* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Pronounced on: 23rd July, 2025***

\+ **CRL. M.C. 219/2018**

RAJ KUMAR KEDIA
S/o Late Shri S.N. Kedia
P-12, 2nd Floor, Hauz Khas Enclave,
New Delhi.

.....Petitioner

Through: Mr. Rahul Singh and Mr. Yashvardhan Bisht, Advocates.

versus

INCOME TAX OFFICE
Through Sh. Neeraj Kumar
DDIT (INV), Unit 3(3),
Income Tax Department,
Jhandewalan, New Delhi.

.....Respondent

Through: Mr. Sanjay Kumar, SSC with Ms. Monica Benjamin, JSC, Ms. Easha Kadian, JSC with Ms. Nancy Jain, Advocates.

\+ **CRL.M.C. 222/2018**

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CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The above two Petitions under Section 482 Cr.P.C. read with Article 227 of the Constitution of India have been filed for quashing of *Criminal Complaint No.516654/2016* and *Complaint No. 516655/2016* under Section 276-C(1) and 277-A Income Tax Act, 1961 for the Assessment Year 2015-16 and Order dated 14.09.2017 passed in Criminal Revision Petition No.407/2017 of learned ASJ upholding the *Order of framing of Charge* dated 28.06.2017 passed by learned ACMM.

2. ***Briefly stated***, a *search and seizure action* under Section 132 Income Tax Act, 1961, on the basis of Warrants of Authorization issued by Director of Income Tax (INV)-1, Delhi, was conducted on 13.06.2014 at the premises of Petitioner/Raj Kumar Kedia at P-12, Hauz Khas Enclave, Second Floor, New Delhi and some incriminating documents were seized. The search action commenced on 13.06.2014 and concluded on 17.06.2014. Panchnama was prepared on the spot in respect of search and seizure action carried out in the aforesaid premises.

3. The statement of the Petitioner was recorded on Oath under Section 132(4) of the I.T. Act on 13.06.2014 and 17.06.2014. The Petitioner in his statement, admitted that in addition to his regular business activity of *Share Broking*, he was involved in the activity of providing *accommodation entries* to various beneficiaries and also explained in detail the modus operandi followed by him in providing such entries.

4. As per the Petitioner, *Accommodation Entry* is a financial transaction between two parties, whereby one party enters the transaction in his books for accommodating the other party in lieu of cash of equal amount and commission charged over and above at a certain fixed percentage of giving such *Accommodation Entry*, which may be a long term or a short term Accommodation entry.

5. The beneficiary, on the instructions of entry Operator, buys the share of a listed paper Company at a very low price and then the price of the shares is jacked up to a desired level through dummy persons. Then the beneficiary is asked to provide cash which can be routed through these shares in the hands of dummy paper entities. The beneficiary then is asked to sell the shares at a specific price and a specific time. It can be an OT entry, i.e. one time entry in the form of share capital, share premium and selling of Private and Listed Companies.

6. The subsequent *search action* under Section 132 and *Survey* under Section 133-A IT Act was carried out in the case of ten other beneficiaries. During *Search Survey*, those beneficiaries admitted that they had taken *Accommodation Entries* of various amounts mentioned in their respective Accounts in different names, from the Petitioner.

7. It was claimed in the Complaint that the accused had generated huge unaccounted income by way of commission in unaccounted cash from various beneficiaries for providing accommodation entries to them. It has transpired that he had dealt with cash of over Rs.700 crores, over Rs.104 crores during Financial Year 2014-15 relevant to Assessment Year 2015-16 and arranged *Accommodation entries* of bogus long term capital gain thereon.

8. As per the statement of the Accused, the conservative estimate of his undisclosed commission income is @ 2%; after considering all expenses out of the commission, he had earned an income of Rs.14 crores (2% of Rs.700 crores), Rs.2.08 crores during FY 2014-15 relevant to AY 2015-16. This amount of commission did not form part of his regular Books of Accounts and thus, *was the undisclosed income on which he attempted to wilfully evade tax.*

9. The beneficiaries also evaded huge amount of Tax on the Accommodation entries taken by them through the accused, in lieu of commission in cash.

10. It was further submitted that the Petitioner after four months of the Search and Seizure action, *vide* Letter dated 14.10.2014 retracted his statement recorded on oath. His statement was again recorded under Section 131(1)(A) of the IT Act on 26.03.2015, wherein the Petitioner confirmed and reconfirmed his stand as *Accommodation Entry Provider* as was earlier stated by him in his statements recorded on 13.06.2014, 17.06.2014 and 24.06.2014.

11. The *Show Cause Notice dated 30.01.2015* was issued by learned DIT (Inv.)-I, Income Tax Department, New Delhi. The Petitioner gave a Reply dated 23.02.2015 under his signatures, to the Show Cause Notice. However, the Reply was not found satisfactory as it was stated that levy of penalty is a pre-condition for launching of prosecution, which can be levied by the Assessing Officer and not by the Investigating Agency. It was also stated in the Reply that prior to the issue of Notification dated 13.11.2014, no power for prosecution was available with the authorities of Investigation Directorate. A reference was also made to his Letter dated 14.10.2014 through which he had retracted his earlier statement.

12. It is submitted that levy of penalty is not a pre-condition for launching of prosecution, as penalty is initiated in the Assessment Order; the only requirement is that the Complainant should have evidence in support of the allegations made in the Complaint.

13. It was asserted that the Petitioner had concealed his income, and thus, committed and offence punishable under Section 276-C(1) and Section 277-A I.T. Act, wilfully with an intent to enable the beneficiaries to evade tax chargeable and imposable under the Act.

14. The Sanction was obtained on 12.03.2015 and thereafter, Criminal Complaint No.147/4/15 was filed before the learned ACMM.

15. The learned *ACMM took cognizance of the Complaint vide Order dated 07.08.2015 and issued Summons for Appearance of the Petitioner.* The matter was thereafter, listed for *pre-charge evidence* for 05.11.2015 on which date the Petitioner moved an Application seeking dismissal of the Criminal Complaint. However, the learned ACMM did not consider the

Application on merits and directed that it shall be considered at the stage of arguments on Charge. *The pre-charge evidence was closed on 18.04.2017*.

16. The Petitioner then requested learned ACMM on 17.05.2017 to first hear arguments on his Application for discharge in consonance with Section 245 of the Code of Criminal Procedure. However, without hearing the pending Application, the learned ACMM after hearing the parties, directed *framing of Charges under Section 276-C)1) and 277-A I.T Act vide Order dated 28.06.2017.*

17. The Petitioner filed ***Criminal Revision Petition under Section 397 Cr.P.C before the learned ASJ***, but the same was dismissed *vide* impugned Order dated 14.09.2017. ***Aggrieved by this Order, the present Petition has been filed.***

18. The ***grounds of challenge*** are that the Sanction of the Prosecution accorded by Principal Director (INV)-1 for launch of prosecution is without jurisdiction, illegal and unsustainable. Section 379(1) of the Act authorizes only Principal Commissioner or Commissioner, of Commissioner (Appeals) or the appropriate Authority (within the meaning of Clause (c) of Section 269 UA) as the Authority competent to grant sanction for institution of prosecution. ***Principal Director (INV) was not a competent Authority to grant such sanction***.

19. It is submitted that the learned ACMM after relying on the definition of "Commissioner" under Section 2(16) of the IT Act, observed that under Section 279 IT Act the word "Commissioner" includes "Principal Director". It is claimed that this interpretation is per-se wrong as *Section 2 of the Act* clearly qualifies the application of definitions therein by the words "*Unless*

the context otherwise requires", meaning thereby that the definitions given in Section 2 *ipso facto*, cannot be applied to various provisions of the Income Tax Act.

20. Permitting a superior Authority to exercise the power of a junior authority, would defeat the legislative intent. The learned ACMM miserably failed to consider that Principal Director is an Authority superior to Commissioner and the same is against the mandate of law.

21. Section 2(16) of the Act is not applicable to the facts in the Complaint and the same cannot be used interchangeably as the power delegated to one class of Officers, has to be exercised only by that class of Officers.

22. Reliance has been placed on *Dr. Nalini Mahajan vs. DIT (Inv.)* 257 ITR 123 (Del.), wherein it was held that the provisions of Income Tax Act envisages a hierarchy of the Officers. Had the legislature intended to confer the power of issuing authorization of warrant upon all officers who come within the purview of interpretation clause of "Director" or "Director-General", it was not necessary to mention therein that where the Director or the Director-General or the Chief Commissioner or the Commissioner or the Joint Director or Joint Commissioner, as the case may be, empowered in this behalf by the Board, would have also come within the purview of the definition of the Director-General or Director. A statutory power is conferred by the Board in favour of particular statutory authority; thus, the scope and purport of the said definition cannot be extended to other authorities in whose favour such power has not been delegated.

23. It is thus, submitted that Section 279 IT Act was amended by Finance Act, 2014 with retrospective effect from 01.06.2013, and *"Principal*

Commissioner" was included amongst other authorities empowered to give sanction, despite the presence of the word "Commissioner" in the said Section. It is evident that the Legislature had no intention of giving any powers to Principal Commissioner for grant of Sanction.

24. It is further contended that this patent error in grant of Sanction is not mere irregularity, error or omission which can be ignored; rather it is a jurisdictional error going to the root of the Complaint.

25. The ***second ground*** to challenge the impugned Order is that the Criminal Complaint under Section 276-C (1) and 277-A IT Act ***has been filed by Deputy Director, Income Tax (Inv.) which is without jurisdiction and is liable to be quashed.***

26. It is further contended that Search and Seizure action had been completed on 17.06.2014 itself. Therefore, in terms of Section 132(9A) of the Act, the authorized officer was mandatorily required to hand over the books of accounts, other documents and valuables seized, to the Assessing Officer having jurisdiction under Section 132 IT Act, within a period of 60 days from the date on which the last authorization for search was executed. In the present case, the said date was 17.08.2014 after which the jurisdiction over the searched persons passed on to the Assessing Officer for all purposes under the Act. Since the jurisdiction passed on to the Assessing Officer on 17.08.2014 itself, *the filing of Complaint by Deputy Director, Income Tax investigation is without jurisdiction and the Complaint is liable to be quashed.*

27. The ***third ground*** for challenging the impugned Order is that the *Sanction Letter* does not specifically state that the Sanction granted under

Section 279(1) of the Act was for prosecution of the petitioner was under Section 276-C(1) or 276-C (2) Income Tax Act. The Sanctioning Authority ought to have mentioned the Sections for which the Prosecution was being granted. Thus, the Sanction is vague; since these two Sections provide for two different types of offences.

28. *The **fourth Ground of challenge** is that the Complaint was filed prematurely since there was no Assessment Order to reflect that there was evasion of Tax.*

29. *Section 276-C(1)* provides for punishment in case if a person wilfully attempts in any manner to evade any tax penalty or interest chargeable or imposable under the Act. However, the Assessment proceedings for Assessment Year 2014-15 have not been completed and 2015-16 had not commenced on the said date when the single Sanction under Section 279(1) was granted on 12.03.2015. The question of evasion of tax did not arise on the date of filing of Complaint since the evasion of tax was not determined on the basis of grant of sanction or on the date of filing of Criminal Complaints. The Complaints are, therefore, pre-mature and liable to be dismissed.

30. Furthermore, Section 276-C(1) Income Tax Act is a case where the amounts sought to be evaded exceeds Rs.25 lakhs, the punishment would be RI for not less than six months, but may extend to 7 years. However, if the amount evaded is less than Rs.25 lakhs, the punishment prescribed is a term not less than 3 months, but may extend till 2 years. It is submitted that the determination of the amounts sought to be evaded, requires completion of

Assessment proceedings and passing of Assessment Order as a pre condition/sin qua non.

31. In the present case, on the date of grant of Sanction and on the date of filing the Complaint, the Assessment proceedings for the Assessment Year 2014-15 and 2015-16 were yet to be commenced; as such the filing of Criminal Complaint for evasion of tax is unwarranted and untenable in law.

32. Similarly, Complaints for prosecution under Section 277A have been filed prematurely as framing of Assessments was necessary for identification of the entries made in the Books of Account or at the behest of the Petitioner/Accused.

33. It is claimed that the *Sanction has been granted in a mechanical manner, without application of mind.* The Sanctioning Authority while granting Sanction under Section 279 IT Act, did not have in its possession even the Income Tax Returns/Assessment Orders of the Petitioner or statements of any of the person which had been recorded pursuant to the *Search and Survey* conducted by the Income Tax officials. The Sanctioning Authority had no opportunity to consider the same while sanctioning the prosecution. Even in the Sanction Letter, there is no mention about the aforesaid documents which clearly show that the sanction was without application of mind.

34. Furthermore, the Sanctioning Authority did not possess records regarding the assessment of the petitioner and other related persons and therefore, the Sanctioning Authority was not in a position to consider the vital information, material and facts while granting Sanction under Section 267-C, 277-A Income Tax Act.

35. It is further contended that before undertaking prosecution under Section 276-C (1), there has to be a wilful attempt to evade any tax penalty or interest chargeable or imposable as provided in the Sanction. In the present case, the Petitioner still had time to file his Return. When the Return had not been filed and there was time for the same, it cannot be said that the Petitioner committed any offence under Section 276(1) of the Act.

36. The pre-condition of initiating prosecution has not been satisfied and the impugned Complaint deserved to be dismissed.

37. **Written submissions** have been filed by both the parties on the similar contentions as have been raised in their respective pleadings.

Submissions heard and record perused.

38. The *first contention* raised on behalf of the Petitioner is that he Sanction has been granted by the ***Principal Director (Inv.)-I*** for launch of Prosecution, when in fact Section 279(1) of the Act authorizes only Principal Commissioner or Commissioner or Commissioner (Appeals) as the appropriate Authority within the meaning of Section 279-C UA.

39. ***Section 2(16)*** of the Act defines Commissioner as under :

> *2(16) "Commissioner" means a person appointed to be a Commissioner of Income-tax or a Director of Income-tax or a Principal Commissioner of Income-tax or a Principal Director of Income-tax under sub-section (1) of Section 117"*

40. ***Section 116*** gives the list of Income-tax Authorities which reads as under :

> *"116. There shall be the following classes of income-tax authorities for the purposes of this Act, namely:*

(a) the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963),
(aa) Principal Directors General of Income-tax or Principal Chief Commissioners of Income-tax,
(b) Directors-General of Income-tax or Chief Commissioners of Income-tax,
(ba) ***Principal Directors of Income-tax or Principal Commissioners of Income-tax,***
(c) Directors of Income-tax or Commissioners of Income-tax or Commissioners of Income-tax (Appeals),
.....
(h) Inspectors of Income-tax"

41. The combined reading of these two Sections make it clear that Commissioner means and includes the Director and Principal Director of Income Tax.

42. In the case of *D.K. Shivkumar vs. Income Tax Department* (2020) 421 ITR 529 (Kar), after referring to the aforesaid Sections, it was held that Commissioner would include Director and Principal Director of Income Tax. It was further concluded that it is not the Principal Commissioner alone who is the *Competent Authority*. By virtue of Notification, the Principal Director, Income Tax would also have the authority.

43. In the case of *Dr. Nalini Mahajan vs. DIT (Inv.)* 257 ITR 123 (Del.) on which reliance has been placed by the Petitioner has been rightly distinguished as the question for consideration in the said case was *whether Additional Director can exercise the powers of Director under Section 132 was in the context of Authority for search under Section 132(1) Income Tax Act and not to the grant of Sanction for the prosecution.*

44. It has been rightly observed by the learned ACMM that the Sanction has been granted by the Competent Authority, though it is under the different nomenclature. This ground of challenge has been rightly rejected by the learned ACMM and upheld by the learned ASJ in the Revisional Order.

45. The ***second ground of challenge*** is that the Criminal Complaint has been filed by the Deputy Director of Income Tax (Inv.) who had no jurisdiction to do so.

46. Section 279 of the Income Tax Act provides that the Complaint for the offence under Section 275A/275B/276/276A/276B/277A/278 Income Tax Act cannot be filed except with the previous sanction of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. ***Proviso to Section 279*** provides that Principal Chief Commissioner or Chief Commissioner or as the case may be, Principal Director General or Director General, *may issue such instructions or directions to the aforesaid Income Tax Authorities as he may deems fit for institution of proceedings under this Sub Section.*

47. From the aforesaid Section itself, it is evident that the Complaint can be filed by any Officer who may be notified by the Principal Director General in this regard. To say at this stage that the Deputy Director had no authority to file the Complaint, is premature and no such inference can be drawn that the Complaint has been filed by a person not duly authorised. However, the Petitioner shall be at liberty to raise this objection at the appropriate stage.

48. The ***third ground of challenge*** is that the Sanction Order dated 12.03.2015 is vague in so much as it does not specify if the Sanction has been granted under Section 276-C(1) of 276 (2).

49. However, this argument has been made without referring to the Sanction Order wherein the Sub Section (1) of Section 276 has been reproduced for considering whether the Sanction is mandated. The very fact that the entire Section 276 (1) has been reproduced and thereafter, Sanction granted clearly implies that the Sanction is under Section 276 (1) Income Tax Act. The argument on the Sanction being without application of mind or vague is not tenable on record.

50. The ***last argument*** which has been contended is that the Complaint is premature as the Assessment of the income for the Financial Year 2015-16 was yet to be finalized.

51. In the case of *P. Jayappan vs. S.K. Perumal, First Income Tax Officer* [1984] 149 ITR 696, it has been held that pendency of re-assessment proceedings cannot act as a bar to the institution of criminal prosecution for the offences under Section 276-C or Section 277 Income Tax Act. The proceedings conducted under Section 153(A) by the Assessing Officer are different and do not pertain to the jurisdiction of the Investigating Unit for the purpose of investigations.

52. This contention also, therefore, is not tenable.

53. In the end, it may also be observed that the Petitioner is aggrieved by the fact that his Application for discharge has not been considered even when writing an Order on Charge. However, there is nothing to show that in the Application for Discharge any other grounds other than those which

have been considered while passing an Order on Charge, was raised. Therefore, this argument also does not come to the benefit of the Petitioner.

54. The observations made herein, are not a final expression on merits.

Conclusion:

55. In the light of aforesaid discussion, it is held that there is no merit in the Petitions which are hereby, dismissed.

56. The pending Application(s), if any, are disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

JULY 23, 2025
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