

Special Court upholds framing of prosecution charges on false statement made in the course of tax proceedings

Summary

The Court of Special Judge, Prevention of Corruption Act (Appellate Court), in its recent order¹, has upheld framing of charge against the taxpayer for making a false statement during the verification proceedings² of the Income-tax Act, 1961 (Act). The Appellate Court held that the probative value of the material brought on record by the prosecution had to be accepted as true. It also held that the court should not make a roving and fishing enquiry into the pros and cons of the matter and weigh the evidence as if it is conducting a trial. The Appellate Court also clarified that if two views are possible, the one which is favourable to the prosecution has to be accepted for the purpose of framing the charge.

Facts of the case

- The revenue department, based on newspaper reports, internet search and validation from the tax authority of British Virgin Islands (BVI), recorded the taxpayer's statement³ on her foreign financial interests. The taxpayer denied knowledge of directorship in any foreign entity, financial interest in any foreign entity and holding any bank account in any foreign country.
- The Principal Director of Income Tax (PDIT) filed a complaint against the taxpayer with the Trial Court alleging that the taxpayer had made a false statement.

¹ Ratna Kumar vs. Principal Director of Income Tax [C.R. No. 9/17 (329/17)]

² Section 277 of the Income-tax Act, 1961 read with Section 181 of the Indian Penal Code

³ Section 131 of the Income-tax Act, 1961

- The Trial Court was of the view that there was sufficient material available on record to frame charges against the taxpayer as she had contravened the relevant provisions of the Act and the Indian Penal Code.
- Aggrieved by the order of the Trial Court, the taxpayer challenged the order before the Appellate Court.

Taxpayer's contentions

- The taxpayer contended⁴ that even if the statement made by her was assumed to be false, it had no consequence from the income-tax point of view as there was no assessment proceeding pending for the relevant year.
- For initiating prosecution proceedings, there should be evasion of tax and if there was no evasion of tax, the said proceedings cannot be invoked.
- The taxpayer was not shown the documents supplied from the authorities, and these documents did not find any reference in the statement recorded by the taxpayer.
- PDIT had failed to prove the authenticity of the electronic record as per the relevant provisions⁵ of the Indian Evidence Act, which was a mandatory provision.
- The taxpayer had never visited BVI, no company could be incorporated without visiting BVI and the documents received from the BVI authorities did not contain any signature of the taxpayer.

Revenue's contentions

- There was a presumption against the taxpayer regarding the presence of culpable mental state under the relevant section⁶ of the Act.
- The taxpayer had not only made a false statement before the income tax authorities but also filed a false income tax return by not disclosing her financial interest in a foreign entity. The taxpayer also had a foreign bank account and thus had clearly committed a punishable offence.
- The taxpayer had deliberately concealed the information from the income tax authorities and made a statement which she knew was false and not correct. Hence, the order of the Trial Court was a reasoned order and required no interference.

⁴ Relying on the decision in the case of K. C. Builders vs. Assistant Commissioner of Income Tax (2004) 135 Taxman 461 (SC).

⁵ Section 65B of the Indian Evidence Act, 1872

⁶ Section 278E of the Income-tax Act, 1961

Appellate Court's ruling

- The Appellate Court noted that the assessment proceedings had not yet been initiated for the financial year 2006-07 in respect of the alleged investment made by the taxpayer.
- The Appellate Court interpreted the relevant section⁷ of the Act, opining that the wordings 'in any other case' implied that no such tax liability needed to be fixed nor was there any specific amount of tax which would have been evaded mentioned. Making a false statement in any verification under the Act was a sufficient condition to qualify as an 'offence' under the said provision.
- Countering the argument of the taxpayer regarding non-compliance with the relevant section of the Indian Evidence Act, the Appellate Court took note of Delhi High Court's decision⁸ holding that the prosecution could file a certificate at the time of trial also.
- The present case was only at the stage of framing of charge and for the purpose of framing of charge, a grave suspicion of commission of offence based on the material filed by the complainant/prosecution was sufficient.
- Based on the above observations, the Appellate Court held that PDIT was justified in launching prosecution proceedings against the taxpayer.

Our comments

This order will embolden the tax authorities to focus on prosecution in case of false verification made under oath in the course of any tax proceedings. With increasing focus on prosecuting tax offenders and pending cases of foreign bank accounts, assets, etc., taxpayers need to exercise caution at the time of filing and signing returns and making statements under oath.

⁷ Section 277(ii) of the Income-tax Act, 1961

⁸ Kundan Singh vs. The State [Crl. A. No. 711/2014]



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