

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 6325/2006

Reserved on : February 5, 2009

Date of decision: March 23, 2009

K.K.MOHTA Petitioner
Through: Mr.Harish Gulati with
Mr. Anindya Malhotra, Advocate.

versus

THE ASSTT. COMMISSIONER OF INCOME TAX
..... Respondent
Through:Mr.R.D.Jolly with
Mr. Paras Chaudhary and Ms. Rani
Kiyala, Advocates.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

J U D G E M E N T

1. This petition under Section 482 Code of Criminal Procedure (Cr.PC) seeks quashing of Complaint Case No. 827/1994 titled *K.K. Sharma, Assistant Commissioner of Income Tax v. Mohta Electro Steel Limited and Others* under Section 276 C(1) of the Income Tax Act, 1961 (the Act), pending in the court of the learned Additional Chief Metropolitan Magistrate (ACMM), New Delhi insofar as the petitioner is concerned.

2. The aforementioned complaint states that Mohta Electro Steel Limited (MESL) was engaged in the business of manufacturing and sale of carbon steel strips. MESL filed its return of income on 31st July, 1983

for the assessment year 1983-84 declaring NIL total income. It is stated that the return of income as well as its verification was made and signed by accused No.2 K.K. Mohta (petitioner herein) in his capacity as Managing Director of MESL. Assessment proceedings for the assessment year 1982-83 were initiated by the Income Tax Officer (ITO) by issuing notices under Section 143(2) and 142(1) of the Act. The notices were accompanied by a questionnaire calling for a number of details/documents. The Assessing Officer found that MESL had claimed an expenditure of Rs.78,23,066/- under the head 'salaries, wages and other benefits' as against the expenditure of Rs.39,15,497/- in the preceding year. MESL was accordingly asked to explain why there was a steep increase in the said expenses.

3. The assessee explained that it had paid Rs.29,46,422/- to M/s. Haryana Steel Products ('HSP') towards the work of annealing and pickling of steel slabs at the rate of Rs.2,500/- per metric tonne ('PMT'). HSP was found to be a proprietary concern of Krishna Mohta Kosh, a family trust of M.K. Mohta, one of the Directors of MESL. Accordingly, MESL was asked to provide evidence that the said amount was genuinely expended for its business purposes. Unconvinced with the explanation, the Assessing Officer added back a sum of Rs.22,04,210/- . The Assessing Officer held MESL could not have paid more than as Rs.500/- PMT to HSP, for the processing work done by the latter.

4. Aggrieved with the disallowance of the aforementioned expenditure, MESL filed an appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. CIT (A) allowed another opportunity to MESL to produce evidence. When MESL failed to avail this opportunity, CIT(A) upheld the order of the Assessing Officer. The rate for the work done by HSP for MESL as determined by the Assessing Officer was upheld by the CIT (A).

5. Aggrieved by the order of the CIT (A), both MESL and the Revenue preferred appeals before the Income Tax Appellate Tribunal ('ITAT'). Among the points considered by the ITAT was whether the amount paid by MESL to HSP for the work done by HSP at the rate of Rs.2,500/- PMT was reasonable or not. The ITAT observed that no exercise was undertaken for ascertaining the cost of service per metric tonne and adding to it reasonable return on the investments which in turn would help ascertaining whether the amount paid to HSP was reasonable or not. The ITAT analysed the figures of profit before and after depreciation and investments allowance of HSP, and found that barring the assessment year 1985-86, HSP had made profits despite keeping the rate for the work of annealing at Rs.512.50 PMT. It was concluded by the ITAT in para 38 of its order dated 31st October 1990 as under:

“38. Thus, after considering all the materials brought by the department and the submissions made by the assessee, we have come to a finding that the Assessing Officer's order to the extent that the payments made are excessive, has to be

upheld. There are materials brought by the Department to support it. We also give a finding that the normal market value during the year would be Rs.1,250/- PMT. We further give a finding that the assessee is entitled for this much amount in every one of the consignments sent to HSP.”

The ITAT dismissed the Revenue’s appeal and partly allowed MESL’s appeal. In effect as against the disallowance of the expenditure in excess of Rs.500 PMT, the ITAT reduced the disallowance to a sum in excess of Rs.1250 PMT.

6. On the basis of the orders of the Assessing Officer as upheld by the CIT (A) for the assessment year 1983-84, the aforementioned complaint was filed by the Assistant Commissioner of Income Tax in the court of the learned ACMM on 28th July 1989 under Section 276 C (1) of the Act. The Petitioner was arrayed as accused No.2 in the complaint and described as Managing Director, MESL. In para 2 it was stated that the Petitioner was looking after the day to day affairs of MESL in his capacity as the Managing Director. A reference was made to the assessment order as well as the order of the CIT (A).

7. It appears that on 4th December 2003 the learned ACMM passed a detailed order on charge. While it was held that no prima facie case was

made out against the accused No.3 M.C. Aggarwal and it was held that as regards the accused Nos. 1 and 2, i.e. the MESL and the Petitioner respectively, "From the testimony of PW1, PW2 and PW3 and considering all the documents filed on record and even after taking into consideration the order of ITAT it is clear that for the period relevant to the assessment year 1982-83 i.e. 1.7.81 to 22.6.82 the accused have deliberately inflated the expenses of processing by showing the payment of Rs.2500/- PMT to the Company in which one of the Director of the accused company was interested. Thus accused Nos. 1 and 2 have intentionally evaded the income tax by diverting the profits of accused No.1 to M/s. Haryana Steel Products in showing their income as Nil for the relevant period and are thus liable for offence punishable under Section 276 C (1) of the Income Tax Act." The learned ACMM concluded that:

"In view of my above discussion prima facie case under Section 276 C (1) of I.T. Act for the assessment year 1983-84 is made out against accused Nos. 1 and 2. So far as accused No.3 is concerned, then no prima facie case is made out against him. As such he is discharged. He is on bail. His bail bond is cancelled and surety discharged."

8. On the above basis the charge was directed to be framed against the Petitioner and MESL for the offence under Section 276 C (1) of the Act. The said charge was framed by an order dated 5th April 2005.

9. Aggrieved by the aforementioned order the Petitioner filed Criminal Revision No. 51 of 2005 before the learned ASJ. By an order dated 26th October 2005 the said revision petition was dismissed on the ground of maintainability. Thereafter the Petitioner filed the present petition on 28th August 2006.

10. Learned counsel for the Petitioner submits that the appeal of MESL against the order of the CIT (A) was partly allowed by the ITAT showed that there was no deliberate intention on the part of MESL to furnish inaccurate particulars of its income for the assessment year 1983-84 thereby evading the income tax, penalty or interest chargeable or impossible under the Act. It was submitted that inasmuch as the order of ITAT was available to the learned ACMM even at the stage of the order on charge, the learned ACMM erred in holding that a prima facie case was made out against the Petitioner for the offence under Section 276 C (1) of the Act.

11. Appearing for the Respondent Mr. R.D. Jolly, learned Senior standing counsel, raised an objection as to the maintainability of the petition under Section 482 CrPC. He submits that the Petition raises disputed questions of fact which ought not to be examined in the present proceedings. The true purport of the order of ITAT can be examined at the trial. According to him, at the present stage it requires to be seen whether there was sufficient material for framing a charge against the

Petitioner. The revision petition against the order on charge having already been dismissed by the learned ASJ, no further petition under Section 482 CrPC can be entertained.

12. As regards the objection of Mr. Jolly, as to the maintainability of the present petition, it requires to be noticed that the power of this Court under Section 482 CrPC is intended to ensure that there is no miscarriage of justice. As explained by the Supreme Court in *Krishnan v. Krishnaveni AIR 1997 SC 987* this Court is not powerless to exercise its jurisdiction under Section 482 CrPC in a given case even where a revision petition against an order on charge has already been dismissed by the learned ASJ. The Supreme Court held that when the scope of interference by this Court in such cases under Section 482 CrPC would depend on the facts of the particular case. In other words the merits of the case would necessarily have to be examined in order to determine if interference under Section 482 is warranted.

13. In the present case the facts are not disputed. While the complaint refers to proceedings up to the stage of the CIT (A), a few months thereafter the ITAT passed a detailed order partly allowing MESL's appeal and dismissing the Revenue's appeal. Clearly there the issue whether payment made by MESL to HSP was excessive was a debatable one. In partly allowing MESL's appeal, the ITAT disagreed with the view taken by the Assessing Officer, on what the reasonable rate should

be for the work done by HSP, as affirmed by the CIT (A). The disallowance was reduced by the ITAT from that in excess of Rs.500 PMT to that in excess of Rs.1,250 PMT. In the circumstances, it is difficult for this Court to appreciate the view taken by the learned ACMM that there was a deliberate intention on the part of the assessee to evade the payment of income tax by suppressing its true income in the return filed by it. If the issue where the amount paid by MESL to HSP was reasonable or not admitted of more than one point of view, as is evident from the orders of the Assessing Officer and the ITAT, then certainly the essential ingredient of Section 276 C (1) of the Act of a deliberate intent on the part of the assessee to evade the payment of income tax, cannot be said to exist in the present case.

14. The order of the learned ACMM on charge does refer to the order of the ITAT but does not discuss the relevant portions of the said order as extracted hereinabove. In the considered view of this Court, if the learned ACMM had taken a note of the specific findings of the ITAT, the conclusion that a prima facie case had been made out for proceeding against the Petitioner and MESL for the offence under Section 276 C (1) of the Act could not have been arrived at.

15. Accordingly, this Court holds that in the facts and circumstances of the case notwithstanding the dismissal of the Petitioner's revision petition by the learned ASJ against the order framing charge, this Court

should exercise its power under Section 482 CrPC in order to prevent a miscarriage of justice.

16. For the aforementioned reasons it is directed that the Petitioner will stand discharged in a Complaint Case No. 827/1994 titled *K.K. Sharma, Assistant Commissioner of Income Tax v. Mohta Electro Steel Limited and Others*. The accused No.3 has already been discharged. The complaint will now proceed against the MESL, which is not a Petitioner in the present petition.

17. The petition is, accordingly, allowed with no order as to costs.

18. A copy of this order be sent to the learned ACMM concerned forthwith.

S. MURALIDHAR, J.

MARCH 23, 2009

Pk/rk