

Ct. Cases 823/2018
INCOME TAX OFFICE Vs. RITU KHAITAN
CNR-DLCT02-031501-2017

25.08.2023

Present:- Sh. Anish Dhingra, Ld. SPP for the complainant (through VC).
Sh. Ramaditya Tiwari and Sh. Ruchesh Sinha, Ld. Counsels for
accused.

An application moved by the accused under Section 245(2) Cr.P.C. seeking discharge is pending disposal. Case file including the reply filed by the complainant has been perused. Arguments on this application were heard at length on earlier occasions.

Succinctly, the present complaint is made against Ritu Khaitan alleging that she did not disclose her interests in foreign companies/entities and she also did not disclose about her beneficial interest in bank accounts opened and operated in foreign countries, in her income tax return for Assessment Year (AY) 2011-12. It is also alleged that she made false statement on oath as she denied having any financial interest in any foreign entity and she also denied being beneficial owner or signatory etc. of a foreign bank account. Furthermore, it is alleged that the accused made statement in verification of her income tax return for aforementioned AY which was false. Hence, she was summoned for offence punishable u/s 276C(1) and 277 of the Income Tax Act, 1961 (hereinafter referred to as 'The Act').

As per the information received from Republic of Singapore (supplying state), the accused was the beneficial owner of bank accounts no. 91204600 and 403984-1 opened by Ismax International Limited with Barclays Bank, Singapore and Bank of Singapore, Singapore respectively. However, the accused denied having any knowledge about the aforementioned company and bank accounts in her statement made to the

income tax authorities recorded u/s 131(1A) of The Act on 02.11.2017.

The present case is still at the stage of pre-charge evidence. The application seeking discharge can be entertained even prior to conclusion of pre-charge evidence (See *Ajoy Kumar Ghose v. State of Jharkhand & Anr.* (2009) 14 SCC 115). The ground for seeking discharge is that the assessment proceedings against the accused u/s 147/148 of The Act for AY 2011-12 were dropped vide order dated 04.12.2019 passed by DCIT duly approved by Pr. CIT (C)-2, New Delhi, as proceedings on the same facts were already initiated under the BM Act. A certified copy of assessment order u/s 10 of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (hereinafter referred to as “BM Act”) for AY 2019-20 qua the accused Ritu Khaitan is placed on record by Ld. Defence Counsel. Perusal of this assessment order dated 15.03.2021 shows that the same takes into account the deposits made in account no. 91204600 and 403984-1 in the financial year 2009-10 to the FY 2013-14 (corresponding to AY 2010-11 to 2014-15). The assessment under the BM Act qua the accused was completed at Rs.703,68,83,648.01/- and the tax was assessed at Rs.211,10,65,090/-.

Section 4(3) of BM Act states “*The income included in the total undisclosed foreign income and asset under this Act shall not form part of the total income under the Income-tax Act*”. The term 'total income' is defined in section 2(45) of The Act as “*the total amount of income referred to in section 5, computed in the manner laid down in this Act*”. It is clear from perusal of these sections that the foreign income which is assessed or reassessed under the BM Act would stand excluded from the total income under The Act. No assessment or reassessment qua the aforementioned deposits for the afore-stated period can be initiated/continued under The Act. Since no assessment proceedings can be continued under The Act on basis of information received from Singapore for AY 2011-12 so there is no question of wilful evasion of

tax or attempt thereof. Similarly, in the absence of reassessment etc., the quantum of tax sought to be evaded by accused cannot be ascertained leading to the result that neither the nature of trial procedure to be followed, nor the maximum punishment that can be imposed for offence punishable u/s 276C(1) and 277 of The Act can be determined. In any case, it is the case of the complainant that all acts and conduct of the accused were designed in order to evade the tax payable under The Act. Since the deposits shown in aforementioned two bank accounts of Ismax International Limited have been taken into account for assessment under the BM Act, so the same cannot be taken for computation of total income under The Act and accordingly, the tax sought to be evaded by the accused on the aforementioned bank accounts cannot be assessed. The issue can also be appreciated from a different angle. Section 72(c) of the BM Act reads '*where any asset has been acquired or made prior to commencement of this Act, and no declaration in respect of such asset is made under this Chapter, such asset shall be deemed to have been acquired or made in the year in which a notice under section 10 is issued by the Assessing Officer and the provisions of this Act shall apply accordingly*'. As is evident from the assessment qua the accused Ritu Khaitan under the BM Act, a notice u/s 10(1) of BM Act was issued to the accused on 08.11.2018, hence, the entire deposits in both the Singapore Bank accounts of Ismax International Limited were deemed to be acquired by the accused Ritu Khaitan in FY 2018-19. Since by deeming fiction, the asset is presumed to be acquired in FY 2018-19, so the same cannot be used for assessment purposes under The Act for AY 2011-12.

A circular No. 24/2019 bearing F.No.285/08/2014-IT(Inv.V)/349, issued by Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, dated 09.09.2019 is relied upon by the accused to state that the present proceedings could not have been initiated prior to the receipt of

confirmation of penalty order by the Income Tax Appellate Authority. This contention of the accused does not inspire confidence as the circular was issued in September 2019 whereas the complaint was made in the year 2018 when no such guidelines were in force.

The judgment of the Apex Court in the case of “*The State of Maharashtra and Ors. v. Sayyed Hassan Sayyed Subhan and Ors. MANU/SC/1021/2018*” relied upon by the Ld. Counsel for the complainant has been perused. The same provides that the prosecution for an act/offence punishable under two or more enactments can proceed independently. However, the issue in the present matter is diametrically opposite as in the instant case an income assessed to tax under the BM Act cannot be the subject matter of assessment under The Act. Since no assessment qua the same income assessed under BM Act can be done in The Act, then there is no question of evasion of income tax or the attempt thereof and there certainly cannot be any prosecution qua that income under The Act. Resultantly, *the accused Ritu Khaitan is hereby discharged of the offence punishable under section 276C(1) and 277 of The Act.*

List the matter for *furnishing bail bonds under section 437A Cr.P.C in the sum of Rs. 25,000/- with one surety in like amount by Ritu Khaitan on 21.09.2023.*

(Anurag Thakur)
ACMM(Special Acts) : Central District:
THC: Delhi: 25.08.2023