(2008) 03 PAT CK 0067

In the Patna High Court

Om Prakash Katyal and Others — APPELLANT

Vs

Union of India (UOI) — RESPONDENT

Date of Decision : 30-03-2008

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482
Income Tax Act, 1961 — Section 194C, 276B

Citation : (2009) 310 ITR 174

Hon'ble Judges : Anwar Ahmad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Anwar Ahmad, J.—This is an application filed u/s 482 of the Code of Criminal Procedure, 1973, for quashing the entire proceedings of Complaint Case No. 2331C of 2006 and the order dated December 2, 2006, passed by the Presiding Officer, Special Court, Economic Offences, Patna, taking cognizance of the offence u/s 276B of the Income Tax Act, 1961.

2. Mr. T.R. Rahman, Income Tax Officer, Ward No. 2(1), Patna, filed a petition of complaint duly authorised by the Commissioner of income tax-I, Patna, against M/s. Iceberg Industries Limited and its three partners who are petitioners here. It is alleged that M/s. Iceberg Industries Limited, accused No. 1, is a company and Shri Om Prakash Katyal, Shri Amit Katyal and Shri Rajesh Katyal, accused Nos. 2, 3 and 4 are its directors and are responsible for any act and day-to-day conduct of the business of the company. It is stated that M/s. Iceberg Industries Limited, accused No. 1 has its registered office at New Delhi and its business premises at Patliputra Colony, Patna. It is alleged that in terms of Sections 194C and 194-1 of the Income Tax Act, accused No. 1 is required to deduct tax at source on contract payments and rent payments and to deposit the TDS amount to the Government account within the stipulated period. A survey operation u/s 133A of the Income Tax Act was conducted in the business premises of the company, accused No. 1, at Patna on August 11, 2005, and during that course it

was detected that the accused persons named in the petition after deducting tax at source amounting to Rs. 69,526 on contract payments made to the contractors and Rs. 80,736 on rent payments made to the landlords for the financial year 2004-05, failed to deposit the TDS amount to the credit of the Central Government account. Subsequently, the TDS amount was deposited on September 1, 2005. A show-cause notice was served upon the accused as to why the proceedings u/s 276B of the Income Tax Act be not initiated. It is alleged that the company, accused No. 1 and its directors, accused Nos. 2, 3 and 4, failed to deposit the TDS amount in the credit of the Central Government account and thereby committed an offence u/s 278B of the Income Tax Act, punishable u/s 276B of the said Act. So the present complaint petition was filed in the court of the Presiding Officer, Special Court, Economic Offences, Patna. The Presiding Officer after perusal and consideration of the complaint petition took cognizance of the offence u/s 276B of the Income Tax Act against the accused persons and ordered to issue notice/summons under the impugned order dated December 2, 2006.

3. Learned lawyer for the petitioners submits that the petitioners are admittedly directors of M/s. Iceberg Industries Limited having its registered office at New Delhi. He submits that they are residents of New Delhi and in support of his contention, he has filed copies of passports, vide annexure 2 series. He submits that the factory of the company is situated at Bihta in the District of Parna and its local office is situated at 271, Patliputra Colony, Patna. He submits that the entire operation and management at Patna is conducted through the officers, employees and consultants, appointed by the company at Patna. He submits that the allegation that the petitioners being the directors of the company are responsible for every act and day-to-day conduct of the business of the company at Patna is totally incorrect and contrary to the admitted records of the cases as the petitioners are residents of New Delhi and are involved only in policy matters of the company and day-to-day activities and routine work are conducted through the officers, employees and consultants appointed by the company at Patna. He refers to Section 278B of the Income Tax Act which provides:

(1) 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:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in Sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable

to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

4. Learned lawyer submits that the company had appointed competent officers and consultants to deal with the company''s account at Patna relating to the entire manufacturing operations of the company, sale and receipts of sale proceeds received at Patna. They were responsible for depositing the tax amount deducted at source at Patna within the due date. He submits that due to some oversight on the part of the consultant who was appointed to deal with Income Tax matters, delay occurred in the deposit of the aforesaid amount of TDS but immediately after the aforesaid delay in deposit of the amount came to light, it was deposited on September 1, 2005, i.e., within twenty days of the discovery of the default. He submits that the interest which had accrued on the delay in deposit of the amount was also paid by a treasury challan. He submits that on receipt of the show-cause notice, the consultant of the company, namely, S. Kausik and Associates, chartered accountants, submitted its reply that the company had appointed a chartered accountant to look after the financial affairs of the company and the said chartered accountant had kept the directors and the company in the dark towards the default committed with respect to the deposit of the TDS amount. He submits that as soon as the directors came to know about the default in payment, the entire balance amount of TDS along with interest was immediately deposited. So, he submits that it is evident that there is no consent, connivance or any neglect on the part of the petitioners who are directors of the company in default of the deposit of the amount of TDS within due date. He submits that bona fide of the company is quite evident from the fact that during the period 2004-05 a total amount of Rs. 4,86,554 was deducted at source out of which due to some oversight on the part of the consultant some small amount could not be deposited within the stipulated period.

5. Learned lawyer for the petitioners, therefore, submits that petitioners are, of course, directors of the company and the company had appointed competent officers and consultant to deal with the company''s account at Patna. He, therefore, submits that petitioners are not responsible for every act and day-to-day conduct of the business of the company. He submits that since the company came to know of the default in payment of TDS amount, the company paid the said TDS amount with interest within a short period of 20 days. He, therefore, submits that there is no mala fide intention and further there has been no consent, connivance or negligence on the part of the petitioners. He, therefore, submits that the petitioners are innocent and, hence, the impugned order be quashed.

6. Learned lawyer appearing on behalf of the Income Tax Department assailed the miscellaneous case on one ground that the petitioners are responsible for the default in the deposit of TDS amount and they being the directors of the

company cannot escape from the liability of default in deposit of the TDS amount within due date. In support of his contention, he referred to a decision reported in [1992] 196 ITR 41. He, therefore, contended that the petitioners are responsible for the default in deposit of the TDS amount within due date and, hence, the miscellaneous case be dismissed.

7. Learned lawyer for the petitioners pointed out that in the aforesaid decision the director was the managing director and he verified the return of Income Tax of the company and, hence, he was made liable for the offence. He submits that in the present case, the petitioners who are directors are not the managing directors and they have not participated in the deduction of the tax at source and in depositing the same in the TDS account of the Government. He, therefore, submits that aforesaid decision is not applicable in the case of the petitioners.

8. Considering the allegation, submissions advanced on behalf the learned lawyer for the petitioners the learned lawyer for the prosecution, I am of the view that this is a fit case for invoking the inherent jurisdiction to prevent the abuse of the process of the court.

In the result, the miscellaneous case is allowed and the impugned order is quashed as against the petitioners only.