

## **Director, being in charge of Co., was liable for offence committed by Co. even if he didn't receive separate notice**

**Summary – The High Court of Delhi in a recent case of Anil Batra, (the Assessee) held that In terms of section 278B, once offence is shown to have been committed by company, then liability of directors in charge of its affairs is attracted and in such a case, directors cannot be acquitted merely on ground that no separate notices were issued to them**

### **Facts**

- For relevant assessment years, a show cause notice under section 278B, read with sections 194A and 200 was issued in the name of Principal Officer of company 'A' regarding failure to pay tax deducted at source. The assessee herein were directors of the company 'A'.
- The Courts below acquitted the assessee in aforesaid proceedings mainly on ground that show cause notice issued by the department was only to the 'Principal Officer' of the company and not to the individual directors, i.e., assessee herein.
- On revenue's appeal:

### **Held**

- For the purpose of section 278B the company can be proceeded against by issuing a notice to the 'principal officer' of the company as defined under section 2(35).
- The term 'principal officer' is also mentioned under section 305 of the Code of Criminal Procedure, 1973 ('Cr PC') which prescribes the procedure to be followed where a company is an accused. It is possible that at that stage of issuance of the SCN the department may not be aware who are the directors in-charge of the company. That requirement flows from section 278B which is a deeming provision and is attracted when the offence is committed by a company.
- Section 278B makes the directors of the company in charge of its affairs liable for the offence committed by it unless the presumption is able to be rebutted by such director.
- For the purpose of section 278B, once the offence is shown to have been committed by the company, then the liability of the directors in charge of its affairs is attracted. The burden then shifts to such directors to show that the offence occurred without their knowledge or that they had exercised all due diligence to prevent the commission of such offence.
- Consequently, the Courts below erred in acquitting the directors of the company only because they were not issued separate notices.

- As far as the merits of the matter are concerned, it is seen that both directors have signed the company's balance sheets. Their defence that they were not in charge of the affairs of the company is, therefore, untenable.
- Accordingly, the impugned judgment is set aside and the assessee is convicted for the offence under section 278B for the aforementioned three assessment years.