

## Obligation to verify & submit ITR on behalf of co. does not lie on Managing Director only:HC

**Summary – The High Court of Delhi in a recent case of Rakshit Jain, (the Assessee) held that where there was a failure to furnish return of income within time stipulated under section 139(1) or in response to notice under section 142(1), omission to mention belated filing of return by assessee in complaint filed by revenue would not come in way of criminal prosecution under section 276CC**

**Directors are also equally responsible for furnishing of return on behalf of company as is case of managing director**

### Facts

- The assessee-company failed to file its return of income for relevant year within stipulated date.
- The Assessing Officer filed a criminal complaint against the company and its directors and managing director alleging offence under section 276CC.
- The assessee filed instant petition seeking quashing of the proceeding arising out of said criminal complaint alleging that (i) it was improper on the part of the Commissioner to have *suo motu* initiated the proceedings leading to the criminal prosecution by issuing *show cause notice* under section 279(1) on 16-7-2014 and by sanctioning the prosecution under section 279(1), although the question as to whether or not to initiate such action being actually within the domain of the assessing authority Asstt. Commissioner which had passed the assessment order, (ii) belated return filed by assessee was not taken into account while initiating proceedings under section 276CC, and (iii) the assessing authority (Dy. CIT) had not imposed any penalty under section 271F which was mandatory in the event of it being concluded that there was a wilful failure to furnish return of income. It was argued that, in this view, it had to be inferred that in the opinion of the assessing authority there was no wilful default and, thus, the requisite *mens rea* required for section 276CC was amiss.

### Held

#### ***Issue regarding granting sanction for prosecution***

- As is clear from the proviso to section 279(1), the prosecution can be initiated at the instance of the authorities superior to the assessing authority, they including officer of the level of Commissioner or even those above in hierarchy who are permitted to issue instructions or directions for institution of proceedings under section 279(1) which provision also governs the process relating to offence under section 276 CC. There was no impropriety on the part of Commissioner, in this view, in issuing the *show-cause notice* on 16-7-2014 followed by the grant of sanction for prosecution on 14-1-2015 it resulting in the criminal complaint being filed on 20-1-2015.

***Issue regarding non-consideration of filing of return***

- The submission that the fact that assessment order in the meanwhile had been passed on 30-3-2014 has not been taken note of or, for that matter, the submission that the filing of the income-tax return (ITR) on 28-3-2013 has been omitted from particular mention in the complaint, do not aid or assist the petitioners in evading the criminal prosecution. The accusations against them in the criminal complaint relate to the offence under section 276CC which is an offence that deals with "failure to furnish returns of income". There is no denial at this stage that there was indeed a failure to furnish return of income within the time stipulated under section 139 (1) or in response to the notice under section 142(1). Whether or not there was justification for such default is a matter of defence which may be agitated during the trial. The assessment proceedings are independent of this matter and they would not come in the way of criminal prosecution.

***Relevance of non-imposition of penalty under section 271F***

- Whether or not the penalty as envisaged in section 271F is to be imposed, is a matter to be determined by the Assessing Officer/authority (Dy. CIT) within the meaning of the section. He may direct such penalty to be paid and conversely, it would be correct to say, he may choose not to so direct for such penalty to be paid. At any rate, the omission on the part of the Assessing Officer to impose such penalty by itself does not mean that, in his opinion, the default was not wilful. To determine whether the default was wilful or otherwise, the explanation offered, may be in response to the *show cause notice*, will have to be seen and construed.

**Whether the obligation to verify and submit the ITR on behalf of the company is only on the managing director of the company and not on the directors of the company ?**

- It does appear, on first blush, that the prime responsibility of furnishing the return of income of the company is of the managing director of such company. But then, it is not correct to read the above provision so as to conclude that it is always or invariably the responsibility of the managing director alone and of no other. In a situation where the managing director may not be in a position to verify or submit the return of income, this on account of numerous reasons which may be presented as "unavoidable" and in case of such difficulties for the managing director to abide by the requirements of law on behalf of the company, the responsibility of other directors - the provision noticeably uses the expression "any director thereof" - cannot be ignored.
- Pertinent to note that in the reply dated 3-11-2014 in answer to the show cause notice, there was no explanation offered for failure on the part of the managing director to furnish income-tax return. Whether or not there was any difficulty on the part of managing director would be a matter of his defence at the trial. It cannot be assumed at this stage that such would be his defence, but if such defence were to be presented, it would be the responsibility of the directors to explain the default. Be that as it may, there is no escape from the conclusion that the directors are also equally

responsible for furnishing of return on behalf of the company as is the case of the managing director.

***Conclusion***

- It was fairly conceded at the hearing by the petitioners that there is no requirement in law that prior to sanction for prosecution being accorded under section 279(1), the complainant authority of income tax must issue show-cause notice. Be that as it may, since show cause notice was issued for the purpose of inquiry, the reply submitted by the company accused in response thereto will have to be looked into. As submitted by the counsel the Chartered Accountant being the authorized representative in the reply dated 3-11-2014 had pleaded financial difficulties and certain default on the part of the auditors. These defences give rise to questions of fact the truth or otherwise of which cannot be gone into in the proceedings under section 482 Cr.P.C.