

No prosecution against advocate for filing client's return on fake TDS certificate as it was supplied by client

Summary – The High Court of Punjab & Haryana in a recent case of Sudesh Sharma, (the Assessee) held that where respondent, a tax practitioner, filed a return on behalf of assessee claiming refund, in view of fact that respondent had no role in preparing TDS certificates, complainant-ITO could not initiate criminal proceedings against him on ground that refund was wrongly claimed on basis of fake TDS certificates.

Facts

- The respondent-accused, an advocate, was practicing on income-tax side. The main assessee, a railway contractor had engaged him for the purpose of submission of his returns for the assessment year 1988-89 and supplied him the requisite documents, including TDS certificates in this regard.
- The respondent had filed the return on behalf of main assessee and claimed a refund on the basis of TDS certificate purported to have been issued by the Senior Divisional Accounts Officer, Northern Railway, New Delhi.
- The complainant-ITO claimed that in the wake of verification, the TDS certificates were found not to be genuine and the refund was wrongly claimed by the main assessee.
- In the background of said allegations, the complainant ITO instituted different complaints, not against the main assessee, but against respondent for commission of offences punishable under sections 418, 465, 468 and 471 of the Indian Penal Code, (IPC).
- Taking into consideration the totality of the peculiar facts and evidence on record, the respondent-accused was acquitted, by means of impugned judgment.
- The complainant-ITO thus filed the instant petition for leave to appeal against the impugned judgments of acquittal, invoking the provisions of section 378(4) Cr. PC.

Held

- It was noted from records that complainant-ITO has miserably failed to point out that how and in what manner, the respondent could be held liable for preparing false documents, which were previously supplied to him by the main assessee. The mere fact that he had prepared the return on behalf of assessee, *ipso facto*, is not a ground, muchless cogent, to hold respondent-accused guilty for the commission of pointed offences in the absence of main assessee, as contrary urged on behalf of complainant.
- Strange enough, the complainant ITO had not filed any complaint against the main assessee and only arrayed the respondent advocate as an accused, who was stated to have submitted the returns of relevant years on his behalf, for the reasons best known to him (ITO). That means, the respondent-accused had only submitted the return along with all the indicated documents on behalf of main assessee.

- In other words, all the TDS certificates, which were purported to have been issued by the Northern Railway, were supplied by the main assessee to his advocate. It was the main assessee, who had procured the documents from the concerned authorities and claimed the refund. Not only that, in case, the main assessee had claimed the refund on the basis of forged TDS certificates, then, the revenue authorities were competent and well within their jurisdiction to reject his claim of refund and even to impose penalty under the relevant provisions of Act. Thereafter, the aggrieved party had a right to file the statutory appeal in this relevant connection.
- Be that as it may, therefore, the respondent-accused, who was an advocate, had just submitted the return on behalf of main assessee, cannot possibly be and indeed could not legally be held liable for criminal prosecution for procuring the documents by main assessee in order to attract the penal provisions of offences in question, as contrary urged on behalf of complainant-ITO.
- There is yet another aspect of the matter, which can be viewed entirely from a different angle. What cannot possibly be disputed here is that the complainant-ITO had earlier filed similar 45 complaints, in which, the respondent was acquitted, *vide* different judgments of acquittal by the trial Court. Meaning thereby, the controversy involved in the present petition is squarely covered and decided by way of earlier judgments. Therefore, there is no reason to grant the leave to appeal against the impugned judgment of acquittal.
- In the light of aforesaid, there is no merit, and therefore, the instant petition for leave to appeal is hereby dismissed.