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## Initiation of prosecution proceedings under section 276CC of the Act for failure to file a return of income upheld by the Supreme Court

### In brief

The Supreme Court (SC), in a recent ruling in the case of *Sasi Enterprises*<sup>1</sup> has held that prosecution proceedings under section 276CC of the Income-tax Act, 1961 (the Act) for failure to file an return of income (ROI) could be initiated even while appellate proceedings were pending. In deciding this case, the SC has placed reliance on its earlier judgement in the case of *Prakash Nath Khanna*<sup>2</sup>.

<sup>1</sup> Sasi Enterprises v. ACIT [TS-43-SC-2014]

<sup>2</sup> Prakash Nath Khanna v. CIT [2004] 266 ITR 1 (SC)

### Facts

- The taxpayer Sasi Enterprises, a registered partnership firm, did not file its ROI for Assessment Year (AY) 1991-92 and AY 1992-93 by the relevant due dates under section 139(1) of the Act, nor did it file a belated ROI under section 139(4) of the Act within the prescribed time limit.
- A survey was conducted on the taxpayer, and consequently a notice under section 148 of the Act was served on the taxpayer directing it to file its ROI. The taxpayer still did not file its ROI in response to this notice.

- Therefore, the Tax Officer (TO) concluded a best judgement assessment under section 144 of the Act, and determined the tax demand for both the above AYs.
- The partners in their individual ROIs for AY 1991-92 and 1992-93 had disclosed the fact that the accounts of the taxpayer were not finalised and its ROIs not filed.
- Similarly, the two partners of the taxpayer-firm did not file their individual ROIs for AY 1993-94 under sections 139(1) and (4) of the Act or even in response to a notice under section 142(1)(i) of the Act, and, accordingly, the TO concluded a best judgement assessment under section 144 of the Act, and determined the tax demand for this AY.
- The taxpayer and its partners litigated the best judgement assessments and the matters were finally settled at the Income-tax Appellate Tribunal (Tribunal) in the years 2004 to 2008.
- In the meantime, prosecution proceedings under section 276CC of the Act were initiated against the taxpayer and its partners in the year 1997, the continuance of which was upheld by the High Court.
- Consequently, the taxpayer and its partners took up these matters before the SC.

### Issue

- Whether pendency of appellate proceedings relating to an assessment was a bar for initiation of prosecution proceedings under section 276CC of the Act?
- Whether disclosure by the partners in their individual ROIs of the taxpayer carrying on business and having income, but whose ROIs were not filed pending finalisation of the accounts, reflected absence of 'willful intent' in not furnishing ROI on the taxpayer's part?

### Taxpayer's contentions

- The taxpayer primarily challenged the initiation of prosecution proceedings under section 276CC of the Act on the ground that on the date of the complaint (in 1997), the assessment had not attained finality, and hence no offence had taken place. Accordingly, the complaint was pre-mature and without jurisdiction.
- The taxpayer also contended that the partners in their individual ROIs disclosed that the taxpayer was carrying on business and had income but their ROI had not been filed pending finalisation of the accounts and this did not constitute 'willful failure' to furnish an ROI on the taxpayer's part.

### Revenue's contentions

- Rebutting the taxpayer's contentions, the Revenue argued that section 139(1) of the Act placed a statutory mandate on every person to file an ROI by the due date. Similarly, an ROI under sections 142(1)(i) and 148 of the Act was required to be filed by the date specified in the notice issued under the above sections.
- Prosecution proceedings under section 276CC of Act could be initiated where an taxpayer had failed to file an ROI by the due date as required under sections 139(1), 142(1)(i) or 148 of the Act.

### SC's ruling

- On the taxpayer's primary contention that initiation of prosecution proceedings under section 276CC of the Act were *ex facie* without jurisdiction, the SC held that prosecution proceedings under section 276CC of Act may be initiated where an taxpayer had failed to file an ROI by the due date as required under sections 139(1), 142(1)(i) or 148 of the Act.

- The language of section 276CC of the Act was clear once a taxpayer has committed a default in filing an ROI by the due date, prosecution proceedings under section 276CC of the Act could be initiated, and pendency of appellate proceedings was no bar for initiation of the prosecution proceedings.
- Further, disclosure by the partners in their individual ROIs of the fact that the taxpayer was carrying on business and had income but had not filed its ROI pending finalisation of accounts did not obliterate the default in filing ROI so as to create a bar for initiation of prosecution proceedings under section 276CC of the Act.

### **PwC observations**

This recent SC ruling reiterates the law of the land on initiation of prosecution proceedings under section 276CC of the Act. With the Revenue tightening its procedures to identify non-filers of ROIs, especially foreign companies having income from Indian sources, the risk of the Revenue initiating prosecution proceedings will need to be borne in mind in respect of past defaults. Going forward, taxpayers may be able to mitigate the risk by filing an ROI by its due date, or at least within the same AY, which gives statutory protection from initiation of prosecution proceedings.

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