition in Crl. M.P. No. 4813 of 1976 u/s 482 of the Criminal Procedure Code,

praying to quash the proceedings in C.C. No. 4445 of 1973.

2. The petitioner-accused had filed a petition u/s 432 of the old Criminal Procedure Code, raising certain preliminary objections and praying for the

dismissal of the complaint on legal grounds or, in the alternative, to refer the questions raised in the said petition for decision by the High Court. The

learned Magistrate, after fully hearing the counsel for the respective parties, dismissed the petition by overruling all the objections raised and

holding that the complaint should be proceeded in accordance with law. However, by the said order, the learned Magistrate has left the doors

open for the grounds of objection being agitated once again at the appropriate stage of the case, i.e., after evidence has been recorded. Hence, this

revision. Crl. M.P. No. 4813 of 1976 was filed during the hearing of the revision petition.

3. The facts which led to these petitions, in brief, are as follows: The respondent-complainant is the Income Tax Officer, Central Circle III,

Madras-34. The petitioner is the first accused and one Sri R. S. Yagneswaran is the second accused. The complaint was filed before the Chief

Presidency Magistrate under Sections 277 and 278 of the Income Tax Act, 1961, and Sections 120-B and 193 of the Indian Penal Code, relating

to an offence said to have been committed during the assessment year 1965-66. According to the complaint, the first accused is the managing

director of the Rayala Corporation Private Ltd., which is a company carrying on the business of manufacture and sale of Halda typewriters under

Swedish collaboration. -The second accused was the chief accountant of the said company during the relevant time. The said Rayala Corporation

Pvt. Ltd. (hereinafter referred to as "the company") is an assessee under the Income Tax Act, 1961, within the jurisdiction of the complainant. The

return of the income of the company for the assessment year 1965-66, dated November 17, 1965, was delivered to the respondent on November

18, 1965, showing a total income of Rs. 21,36,785 for the accounting year ended March 31, 1965. The return so submitted has been verified and

signed by the first accused--the petitioner herein. The accompanying statements are signed by the second accused. According to the complaint, as

a result of a search at the premises of the company and the residence of both the accused and others, made u/s 132 of the Income Tax Act, it has

been discovered that the return of income and the statement accompanying the said return were deliberately false, being less than the true income

by more than Rs. 6 lakhs, and the expenditure shown in the statements has been obviously inflated by at least Rs. 2,69,765. The complainant

would charge, (1) that the first accused has thus wilfully and knowingly made a false verification of the company's return of income dated

November 17, 1965, and thereby committed an offence punishable u/s 277 of the Act ; (2) that the second accused has abetted the first accused

in committing the above offence and thereby has committed an offence punishable u/s 278 of the Act ; and (3) that both the accused have

conspired to fabricate the company's cash book, ledger and other documents, showing therein inflated amounts for expenditure and also vouchers

in support thereof and thereby committed an offence punishable u/s 120-B, Indian Penal Code, read with Section 193 thereof. Along with the

complaint, the complainant has filed an authorization u/s 279 of the Income Tax Act made by the Commissioner of Income Tax, Madras Central,

dated April 23, 1973.

4. By the miscellaneous petition, the petitioner has submitted that in case the legal contentions raised in the revision petition as to the maintainability

of the complaint against the petitioner in his capacity as the managing director are upheld, this court may be pleased to quash the complaint.

5. In the main revision petition, the petitioner has raised as many as thirty grounds. The main features of the grounds are as follows :

(1) The managing director of an incorporated company cannot be prosecuted u/s 277 of the Act in respect of the return filed by the company, as a

combined reading of Sections 271(4A), 277 and 279(1A) shows that only the person against whom the penalty is imposable in respect of the

return can be prosecuted, but not the managing director in the case of a company, and, therefore, the complaint for an offence u/s 277 of the Act

against the managing director when the return is filed by the company, is not at all maintainable.

(2) The managing director of a company is not included in the category of a representative assessee (vide Section 160) and as such the managing

director will not be a "person" u/s 277 of the Act, whereas a representative-assessee will be a "person" u/s 277. For this proposition, the learned

counsel for the petitioner would try to make a distinction between the word "person" occurring in Sections 276, 276A, 276C, 276D and 277 on

the one hand and the word "person" occurring in Sections 276B and 278 of the Act. According to him, the former sections relate to an assessee

and the latter sections relate to a person other than the assessee and, therefore, he would contend that if a person other than the assessee is

prosecuted u/s 277, the protection against prosecution granted to an assessee u/s 279(1A) will be defeated.

(3) The prosecution in this case is premature as penalty has not been imposed against the company.

(4) A conjoint reading of Sections 271(4A), 277 and 279(1A) would show that the prosecution can be ordered only after the assessee is found

guilty of wilful concealment, whereas if a penalty is reduced or waived u/s 271(4A), no prosecution can be launched u/s 279(1A).

(5) The prosecution u/s 277, which, is more serious in character, can be filed only on the basis of an order of the Commissioner of Income Tax

and the complainant (income tax Officer) cannot switch on to Section 193 of the Indian Penal Code, since the prosecution under the Penal Code

will deprive the assessee of the chance to have the prosecution compounded by the Commissioner of Income Tax u/s 279 of the Act.

(6) There is no provision to prosecute officers and the managing director who are responsible to the company, where the company itself files a

false return, because u/s 277 a company alone can be prosecuted, but in so far as the company cannot be subjected to imprisonment, it could be

fined.

(7) The Income Tax Officer cannot invoke Section 120B read with Section 193, Indian Penal Code, for less serious offences like those under

Sections 277 and 278 of the Act, unless he obtains an order from the Commissioner u/s 279(1) of the Act, and, therefore, he cannot prosecute the

petitioner without the order of the Commissioner.

6. It may be noted that though in the grounds of appeal the petitioner has raised a ground that the prosecution is void under Article 14 of the

Constitution of India, no argument was advanced as the right under the said article is mentioned in the Presidential Order passed under Article 359

of the Constitution.

7. Mr. N. C. Raghavachari and Mr. C. K. Venkatanarasimhan, learned counsel appearing for the petitioner and the respondent, respectively,

took me through the various sections of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), and a plethora of decisions in support of

their respective contentions.

8. Now, I shall take up the main criminal revision case and deal with the arguments raised by the learned counsel. The main allegation against the

petitioner (accused No. 1) is that he has committed the offence punishable u/s

277 of the Act, which is the main charge in this case. Section 277 of the Act, as it stood at the period relevant to this case, reads as follows :

If a person makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with rigorous imprisonment for a term which may extend to two years :

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than six months.

9. As per the section, if the assessee conceals a part of his income when submitting a duly verified return, whether u/s 139(1) or in response to an individual notice u/s 139(2), it would constitute an offence under this section. In other words, when the assessee verifies and submits a return which

he knows or believes to be false, an offence under this section is said to have been committed. This section comes under Chapter XXII under the

heading "" Offences and Prosecutions "". According to the learned counsel for the petitioner, a combined reading of Sections 77, 279(1), 279(1A)

and 271(4A) would show that only the person against whom the penalty is imposable can be prosecuted. In this case, the Rayala Corporation

Private Ltd. is the assessee concerned. The return of income of the company for the assessment year 1965-66 was delivered to the Income Tax

Officer on November 18, 1965. According to the complainant-respondent, the petitioner has knowingly and wilfully made a false verification in the

company's return and has delivered the same to the Income Tax Officer along with several statements containing false figures and particulars, and

the petitioner has done so having every reason to believe that the said statement contains false particulars. Therefore, it was submitted that in this

particular case, only the company is the assessee against whom the penalty is imposable and the managing director is not the assessee against

whom the penalty is imposable and that there is no provision in the Act to prosecute a managing director u/s 277 of the Act and, "therefore, the

petitioner, who was the managing director of the company during the relevant period, cannot be prosecuted in this case. The learned counsel

would give two reasons for the above contention, the first emanating from the

protection given u/s 279(1A) and the second relating to the interpretation of the word "person" which word, according to the learned counsel, will not include the managing director.

10. Now, let us analyse the first reason given by the learned counsel. According to Section 279(1A), a person shall not be proceeded against for an offence u/s 277 in relation to the assessment for an assessment year in respect of which the penalty imposable upon him under Clause (iii) of Sub-section (1) of Section 271 has been reduced or waived by an order under Sub-section (4A) of that section. Of course, this section, which provides that a person shall not be proceeded against u/s 277, is mandatory. Sub-section (1) of Section 279 says that a person shall not be proceeded against for an offence u/s 275A or Section 276 or Section 276A or Section 276B or Section 277 or Section 278 except at the instance of the Commissioner. Therefore, the machinery of the prosecution under Sections 275A to 278 under Chapter XXII of the Act can be set in motion only at the instance of the Commissioner. It is apparent that though Section 279(1) covers almost all the penal provisions of the said chapter, Sub-section (1A) of the said section provides that no prosecution shall be instituted for an offence u/s 277 alone if the penalty imposable is reduced or waived. Therefore, it was contended that only the person against whom the penalty is imposable can be prosecuted under this section, but not any other person than the accused. Mr. N. C. Raghava-chari would vehemently contend that there was a lacuna in the statute on the date of the impugned prosecution, that the managing director cannot be prosecuted for the submission of a return on behalf of a company and, therefore, Parliament in its wisdom has thought it fit to give a go-by by introducing a new provision u/s 278B, which is to the effect that now a director can be prosecuted along with the company after October 1, 1975, from which date the amendment came into force. This Sub-section (1A) was inserted by the Income Tax (Amendment) Act, 1965, on the date on which Section 271(4A) was introduced. Section 271(4A) says that, notwithstanding anything contained in Clause (i) or Clause (iii) of Sub-section (1) of Section 271, the Commissioner may, in his discretion, reduce or waive the amount of minimum penalty imposable on a person under certain contingencies, provided the Commissioner is satisfied that such

person has voluntarily and in good faith made full disclosure of his income prior to the issue of notice to him under Sub-section (2) of Section 139

in the case referred to in Clause (i) of sub-section (4A) of Section 271 or has made voluntarily and in good faith full and true disclosure of such

particulars prior to the detection by the officer of the concealment of the particulars in the case referred to in Clause (ii) of the above Sub-section

(4A), or on his being satisfied of the other conditions mentioned in Sub-clauses (b) and (c) of Clause (ii) referred to above. The powers under this

subsection (4A) are only discretionary. When this Sub-section (4A) is read with Section 279(1A), it would mean that the Commissioner may, in

his discretion, reduce or waive the amount of minimum penalty imposable on a person under certain contingencies and if once he has opted to

exercise this discretion and thus has reduced or waived the amount by an order under this sub-section, then the person shall not be proceeded

against for an offence u/s 277 in relation to the assessment for an assessment year in respect of which that order was passed. Therefore, it stands

to reason that if that officer has not opted to exercise that discretion, then in my view the protection granted u/s 279(1A) cannot be availed of. In

the instant case, no order was passed by the Commissioner by the exercise of powers u/s 271(4A) either reducing or waiving the penalty

imposable, but, on the other hand, the Commissioner has authorised the respondent-complainant, viz., V. M. Muthukrishnan, Income Tax Officer,

Central Circle III, Madras, to file this complaint at his instance against this petitioner and the other accused (accused 2) for an offence punishable

u/s 277 of the Act. The said proceedings of the Commissioner of Income Tax in C. No. 110A(55)/71 dated April 23, 1973, is filed by the

respondent-complainant along with his complaint when he presented the complaint before the lower court. The said authorization read as follows :

Whereas, after perusing and examining the Income Tax records and other papers connected with the company, the Rayala Corporation (P.) Ltd.,

I am satisfied that a false verification has been wilfully made by the managing director, Shri M. R. Pratap, in the return of income of the said

company dated November 17, 1965, for the assessment year 1965-66 and that the said false return of income and other false statements have

been knowingly delivered by the said Shri M. R. Pratap to the Income Tax Officer with the knowledge that therein, among others, the expenditure

had been inflated and the net income had been understated, I hereby authorize the filing of complaint against Shri M. R. Pratap u/s 277 of the Income Tax Act of 1961.

(2) Whereas I am satisfied that Shri R. S. Yagneswaran, chief accountant, has abetted Shri M. R. Pratap in committing the aforesaid offences, I

hereby authorize the filing of complaint against Shri R. S. Yagneswaran u/s 278 of the Income Tax Act, 1961.

11. By the above authorization, it is unequivocally made clear that the Commissioner of Income Tax has been satisfied that a false verification has

been wilfully made by the petitioner in the return of income dated November 17, 1965, and that it has been delivered to the Income Tax Officer

with the knowledge that the statements accompanying the said return contained false particulars. As I have mentioned above, the protection given

u/s 279(1A) will come into operation only when the Commissioner in his discretion exercises the powers u/s 271(4A). The submission made by

Mr. N. C. Raghavachari is that since the stage of Section 271(4A) has not reached in the instance case, one cannot say whether the Commissioner

would in his discretion waive or reduce the amount of minimum penalty imposable and, therefore, the prosecution is not sustainable. Mr. C. K.

Venkatanarasimhan, learned counsel for the revenue, would urge that Section 271(4A) has been introduced only with the ultimate object of

encouraging voluntary disclosures and in support of this contention, he would cite before me the notes on clauses under the statement of objects

and reasons in the Income Tax (Amendment) Bill (See [1965] 55 ITR (St.) 168, and would submit that Section 279(1A) has also been inserted

simultaneously with Section 271(4A) providing protection from prosecution and as in the present case there has not been any voluntary disclosure

as stated in the complaint, the protection granted u/s 279(1A) cannot be availed of by the petitioner. Furthering his argument, he would submit that

the protection u/s 279(1A) is confined only to the assessee on whom the penalty u/s 271(1(c) is leviable and there is nothing anomalous about this

and that if the assessee is an individual there is no anomaly, but on the other hand, if the assessee is a company, the protection is available only to

the company and not necessarily to the managing director. He would illustrate this position by giving the following example : A managing director

A"" files the return of income of a company for a particular year and the assessment is completed. Then ""A"" retires. Thereafter, a conscientious person ""B"" becomes the managing director and he discovers the false particulars and makes a voluntary disclosure u/s 271(4A). Here, according to the learned counsel, the benefit would not be available to ""A"" who had no part in the voluntary disclosure. Reliance was then placed by him on an observation made by the Supreme Court in *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, , which runs as follows

:

It is a cardinal rule of construction that when there are in a statute two provisions which are in conflict with each other such that both of them cannot stand, they should, if possible, be so interpreted that effect can be given to both, and that a construction which renders either of them inoperative and useless should not be adopted except in the last resort. This is what is known as the rule of harmonious construction.

12. In the light of the above observation, Mr. C. K. Venkatanarasimhan submits that there is no conflict between Sections 277 and 279(1A) and,

even if there is any, it must be so interpreted that effect can be given to both. His further submission is that in order to attract Section 279(1A),

certain conditions as laid down u/s 271(4A) have to be satisfied, viz., the voluntary disclosure before detection by the department, and as these are

not satisfied in the present case, the immunity cannot be pleaded. Further, he would say that this is a matter ultimately only for evidence. Countering

the above argument, it was contended on behalf of the petitioner that there were averments made in the complaint which is not evidence and,

therefore, the arguments of the learned counsel for the revenue cannot be countenanced. After hearing both parties on this aspect and going

through the complaint and the ground on which the Commissioner has passed the authorization for launching the prosecution, it is clear that the

prosecution, has come forward with the case that the Commissioner has been satisfied that there is no room for exercising his discretion u/s

271(4A) and the return of income and the statement accompanying it contained false particulars. As I have said more than once, the protection or

immunity u/s 279(1A) could be availed of by the petitioner only in a case where the Commissioner is inclined to exercise his discretion u/s

271(4A).

13. Of course, the petitioner is free to challenge the averments made in the complaint by saying that the petitioner has not filed the verification of the return of income and the statements accompanying it with false allegations and can also show to the court that the case of the complainant is not maintainable on facts. This aspect can be fully appreciated and decided only after evidence is recorded on both sides. Therefore, I hold that the contention of the counsel for the petitioner that the institution of this criminal case before the exercise of the discretionary power given u/s 271(4A) is not sustainable, cannot be accepted. From the foregoing discussion, I hold that the first contention of the petitioner fails.

14. The next contention of Mr. N. C. Raghavachari is that the word "person" occurring in Section 277 of the Act would relate only to an assessee and not to any person other than the assessee and, therefore, the petitioner, who signed the return of income on behalf of the company in the capacity as a managing director, cannot be included within the definition of the word "person" as used in Section 277 and, consequently, if a person other than the assessee is prosecuted, it would be void, because Section 277 contemplates an offence by an assessee against whom penalty is imposable and not by any person other than the assessee, viz., the company. Section 2(31) of the Act defines the word "person", according to which it includes, (1) an individual, (2) a Hindu undivided family, (3) a company, (4) a firm, (5) an association of persons or a body of individuals, whether incorporated or not, (6) a local authority, and (7) every artificial juridical person not falling within any of the preceding sub-clauses. The word "assessee" is defined in Section 2(7) as a person by whom any tax or any other sum of money is payable under the Act, and includes a person in respect of whom proceedings under this Act has been taken for the assessment of his income, etc. Under Chapter XXII, in Sections 276, 276A, 276B, 277, 278 and 279, the word "person" is used. Mr. C. K. Venkatanarasimhan would resist the above submission very vehemently and say that the word "person" in Section 277 does not and cannot mean the assessee. Relying on an obiter dictum of the Supreme Court in Kapurchand Shrimall Vs. Tax Recovery Officer, Hyderabad and Others, Mr. C. K. Venkatanarasimhan would submit that the expression

person "" occurring in the penal sections is not used in the sense in which it is defined in Section 2(31) of the Act, but would include any person

who makes a declaration on oath which he believes to be false. According to the respondent, a verification of the return of income in this case is

only one of several verifications required under the Act and the Rules made thereunder. The verification made by the petitioner in the present case

is, according to the respondent, in accordance with Rule 12(1), i.e., in Form I, and accused No. 1 has signed in that form in his capacity as the

principal officer. This verification form was produced in court at the time of the hearing of the case. Mr. N. C. Raghavachari was permitted to go

through the verification. After going through the said verification Mr. N. C. Raghavachari would say that he is unable to object to the contention

that the accused has signed that form in his capacity as a principal officer. Be that as it may, the fact remains that the petitioner has signed in the

verification in his capacity as a principal officer and I am of the view that it cannot be disputed, and in fact it is not challenged.

15. Mr. Raghavachari argues that the term "" principal officer "" is defined in Section 2(35), as the secretary, treasurer, manager or agent of the

company, but would not include the managing director as the said term "" managing director"" is conspicuously omitted there and that, therefore,

whenever an assessee or any other person is to be prosecuted or is intended to be subjected to certain obligations, the statute intends the

company and the principal officer "" as mentioned in Sections 204, 206 and 286 of the Act. (Actually, the words "" the company and the principal

officer"" are not used in the above sections ; but in Section 204 the words used are "" the company itself including the principal officer thereof "" and

in Section 206 the words used are "" the principal officer in the case of every company "", while in Section 286 the words are ""the principal officer of

every company "". This argument will be met in the appropriate place of this judgment). By making the above submissions, the learned counsel

would urge that the omission of the words ""principal officer "" or "" managing director "" in Section 277 is very- very clinching and the managing

director cannot at all be prosecuted in a case where the company itself is an assessee. In this connection, he would refer to Section 160 which

gives the meaning of the words "" representative assessee "" and Section 161 which deals with the liability of the said assessee, and argue that if the

object of the legislature were to include the managing director also, it would have included it in the definition of "representative assessee".

Therefore, according to him, the word "person" occurring in Section 277 will include neither the managing director nor the principal officer nor the

representative assessee, and as the definition of "person" includes only the company, the verification has to be done u/s 139 only by the company

and the person who signs that verification is only a signatory whereas the company is the assessee, the person who is obliged to file the verified

return. He would also place reliance on *Kapurchand Shrimal Vs. Tax Recovery Officer, Hyderabad and Others*, and say that it is in his favour,

since, according to him, the Supreme Court had held that a "karta" would not come under the definition of "person" because "karta" is not

included in the definition of a "Hindu undivided family" and thus the observations of the Supreme Court in the said decision would not help the

revenue in this case. He would bring to my notice the newly introduced Sections 278B and 278C (introduced on October 1, 1975), according to

which sections a director in the case of a company and a karta in the case of a Hindu undivided family can be prosecuted, and, therefore, by virtue

of the said new amendments, the legislature in its wisdom has thought it fit to bring the managing director also along with the company as accused

person only by this amendment which takes effect from October 1, 1975, and this introduction of the amendment will go in support of the

petitioner's case that the legislature itself had not, during the relevant period in this case, intended the managing director to be included and so the

managing director cannot be prosecuted at all in this case. He would urge that if the contention of the prosecution that the managing director can be

prosecuted before October 1, 1975, is correct, then there is no necessity for this amendment to fill up the lacuna, and, therefore, before October

1, 1975, in view of Section 279(1A), the assessee alone can be prosecuted. Relying on the observations made by Ramaprasada Rao J. in *Cement*

Distributors Private Ltd. Vs. Inspecting Assistant Commissioner (Central) Range II and Another, the learned counsel for the petitioner would urge

that it is the assessee who is referred for penalty and prosecution and not a person other than the assessee. Then, he would rely on the observation

made by Krishnaswamy Reddy J. in *S. Sannana Chetty and Sons and Others Vs. Third Income Tax Officer*, which reads thus :

This section (Section 279) clearly states that no prosecution u/s 277 and other sections mentioned in Clause (1) can be instituted except at the

instance of the Commissioner. This is a protection given to the persons against whom prosecution has to be instituted. u/s 271(1), the Income Tax

Officer or the Appellate Assistant Commissioner can levy penalty in the circumstances mentioned therein after having satisfied that such

proceedings are necessary to be instituted. The discretion is not left to the authorities mentioned in Section 271(1) to institute prosecution. It is left

in the hands of a higher authority, the Commissioner of Income Tax, to exercise his discretion as to when prosecution should be instituted.

16. The above observation, according to the learned counsel, would clearly show that it is the assessee that can be prosecuted and the said

observation also states when the prosecution should be instituted, i.e., after the Commissioner comes to the conclusion when the penalty is

reducible or waiv-able. Then, he relies on another passage in the said judgment, which reads (page 184):

It is true that, in the earlier Act, u/s 28(4) no prosecution can be instituted in respect of the same facts on which a penalty has been imposed. In

the old Act, a larger protection was given. In the present, u/s 279(1A), a partial protection is given, which itself will constitute a sufficient

safeguard, fettering the absolute discretion of the Commissioner in instituting prosecution.

17. Relying on the above passage, Mr. N. C. Raghavachari would submit that only the assessee against whom the penalty is imposable can be

prosecuted u/s 277 and not a person other than the assessee. He would further contend that the prosecution is not justified in going to the definition

of the word "" person "" in the General Clauses Act since there is a specific definition in the Income Tax Act itself.

18. Resisting the above contention, Mr. C. K. Venkatanarasimhan would submit that the person liable to prosecution u/s 277 need not necessarily

be only the assessee on whom penalty is leviable u/s 271(1)(c) for concealment and that the word ""person"" occurring in Section 276 means the

individual who fails to do the acts prescribed by the statute and the word ""person"" occurring in Section 276A means the individual who acts in a

manner contrary to the statute, while the word "" person"" occurring in Section 277 means the individual who makes a declaration on oath, which he

believes to be false. For the above contention, he would rely on the following observation of the Supreme court in Kapurchand Shrimal Vs. Tax

Recovery Officer, Hyderabad and Others,

We are unable to hold that the expression " person " in Sections 276, 276A and 277 is used in the sense in which it is defined in Section 2(31) of

the Act. For each specific act which is deemed to be an offence under those provisions, an individual who, without reasonable cause or excuse,

fails to do the acts prescribed by statute or acts in a manner contrary to the statute, or makes a declaration on oath which he believed to be false or

does not believe to be true, is made liable to be punished. Section 278 penalises the abetment or inducing any person to make and deliver an

account, statement or declaration relating to any income chargeable to tax which is false and which he either knows to be false or does not believe

to be true. In the context in which the expression " person " occurs in Sections 276, 276A, 277 and 278, there can be no doubt that it seeks to

penalise only those individuals who fail to carry out the duty cast by the specific provisions of the statute, or are otherwise responsible for the acts

done.

19. Replying to the arguments advanced by Mr. Raghavachari, relying on this decision, Mr. Venkatanarasimhan would contend that the main

decision of the Supreme Court that a karta cannot be detained in a civil jail, rests on Section 222 which specifically uses the word "" assessee "" and,

therefore, the conclusion arrived at in that case while dealing with Section 222 cannot be availed of by the petitioner in this case. Then, he would

draw my attention to a decision of this court in THE INSPECTING ASSISTING COMMISSIONER OF Income Tax Vs. CHOTABHAI

JAVERBHAI AND OTHERS., , wherein Horwill J., while dealing with Section 52 of the Indian Income Tax Act, 1922 (corresponding to Section

277 of the 1961 Act), has held that the word "" person "" in that section does not necessarily mean the assessee and that it must be given its ordinary

dictionary meaning and that it includes a person duly authorised. Ramaprasada Rao J. in Cement Distributors Private Ltd. Vs. Inspecting Assistant

Commissioner (Central) Range II and Another, has expressed his opinion :

If the statement is false and if it is made knowing it to be false or believing it to be false, then the delinquent is punishable, on conviction before a

Magistrate...

20. Mr. Venkatanarasimhan has vehemently urged, on the basis of the above rulings, that accused No. 1, being the managing director of the company, is liable for prosecution u/s 277 of the Income Tax Act and the word "person" occurring in Section 277 must be given its ordinary dictionary meaning which would include the individual persons who fail to carry out the duty cast upon them by the specific provisions of the statute and, therefore, in the instant case, the managing director, who has wilfully made the verification knowing that it was false, is certainly liable to be prosecuted u/s 277 of the Act. In view of the dictum of the Supreme Court in *Kapurchand Shrimal Vs. Tax Recovery Officer, Hyderabad and Others*, I am unable to accept the argument advanced by Mr. Raghavachari. On the other hand, I am of the view that the petitioner cannot escape on the plea that the word "person" used in Section 277 refers only to an assessee but not the person who has made the verification on behalf of the said assessee.

21. Section 140(c) of the Income Tax Act says that the return u/s 139 shall be signed and verified by the principal officer thereof. Thus, the statutory obligation is cast on the principal officer to sign and verify the tax return. A conjoint reading of Sections 2(35) and 2(20) of the Income Tax Act and Sections 2(24) and 197A of the Companies Act would make the position very clear. Section 2(35) defines the term "principal officer" used with reference to a local authority or a company or any other public body or any association of persons or any body of individuals, as meaning, (a) the secretary, treasurer, manager or agent of the authority, company, association or body or, (b) any person connected with the management or administration of the local authority, company, association or body upon whom the Income Tax Officer has served a notice of his intention of treating him as the principal officer thereof. Section 2(20) reads : "Director", "manager" and "managing agent", in relation to a company, have the meanings respectively assigned to them in the Companies Act, 1956 (Act 1 of 1956).

22. Section 2(24) of the Companies Act defines the word "manager" as meaning an individual (not being the managing agent) who subject to the superintendence, control and direction of the board of directors, has the

management of the whole or substantially the whole of the affairs of a company, and as including a director or any other person occupying the position of a manager, by whatever name called and whether under a contract of service or not. Section 197A of the Companies Act provides that no company shall appoint or employ at the same time more than one of the following categories of managerial personnel, viz., the managing director and the manager. In the present case, the petitioner-first-accused admittedly was the managing director of the company, and thus he was the principal officer thereof. Rule 12(1) of the Income Tax Rules states that the return of income shall, in the case of a company, be in Form No. 1 and be verified in the manner indicated therein. During the hearing of this petition, the respondent produced the statement of verification before this court. It is seen from the verification of the return filed by the petitioner that the petitioner has signed in the said form in his capacity as principal officer. The said return was handed over to Mr. N. C. Raghavachari in open court. On looking at that statement, the learned counsel would fairly state that it is true that the accused has signed in his capacity as the principal officer and that, therefore, he could not at this stage assert that the petitioner has not signed as the principal officer. But Mr. N. C. Raghavachari would try to get over this position by stating that Parliament has now, by the Taxation Laws (Amendment) Act of 1975, which took effect from April 1, 1976, has removed the expression "" the principal officer "" occurring in Section 140(c), in so far as it related to a company, and instead has substituted the words ""the managing director.....or, where there is no managing director, any director thereof "" . He would thus contend that the substitution of the word "" managing director "" for the term ""principal officer"" is an indicia to show that the expression "" principal officer "" will not relate to the managing director and that is why the above substitution has now taken place. But I am unable to agree with the learned counsel for the petitioner since a conjoint reading of Sections 2(35) and 2(20) of the Income Tax Act and Sections 2(24) and 197A of the Companies Act, as they stood in 1965-66, would make it abundantly clear that the term "" principal officer"" will include the managing director in the case of a company. The substitution of the words made under the new Amendment Act will not in any way alter the position with regard to the operation of

the provisions of the Income Tax Act as against a managing director of a company when he has signed the return of the company in such capacity.

The effect of the amended Section 140(c) is that the company's return of income should be signed only by the managing director or by any

director, when there is no managing director, and not by the secretary or the treasurer, who are however included within the definition of "principal

officer" u/s 2(35) of the Income Tax Act. Now, by the introduction of Section 278B by the Taxation Laws (Amendment) Act of 1975, with effect

from October 1, 1975, it is enacted that where an offence under this Act has been committed by a company, every person who, at the time the

offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the

company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. The effect of the new

section, according to Mr. C.K. Venkata-narasimhan, is to make every person connected with the affairs of the company, apart from the managing

director who has signed the return, liable to be proceeded against and punished. I agree with this interpretation. At the same time, I would like to

state that I am not able to subscribe to the view of Mr. Raghavachari that by the introduction of this new Section 278B, Parliament itself thought

that, prior to this amendment, a managing director could not be proceeded against and punished for the submission of the return of income made

on behalf of the company.

23. Regarding the contention of Mr. Raghavachari that, since the managing director is not included within the definition of representative assessee,

as defined u/s 160 of the Act, the managing director cannot be mulcted with the duties, responsibilities and liabilities of the assessee, viz., the

company, and he cannot be included as a person within the purview of Section 277. - Section 166 makes it clear that Sections 160 and 161 are

only enabling sections. Under these sections, the department has the option to make an assessment on the representative assessee or a direct

assessment on the person beneficially entitled to the income. These Sections 160 and 161 appear only in Chapter XV which deals with liabilities in

special cases like the responsibilities of legal representatives, representative assessees, etc. The contention of the learned counsel is not relevant to

this case at all since the assessee in this case is a limited company and the petitioner is prosecuted in his capacity as its managing director who has signed the verification as a principal officer.

24. Then, on behalf of the petitioner, another argument was advanced by the learned counsel that the Income Tax Officer cannot invoke Section

120B read with Section 193 of the Indian Penal Code, when the said officer deals with less serious offences like the one under Sections 277 and

278 of the Income Tax Act, unless he obtains sanction u/s 279(1) of the Income Tax Act. The reason given by the counsel for this contention is

that, normally, the Commissioner has got the power to compound the prosecutions for offences under the Income Tax Act and that the accused

would be deprived of this benefit in case the prosecution is launched under the provisions of the Indian Penal Code, but the position would be

different if the Income Tax Officer obtains an order from the Commissioner for invoking the provisions of the Penal Code. In support of the above

contention, reliance was placed on *Phoenix Mills Ltd. v. Central Bureau of Investigation* ILR 1973 Bom 688, where a Division Bench of the

Bombay High Court pointed out that when the allegations contained in the charge-sheet disclose primarily and essentially an offence squarely and

fully falling within the ambit of Section 5 of the Imports and Exports (Control) Act, 1947, then, under the mandatory provisions contained in

Section 6 of the said Act, no court shall take cognizance of any such offence except upon a complaint in writing made by an officer authorised in

this behalf by the Central Government or by a general or special order. After going through this decision, I am of the view that the principle laid

down therein is not applicable to the facts of the present case, as the complaint in the present one is filed both for the offences under the Indian

Penal Code and for the offences under the Special Act, viz., the Income Tax Act.

25. As has been held in *T.S. Baliah Vs. T.S. Rengachari*, by the Supreme Court, having regard to the terms and language of the Income Tax Act

of 1922, and the Penal Code, there is no repugnancy or inconsistency and the two enactments can stand together and they must, therefore, be

treated as cumulative in effect. In *Nagesh v. Panchapagesan* [1975] MLJ (CrI) 263, *Krishnaswamy Reddy J.* has held that an Income Tax Officer

is a court u/s 195 of the Criminal Procedure Code and that a Magistrate has,

therefore, jurisdiction to take cognizance of the offences under Sections 193 and 196 of the Indian Penal Code and that the prosecution would not be premature even if an appeal against the order of the Income Tax Officer is pending. In *Chandrika Sao v. State of Bihar* [1963] M. W. N. (Crl.) 49, the Supreme Court has pointed out that resort to general law instead of to special law to avoid sanction is not a colourable act. The Supreme Court pointed out in *Lalji Haridas Vs. State of Maharashtra* and *Another*, that it could not have been the intention of the legislature in making the offences committed during the course of a proceeding before an Income Tax Officer more serious without affording a corresponding safeguard provided by Section 195(1)(b), Criminal Procedure Code, in respect of the complaint which can be made in that behalf and that Section 37(4) of the 1922 Act makes the proceedings before the Income Tax Officer judicial proceedings u/s 193, Indian Penal Code, and these judicial proceedings must be treated as proceedings in any court for the purpose of Section 195(1)(b), Criminal Procedure Code, and that that would really carry out the intention of the legislature in enacting Section 37(4) of the Act and that where, therefore, an offence u/s 193, Indian Penal Code, is committed in respect of the proceedings before the Income Tax Officer, complaint by that officer is a condition precedent prescribed u/s 195(1)(b), Criminal Procedure Code, before a Magistrate can take its cognizance. It may be noted that Section 136 of the 1961 Act corresponds to Section 37(4) of the 1922 Act. As per Section 136, proceedings under this Act before the Income Tax authority is a judicial proceeding within the meaning of Section 193, Indian Penal Code. In the present case, the Income Tax Officer, before whom the impugned statement of verification was admittedly filed by the petitioner, has instituted this complaint" stating that an offence u/s 193 has been committed by the petitioner by making false verification. It is pertinent to note here that the Commissioner has given the authorisation u/s 279(1) to prosecute both the petitioner and the other accused under Sections 277 and 278 on the basis that the petitioner has made a false return of income and false statements and the second accused has abetted the petitioner in committing the said offences, as stated supra. Therefore, in the light of the decisions cited above and the facts of the case, the contention of the learned counsel that the

proceedings initiated against the petitioner in this case under the provisions of the Indian Penal Code are not legal and proper, cannot be

countenanced. Further, I find that no provision of the Income Tax Act has been by-passed.

26. The other contention of the learned counsel for the petitioner that the prosecution in this case is premature also falls to the ground in the light of the discussions made by me above.

27. From the foregoing discussion, I hold that Crl. R. C. No. 44 of 1974 is devoid of merits and is, therefore, dismissed.

28. The case being an old one instituted as early as in 1973, the Magistrate is directed to proceed with the case and dispose of it as expeditiously as possible.

Cr. M.P. No. 4813 of 1976:

29. This application is filed for quashing the proceedings in C.C. No. 4445 of 1973 on the same ground that was raised in the main revision

petition. For the reasons given by me in the revision petition, this petition cannot be sustained and as such it is also dismissed.