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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.REV.P 16/2015

Order reserved on: 15TH November,2017

Order pronounced on:23rd November,2017

M/S AMBIENCE HOSPITALITY PVT LTD ...Petitioner

Through: Mr. K.R. Manjani, Advocate.

versus

DY COMMISSIONER OF INCOME TAX ...Respondent

Through: Mr. Rahul Kaushik, Senior Standing
Counsel for respondent.

CORAM:

% **HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

1. By way of the present Revision petition filed under Section 397 of The Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C.') the petitioner seeks quashing of judgment dated 24.06.2014 and order of sentence dated 25.06.2014 passed by the Additional Chief Metropolitan Magistrate (hereinafter referred as 'ACMM'), Tis Hazari Courts, whereby the learned ACMM held the petitioner guilty under Section 266C/277 of the Income Tax Act (hereinafter referred 'IT').
2. The brief facts of the present case are that the complainant/Deputy Commissioner of Income Tax, filed a complaint against the petitioner alleging that the false depreciation on land amounting to Rs. 31,80,000 was claimed in the company's balance sheet in the assessment year 2007-2008 shown under the head 'property' along

with the depreciation on building and as per IT Act, land is exempted from taxation. After the assessment done by the Assessing Officer, penalty of Rs.32,11,164/- was imposed for concealment. An appeal was preferred against this before the learned CIT(A), who deleted the imposed penalty by considering the same as sheer mistake on part of the petitioner. Then the department filed an appeal before learned ITAT, who reinstated the penalty and the same was challenged by the accused in this court, which was dismissed thereafter. Consequently, the complaint was filed by the respondent before learned ACMM wherein vide order 25.06.2014, the respondent no. 3 was acquitted but the company/respondent no. 1 was found guilty for the offence punishable under Section 266C and 277 of the IT Act and sentenced him to pay a fine of Rs. 15,000/- each i.e. Rs. 30,000/-. Hence, the present petition.

3. The learned counsel for the petitioner contended that the mistake committed in the accounts book for the assessment year 2007-2008 was a sheer mistake made by the accounts clerk of the company and the same was not in the knowledge of the petitioner, Director or its Chartered Accountants; that while assessment of the accounts of the company by the Chartered Accountants in the subsequent year, they came to know about the mistake that had occurred; that the same was brought to the knowledge of the Assessing Officer vide letter dated 08.12.2009, during assessment and much before the scrutiny; that the petitioner company came to

know about the alleged mistake much before it could be detected by the Assessing Officer; that the mistake in the balance sheet was *suo moto* rectified in the balance sheet of the subsequent year by the company's Chartered Accountant; that no notice was received by the petitioner before sending of letter dated 08.12.2009; that there is absence of *mens rea* in committing the said act; that the doctrine of vicarious liability is not applicable for prosecution and the impugned order is not a speaking order, therefore, needs to be set aside.

4. Per contra, learned counsel for the respondent contended that the order passed by the learned ACMM is a reasoned order and does not suffer from any infirmity.
5. The submissions made by the both the parties have been heard and the records have been perused.
6. After giving careful consideration to the entire facts, it is seen that the main contention of the learned counsel for the petitioner is that the fact with regard to charging of depreciation on the land along with the building and the same shown under a common head in the balance sheet of the assessment year 2007-2008 as 'property', is a mere clerical mistake and the same was *suo moto* corrected by the company in the balance sheet of subsequent year, i.e 2008-2009 and was informed about it to the Assessment Officer(AO) vide letter dated 08.12.2009. Perusal of the record shows that after the assessment of the Balance Sheet of the year 2007-2008 by the assessing Officer, two order sheet entry dated 04.09.2009 and

23.11.2009 was made by the AO whereby the AO had asked the petitioner to explain the claim of depreciation on building as shown in the said balance sheet for the assessment year 2007-2008. The said order sheet entries are proved by PW-2/Sh.S.K. Mehra(IT Department) in his cross examination wherein he has stated that “...It is the order sheet entry dated 23.11.2009 Ex.PW2/2 in which at question no. 1 the assessee was specifically asked to explain the claim of depreciation under the head building and has not shown land separately in the companies assets...” It was further proved by DW-2/Shri Manoj Kumar Maheshwari/Occupation Service in M/s Ansal Properties, during his cross-examination wherein he has stated that “...It is correct that on 04.09.2009, I appeared before the Assessing officer. My sign are at point ‘X’ and on that date Assessing Officer had asked the details of addition in assets already Ex.PW2/1. It is correct that on 23.11.2009 I again appeared before the Assesseing officer during the assessment proceedings and he has at sl.no. 1 asked to explain claim of depreciation on building. The same is already Ex.PW2/2, my sign at point ‘X’. It is correct that I have filed letter dated 08.12.2009 Ex.PW2/3 in response to the hearing on 23.11.2009 duly signed by me at point ‘X’ wherein in para no. 7, it has been mentioned by me that depreciation on land was inadvertently charged as included by the tax auditors.It is correct that no letter admitting the wrong claim upon depreciation on land was written by the accused company to the complainant

department prior to 23.11.2009 for Assessemnet year 2007-2008...”

7. The explanation given above proves that only after the order sheet entry made by the Department of Income Tax, that the correction was made by the petitioner in the subsequent Assessment year 2008-2009. It was on 08.12.2009, when the petitioner sent the letter to the AO by stating that :- “...*This mistake came to notice of the auditors next year while preparing and certifying the balance sheet and the tax audit report relating to assessment year 2008-2009. In the balance sheet for that year land has been segregated and appears as the distinct item in Schedule of the fixed assets. In the tax audit report and in the income tax return also depreciation has been claimed only on the building. It is therefore, prayed that depreciation on building may kindly be allowed after excluding the cost of land namely Rs. 3,18,00,000/-..*”Therefore, the contention of the learned counsel for the petitioner that the mistake in the balance sheet was *suo moto* rectified in the balance sheet of the subsequent year much before it was scrutinised by the Assessment Officers cannot be accepted.
8. Proceeding further with the case, the another contention of the counsel for the petitioner that the alleged mistake was mere clerical in nature, not deliberate and no element of *mens rea* is present, also, does not hold any ground as it has been rightly held by the learned ACMM that no sincere efforts were put in by the petitioner after detection of the alleged mistake by filing the

revised return immediately thereafter. It was specifically stated by DW-2 during his cross examination that “*The said mistake was detected in or about August 2008 i.e. prior to the finalization of accounts/audit report for assessment year 2008-2009 dated 20.09.2008. The said mistake was corrected in the year 2008-2009.We have suto moto corrected the mistake vide letter dated 08.12.2009...*” It makes it apparent that the alleged mistake was detected in the month of August by the company but only on 08.09.2009, the same was informed by the petitioner to the Assessment Officer. The petitioner had ample time to rectify its mistake by either bringing the same into the notice of the Assessing Officers soon after its detection or by filing a revised IT return to that effect. But, no action was taken by the petitioner until 08.12.2009, which casts a serious doubt on the story of the petitioner.

9. It is a manifest procedure that before filing of the Income Tax return for the assessment year 2007-2008 by the petitioner, the same is scrutinized, **firstly**, by the auditors of the company. **Secondly**, by the directors of the company before endorsing their signatures on the final Balance Sheet. Therefore, it cannot be considered as a mere accounting mistake.
10. On the basis of the above observations, it is viewed that the judgment dated 24.06.2014 and order of sentence dated 25.06.2014, is a well reasoned order and does not suffer from any infirmity. The same is upheld.

11. Accordingly, the present petition is dismissed.
12. However, it is made clear that the observations made hereinabove shall not be taken as an expression on the merits of the case.

SANGITA DHINGRA SEHGAL, J

NOVEMBER 23 , 2017

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HIGH COURT OF DELHI



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