Supreme Court of India
Sasi Enterprises vs Assistant Commissioner Of Income ... on 30 January, 1947
Author: .....J.
Bench: K.S. Radhakrishnan, A.K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.61 OF 2007

Sasi Enterprises … Appellant

Versus

Assistant Commissioner of Income Tax … Respondent

WITH

CRIMINAL APPEAL NOs.62, 63 & 64 OF 2007

J U D G M E N T

K.S. Radhakrishnan, J.

1. We are concerned with four Criminal Appeals No.61 to 64 of 2007, out of which two Criminal Appeals No.61 of 2007 and 63 of 2007 relate to M/s Sasi Enterprises, a registered partnership firm, of which Ms. J. Jayalalitha and Mrs. N. Sasikala are partners, which relate to the assessment years 1991-92 and 1992-93 respectively. Criminal Appeal Nos.62 and 63 of 2007 relate to J. Jayalalitha and N. Sasikala respectively for the assessment years 1993-94. Proceedings giving rise to these appeals originated from the complaints filed by the Assistant Commissioner of Income Tax, Chennai, before the Additional Chief Metropolitan Magistrate (Egmore), Chennai, for the willful and deliberate failure to file returns for the assessment years 1991-92, 1992-93 and hence committing offences punishable under Section 276 CC of the Income Tax Act, 1961 (for short "the Act"). Complaints were filed on 21.8.1997 after getting the sanction from the Commissioner of Income Tax, Central II, Chennai under Section 279(1) of the Income Tax Act. Appellants filed two discharge

petitions under Section 245(2) Cr.P.C., which were dismissed by the Chief Metropolitan Magistrate vide order dated 14.6.2006. Appellants preferred Crl. R.C. Nos.781 to 786 of 2006 before the High Court of Madras which were dismissed by the High Court vide its common order dated 2.12.2006, which are the subject matters of these appeals.

2. M/s Sasikala Enterprises was formed as a partnership firm by a deed dated 06.02.1989 with N. Sasikala and T.V. Dinakaran as its partners, which was later reconstituted with effect from 04.05.1990 with J. Jayalalitha and N. Sasikala as partners. The firm did the business through two units, namely, M/s Fax Universal and M/s J.S. Plan Printers, which, inter alia, included the business in running all kinds of motor cars, dealing in vehicles and goods etc. In the complaint E.O.C.C. No.202 of 1997 filed before the Chief Metropolitan Magistrate, Egmore, M/s Sasi Enterprises was shown as the first accused (A-1) and J. Jayalalitha and N. Sasikala were shown as (A-2) and (A-3) respectively, who were stated to be responsible for the day- to-day business of the firm during the assessment years in question and were individually, jointly and severally made responsible and liable for all the activities of the firm. Partnership deed dated 04.05.1990 itself stated that the partners, A-2 and A-3 are responsible and empowered to operate bank accounts, have full and equal rights in the management of the firm in its business activities, deploy funds for the business of the firm, appoint staff, watchman etc. and to represent the firm before income tax, sales tax and other authorities.

3. M/s Sasi Enterprises, the firm, did not file any returns for the assessment year 1991-92 and 1992-93, for which the firm and its partners are being prosecuted under Section 276 CC of the Act. J. Jayalalitha and N. Sasikala did not file returns for the assessment year 1993-94 and hence they are being prosecuted for that breach (in their individual capacity) separately but not for the assessment years 1991-92 or 1992-93 and their returns have been filed as individual assessee by them for the assessment years 1991-92 and 1992-93, though belatedly on 20.11.1994 and 23.02.1994 respectively. In those returns it was mentioned that accounts of the firm had not been finalized and no returns of the firm had been filed.

4. The Assistant Commissioner of Income Tax in his complaint stated that the firm through its partners ought to have filed its returns under Section 139(1) of the Act for the assessment year 1991-92 on or before 31st August, 1991 and for the assessment year 1992-93 on or before 31st August, 1992 and A-2 in her individual capacity also should have filed her return for the year 1993-94 under Section 139(1) on or before 31.08.1993 and A-3 also ought to have filed her return for the assessment year 1993-94 on or before 31st August, 1993, as per Section 139(1) of the Act. The accused persons, it was pointed out, did not bother to file the returns even before the end of the respective assessment years, nor had they filed any return at the outer statutory limit prescribed under Section 139(4) of the Act i.e. at the end of March of the assessment year. It was also pointed out that a survey was conducted in respect of the firm under Section 133A on 25.08.1992 and following that a notice under Section 148 was served on the partnership firm on 15.2.1994 to file the return of income tax for the years in question. Though notice was served on 16.2.1994, no return was filed within the time granted in the notice. Neither return was filed, nor particulars of the income were furnished. For the assessment year 1991-92, it was stated that pre-assessment notice was served on 18.12.1995, notice under Section 142(1)(ii) giving opportunities was also issued on

20.07.1995. The department made the best judgment assessment for the assessment year 1991-92 under Section 144 on a total income of Rs.5,84,860/- on 08.02.1996 and tax was determined as Rs.3,02,434/- and demand notice for Rs.9,95,388/- was issued as tax and interest payable on 08.02.1996.

5. For the assessment year 1992-93, the best judgment assessment under Section 144 was made on 9.2.1996 on the firm on a total income of Rs.14,87,930/- and tax determined at Rs.8,08,153/-, a demand notice was issued towards the tax and interest payable.

6. We may indicate, so far as A-2 is concerned, the due date for filing of return of income as per Section 139(1) of the Act for the assessment year 1993-94 was 31.8.1993. Notice under Section 142(1)(i) was issued to A-2 calling for return of income on 18.1.1994. The said notice was served on her on 19.1.1994. Reminders were issued on 10.2.1994, 22.8.1994 and 23.8.1995. No return was filed as required under Section 139(4) before 31.3.1995. The Department on 31.7.1995 issued notice under Section 142(1)(ii) calling for particulars of income and other details for completion of assessment. Neither the return of income was filed nor the particulars of income were furnished. Best judgment assessment under Section 144 was made on 9.2.1996 on a total income of Rs.1,04,49,153/- and tax determined at Rs.46,68,676/- and demand of Rs.96,98,801/-, inclusive of interest at Rs.55,53,882/- was raised after adjusting pre-paid tax of Rs.5,23,756/- . The Department then issued show-cause notice for prosecution under Section 276CC on 14.6.1996. Later, sanction for prosecution was accorded by the Commissioner of Income Tax on 3.10.1996.

7. A-3 also failed to file the return of income as per Section 139(1) for the assessment year 1993-94 before the due date i.e. 31.8.1993. Notice under Section 142(1)(i) was issued to A-3 calling for filing of return of income on 8.11.1995. Further, notice was also issued under Section 142(1)(ii) on 21.7.1995 calling for particulars of income and other details for completion of assessment. Neither the return of income was filed nor the particulars of income were furnished. Best judgment assessment under Section 144 was made on 8.2.1996 on a total income of Rs.70,28,110/- and tax determined at Rs.26,86,445/-. The total tax payable, inclusive of interest due was Rs.71,19,527/-. After giving effect to the appellate order, the total income was revised by Rs.19,25,000/-, resulting in tax demand of Rs.20,23,279/-, inclusive of interest levied. Later, a show-cause notice for prosecution under Section 276CC was issued to A-3 on 7.8.1996. A-3 filed replies on 24.11.1996 and 24.3.1997. The Commissioner of Income Tax accorded sanction for prosecution on 4.8.1997.

8. We may incidentally also point out, the final tax liability so far as the firm is concerned, was determined as Rs.32,63,482/- on giving effect to the order of the Income Tax Appellate Tribunal (B Bench), Chennai dated 1.9.2006 and after giving credit of pre-paid tax for the assessment year 1991-92. For the assessment year 1992-93 for the firm, final tax liability was determined at Rs.52,47,594/- on giving effect to the order of the Income Tax Appellate Tribunal (B Bench), Chennai dated 1.9.2006 and after giving credit of pre-paid tax. So far as A-2 is concerned, for the assessment year 1993-94 final tax liability was determined at Rs.12,54,395/- giving effect to the order of Income Tax Appellate Tribunal (B Bench), Chennai dated 11.10.2008 after giving credit to pre-paid tax. So far as A-3 is concerned, for the assessment year 1993-94, final tax liability was determined as Rs.9,81,870/- after giving effect to the order of Income Tax Appellate Tribunal (B

Bench), Chennai dated 14.9.2004 and after giving credit to pre-paid tax.

9. We have already indicated, for not filing of returns and due to non-compliance of the various statutory provisions, prosecution was initiated under Section 276CC of the Act against all the accused persons and the complaints were filed on 21.08.1997 before the Chief Metropolitan Magistrate, which the High Court by the impugned order has permitted to go on.

10. Shri Shekhar Naphade, learned senior counsel appearing for the appellants, submitted that the High Court did not appreciate the scope of Section 276CC of the Act. Learned senior counsel pointed out that once it is established that on the date of the complaint i.e. on 21.08.1997 the assessment had not attained finality, the complaint became pre-mature as on the date of the complaint and no offence had taken place and all the ingredients of offence under Section 276 of the Act were not satisfied. Learned senior counsel pointed out that unless and until it is shown that failure to file the return was willful or deliberate, no prosecution under Section 276CC could be initiated. Learned senior counsel pointed out that in fact, the second accused in her individual return had disclosed that the firm was doing the business and that it had some income and hence, it cannot be said that A-2 had concealed the fact that the firm had any intention to evade tax liability. Learned senior counsel also submitted that whether the assessee had committed any offence or not will depend upon the final assessment of income and tax liability determined by the appropriate authority and not on the assessment made by the assessing officer. Placing reliance on the proviso to Section 276CC learned senior counsel submitted that, that is the only interpretation that could be given to Section 276CC. In support of his contention reliance was placed on the Judgment of this Court in Commissioner of Wealth Tax, Gujarat v. Vimlaben Vadilal Mehta (Smt.) (1983) 4 SCC 692, Commissioner of Wealth Tax, Gujarat, Ahmedabad v. Vadilal Lallubhai & Ors. (1983) 4 SCC 697 and State of H.P. and others v. Gujarat Ambuja Cement Ltd. and another (2005) 6 SCC 499. Referring to Section 278E of the Act, learned senior counsel submitted that till the assessment does not attain finality, Section 276CC is not complete and the presumption under Section 278E is not attracted. Learned senior counsel also submitted that the High Court has wrongly applied the principles laid down by this Court in Prakash Nath Khanna and another v. Commissioner of Income Tax and another (2004) 9 SCC 686, in any view, which calls for reconsideration. Learned senior counsel submitted that the said Judgment deals with the factum of proviso to Section 276CC of the Act which lays down that there is no offence if the tax amount does not exceed Rs.3,000/-.

11. Shri Sidharth Luthra, learned Additional Solicitor General of India, appearing for the Revenue, on the other hand, submitted that Section 139 of the Act placed a statutory mandate on every person to file an income tax return in the prescribed form and in the prescribed manner before the due date i.e. 31st August of the relevant assessment year. Learned ASG submitted that on breach of Section 139(1) of the Act, cause of action to prosecute the assessee arises subject to other ingredients of Section 276CC of the Act. Learned ASG pointed out that what is relevant in the proceedings, is not only the due date prescribed in Section 139(1) of the Act, but also time prescribed under Section 142 and 148 of the Act, by which further opportunities have been given to file the return in the prescribed time. In other words, Section 276CC, according to the learned ASG, applies to a situation where assessee has failed to file the return of income as required under Section 139 of the Act or in response to notices issued to the assessee under Section 142 or Section 148 of the Act. Learned ASG

also submitted that the scope of proviso to Section 276CC to protect the genuine assessees who either file their return belatedly but within the end of the assessment year or those who paid substantial amount of their tax dues by pre-paid taxes. Considerable reliance was placed on the Judgment of this Court in Prakash Nath Khanna and another (supra). Reliance was also placed on the Judgment of this Court in Maya Rani Punj (Smt.) v. Commissioner of Income Tax, Delhi (1986) 1 SCC 445.

12. Learned ASG also explained the scope of Section 278E by placing reliance on P.R. Metrani v. Commissioner of Income Tax, Bangalore (2007) 1 SCC 789, Kumar Exports v. Sharma Carpets (2009) 2 SCC 513, and submitted that pendency of the appellate proceedings is not a relevant factor in relation to prosecution under Section 276CC. Reference was also made to Ravinder Singh v. State of Haryana (1975) 3 SCC 742 and Standard Chartered Bank and others v. Directorate of Enforcement and others (2006) 4 SCC 278. Learned ASG submitted that the Judgment in Prakash Nath Khanna (supra) calls for no reconsideration, as the same has been uniformly applied by this Court as well as by the various High Courts. Learned ASG also pointed out that the appellants have been indulging in litigative exercises by which they could hold up the proceedings for almost two decades and that the trial court has rightly rejected the application for discharge, which was affirmed by the High Court and the same calls no interference by this Court.

13. We may formulate the questions that arise for our consideration, which are as under:

> (1) Whether an assessee has the liability/duty to file a return under Section 139(1) of the Act within the due date prescribed therein?
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> (2) What is the effect of best judgment assessment under Section 144 of the Act and will it nullify the liability of the assessee to file its return under Section 139(1) of the Act? (3) Whether non-filing of return under Section 139(1) of the Act, as well as non-compliance of the time prescribed under Sections 142 and 148 of the Act are grounds for invocation of the provisions of Section 276CC of the Act? (4) Whether the pendency of the appellate proceedings relating to assessment or non-attaining finality of the assessment proceedings is a bar in initiating prosecution proceedings under Section 276CC due to non-filing of returns? (5) What is the scope of Section 278E of the Act, and at what stage the presumption can be drawn by the Court?

14. We may, at the outset, point out that the appellants had earlier approached this Court and filed SLP(C) Nos.3655-3658 of 2005 which were disposed of by this Court directing the trial court to dispose of the petition for discharge within a period of two months by its order dated 03.03.2006. Learned Chief Metropolitan Magistrate rejected the petitions vide its order dated 14.06.2006. Though the High Court affirmed the said order vide its judgment dated 02.12.2006, these appeals were kept pending before this Court over six years for one reason or another.

15. We are, in these appeals, concerned with the question of non- filing of returns by the appellants for the assessment year 1991-92, 1992-93 and 1993-94. Each and every order passed by the revenue as well as by the Courts were taken up before the higher courts, either through appeals, revisions or

writ petitions. The details of the various proceedings in respect of these appeals are given in paragraph 30 of the written submissions filed by the revenue, which reveals the dilatory tactics adopted in these cases. Courts, we caution, be guarded against those persons who prefer to see it as a medium for stalling all legal processes. We do not propose to delve into those issues further since at this stage we are concerned with answering the questions which have been framed by us.

16. Section 139 of the Act prior to 1989-90 and after, placed a statutory mandate on every person to file an income tax return in the prescribed form and in the prescribed manner. The Direct Tax Laws (Amendment) Act, 1987 with effect from 01.04.1989 made various amendments to the Income Tax Act, by which the assessing officer has no power to extend the time for filing a return of income under Section 139(1) and to extend the time for filing under Section 139(3), a return of loss intended to be carried forward. The time prescribed for filing a belated return under Section 139(4) or a revised return under Section 139(5) was reduced to one year from the end of the relevant assessment year. The provision of Section 139(2) stood incorporated in Section 142(1)(i). The notice under Section 142(1)(i) to furnish a return of income cannot be issued in the course of the assessment year itself and need not give the person concerned a minimum period of 30 days for furnishing the return. When a return is furnished pursuant to a notice under Section 142(1)(i), the assessment may be made under Section 143 without recourse to Section 147. Further, with the deletion of Section 271(1)(a), a penalty for failure to furnish in due time a return of income under Section 139(1), is abolished. Levy of punitive interest under Section 234A made mandatory and the discretion of the assessing officer to reduce or waive the interest was taken away. Non-compliance with a notice under Section 142(1)(i) may attract prosecution under Section 276CC.

17. The Income Tax Act, therefore, had stipulated both the penalty under Section 271(1)(a) and prosecution under Section 276CC, the former for depriving taxes due to the exchequer and later for the offence/infraction committed. As already indicated by the Taxation Laws (Amendment) Act, 1989, penalty provision under Section 271(1)(a) had been deleted w.e.f. 01.04.1989 and a provision for levy of mandatory/compulsory interest under Section 234A of the Act was introduced. But, legislature has never waived or relaxed its prosecuting provisions under Section 276CC of the Act for the infraction or non-furnishing of return of income.

18. Section 139 of the Act, as it stood at the relevant time, reads as under:

> “139. (1) Every person, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax, shall, on or before the due date, furnish a return of his income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.
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> Explanation: In this sub-section, “due date” means-
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> (a) where the assessee is a company, the 30th day of November of the assessment year;

(b) where the assessee is a person, other than a company.-

(i) in a case where the accounts of the assessee are required under this Act or nay other law to be audited, or where the report of any accountant is required to be furnished under section 80HHC or Section 80HHD or in the case of a co-operative society, the 31st day of October of the assessment year:

(ii) in a case where the total income referred to in this sub- section includes any income from business or profession, not being a case falling under sub-clause (i), the 31st day of August of the assessment year :

(iii) in any other case, the 30th day of June of the assessment year.

xxx xxx xxx

xxx xxx xxx

(3) If any person who has sustained a loss in any previous year under the head "Profits and gains of business or profession" or under the head "Capital gains" and claims that the loss or any part thereof should be carried forward under sub-section (1) of section 72, or sub-section (2) of section 73, or sub-section (1) or sub-section (3) of section 74, or sub-section (3) of section 74A, he may furnish, within the time allowed under sub-section (1), a return of loss in the prescribed form and verified in the prescribed manner and containing such other particulars as may be prescribed, and all the provisions of this Act shall apply as if it were a return under sub-section (1).

(4) Any person who has not furnished a return within the time allowed to him under sub-section (1), or within the time allowed under a notice issued under sub-section (1) of section 142, may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier:

xxx xxx xxx

xxx xxx xxx"

19. A plain reading of the above provisions indicates that it is mandatory on the part of the assessee to file the return before the due date. Explanation (a) to the said section defines the term "due date", which is 30th November of the assessment year. The consequence of non-filing of return on time has also been stipulated in the Act.

Further a reference to Sections 142 and 148 is also necessary to properly understand the scope of Section 276CC. Relevant portion of Section 142, as it stood at the relevant time, is quoted below:

> "142. Inquiry before assessment.- (1) For the purpose of making an assessment under this Act, the Assessing Officer may serve on any person who has made a return under section 139 or in whose case the time allowed under sub- section (1) of that section for furnishing the return has expired] a notice requiring him, on a date to be therein specified,-
>
> (i) where such person has not made a return within the time allowed under sub-section (1) of section 139, to furnish a return of his income or the income of any other person in respect of which he is assessable under this Act, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed, or xxx xxx xxx xxx xxx xxx"

20. Section 148 refers to the issue of notice where income has escaped assessment. Relevant portion of the same is also extracted hereinbelow for ready reference:

> "148. (1) Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, not being less than thirty days, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139.
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> (2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so."

21. Sub-section (1) of Section 139, clause (i) sub-section (1) of Section 142 and Section 148 are mentioned in Section 276CC of the Act. Section 276CC is extracted as under:

> "276CC. Failure to furnish returns of income. If a person wilfully fails to furnish in due time the return of income which he is required to furnish under sub-section (1) of section 139 or by notice given under clause (i) of sub-section (1) of section 142 or section 148, he shall be punishable,-
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> (i) in a case where the amount of tax, which would have been evaded if the failure had not been discovered, 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 imprisonment for a term which shall not be less than three months but which may extend to three years and with fine:

Provided that a person shall not be proceeded against under this section for failure to furnish in due time the return of income under sub-section (1) of section 139-

(i) for any assessment year commencing prior to the 1st day of April, 1975 ; or

(ii) for any assessment year commencing on or after the 1st day of April, 1975 , if-

(a) the return is furnished by him before the expiry of the assessment year; or

(b) the tax payable by him on the total income determined on regular assessment, as reduced by the advance tax, if any, paid, and any tax deducted at source, does not exceed three thousand rupees."

22. The constitutional validity of Section 276CC, was upheld by the Karnataka High Court in Sonarome Chemicals Pvt. Ltd. and others v. Union of India and others (2000) 242 ITR 39 (Kar) holding that it does not violate Article 14 of 21 of the Constitution. Section punishes the person who "willfully fails to furnish the return of income in time". The explanation willful default, as observed by Wilber Force J. in Wellington v. Reynold (1962) 40 TC 209 is "some deliberate or intentional failure to do what the tax payer ought to have done, knowing that to omit to do so was wrong". The assessee is bound to file the return under Section 139(1) of the Act on or before the due date. The outer limit is fixed for filing of return as 31st August of the assessment year, over and above, in the present case, not only return was not filed within the due date prescribed under Section 139(1) of the Act, but also the time prescribed under Section 142 and 148 of the Act and the further opportunity given to file the return in the prescribed time was also not availed of.

23. Section 276CC applies to situations where an assessee has failed to file a return of income as required under Section 139 of the Act or in response to notices issued to the assessee under Section 142 or Section 148 of the Act. The proviso to Section 276CC gives some relief to genuine assesses. The proviso to Section 276CC gives further time till the end of the assessment year to furnish return to avoid prosecution. In other words, even though the due date would be 31st August of the assessment year as per Section 139(1) of the Act, an assessee gets further seven months' time to complete and file the return and such a return though belated, may not attract prosecution of the assessee. Similarly, the proviso in clause ii(b) to Section 276CC also provides that if the tax payable determined by regular assessment has reduced by advance tax paid and tax deducted at source does not exceed Rs.3,000/-, such an assessee shall not be prosecuted for not furnishing the return under Section 139(1) of the Act. Resultantly, the proviso under Section 276CC takes care of genuine assesses who either file the returns belatedly but within the end of the assessment year or those who have paid substantial amounts of their tax dues by pre-paid taxes, from the rigor of the prosecution under Section 276CC of the Act.

24. Section 276CC, it may be noted, takes in sub-section (1) of Section 139, Section 142(1)(i) and Section 148. But, the proviso to Section 276CC takes in only sub-section (1) of Section 139 of the Act and the provisions of Section 142(1)(i) or 148 are conspicuously absent. Consequently, the benefit of proviso is available only to voluntary filing of return as required under Section 139(1) of the Act. In other words, the proviso would not apply after detection of the failure to file the return and after a notice under Section 142(1)(i) or 148 of the Act is issued calling for filing of the return of income. Proviso, therefore, envisages the filing of even belated return before the detection or discovery of the failure and issuance of notices under Section 142 or 148 of the Act.

25. We may in this respect also refer to sub-section (4) to Section 139 wherein the legislature has used an expression "whichever is earlier". Both Section 139(1) and Sub-Section (1) of Section 142 are referred to in sub-section (4) to Section 139, which specify time limit. Therefore, the expression "whichever is earlier" has to be read with the time if allowed under sub-section (1) to Section 139 or within the time allowed under notice issued under sub-section (1) of Section 142, whichever is earlier. So far as the present case is concerned, it is already noticed that the assessee had not filed the return either within the time allowed under sub-section (1) to Section 139 or within the time allowed under notices issued under sub-section (1) to Section 142.

26. We have indicated that on failure to file the returns by the appellants, income tax department made a best judgment assessment under Section 144 of the Act and later show cause notices were issued for initiating prosecution under Section 276CC of the Act. Proviso to Section 276CC nowhere states that the offence under Section 276CC has not been committed by the categories of assesses who fall within the scope of that proviso, but it is stated that such a person shall not be proceeded against. In other words, it only provides that under specific circumstances subject to the proviso, prosecution may not be initiated. An assessee who comes within clause 2(b) to the proviso, no doubt has also committed the offence under Section 276CC, but is exempted from prosecution since the tax falls below Rs.3,000/-. Such an assessee may file belated return before the detection and avail the benefit of the proviso. Proviso cannot control the main section, it only confers some benefit to certain categories of assesses. In short, the offence under Section 276CC is attracted on failure to comply with the provisions of Section 139(1) or failure to respond to the notice issued under Section 142 or Section 148 of the Act within the time limit specified therein.

27. We may indicate that the above reasoning has the support of the Judgment of this Court in Prakash Nath Khanna (supra). When we apply the above principles to the facts of the case in hand, the contention of the learned senior counsel for the appellant that there has not been any willful failure to file their return cannot be accepted and on facts, offence under Section 276CC of the Act has been made out in all these appeals and the rejection of the application for the discharge calls for no interference by this Court.

28. We also find no basis in the contention of the learned senior counsel for the appellant that pendency of the appellate proceedings is a relevant factor for not initiating prosecution proceedings under Section 276CC of the Act. Section 276CC contemplates that an offence is committed on the non-filing of the return and it is totally unrelated to the pendency of assessment proceedings except for second part of the offence for determination of the sentence of the offence, the department may

resort to best judgment assessment or otherwise to past years to determine the extent of the breach. The language of Section 276CC, in our view, is clear so also the legislative intention. It is trite law that as already held by this Court in B. Permanand v. Mohan Koikal (2011) 4 SCC 266 that "the language employed in a statute is the determinative factor of the legislative intent. It is well settled principle of law that a court cannot read anything into a statutory provision which is plain and unambiguous". If it was the intention of the legislature to hold up the prosecution proceedings till the assessment proceedings are completed by way of appeal or otherwise the same would have been provided in Section 276CC itself. Therefore, the contention of the learned senior counsel for the appellant that no prosecution could be initiated till the culmination of assessment proceedings, especially in a case where the appellant had not filed the return as per Section 139(1) of the Act or following the notices issued under Section 142 or Section 148 does not arise.

29. We are also of the view that the declaration or statement made in the individual returns by partners that the accounts of the firm are not finalized, hence no return has been filed by the firm, will not absolve the firm in filing the 'statutory return under section 139(1) of the Act. The firm is independently required to file the return and merely because there has been a best judgment assessment under Section 144 would not nullify the liability of the firm to file the return as per Section 139(1) of the Act. Appellants' contention that since they had in their individual returns indicated that the firm's accounts had not been finalized, hence no returns were filed, would mean that failure to file return was not willful, cannot be accepted.

30. Section 278E deals with the presumption as to culpable mental state, which was inserted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986. The question is on whom the burden lies, either on the prosecution or the assessee, under Section 278E to prove whether the assessee has or has not committed willful default in filing the returns. Court in a prosecution of offence, like Section 276CC has to presume the existence of mens rea and it is for the accused to prove the contrary and that too beyond reasonable doubt. Resultantly, the appellants have to prove the circumstances which prevented them from filing the returns as per Section 139(1) or in response to notices under Sections 142 and 148 of the Act.

31. We, therefore, find no reason to interfere with the order passed by the High Court. The appeals, therefore, lack merits and the same are dismissed and the Criminal Court is directed to complete the trial within four months from the date of receipt of this Judgment.

.....J.

(K.S. Radhakrishnan) .....J.

(A.K. Sikri) New Delhi, January 30, 2014.