(2020) 11 DEL CK 0174

In the Delhi High Court

Case No : Criminal Writ Petition No. 3486 Of 2018, Criminal Miscellaneous Application No. 47373 Of 2018

Paraminder Singh Kalra APPELLANT

Vs

Commissioner, Income Tax RESPONDENT

Date of Decision : 24-11-2020

Acts Referred:

Constitution Of India, 1950 — Article 20(2)
Income Tax Act, 1961 — Section 2(7A), 2(28A), 2(43), 142(1), 256D, 270, 271, 272, 273, 274, 275, 276C, 276C(1), 276D, 277
Indian Penal Code, 1860 — Section 71
Code Of Criminal Procedure, 1973 — Section 218, 220, 300
General Clauses Act, 1897 — Section 26

Citation : (2020) 11 DEL CK 0174

Hon'ble Judges : Brijesh Sethi, J

Bench : Single Bench

Advocate : R.K. Hando, Aditya Chaudhary, Yoginder Handoo, Vibhooti Malhotra, Shailendera Singh

Final Decision : Disposed Of

Judgement

,,,

Brijesh Sethi, J",,,

1. The petitioner is said to be the Director/EEO of one M/S Consortium Securities Pvt. Ltd. On 28th July, 2011 the respondent/ department conducted",,,

a search on the premises of petitioner on the allegation that an information was received from the Government of France that petitioner is having an,,,

account in HSBC Bank, Zurich, Switzerland with the mala fide intention to evade tax and to hide money transactions.",,,

2. The respondent/department preferred a criminal complaint being CC No.511538/16 (Old CC No.131/2014), under Section 276-D of the Income Tax",,,

Act on 28th February, 2015 against the petitioner. The respondent/ department also preferred two separate criminal complaints under Section 276-C",,,

(1) and Section 277 of the Income Tax Act being CC No. 528982/16 (Old CC No.157/4) and CC No.528983/16 (Old CC No.158/4) on 12th January,",,,

2016. In this petition, the stand of the petitioner is that the respondent/ department has preferred these complaints on the very same material, evidence,",,,

witnesses and documents and the allegation in all the three complaints are to a large extent word to word same.,,,

3. The petitioner is facing three separate trials in all the three complaints before the same Magistrate for allegedly not declaring the fact of having a,,,

foreign account to the Income Tax authorities, though the material and evidence relied upon by the respondent/department is similar in all the three",,,

complaints. Petitioner stated that he had filed an application before the learned Magistrate for clubbing of the three complaints and joint trial, which",,,

was rejected by the learned Magistrate on 30th June, 2018 while observing as under:-",,,

â??7. Keeping foreign funds for number of years might be part of same transaction but not declaring the same in the Income Tax file for each,,,

specific year under prosecution is a distinct offence. Each instance of filing of income tax return without disclosing foreign funds is a separate and,,,

different act and same cannot held in part of same transaction.,,,

8. In the present case I am of the opinion that the test of each offences being part of same transaction fails. As in the present case the accusations,,,

are for evasion of income tax for the different assessment years or for false statement given on oath before the income tax authorities.,,,

9. Accordingly, in my humble opinion, no prejudice would be caused to the accused if he is tried in the separate complaints.â??",,,

4. Vide this petition, petitioner is seeking quashing of the aforesaid order of 30th June, 2018 passed by the learned Magistrate on the ground that",,,

petitioner cannot be subjected to several criminal prosecutions for the same offence on the basis of same material, evidence and list of witnesses",,,

under the same enactment merely on the basis that the financial years of the complaints are different. It is submitted on behalf of the petitioner that,,,

the filing of three different complaints by the respondent/Department is abuse of process of law and is in contravention of Article 20(2) of the,,, Constitution of India, Section 71 of IPC, Section 300 of Cr.P.C and Section 26 of General Clauses Act.",,,

5. It is averred on behalf of the petitioner that first the existence of the alleged foreign account for funding of amount from India has to be proved and,,,

only thereafter the other two complaints, which are based on mere assumption of petitioner having a foreign account funded from India, have to",,,

follow. It is stated that such an assumption has to be dealt with in one complaint instead of all the three complaints and in case the,,,

respondent/department fails to prove that the petitioner has suppressed holding of a foreign account or the income, the subsequent complaints shall",,,

cease to exist, for which petitioner has been forced to undergo trial.",,,

6. It is urged on behalf of the petitioner that the learned trial court in para-7 of the impugned order dated 30th June, 2018 has returned the finding that",,,

each instance of filing of income tax return without disclosing foreign funds is a separate and different act and same cannot form part of same,,,

transaction, which is an erroneous conclusion inasmuch as that in the very same paragraph the learned trial court has concluded that keeping of",,,

foreign funds for number of years is part of the same transaction. It is stated that filing of income tax returns for each financial year cannot give rise,,,

to a separate cause of action for filing prosecution for each financial year, particularly when the core allegation is of keeping a foreign account, which",,,

the court itself concluded to be part of the same transaction.,,,

7. It was submitted on behalf of the petitioner that the respondent has not been able to distinguish between 'assessment proceedings' and the,,,

'prosecution proceedings'. The assessment proceedings are conducted by an Assessment Officer as designated under the Income Tax Act while an,,,

offence"" is triable by a Court of Law. Assessment proceedings conducted by competent authority known as Assessment Officer as defined u/s",,,

2(7A) is an assessment for the purposes of calculating/assessing any tax or any other sum of money payable under the Income Tax Act, be it interest",,,

or penalty.""Tax"" is defined u/s 2(43) of Income tax Act to mean as income tax chargeable in any Assessment Year and subsequent years under the",,,

provisions of Income Tax Act, which may be of one year or spread over to several years. Such ""tax"" does not include ""interest"" or ""penalty"". Interest",,,

is defined under section 2(28A) of Income Tax. There can be prosecution only for payable interest or penalty or tax, as stipulated u/s 276C of Income",,,

Tax Act. Assessment proceedings are dealt under separate chapters of Income Tax Act whereas penalties imposable are dealt under Chapter XXI of,,,

Income Tax Act from sections 270 to 275 of the said Act. Learned counsel for the petitioner, therefore, submitted that importing the concept of",,,

Assessment Year"" into the definitions of ""offences"" triable by Special Courts is reading something in the definition which does not exists and which is",,,

contrary to constitutional safeguards and criminal jurisprudence.,,,

8. It was submitted on behalf of the petitioner that it is laid down in law that if different cases are filed on same cause of action, 'Doctrine of Issue",,,

Estoppel' prevents second prosecution on the same sets of facts for which a person could be prosecuted. The petitioner relied upon decision of,,,

Honâ??ble Apex Court in State of â??Andhra Pradesh vs. Cheemalapati Ganeswara Rao & Anr., 1964 (3) SCR 297â?? and a decision dated 9th",,,

February, 2016 of a Coordinate Bench Of this Court in â??Chandni Srivastava Vs. CBI & Ors.â?? to submit that allowing of several complaints on",,,

same cause of action would lead to re-appreciation of evidence several times on one issue of fact which is against the principle of ""Doctrine of Issue",,,

Estoppel"". Hence, dismissal of impugned order of 30th June, 2018 passed by the learned trial court is sought and it is prayed that a common trial in all",,,

the three complaints be conducted.,,,

9. On the other hand, respondent /department has alleged that during search proceedings on 28th July, 2011, the petitioner in his statement had",,,

admitted of having an undeclared account in HSBC Bank, Zurich, Switzerland and disclosed the entire modus operandi of opening the account with",,,

the help of an introducer, one Charlie with the mala fide intention to evade tax. It is the stand of respondent that during the financial year 2006-07,",,,

notices dated 9th May, 2013 and 15th July, 2013, under Sections 142(1) of the Income Tax Act, 1961 (henceforth referred to as the â??Actâ?) were",,,

issued to the petitioner to furnish the details of the foreign accounts held by him. In addition, he was also asked to provide consent letter to procure",,,

details from HSBC bank, Zurich, Switzerland. Since the petitioner failed to respond to the aforesaid, notice under Section 274 r/w Section 271 of the",,,

Act was issued for non compliance of Section 142(1) of the Act, which is punishable with rigorous imprisonment for a term upto one year under",,, section 276D of the Act. It is alleged that the petitioner did not disclose the foreign bank account in return of income and balance appearing in the said,,,

foreign account was also not taken into account in his balance sheet and thus, the petitioner made a ""willful attempt to evade income tax"" thereby",,,

committed substantive offence under section 276C(1) of the Act for which the he is liable to be prosecuted u/s 276C(1) of the Income Tax Act for,,,

S.No.,CC No. 511538/16 (Old No. 131/4),CC No. 528982/16 (Old No. 157/4),"CC No. 528983/16 (Old No

158/4)

1.,"Information received from the Government

of France in 2011 under Double Tax

Avoidance Convention with India revealed

that certain Indian including accused, held

or were beneficial owners of bank

account(s) with HSBC, Switzerland.","That information received from the

Government of France in 2011

under double tax avoidance

convention with India revealed that

certain Indians including the

accused, held or were beneficial

owners of Bank account(s) with

H S B C , Switzerland. The

information/documents received,

contained the personal information

of the accused viz. his name,

address, nationality, date of birth,

place of birth, profession, place of

office, passport no. etc. The

documents also contained details of

the entities which were held by the

accused as trustee viz. â??Nine on

Ten Foundationâ?? and
â??Burnfield Invest SAâ?? etc.","That information received
from the Government of
France in 2011 under double
tax avoidance convention
with India revealed that
certain Indians including the
accused, held or were
beneficial owners of Bank
account(s) with HSBC
Switzerland. The
information/documents
received, contained the
personal information of the
accused viz. his name,
address, nationality, date of
birth, place of birth,
profession placed of office,
passport no. etc. the
documents also contained
details of the entities which
were held by the accused as
trustee viz. â??Nine on Ten
Foundationâ?? and
Burnfield Invest SAâ??
etc.
2.,"That a search action was carried out
on28.07.2011 at the residence of the
accused, A-29 Friends Colony (East)
New Delhi.","That a search action was carried

out on 28.07.2011 at the residence

,of the accused, A-29 Friends

Colony (East), New Delhi.","That a search action was

carried out on 28.07.2011 at

the residence of the

accused, A-29 Friends

Colony (East), New Delhi.

3.,"During the search proceedings statement

of the accused was recorded on oath, in

which he had written all the answers in his

own handwriting. On the basis of

information received regarding his account

with HSBC Bank, Zurich he wa

questioned about his foreign bank

accounts. He admitted that he had opened

a bank account with HSBC Bank, Zurich

Switzerland in December 2002, when

visited there. â?¦.

â?¦He further said that the account is not

into existence as on today and should have

been closed. He further stated that the

said bank account with HSBC Bankw as

not disclosed in his return of income.

Regarding mode of operation he submitted

that he used to give cash on the instruction

of the introducer at Delhi, who arrange to

deposit the same in his bank account at

Zurich. He further stated that he has given

at Delhi in the year 2002 amount ranging

from Rs. 2-5 crores.","That during the search proceedings statement u/s 132(4) of the I.T. Act dated 28.07.2011 of the accused was recorded on oath, in which he had written answers to squestion 5 to 34 in his own handwriting. On the basis of information received regarding his a,ccount with HSBC Bank, Zuric he was questioned about his foreign bank accounts. He admitted that he had opened a bank account with HSBC Bank, Zurich Switzerland in 2002 when he visited thereâ?¦.

â?¦He further said that the account is not into existence as on today and should have been closed. He further stated that the said bank account with HSBC Bankw as not disclosed in his return of income. Regarding mode of operation he submitted that he used to give cash on the instruction of the introducer at Delhi, who arrange to deposit the same in his bank account at Zurich/ he has further stated that he had given at Delhi in the year 2002 amount ranging from Rs. 2-5 crores.","That during the search proceedings statement u/s

132(4) of the I.T. Act dated 28.07.2011 of the accused was recorded on oath, in which he had written answers to question 5 to 34 in his own handwriting. On hthe basis of information received regarding his account with HSBC Bank Zurich he was questioned a,bout his foreign bank accounts. H admitted that he had opened a bank account with HSBC Bank Zurich, Switzerland in 2002 when he visited thereâ?¦.. â?¦He further said that the account is not into existence as on today and should have been closed. He further stated that the said bank account with HSBC Ban was not disclosed in his return of income. Regarding mode of operation he submitted that he used to give cash on the instruction of the introducer at Delhi, who arrange to deposit the same in his bank account at

Zurich. He has further

stated that he had given at

Delhi in the year 2002

amount ranging from Rs. 2-

5 Crores.

the petitioner for clubbing of the three complaints and joint trial is set aside. Vide order dated 25th February, 2020, proceedings before the learned",,,

Trial Court were directed to be stayed. The stay order stands vacated. It is now directed that common trial in CC No.511538/16 (Old CC,,,

No.131/2014), under Section 276-D of the Income Tax Act dated 28th February, 2015; CC No.528982/16 (Old CC No.157/4) and CC No.528983/16",,,

(Old CC No,158/4) dated 12th January, 2016, under Section 276-C (1) and Section 277 of the Income Tax Act shall take place before the court",,,

concerned.,,,

21. With aforesaid directions, this petition along with pending application, is disposed of.",,,

22. The order be uploaded on the website of this Court forthwith.,,,