Karnataka High Court P.V. Pai, B.R. Shetty, Biyar ... vs R.L. Rinawma, Deputy ... on 22 January, 1993 Equivalent citations: 1993 78 CompCas 312 Kar, ILR 1993 KAR 709 Author: D Hiremath Bench: D Hiremath, L S Reddy JUDGMENT D.P. Hiremath, J. 1. The petitioners herein have challenged the legality of the complaint filed by the respondent, Deputy Commissioner of Income-tax (Assessments), against them for various offences under the Income-tax Act, 1961, before the Special Court for Economic Offences at Bangalore. A-1 is a private limited company, A-2 and A-3 are its directors and A-4, a chartered accountant, auditing their accounts. They are alleged to have committed offences under sections 276C and 277 read with sections 278B and 278 of the Income-tax Act, 1961. During verification of the accounts submitted by them for the assessment year 1985-86 for the period ending on March 31, 1985, it was revealed that a false claim regarding depreciation on buildings in a sum of Rs. 1,35,480 was made by the company and investment allowance amounting to Rs. 5,30,506 was also claimed which A-1 could not have done. Similarly, there was fabrication of false evidence regarding commissioning of the intermix before March 31, 1985, to entitle the company to claim depreciation and investment allowance. The machinery was not commissioned till September 24, 1985. The complainant-respondent further alleged that the accused persons had wilfully attempted to evade payment of taxes to the Revenue. A-3 is in charge of and responsible for the conduct of the business of the company, whereas A-4 has given audited reports to the shareholders as required under section 277(2) of the Companies Act, 1956. In fact, A-4 has abetted the commission of these offences by A-1 to A-3. These are the allegations in brief in the complaint filed by the respondent. 2. In challenging the legality of the trial court taking cognizance of the offences against them in these petitions, the petitioners-accused have raised and urged the following contentions : (a) There can be no prosecution of a company which is a juristic person and it cannot be imprisoned under sections 276C and 277 of the Act. (b) The sanction accorded by the sanctioning authority to prosecute them, namely, the Commissioner of Income-tax is bad since the order of the Commissioner records his satisfaction about the commission of the offences but does not record granting of sanction specifically. (c) There is no allegation in the complaint that A-1 company contravened any of the provisions of law to make other accused persons guilty. (d) The principles of natural justice ought to have been followed while according sanction by giving opportunity to the petitioners of being heard. 3. Even though a few other contentions have been raised in the petitions, learned senior counsel, Sri K. Srinivasan, has confined himself to these points referring us to the scope of the various provisions of law under which the prosecution is launched and decisions rendered by the Supreme Court and various High Courts. 4. Section 276C refers to evasion of tax by any person, and section 277 make penal delivering an account or statement which is false. Under section 278B, where an offence under the Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Section 277 which is penal and which is very material for our purpose reads as follows : "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 term which shall not be less than three months but which may extend to three years and with fine." 5. Section 278 dealt with abetment of the offence under section 276C of the Act involving evasion of tax. 6. The first accused in the complaint filed before the trial court is a private limited company and hence a "company" within the meaning of section 278B, Explanation (a). It is urged for the petitioners herein that, because, under section 277, both imprisonment and fine are made compulsory as the law now stands and because "a company" which is a corporate body cannot be sentenced to imprisonment, it cannot be proceeded against by filing a criminal complaint against it as now done by the respondent. Though a Division Bench of the Allahabad High Court in the case of Modi Industries Ltd. v. B. C. Goel , pointed out that the words "person" occurring in sections 277 and 278 of the Income-tax Act, 1961 ("the Act" for short), in view of the definition clause in section 2(31), includes a company and hence a company is prima facie liable to be prosecuted for the commission of an offence under sections 276 and 278 of the Act. Further, it pointed out that the law is well settled that a corporation or a juristic personality cannot be subjected to bodily punishment or imprisonment. The learned single judge of the Kerala High Court in the case of S. M. Badsha v. ITO [1987] 168 ITR 332 and of the Rajasthan High Court in the case of Shree Singhvi Brothers v. Union of India and also a Division Bench of the Calcutta High Court, in the case of Kusum Products Ltd. v. S. K. Sinha also, took the same view. In all these decisions, the material observation is that mens rea being an essential ingredient for an offence of false statement in a verification under section 277 of the Act only an actual person who does any of the acts indicated in the section with a specific knowledge or intent can be made liable for the said offence. The Calcutta High Court pointed out that, although under section 2(31), the definition of "person" is wide enough to include a company or any juristic person, the word "person" could not have been used by Parliament in section 277 in that sense because imprisonment has been made compulsory for an offence under the section and a company or a juristic person cannot be sent to prison and it is not open to a court to impose a sentence of fine or not to award any punishment if the court finds a company guilty under the section. If the court does so, it would be altering the very scheme of the Act and usurping the legislative function. The learned single judge of this court in the case of Vijaya Commercial Credit Ltd. v. Sixth ITO [1988] 170 ITR 55, on the same reasoning, held that since there is no statutory compulsion to prosecute a company alongside the officers or person in charge of and responsible to the company and such officers or the

persons responsible to the company may be prosecuted without prosecuting the company, criminal proceedings instituted against a company under section 277 are futile and should be quashed. 7. However, a learned single judge of the Andhra Pradesh High Court in the case of ITO v. Jyothi Coconut Merchants , took a contrary view and observed thus while answering the point whether a company, being a juridical person, is liable for prosecution for an offence under the provisions of the Income-tax Act and whether, being a juridical person and incapable of being put to bodily punishment like sentences of imprisonment, can be sentenced to fine only though the punitive provision in the tax law contemplates imposition of a minimum sentences of imprisonment and also fine (at page 254) : "It is apposite here to note that, while interpreting the provisions in the statues, such as section 277 in the instant case, the paramount object is to discover what the Legislature intended. As Mr. Justice Holmes warned, 'Words are certainly not crystals, transparent and unchanged' (vide Towne v. Eisner [1918] 245 US 418 at page 425). So much so, as put by Learned Hand J., 'Statutes should be construed, not as theorems of Euclid, but with some imagination of the purposes which lie behind them' (Lenigh Valley Coal Co. v. Yensavage (218 FR 547 at 553)). The Supreme Court having followed the above principles of Mr. Justice Holmes and Learned Hand J. in Union of India v. Filip Tiago De Gama, AIR 1990 SC 981, also observed that the legislators do not always deal with specific controversies which the courts decide and that if a given case is well within the general purpose of the Legislature but not within the literal meaning of the statute, the courts must strike a balance. Keeping these principles in mind and advancing the purpose behind incorporating section 278B and rendering section 277, by way of amendments from time to time, more and more severe and following the decision of the Full Bench of the Delhi High Court, it is to be held that a company can be sentenced to fine only though the section contemplates imposition of minimum sentence of imprisonment and fine. Question No. 2 is, accordingly, answered in the affirmative." 8. While coming to this conclusion, it appears that the learned judge adverted to the principle of construing the provisions of a statute which states that an attempt must always be made so as to reconcile the relevant provisions as to advance the remedy intended under the statute. In such a case, it is legitimate and even necessary to adopt the rule of liberal construction so as to give meaning to all parts of the provision and to make the whole of it effective and operative. Reliance was placed on a decision of the Full Bench of the Delhi High Court in the case of Delhi Municipality v. J. B. Bottling Co. [1975] Crl. L.J. 1148 which considered the scope of section 16(1) of the Prevention of Food Adulteration Act under which minimum punishment contemplated was a sentences of imprisonment for a term not less than six months and fine of not less than Rs. 1,000. Section 17 of the Prevention of Food Adulteration Act is similar to section 278B of the Income-tax Act and refers to offences committed by a company. The learned judge Yogeshwar Dayal J., speaking for the Full Bench, observed that, by a simple rule of interpretation, a company, as contemplated under section 17, is covered for the purpose of prosecution under section 16(1) of the Act, that the history of section 16 also shows the legislative intent that

the idea of the Legislature was to make punishment more stringent and not to create an exemption in favour of companies. It was finally held in that case that a company as defined in section 17 of the Prevention of Food Adulteration Act does not enjoy immunity from prosecution when, under the said Act, it is alleged to have committed an offence and, in the event of the company being found guilty, it can be punished with fine only, though the section contemplates sentence of compulsory imprisonment and fine since the corporal punishment of imprisonment becomes impossible of execution in the case of a company. Referring to the decisions cited by us earlier, the learned judge sought to make a distinction between cases arising before amendment to the Act on October 1, 1975, and after the amendment. Before the amendment, the sentence prescribed was only imprisonment and imposition of fine was not contemplated by section 277 of the Income-tax Act, but the amendment prescribes both imprisonment as well as fine and, therefore, according to the learned judge, even though imprisonment is also compulsory, as imposition of fine is also made compulsory under section 277 after the amendment in the year 1975, to give effect to the statute, fine alone could be imposed on the company in the event of it being found guilty under section 277 of the Act. 9. It is true that, prior to the amendment of section 277 in the year 1975, imprisonment alone was the punishment that could be imposed on the person found guilty. But, in our view, the amendment does not, in any way, affect the proposition or the principle that a company, a juristic person cannot have any mens rea. When the amended provision itself has made the punishment more rigorous by making imposition of fine also compulsory, it does not follow that the Legislature intended that wherever a corporate body or a juristic person is involved, a fine alone could be imposed. To that extent, it must be said that there is a lacuna in the provision with regard to punishment and simply because the section makes both imprisonment and fine compulsory, courts cannot lay an interpretation which was not in the contemplation of Parliament. In this context, it would be apposite to refer to the observations of the Calcutta High Court in the case of Kusum Products Ltd. . The learned judges referring to section 277 of the Act as it stood prior to and after the amendment of October 1, 1975, observed thus (at page 808) : "That mens rea is an essential ingredient of an offence under section 277 of the Act is clear from the section itself and only an actual person who does any of the acts indicated therein with a specific knowledge or intent can be made liable. Although under section 2(31) of the Act, the definition of a person is wide enough to include a company or any juristic person, the word person could not have been used by Parliament in section 277 of the Act, in the sense given in the definition clause. That this was the intention of Parliament is clear because imprisonment has been made compulsory for an offence under section 277 of the Act. A company or a juristic person cannot possibly be sent to prison, and it is not open to a court to impose a sentence of fine or not to award any punishment if the court finds a company guilty under the said section. If the court does so it would be altering the very scheme of the Act and usurping the legislative function." 10. If this could be the view taken when the only punishment was imprisonment before the amendment of 1975 and when the imposition of fine

also was made compulsory by the amendment, the words "and fine" cannot be construed to be equivalent to the words "or fine" only with a view to dilute the rigour of the provision where a company is sought to be prosecuted. As we have pointed out earlier, when the Legislature intended that the offence under section 277 should be met with punishment of compulsory imprisonment and fine, courts have no jurisdiction to impose fine only and, if that is done, it would be altering the very scheme of the Act. We find it difficult to agree with the view taken by the Full Bench of the Delhi High Court which ruled that even though both imprisonment and fine are made compulsory after the amendment of 1975, as far as a company is concerned, fine alone could be the sentence that could be imposed. In the result, we find that, when the company cannot be punished with imprisonment, its prosecution becomes unpurposeful as, if the court finds the company also guilty, it cannot pronounce a verdict of guilt and leave it at that without imposing any punishment. The proceedings against the company-accused No. 1 are liable to be quashed. 11. The second contention of the petitioners is that the principles of natural justice were violated by the Commissioner of Income-tax inasmuch as, before according sanction to prosecute the petitioners, he ought to have given opportunity to them of being heard. Section 279 which is relevant in this behalf is as follows : "279. (1) A person shall not be proceeded against for an offence under section 275A, section 276, section 276A, section 276B, section 276BB, section 276C, section 276CC, section 276D, section 277 or section 278, except with the previous sanction of the Chief Commissioner or Director-General or Commissioner : Provided that no such sanction shall be required if the prosecution is at the instance of the Commissioner (Appeals) or the appropriate authority. Explanation. - For the purposes of this section, 'appropriate authority' shall have the same meaning as in clause (c) of section 269UA. (IA) A person shall not be proceeded against for an offence under section 276C or section 277 in relation to the assessment for an assessment year in respect of which the penalty imposed or imposable on him under clause (iii) of sub-section (1) of section 271 has been reduced or waived by an order under section 273A. (2) Any offence under this Chapter may, either before or after the institution of proceedings, be compounded by - (a) the Board or a Chief commissioner or a Direction-General authorised by the Board in this behalf, in a case where the prosecution would lie at the instance of the Commissioner (Appeals) or the appropriate authority; (b) the Chief Commissioner or Director-General or Commissioner, in any other case. (3) Where any proceeding has been taken against any person under sub-section (1), any statement made or account or other document produced by such person before any of the income-tax authorities specified in clauses (a) to (g) of section 116 shall not be inadmissible as evidence for the purpose of such proceedings merely on the ground that such statement was made or such account or other document was produced in the belief that the penalty imposable would be reduced or waived under section 273A or that the offence in respect of which such proceeding was taken would be compounded." 12. Amongst the three accused, only accused No. 1, the director, received notice from the Deputy Commissioner of Income-tax, dated December 1, 1989. Having set out the particulars of the

falsification, para-5 of the notice says : "In order to give you an opportunity to explain as to why prosecution proceedings contemplated under section 276C of the Income-tax Act, under section 177, 181, 193 and 196 of the I.P.C. should not be initiated against you. You are requested to appear in person on December 11, 1989, at 3 p.m." 13. Though the paragraph is not happily worded, its purport appears to be clear. It appears time was sought by the company itself on December 11, 1989. The section order produced in the court below dated March 28, 1990, was made by the Commissioner of Income-tax but does not refer to the notice issued by the Deputy Commissioner. In fact, the Deputy Commissioner was not empowered to accord sanction for prosecution. Thus it cannot be construed as an opportunity given by the sanctioning authority at least to A-1. The argument of learned counsel of the petitioners, Sri Srinivasan, is that the proceedings of the Commissioner to accord sanction cannot be deemed purely administrative in nature. In a way, they are quasi-judicial. If only the petitioners were given opportunity of being heard before the sanction was accorded, they could have availed of the opportunity to compound the offence and also could have shown, if possible, whether the penalty imposed or imposable on them had been reduced or waived by an order under section 273A of the Act. What section 279(1A) states is that a person shall not be proceeded against for an offence stated therein of which the penalty imposed or imposable has been reduced or waived by an order under section 273A. Section 273A gives discretion to the Chief Commissioner or Commissioner to reduce or waive the amount of penalty imposed or imposable, if he is satisfied that such person acted in good faith and also co-operated in any enquiry relating to the assessment of his income and has either paid or made satisfactory arrangements for the payment of any tax or interest payable in consequence of an order passed under the Act. Similarly, under sub-section (2) of section 279, any offence under Chapter XXII may, before or after institution of the proceedings, be compounded by the Chief Commissioner or a Director-General. It was argued on behalf of the petitioners that they are deprived of this opportunity as the sanctioning authority did not choose to hear them before according sanction. If only such an opportunity was given, the possibility of compounding the offence could have been considered. Our attention was invited to a decision of the Rajasthan High Court in the case of Shree Singhvi Brothers v. Union of India . As in the present case before us, in that case as well, it was contended by the petitioners that, before launching of the prosecution, no notice was given to petitioners Nos. 2 and 3 and they were not even afforded an opportunity of being heard before launching of the prosecution and, therefore, it is violative of the principles of natural justice. In case of concealment of any income, the Department has an authority to add the concealed income in the assessment for that year of the assessee and can levy tax and it has also authority to levy penalty. It has authority to launch prosecution as well. It is also provided in the Act that, in such cases of imposition of penalties, offences can also be compounded either before filing of the prosecution or thereafter. Referring to these contentions, the learned judge at page 245 of the Report summed up his conclusion as follows : "As observed earlier in Institute of Chartered Accountants of India's case ,

the principles of natural justice must be read into the unoccupied interstices of the statute unless there is a clear mandate to the contrary. Thus, it is amply clear that every process of the quasi-judicial Tribunals must inform itself of the principles of natural justice. In this particular case, four alternative remedies were available to the Department and specially, this remedy of launching of the prosecution is at the option of the Department and, in such a situation, it is all the more essential that the petitioners should be afforded an opportunity of hearing before the launching of the prosecution and that has not been done at all in this case, so far as petitioners Nos. 2 and 3 are concerned and in the case of petitioner No. 1, a show-cause notice was issued and, thereafter, after adjourning the hearing, petitioner No. 1 was not granted any further opportunity of hearing. Under these circumstances, the launching of such a prosecution cannot be sustained and it deserves to be quashed." 14. The advantage of the provision for compounding in fiscal legislations came to be considered by the Full Bench of this court in the case of S. V. Bagi v. State of Karnataka, . That case, of course, arose under section 31 of the Karnataka Sales Tax Act, 1957. The question before the Full Bench was whether an appeal lies under section 20 of the Act challenging the order made against the assessee to save himself from the "disgrace and ignominy of prosecution". While holding that no appeal lies from an order made in favour of the assessee, the learned judges held while concluding the judgment thus (at page 144 of 87 STC) : "For the purpose of this judgment, we have proceeded upon the basis that an 'order' to compounding is required to be made under section 31. Even so, no appeal can lie there against under section 20, because the appellant cannot object thereto. The order is, in fact, in his favour, made to save him 'the disgrace and ignominy of a prosecution'." 15. If the provisions of section 279 of the Act are read in totality together with the provisions of section 278 regarding abetment by assessee or a person abetting the commission of the offence under section 276C, the intention of the Legislature becomes clear, namely, to given an opportunity to the assessee or the person charged with abetment to satisfy the sanctioning authority about his bona fides or about the circumstances under which certain statements were made. As far as compounding is concerned, the same may be made either before or after institution of the proceedings. Therefore, an assessee may be anxious to offer composition even before prosecution to save himself from the "disgrace and ignominy of prosecution". The person sought to be prosecuted may be an individual holding some position or status in society or a company, an officer or a legal practitioner. Even where there is wilful concealment of income, such person may repent or, out of fear of the prosecution or of standing as an accused before the criminal court, offer to compound with the terms and conditions which the compounding authority may impose. Therefore, simply because there is an opportunity to compound after the prosecution is launched, it does not necessarily follow that such opportunity should be denied before the prosecution is launched. The stage at which such offer may be considered could be at the time the sanctioning authority considers according of sanction to prosecute. 16. A Division Bench of the Bombay High Court in the case of Naresh Pran Jivan Mehta v. State of Maharashtra [1986] 61 STC 309 on which learned

counsel for the respondent relied, considered whether the principles of natural justice are attracted when sanction is accorded to prosecute for certain offences under the Bombay Sales Tax Act, 1959, as amended in 1981. In that case, as the reported judgment reveals, criminal prosecution was launched against the petitioner therein when the offences complained of against him were explained to him on April 26, 1983. Though criminal proceedings were started, in law, no charges were levelled against the petitioner. Even prior to April 26, 1983, on May 6, 1982, a notice to show cause as to why penalty should not be imposed on the petitioner was issued. Thereafter, criminal proceedings were instituted against the petitioner after obtaining sanction from the Deputy Commissioner of Sales Tax for certain offences under the Sales Tax Act. It was contended before the High Court that, since the sanction accorded by the Deputy Commissioner of Sales Tax resulted in penal and serious consequences, namely, a criminal prosecution which could result in the sentence of fine or jail, it was obligatory on the part of the Deputy Commissioner of Sales Tax to give an opportunity of being heard to the petitioner before sanction was accorded. The argument did not find favour with the learned judges. The learned judges pointed out that granting of sanction is an administrative act. At the same time, the High Court agreed that the principles of natural justice apply even to administrative decisions if they involve civil and penal consequences of a grave nature, and no full review or appeal on merits against that decision is provided, and the administrative order finally decides the rights. But, in cases of this nature, the accused has a reasonable opportunity of being heard and to put forward his case at the trial. It was also of the view that the function of according sanction is neither judicial nor quasi-judicial. Reliance was placed on the decision of the same court in the case of Parasnath v. State, and also of the Madras High Court in the case of Kalagava Bapiah, In re [1903] ILR 27 Mad 54. The Madras High Court referred to section 197 of the Code of Criminal Procedure and said that the same is not null and void because no opportunity was given to the person concerned. At the same time, in the concluding part of the judgment, the learned judges said (at page 314 of 61 STC) : "The Department decided to launch prosecution against the petitioner, since there are serious allegations against him, and the Department thought that this was a fit case wherein criminal prosecution should be launched against the petitioner. We find much substance in these contentions. Even otherwise, under section 69 the Commissioner is authorised to compound the offences. This compounding could be either before or after the institution of the proceedings, and in the case of minor offences if the Commissioner thinks if fit to issue a show-cause notice so as to consider as to whether the offence is a fit one which could be compounded, obviously if the accused is ready to do so, it cannot be said that there is anything illegal in the said procedure. It cannot universally apply to all cases. Further, it was also open to the petitioner to approach the Commissioner, if he was ready and willing to compound the offences. Compounding of offences must ultimately depend upon the facts and circumstances of each case and no general rule can be laid down in that behalf." 17. It was also urged in that case that the Commissioner in fact had issued show-cause notices. The Supreme Court, in the case of S. L. Kapoor v.

Jagmohan, , elaborately dealt with what "civil consequence" means. Observations of his Lordships Justice Krishna Iyer in the case of Mohinder Singh Gill v. Chief Election Commissioner, , were quoted with approval. They are (at page 876) : "But what is a civil consequence, let us ask ourselves, by passing verbal booby-traps ? 'Civil consequences' undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequences." 18. While so quoting, they observed that the old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequence must be made consistently with the rules of natural justice. The case before their Lordships related to the supersession of the New Delhi Municipal Committee by the Lt. Governor and it was contended that the order of supersession was passed in complete violation of principles of natural justice and total disregard of fair play. No notice to show cause was ever issued and there was not the slightest hint until the order was made that there was any such proposal to supersede the committee. Suffice it to note for the purpose of the case at hand, that their Lordships made it amply clear that the distinction between a judicial act and an administrative act does not very much exist when it is a question of application of principles of natural justice. In the instant case, we are not very much concerned with the powers of sanction that could be exercised under section 197 of the Code of Criminal Procedure where it is in the absolute discretion of the Government to consider whether sanction to prosecute for an offence should be accorded or not, keeping in view the nature of the offence committed and where no such provision as under section 279 of the Income-tax Act, exists. For example, where sanction is required to prosecute for offences under the Anti-Corruption Act, the Penal Code and such other legislations where there is no provision for compounding, the question for consideration would not be the same. It would be in the absolute discretion of the sanctioning authority to consider whether sanction should be accorded or not on the material placed before it. But where particular enactments do provide an opportunity to the person intended to be prosecuted to avail of the benefit of a provision regarding compounding either before or after institution of the proceedings, the provision of sanction cannot be viewed in the same perspective as that under other enactments or the Code of Criminal Procedure. 19. In our considered opinion, the view taken by the learned single judge of the Rajasthan High Court in the case of Shree Singhvi in the matter of applicability of the principles of natural justice while according sanction under section 279 of the Act appears to be the correct view. We have extracted the observations of the learned judge at the commencement of our discussion on this point and we are of the view that these observations made a correct approach towards the course to be followed while according sanction under section 279(1) of the Act. In Ganga Sagar v. Emperor [1929] 4 ITC 97 (All), it was pointed out that the provision for compounding is not meant to enable the Department to obtain as much money as possible by holding out a threat of prosecution. However, when it is for the benefit of the assessee, he may avail of the benefit by making an offer

even before the prosecution is launched and the discretion vests in the sanctioning authority whether to accept or not. In the instant case, the Department is at liberty to consider the question of sanction afresh after giving an opportunity to the petitioners (A-2 to A-5) of being heard. 20. The next contention urged is with regard to the form of sanction accorded. Our attention was invited to the sanction order made by the Commissioner and to which we have referred above. It was urged on behalf of the petitioners that it records only the satisfaction of the Commissioner and though the petitioners are liable to be prosecuted for the various offences stated therein, it does not end with the statement that sanction was being accorded. The respondent's counsel, however, has argued that, if the subject specified at the commencement of the sanction order, the reasoning of the sanctioning authority and authorisation given to the Deputy Commissioner of Income-tax to file the complaint are considered, the order spells out that in fact sanction has been accorded, though no such specific words have been used in the order. We are unable to agree with the petitioner's counsel that the sanction is bad for this reason alone. Such a technical approach is impermissible. A perusal of the detailed order shows that in fact the Commissioner of Income-tax did consider the material placed before him on the subject of according sanction, gave reasons for his satisfaction and then authorised the Officer who should file the complaint. The cumulative effect of the consideration of all these facts only leads to an inference that sanction in fact has been accorded to prosecute the persons named in the order. The order as a whole should be looked into and effort should not be made to pick out holes on technical omissions. We, therefore, find that the order is not vitiated on this ground. 21. It was lastly contended that there is no averment in the complaint that the company has contravened any of the provisions of law and, therefore, unless such an averment is made in the complaint, the other accused persons cannot be made liable. In the matter of prosecution of a company, the law is well-settled. In an analogous case, the Supreme Court in the case of Sheoratan Agarwal v. State of M.P., , under section 10 of the Essential Commodities Act observed that section 10 does not state that, if the person contravening the order made under the Essential Commodities Act is a company, the prosecution of the directors, the officers and servants of the company or other persons is precluded unless the company itself is prosecuted. There is no statutory compulsion that the person in charge or any officer of the company may not be prosecuted unless he be ranged alongside the company itself. Section 10 indicated the persons who may be prosecuted where the contravention is made by the company. It does not lay down any condition that the person in charge of or an officer of the company may not be separately prosecuted if the company itself is not prosecuted. Each or any of them may be separately prosecuted or along with the company. Section 10 lists the persons who may be held guilty and punished when it is a company that contravenes an order made under section 3 of the Essential Commodities Act. Naturally, before the person in charge of or an officer of the company is held guilty in that capacity, it must be established that there has been a contravention of the order by the company. It thus follows that, if the liability of the person in charge or an officer of the company to be held guilty is to be

considered, it must be found that the company itself has contravened any such provision. In other words, there must be averments in the complaint that the company is guilty of such contravention even where the company itself is not prosecuted as such. Under section 278B(1) of the Act, where an offence under the Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly : provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. This section is in pari materia with section 10 of the Essential Commodities Act which came up for consideration before the Supreme Court. We have read and allegations in the complaint filed before the trial court in the light of the aforesaid decision and do not find ourselves in agreement with the submission made by learned counsel for the petitioners. In fact, the averments in each of the paragraphs which, according to the complaint, reveal the offences committed by the accused persons relate principally to accused No. 1-company and then it is elaborately stated how accused Nos. 2 to 4 are guilty of various contraventions. In particular, it is stated in paragraph 4 of the complaint that, for the assessment year 1985-86 for the period ending on March 31, 1985, accused No. 1 filed its return of income on November 5, 1985, that it was duly verified and signed by accused No. 2 and the return of income filed by accused No. 1 is accompanied by a schedule of fixed assets, financial notes, auditor's report, etc. It is also averred that in order to verify the correctness of the return of the income filed by accused No. 1, a notice under section 143(2) was issued by the Income-tax Officer, Company Circle 2, and the same was received by accused No. 1. In response to the said notice, accused No. 4 appeared before the Income-tax Officer and the case was discussed. It is also averred in paragraph 9 that, in response to the summons issued to accused No. 1, accused No. 2 appeared and opportunity was given to him to put forth evidence in support of his plea made. If at all individual acts are alleged against accused Nos. 2 to 4, it is only in the capacity that they held in relation to the company-accused No. 1 and in no other capacity. The complaint against ends with averments in paragraph 16 that accused No. 4 filed a power of attorney on behalf of accused No. 1 and represented the company, during the assessment proceedings filed a false endorsement from the Karnataka Electricity Board which has the effect of enabling accused No. 1 to show that the machinery was commissioned by March 31, 1985, when in fact it was not commissioned. These various averments in the complaint clearly make out a case against accused No. 1-company and further state how accused Nos. 2 to 4 are sought to be made liable for the contraventions alleged. Therefore, it cannot be said that there are no allegations of any contravention by the company itself which is necessary to make other accused persons liable. We reject this contention as well. 22. In conclusion, we hold that accused No. 1-company cannot be prosecuted under sections 276C and 277 of the Income-tax Act and, therefore,

the proceedings against accused No. 1 before the trial court are quashed. The proceedings against accused Nos. 1 to 4 are also quashed for the reason that the sanctioning authority, i.e., the Commissioner did not afford opportunity to the petitioner-accused persons of being heard before according sanction under section 279(1) of the Act. The quashing of these proceedings, however, does not come in the way of the sanctioning authority, the Commissioner, according sanction for their prosecution after giving them reasonable opportunity of being heard according to the principles of natural justice.