

# Continuation of prosecution proceedings u/s 276CC not precluded merely because taxpayer claims no tax is payable

October 18, 2018

## In brief

In a recent decision,<sup>1</sup> the Delhi High Court (HC) held that the prosecution proceeding stands committed upon non-filing of income tax return within the prescribed due date under section 139(1) of the Income-tax Act, 1961 (Act). By upholding the Trial Magistrate's order of framing prosecution charges under section 276CC of the Act, the HC rejected taxpayer's reference of the proviso to section 276CC of the Act,<sup>2</sup> and the contention that there was no tax payable but rather the taxpayer was entitled to a refund.

## In detail

### Facts

- The taxpayer was an individual who failed to file his income-tax return for the Assessment Year (AY) 2003-04 to 2005-06 within the time stipulated under section 139(1) of the Act. In addition, he failed to abide to notices issued under section 142(1) of the Act by not filing returns in response to these notices.
- The tax officer initiated the prosecution proceedings against the taxpayer as

punishable under section 276CC of the Act and referred the case to the concerned Trial Court.

- While passing the order, the Trial Magistrate rejected the objections raised by the taxpayer and ordered the charge of the frame separately for each of the three years against the taxpayer.
- The taxpayer further challenged the orders of the Trial Magistrate before the Revisional Court. Orders passed by the Trial Court

were upheld by the Revisional Court, except for AY 2003-04, which was closed in the favour of the taxpayer.

### Issue before the High Court

The aggrieved parties approached the Delhi HC to invoke the inherent powers under section 482 of the Code of Criminal Procedure, 1973 and pass such order as may be necessary to secure justice in response to the complaint raised by the taxpayer for AY 2004-05 and 2005-06 and the complaint raised by the

<sup>1</sup> CRL.M.C. 3385/2016 & Crl.M.A. 14338/2016, 1336/2017, 11516/2017 dated 14 September, 2018

<sup>2</sup> Proviso to section 276CC:

“...**Provided** that a person shall not be proceeded against under this section for failure to furnish in due time the return of fringe benefits under sub-section (1) of section 115WD or 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 such person, not being a company,] 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.

tax officer for AY 2003-04.

### ***Tax payer's Contention***

- In relation to AY 2004-05 and AY 2005-06, the taxpayer argued that no tax was due and rather a case was made for excess tax paid to be refunded, and accordingly, based on the proviso to section 276CC of the Act, the taxpayer was outside the ambit of prosecution proceedings.
- In context of AY 2003-04, it was contended that the notice under section 142(1) of the Act had been followed by a fresh notice without indicating any date by which compliance was to be made, and accordingly, the taxpayer could not have been found to be in breach of the statutory obligation.

### ***HC decision***

- While passing the decision, the Delhi HC relied on the ruling passed by the Supreme Court in the case of Sasi Enterprises<sup>3</sup>, where it was held that prosecution proceedings under section 276CC of the Act stands committed upon failure to file Income-tax return and the proviso to section 276CC of the Act, does not state that an offence has not been committed by the categories of taxpayers who fall within the proviso. The proviso cannot

control the main section but only provides some benefit to certain categories of taxpayers.

- It was construed that assessment proceedings are not related to prosecution proceedings, as it may eventually bear a benefit of proviso to section 276CC of the Act, but not inhibit the continuation of prosecution proceedings.
- The Delhi HC also noted that the taxpayer had disobeyed section 139(1) of the Act, by failing to file the return of income and had not complied with the notice under section 142(1) of the Act. It was highlighted that the subsequent notice cannot *prima facie* be read to supersede the previous notice, particularly to provide the taxpayer an indefinite period for compliance, as that can never be the intention of the lawmaker. It was re-iterated that the offence of not abiding the notice issued under section 142(1) of the Act, is altogether a distinct offence from 139(1) of the Act and need to be considered appropriately for prosecution proceedings.
- Therefore, the Delhi HC upheld the orders passed by the Revisional Court for AY 2004-05 and 2005-06.

However, the order of the Revisional Court for AY 2003-04 was set aside, and consequently, the prosecution proceedings stand revived for all three years.

### ***The takeaways***

Considering the Government's increased focus on compliances, it is important for taxpayers to file their tax return within the prescribed due dates. Where the tax authorities detected and initiated prosecution proceedings, the claim of beneficial provision that the taxpayer cannot be prosecuted when the tax due is not more than INR 3,000 will not come to the rescue of the taxpayer. The default that is subject to prosecution under section 276CC of the Act, stands committed the moment the taxpayer misses the tax filing deadline, unless a belated return has been filed before detection by the tax authorities. Further, the taxpayer should ensure timely filing of returns in response to a notice issued under sections 142(1) and 148 of the Act, as failure to abide the same can also lead to prosecution proceedings.

### ***Let's talk***

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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<sup>3</sup> Sasi Enterprises v ACIT [2014] 361 ITR 163 (SC)

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