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Delhi High Court* upholds prosecution charges on taxpayer for failure to file tax return under Income- tax Act

*Karan Luthra TS-595-HC-2018(DEL)

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Facts of the case

- Karan Luthra (taxpayer) had failed to furnish his income-tax return for the Assessment Year (AY) 2003-04, AY 2004-05 and AY 2005-06 within the due date provided under section 139(1) of the Income-tax Act, 1961 (the Act).
- Prosecution was launched by the tax officer by filing criminal complaint, alleging offence punishable under section 276CC of the Act.
- The taxpayer filed an application in the sessions court challenging the order, arguing as follows -
 - For AY 2004-05 and AY 2005-06, no tax is payable, as refund was due.
 - For AY 2003-04, initial notice was followed by a fresh notice under section 142(1) of the Act, which had not provided any timeline for compliance.
- On appeal before the Revisional Court, the taxpayer's contention that no tax was due for AY 2004-05 and AY 2005-06 was rejected relying on the decision of the Supreme Court (SC) in the case of *Sasi Enterprises v Assistant Commissioner of Income tax [(2014) 5 SCC 139]*.
- For AY 2003-04, the Revisional Court accepted the taxpayer's contentions.
- Aggrieved by the aforementioned order, both parties filed petitions before the Delhi High Court (HC).

Issue under consideration

- Whether failure to furnish return of income within due time, even in case where there is no tax payable/ where the taxpayer is entitled to refund, is punishable under section 276CC of the Act?
- Whether subsequent notice supersedes the previous notice to have the effect of giving to the taxpayer an indefinite period for compliance?

Ruling of the Delhi High Court

- The HC noted that section 139(1)/142(1)/148 of the Act, inter alia creates obligation to file return of income on or before the prescribed date. Failure to furnish return would attract prosecution proceedings under section 276CC(1) of the Act.
- HC referred to the decision of the SC in the case of Sasi Enterprises (supra).
- In the cited case, the SC has inter alia held that the proviso to section 276CC of the Act does not state that offence under section (1) is not committed. It only provides that in certain cases prosecution will not be proceeded. In this context, the SC also held that the proviso cannot control the sub-section (1).
- Accordingly, the HC upheld the decision of the Revisional Court for AY 2004-05 and AY 2005-06.
- In respect of AY 2003-04, the HC rejected the taxpayer's ground holding that the fresh notice issued cannot supersede the previous notice as it is not the intention of the law to allow an indefinite period for compliance.
- HC dismissed the taxpayer's appeal stating that even subsequent cure of filing the return could not come to the rescue of the taxpayer.

Conclusion

- The HC has affirmed a strict interpretation of the provisions of section 276CC of the Act in holding that the 'act of committing offence' of not filing return and continuing non-compliance to notices, attracts prosecution under section 276CC (1).
- The above decision is a precautionary call for taxpayers to be cautious on compliance with the return filing deadlines. The ruling affirms no sympathy in cases where taxpayers have discharged all their taxes and have refunds due or whether taxpayers file the returns in response to subsequent notices by assessing officers.
- This ruling assumes further importance in light of the recent amendment by Finance Act, 2018 that deleted the income threshold of INR 3,000 for corporate taxpayers. Particularly, foreign companies claiming treaty benefits in respect of their India-sourced income and not filing the return of income in India, would have to be cautious of the position adopted on compliance with their return filing requirement.
- It would be recommended for companies to visit the position of filing return in India in view of the observation of the Court in the above decision and also the amendment by Finance Act, 2018.

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