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IN THE COURT OF MR K.J DARJI, ADDITIONAL CHIEF METROPOLITAN MAGISTRATE (ECONOMIC OFFENCES) AT : AHMEDABAD

CRIMINAL CASE No.200041 of 2008

EXHIBIT : 40

COMPLAINANT : Shri F. S. Sadikot
Assistant Commissioner of
Income Tax, Ahmedabad
Circle-3, 5th Floor, Insurance
Building, Ashram Road, Ahmedabad

Vs

ACCUSED : Indravadan V. Darbar
Age: Adult,Occ : Business
Residing At : 1346, Piplani
Pole, Rangati Bazar,
Ahmedabad

COMPLAINT : Under Section 276C (1) and 276C(2), 277 of the Income Tax Act, 1961

FOR PROSECUTION : Ld. Special Prosecutor:
Mr. J. C. Yagnik & Mr. Ashvin Thakore

FOR ACCUSED : Ld. Advocate Mr. J. K. Patel

J U D G M E N T : The complaint is filed for the offences u/s. 276C(1) & 276C(2) & 277 of Income Tax Act 1961 Section 276C of the Act pertains to willfully attempt to evade tax, & willfully l attempt to evade payment of any tax, penalty or interest chargeable or imposable under the Act and Section 277 of the Act provides punishment for making any statement in any verification, which is false and which a person knows or believes to be false or does not believe tobe true. The complaint pertains to **assessment year of 1988-89**

[**1**] **BRIEF FACT OF THE PROSECUTION CASE:**

➢ IT IS CASE OF PROSECUTION THAT, the accused is doing the business activities such as issue of cheques against receipt of cash funds from various persons as per their requirements as well as discounting cheques or draft from the bank accounts for and on behalf of various parties.

➢ IT IS CASE OF PROSECUTION THAT, on dated 5th January 1995 **,** search was carried out at the residential as well as business premises of the accused u/s 132 of the Act by the official of Income Tax wherein it was found several loose papers, bank related documents and diaries, hence it were seized. More so, it was found that the accused had owned up 145 bank accounts in the name of various persons. In addition, another 63 bank accounts which were not owned up by him, but they were being operated by him. Thus the Accused was doing business activities through these bank accounts.

➢ IT IS CASE OF PROSECUTION THAT, The accused filed its return of income on 10th December 1998 for the said assessment year, declaring a total income of **Rs.1426 /-** The return was signed and verified by the accused and also signed accounts and other documents attached with the returns .On the basis of search and seizer at the residential as well as business premises of the accused, The income tax authorities has issued notice under *Section 148 of the Act*. In view of said notice the accused filed revise return of income on 15th December 1998 for assessment year of **1988-89** declaring total amount of **Rs.4786 /-**.

➢IT IS CASE OF PROSECUTION THAT, the income tax authorities undertook the assessment proceeding under S*ection 143(3) of the Act* and on 8th February 1999 and the Income tax authority came to a conclusion that the total taxable income of the accused was Rs.2,93,230 /-.

➢ IT IS CASE OF PROSECUTION THAT, as against the order of Assessing officer dated 8th February 1999,the accused filed appeal before Commissioner of Income Tax Tribunal (CIT)-(A)-II, Ahmedabad. The appeal was allowed and order passed by the Assessing officer dated 8th February 1999 was quashed with certain direction.

➢ IT IS CASE OF PROSECUTION THAT, the Income tax authority as per direction of the Appellate Authority,undertook the assessment proceeding under *Section 143(3) of the Act* re-assess the the total income of the accused for the assessment year of 1988-89 on 28th March 2002 and the Income tax authority came to a conclusion that the total taxable income of accused was Rs.2,47,786/-**.**

➢ IT IS CASE OF PROSECUTION THAT,as against the order of Assessing officer dated 28th March 2002 the accused filed appeal before Commissioner of Income Tax Tribunal (CIT)-(A)-VII, Ahmedabad. The appeal was dismissed on 5th December 2002 and order passed by the Assessing officer dated 28th March 2002 was confirmed.

➢ IT IS CASE OF PROSECUTION THAT, the accused did not challenge the order of Commissioner of Income Tax Tribunal (CIT)-(A)-VII, Ahmedabad, therefore the order of Assessing officer dated 28th March 2002 is absolute and accused has to comply the order of Assessing officer. Therefore notice under Section 271(1)(c) was issued to the accused on dated 17th June 2003 and thereafter passed penalty order under

Section 271(1)(c) on dated 30th June 2003 and imposed penalty of Rs 2,43,000 /- to the accused for the assessment year of **1988-89** As the accused did not challenge the penalty order,he has to pay the penalty to the Income Tax Authority.

➢ IT IS CASE OF PROSECUTION THAT, the accused neither pay the penalty amount nor challenge the penalty order before appropriate forum,therefore the Commissioner of Income Tax, Ahmedabad has issued show-cause notice to the accused for launching prosecution under *Section 276C(1) &(2) and Section 277 of the Act.*

➢IT IS CASE OF PROSECUTION THAT, thus the accused attempted to evade tax, penalty or interest chargeable or imposable under the Act, and *Section 277 of the Act* provides punishment for making any statement in any verification, which is false and which a person knows or believes to be false or does not believe to be true,therefore the complaint filed against the accused by the Income-Tax Authority

[2] On this complaint, the accused was summoned and thereafter pre-charge evidence was led. Complainant examined one **PW-1 Dilipbhai Arjanbhai Tapodhan** (Assessing officer) and **PW-2 Dr.Shyamprasad Kathipall**i (who passed the penalty order) and following documentary evidence ;

Documentary Evidences		
Sr. No.	Description of Document	Exhibit
1	Panchnama	11
2	Notice u/s 148 of the I.T.Act	12
3	Return of Income	13
4	Revised Return of Income	14
5	Notice u/s 142 of the I.T.Act	15
6	Assessment order dated 8/2/1999	16
7	Order of The CIT(A)-II, Ahmedabad	17
8	Assessment order u/s 144	18

9	Order of The CIT(A)-VII, Ahmedabad	19
10	Show-cause notice u/s 271(1)(c) of the Act	20
11	Penalty order	21
12	Demand Notice dated 28.3.2002	22
13	Demand Notice dated 17.6.2002	23
14	Sanction letter	39

[3] On the basis of pre-charge evidence, this Court has framed charge for the offence u/s 276C(1), 276C(2) and 277 of the Income Tax Act at **Ex : 34.** The accused does not plead guilty and claimed for trial therefore statement of the accused were recorded at **Ex: 35**.

[4] After the framing of the charge the accused has given a pursis vide **Ex : 36** declaring that he does not want to further cross examine of the witnesses who already been examined prior to charge-frame as provided under *Section 246(4) &(5) of Code of Criminal Procedure*

[5] Likewise the prosecution has given a pursis at **Ex : 37** declaring that they does not want to adduce further evidence after the framing of the charge as provided under *Section 246(6) of Code of Criminal Procedure*

[6] After conclusion of complainant's evidence, all the incriminating evidence was put to the accused in their examination *u/s.313 r/w Section 281 of Code of Criminal Procedure .*

[7] Mr.Yagnik Ld.Special Prosecutor for the prosecution argued that the prosecution proves its case on the basis of oral as well as documentary evidence which is un-rebuttal. It is proved by the prosecution that the accused willfully attempt to evade tax and penalty chargeable or imposable under the Act, and making false statement in the verification, which he knows or believes to be false or does not believe to be true.

Per contra Mr. Patel Ld.Advocate for the accused has argued that without considering the document assessing officer has passed wrong order. Further he argued that the assessing officer did not examined the all the bank account, thus the assessment proceeding is not made as per law. Moreover the evidence of the prosecution is not sufficient to prove the case against the accused,under such circumstance accused to be acquitted.

[8] POINT FOR DETERMINATION AND FINDING:

POINT NO.1	Whether the PROSECUTION beyond reasonable doubt proves that the accused has willfully attempts to evade any tax ,penalty or interest chargeable or impose under this Act and did not pay the amount of penalty and committed offence under Section 276C(1)of the Income Tax Act ?
FINDING	AFFIRMATIVE
POINT NO.2	Whether the PROSECUTION beyond reasonable doubt proves that the accused has willfully attempts to evade payment of any tax ,penalty or interest chargeable or impose under this Act and committed offence under Section 276C(2)of the Income Tax Act ?
FINDING	AFFIRMATIVE
POINT NO.3	Whether the PROSECUTION beyond reasonable doubt proves that the accused making of a statement in verification which is false and which he knows or believes to be false or does not believe to be true and committed offence under Section 277 of the Income Tax Act ?

FINDING	AFFIRMATIVE
POINT NO.4	What order ?
FINDING	As per final order

[9] REASONS :

[9.1] Point No. 1 and 2 :

- All the point are inter-connected, therefore for sake of convenience I discuss all the point together.

- Before proceed with the evidence ,I have to go through record of case. On perusal of record,it appears that the prosecution did not examined complainant because of he was not available. The complainant is formal witness, therefore non-examination of complainant did not fatal to the prosecution case. Further the prosecution has produced the documents which are certified copies of the original with the signature of the Additional Commissioner at Ex : 7 and my predecessor has passed the order to tentative exhibit of the documents. All the documents are produced from the custody of the prosecution. The copy of the assessment orders, notices are issued to the accused and these all original documents are lying with the accused. Therefore, the document at serial no. 2 to 5 and 9 to 12 are admissible at the evidence under **section 279(b) of Income Tax Act r.w.s. 63(3) of the Indian Evidence Act** as a secondary evidence.
- It is true that in a criminal case, it is for the prosecution to bring home guilt of the accused. It is also true that the prosecution must prove the offence beyond reasonable doubt. When the prosecution leads the, which, if believed, will sustain, the burden of proof may lie upon the accused, in this regard, the provision ***Section 101 & 102 of Indian***

Evidence Act need to be read together. In view of the principle laid down in these two sections, it is for the prosecution to prove the fact that the accused has deliberately not disclose his true, accurate and correct income but he intentionally, corruptly and dishonestly furnished incorrect, inaccurate and false information about income in his RETURN OF INCOME for the assessment year of 1988-89 with full knowledge that the information so furnished by him was false to the knowledge of him and that the accused for the purpose of willful evasion of taxes payable by him made false declaration in his aforesaid RETURN OF INCOME and falsely verified the same to be true with full knowledge that the verification so executed by him was false to the knowledge of him. For reference, Section 276C(1) & 276C(2) are reproduced as under :

- **"276C(1)** If a person **willfully attempts** in any manner whatsoever **to evade any tax ,penalty or interest chargeable or impose under this Ac**t, he shall ,without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable -

  (i) in the case where the amount sought to be evaded exceeds one hundred thousand rupees, with rigorous imprisonment for a which shall not be less than six months but which may extend to seven years and with fine.

  (ii) In any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

- **276(2)** If a person willfully attempts in any manner whatsoever **to evade the payment of any tax, penalty or interest chargeable or impose under this Act**, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall ,in the discretion of the court, also be liable to fine .

- Thus language of the Section 276C is very clear that to prove the offence under Section-276C(1) & 276C(2) of the Income Tax Act

1961, the prosecution has to prove that the accused has **willfully attempt to evade tax, penalty** or interest chargeable or imposable under the Act and **willfully attempt to evade the payment** of any tax, penalty or interest chargeable or imposable under the Act.

- To prove the case, prosecution is relied on evidence of the Assessing officer **PW-1 (** Mr. Dilipbhai Tapodhan), assessment order and the evidence of **PW-2** (Dr. Shyamprasad Katipalli) who passed the penalty order. PW-1 deposed that he initiated assessment proceeding for the assessment year of 1988-89 under *Section 143 of the Income Tax Act* and after giving reasonable opportunity to the accused .In the cross-examination of the PW-1 ,it is admitted that before passing assessment order he examined all the transaction of the accused relating to his business. It is evident from the cross -examination of PW-1 that the accused has produced documents in the assessment proceeding ,thus it is crystal clear from the evidence of PW-1 that he has passed assessment order as per law . Thus assessment order **(Ex:18)** duly proved by the prosecution On perusal of assessment order **(Ex: 18)** ,it appears that total income of the accused was under Section 143(3) r.w Section 250 is **Rs.2,47,786/-.** Further it is evident from the evidence of **PW-1** that the accused has preferred appeal before the Commissioner of Income Tax Tribunal (CIT)-(A)-VII, Ahmedabad vide Appeal No.CIT(a)VII /Cir3/126 to 131 against order of the Assessing officer dated 27th September 2009. The appeal was dismissed. The certified copy of the order of (CIT)-(A)-VII, is produced at **Ex : 19** . It is not disputed that the accused did not initiate any proceedings in any forum to challenge the order of Commissioner of Income Tax Tribunal (CIT)-(A)-VII**(Ex : 19)** . Thus assessment order dated 28th March 2002 is become absolute and binding to the accused .As per assessment order (Ex :24) the total taxable income was determined of **Rs.2,81,219 /-.** instead of total taxable income Rs. 1426 /- shown by the accused in his RETURN OF INCOME which was filed on 10th December 1998 before the

Income Tax Department **.**The prosecution has produced certified copy of the original of RETURN OF INCOME at Ex : 13 of the accused for the assessment year of 1986-87. On perusal of RETURN OF INCOME , it appears that it is a certified photocopy of the original. Therefore, as per *section 63(3) of the Evidence Act r.w.s. 279(b) of the Income Tax Act* is admissible as a secondary evidence. In the RETURN OF INCOME , the accused has declared, his total taxable income for the **assessment year of 1988-89 was Rs.1426 /-.**

- Furthermore **,** after the absolutism of assessment order **(Ex : 18)** ,the Income Tax Authority has initiated penalty proceeding against the accused . The officer who initiated penalty proceeding is examined by the prosecution . Dr. Shyamprasad Katipall **(PW-2**) who was the officer who initiated penalty proceeding is examined at **Ex : 35.** PW-2 deposed that he has issued penalty notice to the accused under Section 279(1) of the Income Tax Act and he identified his signature in the notice Ex : 27 and contents of the notice ,thus **penalty notice to the accused under Section 279(1) of the Income Tax is duly proved from the evidence of PW-2 .** PW-2 further deposed that notice (Ex.20) was served to the accused and he replied the notice. Then after he has passed penalty order against the accused. In the penalty order he identified his signature **thus the penalty order is duly proved from the evidence of PW-2**
- As per penalty order **(Ex :21)** , **Rs.2,43,000/-** was imposed as penalty to the accused ,therefore the accused has to pay of **Rs.2,78,600/- b**y way of penalty to the Income Tax department In the cross-examination of PW -2 , it is admitted that he has passed penalty order after going through all the document.. Thus the the penalty order was passed with fully application of mind . It is also comes on record that the accused neither challenged penalty order (**Ex:21)**nor pay the penalty amount.
- It is well settle law that Willful evasion of tax punishable u/s.276C involves mens rea and in a criminal trial such mens rea ought to be proved before an accused can be convicted. In the facts and circumstances of the present case, Section 278E of the act is apply. This

section was brought in force w.e.f. 10.9.1986 whereas the present matter pertains to the assessment year 1988-89 and the complaint was instituted on 11.3.2008 when the accused were summoned. Therefore, the onus was on the accused to have proved that he has not mens rea to willfully evade tax but accused did not adduced any evidence to rebut the prosecution evidence.

- Be that as it may, the point is whether, the evidence which has come on record, and as discussed above, points out to willful concealment of income by the accused? It has been established on record that as per assessment order **(Ex : 18**) and as per evidence of assessing officer **PW-1** (Mr. Dilipbhai Tapodhan).total taxable income of the accused for the assessment year of 1988-89 is Rs. **Rs.2,47,786 /-.** instead of total taxable income of Rs. 1426 /- which has been shown in the RETURN OF INCOME **(Ex: 13).** Thus willful concealment of income by the accused has been proved. Same way ,willfully non payment of penalty has been proved as per evidence of **PW-2** (Dr. Shyamprasad Katipalli) and penalty order (**Ex:21) . Hence I answer point no.1 & 2 in affirmative.**

[9.2] Point No. 3

- It is alleged in the complaint that the accused has make a statement and made false declaration in respect of total income and committed violation of section 277 of the Income Tax Act. For this, let us examine the provision of *Section 277 of the Income Tax Act* which reads as under:

  Section 277. False statement in verification, etc. -

  If a person makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable, -

(i) in a case where the amount of tax, which would have been evaded if the statement or account had been accepted as true, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with rigorous imprisonment for a terms which shall not be less than three months but which may extend to three years and with fine.

- From bare perusal of the aforementioned provisions, it appears that Section 277 of the Income Tax Act contains some crucial words in regard to mens rea of the assesses such as that he either knows or believes to be false, or does not believe to be true. The intention of the Legislature incorporating these words is quite obvious that the prosecution under this section will not follow in every case where a wrong statement is made. It has to be judged as to whether assesses had the required mens rea for commission of the offence or not. It shows that existence of 'mens rea' is sine-qua-non for prosecution of the commission of offence under *Section 277 of the Income Tax Act.*

- In the present case, Section 278E of the act is apply. This section was brought in force w.e.f. 10.9.1986 whereas the present matter pertains to the assessment year 1986-87 and the complaint was instituted on 11.3.2008 when the accused were summoned. Therefore, the onus was on the accused to have proved that he has not mens rea to makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, it is not disputed that prior to sanction for prosecution, a notice to show-cause was given to the accused by the Income Tax Department asking him to reply as to why prosecution be not launched against him. The sanction is produced at **Ex: 42** and the notice is produced at **Ex: 30.** Further more it is proved that the accused has shown total income of Rs. 380 **/- i**n his RETURN OF INCOME for the year of 1986-87 which is false one as per assessment order **(Ex: 24)**. On perusal of The RETURN OF INCOME **(Ex: 20),** it appears that same is signed by the accused and he make statement in verification under the act which is false and which he either knows or believes to be false, or does not believe to be true in view of assessment order **(Ex: 24)**. As discussions and findings above, I hold that the prosecution is proved beyond reasonable doubt that the accused has committed offence under *Section 277 of the Act* and I answer **point no. 3 in affirmative.**

[9.3] Point no.3 :

In view of the above discussion , I hereby convict the accused namely INDRAVADAN DARBAR for the offence punishable under Section *276C(1) & (2) and 277 of the Income Tax Act under Section 248(2) of the Code of Criminal Procedure*

Announced in the open Court.

Dt.26/06/2018
Ahmedabad

Kirti Jayantilal Darji
Addl. Chief Metropolitan Magistrate
(Economic Offences), Ahmedabad
Code No. GJ-00461

IN THE COURT OF MR K.J DARJI, ADDITIONAL CHIEF METROPOLITAN MAGISTRATE (ECONOMIC OFFENCES) AT : AHMEDABAD

CRIMINAL CASE No.200041 of 2008

COMPLAINANT : Shri F. S. Sadikot
Assistant Commissioner of
Income Tax, Ahmedabad

Vs

ACCUSED : Indravadan V. Darbar

ORDER ON SENTENCE

1. Vide my judgment,the accused INDRAVADAN DARBAR has been convicted for the offence under *Section 276C(1) & (2) and 277 of the Income Tax Act.*

2. I have heard Ld. Special Prosecutor for the Income Tax Department as well as Ld. Advocate for the accused on the point of sentence

3. On behalf of the convict, Ld Advocate for the convict INDRAVADAN DARBAR has submitted that convict is the sole bread earners of his family. It is prayed that keeping in view of age of the convict and his family back ground, a lenient view may be taken in awarding sentence to him

4. The Ld. Special prosecutor for the Income Tax has argued that the convict has involved in economic offence therefore, punishment may be awarded to the convict as per law

5. In view of fact and circumstance of the present case;

- The convict INDRAVADAN DARBAR is awarded rigorous imprisonment for for the offence un*der Section 276C(1) of the Income Tax Act* for **a period of six month and fine of Rs.500/-**under *Section 248 (2) of the Code of Criminal Procedure.* In default of payment of fine the convict shall further undergo SI for 10 days.

- The convict INDRAVADAN DARBAR is further awarded rigorous imprisonment for for the offence *under Section 276C(2) of the Income Tax Act* for **a period of six month and fine of Rs.500/-**under *Section 248 (2) of the Code of Criminal Procedure.* In default of payment of fine the convict shall further undergo SI for 10 days .

- The convict INDRAVADAN DARBAR is further awarded rigorous imprisonment for for the offence under *Section 277 of the Income Tax Act* for **a period of six month and fine of Rs.500/-**under *Section 248 (2) of the Code of Criminal Procedure.* In default of payment of fine the convict shall further undergo SI for 10 days

- All the sentences run concurrently

- Certified copy of this judgment be provided to the convict free of cost as per *Section 363 of the Code of Criminal Procedure.*

Announced in the open Court on 26th June, 2018

Dt.26/06/2018
Ahmedabad

Kirti Jayantilal Darji
Addl. Chief Metropolitan Magistrate
(Economic Offences), Ahmedabad
Code No. GJ-00461