Before Hon'ble (Dr.) Mrs. Sarojnei Saksena, J.

DEPUTY COMMISSIONER OF INCOME TAX, SPECIAL RANGE, LUDHIANA,—*Petitioner.*

versus

M/S MODERN MOTOR WORKS, LUDHIANA & OTHERS, —*Respondents.*

Crl. M. No. 17710-*M of* 1994

23rd February, 1996

Code of Criminal Procedure, 1973—*S.* 482 & *S.* 387—*Against impugned order revision filed under section* 397(3) *of the Code, which was dismissed—Then approached High Court under S.* 482 *for quashing of impugned order on the ground that both the Courts below did not consider law as laid down by the High Court—Maintainability of petition.*

Held, that in *Raj Kapoor and others* v. *State (Delhi Administration) and others,* A.I.R. 1980 S.C. 258 the Apex Court has held "Inherent power of the High Court under Section 482 of the Code does not stand repelled when revisional power under section 397 of the Code overlaps. Nothing in the Code, not even section 397 can affect the amplitude of the inherent power preserved in so many terms by the language of section 482. Even so, when a specific provision is made easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code. There is no total ban on the exercise of inherent power where abuse of the process of the Court or other extraordinary situation excites the Court's jurisdiction. The limitation is self-restraint, nothing more.

In this case also it is not a second revision in the garb of a petition under section 482 of the Code, the petitioner's contention is that by discharging the accused persons and affirming the order of the Chief Judicial Magistrate, the revisional Court has failed to follow the Single Bench and Division Bench authorities of this Court on the points of ingredients of section 276-B of the Act, these orders amount to an abuse of the process of law. The above preliminary objection about maintainability of the petition is liable to be and is hereby repelled.

(Paras 8 & 9)

Code of Criminal Procedure, 1973—*S.* 482—*Income Tax Act,* 1961—*Ss.* 194-*A,* 200 & 276-B—*Failure of accused firm to deposit entire tax deducted at source with authorities—Proving* mens rea *of*

accused persons for committing said offence is not a requisite ingredient—Accused liable to be prosecuted for default.

Held, that both the Courts below have fallen into an error. *Mens rea* is not a requisite ingredient of offence under Sections 194/A/200/276-B of the Act. If the accused fails to make deduction of tax at source, he is liable to be punished for the said offence. It is so held in *Rishikesh Balkishandas and others* v. *I. D. Manchanda* 167 I.T.R. 49. In *Jagmohan Singh* v. *Income Tax Officer, Award, Hoshiarpur* 196 *ITR* 473, it is further elucidated that offence under Section 276-B is complete when tax deducted at source is not deposited in time. Even late deposit will not absolve the accused. (Para 15)

R. P. Sawhney, Senior Advocate, Miss Aaradhana Sawhney, Advocate with him, *for the petitioner.*

D. R. Mahajan, Advocate, *for Respondents Nos.* 1, 3 to 6.

JUDGMENT

Dr. Sarojnei Saxsena, J.

(1) All these petitions have similar facts and legal issues raised therein are also common and, therefore, these petitions are being decided by a common order. The petitioner has filed these petitions under section 482 of the Code of Criminal Procedure (in short, the Code) against the orders of the Additional Sessions Judge, Ludhiana, dated November 11, 1992.

(2) Reference to a few facts from Crl. Misc. No. 17710 M of 1994 would be useful to appreciate the controversy.

(3) Income-tax Officer, District I(4) Ludhiana filed a complaint under sections 201(1)/276-B of the Income-tax Act, 1961 (in short, the Act) against Messrs Modern Motor Works, G.T. Road, Ludhiana, and its partners/respondents, on the allegations that the accused firm credited interest of Rs. 8,877 to Messrs J. R. Bansal and Company Private Limited. Respondent No. 1 was required to deduct interest at the rate of 21 per cent amounting to Rs. 1,864 as required under section 194 A of the Act, but respondent No. 1, instead of depositing the said amount deducted and paid tax at the rate of 10 per cent amounting to Rs. 880. Thus, the balance tax of Rs. 976 was neither deducted by the accused-firm by January 8, 1979, nor

paid till February 7, 1979, the stipulated time as provided by law and rules, and the accused firm deposited Rs. 975 in the Central Government account on November 18, 1983, i.e. after 57 months and that, too, after receiving show-cause notice from the complainant-petitioner. Thus, the accused firm has contravened the provisions of sections 194 A/200 of the Act read with rule 30 of the Income-tax Rules, 1962, and thereby they are liable to be punished under section 276 B of the Act.

(4) On the filing of the complaint, the respondents were summoned. The complainant examined two witnesses to prove the charge on *prima facie* basis. Thereafter after hearing both the parties, the learned Chief Judicial Magistrate, Ludhiana, discharged the accused persons,—*vide* order dated October 24, 1990.

(5) The complainant-petitioner filed Criminal Revision No. 7/33 of 1991-92 in the Court of the Additional Sessions Judge, Ludhiana. The revisional Court also dismissed the revision,—*vide* its order dated November 11, 1992. Both the Courts below held that the complainant has not proved any *mens rea* on the part of the accused persons in late deposit of the required amount of interest, which was required to be deducted at source. They also held that from the evidence of the complainant itself, *bona fide* mistake on the part of the accused firm stands abundantly proved. It was also held that in the Act section 278 E is incorporated on April 1, 1988, which provides that culpable *mens rea* on the part of the accused is to be presumed in any prosecution for any offence under the Act. The revisional Court held that the incorporation of this section goes to show that earlier to April 1, 1989 there would not be any presumption of any culpable *mens rea* against the accused and it was for the complainant to allege and prove it [Section 278 E was inserted in the Act with effect from September 10, 1986 by Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986]. The revisional Court also held that the complainant could not prove that there was any such culpable *mens rea* on the part of the accused-respondents by not deducting the tax at source at the rate of 21 per cent which they did at the rate of 10 per cent only and thus affirming the order passed by the Chief Judicial Magistrate, Ludhiana, the revision was dismissed.

(6) The respondents have raised a preliminary objection that the petitioners have filed this second revision under the garb of quashment proceedings under section 482 of the Code. Relying on

Dharampal and others v. *Smt. Ramshri and others* (1), *Ganesh Narayan Hegde* v. *S. Bangarappa and others* (2), *Amrik Singh* v. *State of Punjab* (3) and *Gurmel Singh* v. *Gurmail Kaur* (4), the respondents' learned counsel contended that in these authorities the Apex Court as well as this Court have held that under section 397(3) Cr.P.C. second revision before the High Court in exercise of its inherent powers is barred.

(7) The petitioner's learned counsel contends that the petitioner has not filed a second revision against the impugned order under section 397(3) Cr.P.C. but it is a petition under section 482 Cr.P.C. for quashing the impugned orders as not only it amounts to abuse of the process of the Court but even Single Bench and Division Bench judgments of this Court were not properly considered and followed by the Courts below.

(8) In *Raj Kapoor and others* v. *State (Delhi Administration) and others* (5), the Apex Court has held "Inherent power of the High Court under section 482 of the Code does not stand repelled when revisional power under section 397 of the Code overlaps. Nothing in the Code, not even section 397 can affect the amplitude of the inherent power preserved in so many terms by the language of section 482. Even so, when a specific provision is made easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code. There is no total ban on the exercise of inherent power where abuse of the process of the Court or other extraordinary situation excites the Court's jurisdiction. The limitation is self-restraint, nothing more."

(9) In this case also it is not a second revision in the garb of a petition under section 482 of the Code. The petitioner's contention

(1) 1993 (1) R.C.R. 696.
(2) 1995 (2) R.C.R. 373.
(3) 1995 (3) R.C.R. 118.
(4) 1995 (3) R.C.R. 594.
(5) A.I.R. 1980 S.C. 258.

is that by discharging the accused persons and affirming the order of the Chief Judicial Magistrate, the revisional Court has failed to follow the Single Bench and Division Bench authorities of this Court on the point of ingredients of section 276 B of the Act, these orders amount to an abuse of the process of law. In my considered view, the above preliminary objection about maintainability of the petition is liable to be and is hereby repelled. I find that the petition is maintainable.

(10) The petitioner's learned counsel contended that the revisional Court has wrongly referred to section 278-E and has drawn wrong inference therefrom. No doubt, section 278-E is inserted in the Act on September 10, 1986, but this offence was committed in 1983 and before that. Section 278-E reads as under :—

> "(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state, but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution."

He further submits that to prove an offence under section 276-B for violating the provisions of section 194-A read with Rule 30 of the Income-tax Rules, 1962, the complainant-petitioner was not required to prove *mens rea*, because *mens rea* is not an ingredient of this offence. To buttress this contention he has relied on *Rishikesh Balkishandas and others* v. *I. D. Manchanda* (6). The complainant's learned counsel further argued that a Division Bench of this Court in *Jagmohan Singh* v. *Income Tax Officer, Award, Hoshiarpur* (7), has held that offence under section 276-B is complete when tax deducted at source is not deposited in time. Late deposit will not absolve accused. Revenue authorities only charging tax and not imposing penalty is not relevant. Prosecution under sections 194-A/200 read with section 276-B of the Act cannot be quashed. The offence is complete on due date on which the amount should have been deposited but not deposited and late deposit will not absolve the accused.

(11) The petitioner's learned counsel valiantly argued that in *Income-tax Officer* v. *Anil Kumar* (8), a Division Bench of this

(6) 167 I.T.R. 49.
(7) 196 I.T.R. 473.
(8) 196 I.T.R. 638.

Court has held that a firm is a legal entity for purposes of tax laws and is liable to be prosecuted under section 276-B for failure to deduct tax at source from interest paid or credited and for not depositing it as required by the section.

(12) The petitioner's learned counsel further pointed out that the Courts below have wrongly relied on *P. V. Devassy* v. *Commissioner of Income-tax* (9), wherein Kerala High Court has held that failure to file return within the time allowed will not make the assessee liable for penalty. The department must prove that the assessee has no reasonable cause for not filing or he acted deliberately in defiance of law or was guilty of conscious disregard of its obligations. He also pointed out that the Courts below have also wrongly relied on *Sequoia Construction Co. P. Ltd. and others* v. *P. P. Suri* (10). He contends that the facts of that case are totally distinguishable.

(13) Complainant--petitioner's counsel submits that the prosecution cannot be asked to prove a negative fact. Admittedly, the accused persons have not deducted tax at the rate of 21 per cent on the amount of interest credited by them to Messrs J.R. Bansal and Company Private Limited, though they deducted interest at the rate of 10 per cent only, but whether for committing this default they had any 'reasonable cause or excuse is a fact which is within the personal knowledge of the accused-respondents. This can be a defence for them in the said prosecution, but initially the complainant cannot be burdened with this duty to prove that the accused persons failed to deposit interest at the rate of 21 per cent without any reasonable cause or excuse. In this connection he further submits that the complainant examined R. D. Mann, Income-tax Officer, to prove the allegations made in the complainant and this witness has stated that the accused-respondents failed to deduct tax at the rate of 21 per cent on the amount of interest credited to M/s J. R. Bansal and Company Private Ltd. without any reasonable cause or excuse. The revisional Court has lightly brushed aside the statement of this witness saying that this statement is not sufficient to fill up the lacuna of the complaint itself as the words 'reasonable

(9) 84 I.T.R. 502.
(10) 158 I.T.R. 496.

cause or excuse' do not find mention in the body of the complaint itself. He further submits that this is not a legal requirement that in the complaint the complainant should write that the accused did not deduct interest at the rate of 21 per cent at the relevant time and did not deposit it in the Central Government account on due date without any reasonable cause or excuse.

(14) The respondents learned counsel, supporting the impugned orders, contended that the complainant was bound to prove the *mens rea* of the accused persons for committing the said offence as well as this fact that the accused failed to deduct interest at the rate of 21 per cent from the amount of interest credited by them in the account of Messrs J. R. Bansal and Company Private Limited and also failed to deposit in the Central Government account on the due date without any reasonable cause or excuse. According to him, in the complaint such allegations are not made. Hence the revisional Court has rightly not accepted the statement of Mr. R. D. Mann, who tried to prove the alleged ingredient of the offence.

(15) In my considered view, both the Courts below have fallen into an error. *Mens rea* is not a requisite ingredient of offence under sections 194-A/200/276-B of the Act. If the accused fails to make deduction of tax at source, he is liable to be punished for the said offence. It is so held in *Rishikesh Balkishandas's case* (supra). In *Jagmohan Singh's case* (supra), it is further elucidated that offence under section 276-B is complete when tax deducted at source is not deposited in time. Even late deposit will not abolve the accused. This fact was held not relevant that the revenue authorities only charged interest on the amount not deposited and did not impose any penalty. A Single Bench of this Court has held in this case that the offence is complete on the due date on which the amount should have been deposited but not deposited and late deposit will not absolve the accused. Hence it was held that prosecution under sections 194-A/200/276-B of the Act read with Rule 30 of the Income-tax Rules, 1962, cannot be quashed. In *Anil Kumar's* case (supra) a Division Bench of this Court has again considered the point as to when offence under section 276-B of the Act is committed. It is held that if the firm-accused fails to pay tax deducted at source, its prosecution and punishment under section 276-B is valid. They have further clarified that firm is a legal entity for purposes of tax laws and is liable to be prosecuted under section 276-B for failure to deduct tax at source from interest paid or credited and for not depositing it as required by the section.

(16) In *P. V. Devassy's* case (supra) Kerala High Court has considered altogether different facts. It is held that mere failure to file return within the time allowed will not make the assessee liable for penalty. The department must prove that the assessee had no reasonable cause for not filing or he has acted deliberately in defiance of law or was guilty of conscious disregard of the obligations. In that case there was a finding of the Tribunal that the act of the assessee in not filing the return in time was *bona fide* and he had reasonable cause. Hence prosecution on that very count was held just a futility. In this case there is no material on record to show the *bona fides* of the accused-respondents. They failed to deduct interest at the rate of 21 per cent from the amount of interest credited by them in the name of Messrs J. R. Bansal and Company Private Limited and further failed to deposit it in the Central Government account on due date.

(17) In *P. P. Suri's* case (supra) tax was not deducted by the assessee-accused within time. Penalty proceedings were initiated against the assessee. Penalty was imposed on the assessee under section 201(1) read with section 221 of the Act. It was cancelled on merits after acceptance of the case of the assessee that there was good and sufficient reason for not depositing that tax within time. Later on, on the basis of the same penalty complaint was lodged against the assessee under section 276-B of the Act. On these facts, a Single Bench of Delhi High Court held that in the penalty proceedings the assessee's explaination was accepted that there was good and sufficient reason for not depositing that tax within time and hence it was held that milder proof of 'reasonable cause' contemplated by section 276-B of the Act for an offence for the same penalty should be taken to have been established and it would be a sheer exercise in futility and harassment of the accused-assessee to allow criminal prosecution to proceed against him.

(18) In this case the accused-respondents have not even placed on record any material to show that after receiving show cause notice, when they deposited balance of Rs. 976, whether they submitted any explanation showing their *bona fides* or showing that they had any reasonable cause or excuse for not depositing the tax on the due date. It seems that the Courts below are misled by this fact that these accused-respondents/assessees deposited income-tax in excess which was later on refunded to them and further the concern Messrs. J. R. Bansal and Company Private Limited also

deposited income-tax in excess, which was later on returned to them. Payment of income-tax, its assessment, its excess payment or its refund had nothing to do with the liability of the accused-respondents for deducting 21 per cent tax on the amount of interest credited by them to Messrs J. R. Bansal and Company Private Limited. The provisions of section 194-A of the Act are mandatory and the accused-respondents were duty bound to comply with these provisions.

(19) Considering all the above facts and the authorities cited by both the parties, in my considered view the Courts below have fallen into an error in discharging the accused-respondents/affirming the order of discharge of the accused persons. The accused-respondents are required to prove whether there was any reasonable cause for them not to deposit the amount of balance tax of Rs. 976 on the due date. *Mens rea* is not an ingredient of this offence.

(20) Accordingly, the impugned orders are quashed. The learned Chief Judicial Magistrate, Ludhiana, is hereby directed to frame charge against the accused-respondents. The petitions under consideration are thus allowed.

J.S.T.

Before Hon'ble N. K. Sodhi, J.

DR. VEER SINGH,—*Petitioner.*

versus

PUNJAB UNIVERSITY, CHANDIGARH & OTHERS,—*Respondents.*

C.W.P. No. 2991 of 1994.

1st July, 1996.

Constitution of India, 1950—Art. 226—Punjab University Calendar Volume III, 1990—Chapter LIV—Rls. 2.1 & 3—Regulations 4, 5 & 6 of Chapter V(A)—Punjabi University Act, 1961—Clause 6 of Part-B of Chapter II—Clause 15 of Chapter I—University Grants Commission's Merit Promotion Scheme—University regulations making posts of Readers & Professors direct recruitment posts—Merit promotee professor does not form part of the cadre of professors, such merit promotion being personal to him—Merit promotee professors cannot claim seniority over directly recruited professors—Nature of appointment of the two is totally different—Merit promotee professors have no right to appointment as Chairman/Head of the Department by rotation since they do not hold a