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

Decided on: 12.02.2015

+ **ITA 1428/2006, C.M. APPL.2553-2554/2015**

C.I.T

..... Appellant

versus

M/S. ESCORTS LTD.

..... Respondent

+ **ITA 2011/2010**

CIT

..... Appellant

versus

BIG APPLE CLOTHING PVT. LTD.

..... Respondent

+ **ITA 1262/2011, C.M. APPL.21759/2011**

CIT

..... Appellant

versus

NARESH. K. TREHAN

..... Respondent

+ **W.P.(C) 836/2007, C.M. NO.1490/2007**

ESCORTS LTD.

..... Petitioner

versus

ASSTT. COMMISSIONER OF INCOME

..... Respondent

Through: Sh. Parag. P. Tripathi, Sr. Advocate with
Sh. Simran Mehta and Sh. Prabhat Kalia,
Advocates, for petitioner in Item No.5 and for the
respondents in Item Nos. 2 and 3.

Ms. Suruchii Aggarwal and Ms. Sonia Dhamija,
Advocates, for appellants in Item Nos. 2 to 5

Dr. Rakesh Gupta and Sh. Mukul Mathur,
Advocates, for respondent in Item No.4.

Sh. Shashwat Bajpai, Advocate.

Dr. Rakesh Gupta, Sh. Ashwani Taneja, Ms.
Poonam Ahuja and Sh. Mukul Mathur, Advocates,
for respondent in Item No.4.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K. GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. On 15.01.2015, this Court had noted by its order that Sh. Rakesh Kumar Gupta's intervention application, being No.5779/2008 was rejected. He had, however, sent an e-mail to counsel appearing on behalf of the Revenue, levelling several allegations which were shown to the Court. In the course of hearing, the Court pointed this out to Sh. Rakesh Kumar Gupta, who stated that he would be withdrawing the allegations levelled against the Revenue's counsel. Having regard to this development, the Court recorded on 15.01.2015 as follows:

"2. Learned counsel submitted that in the light of these allegations they wish for further clarification from CBDT

3. Mr. Gupta is present in Court and he states that he would withdraw the allegations and that he may be permitted to address arguments in the Court instead."

2. Sh. Gupta had, in the meanwhile, sent a detailed fax to this Court in respect of these pending matters which runs into 100 pages. The Court had, however, not proceeded with that or made any adverse order at that stage

given the fact that Sh. Gupta assured the Court that the allegations would be withdrawn. After the conclusion of hearing, on 09.02.2015, Sh. Gupta filed yet another affidavit titled as “Intervener Affidavit”. In the affidavit, after stating that the intervener informed this Court in the hearing that the Income Tax Department had “deliberately presented weak case”, and quoting the order dated 16.10.2014, the following averments were made:

“F. However, no “no joint flow chart” was submitted, despite Income Tax official has submitted documents given by Intervener to them. (As stated in point D above.)

G. Nothing is done to protect Government interest by giving factual facts to Honourable Court. However, there are six pages (unsigned and without detail of who is submitting it, to Honourable Court) in ITA 1428/2006 CIT Vs. Escorts Limited. These pages, completely ignored the facts in favour of tax department.

H. Reason of submitted it (loose six – unsigned pages/documents) in open court, without signature, is that in future, they completely disown these six pages and even removed after wards from Court Records.

*I. Removing of documents after Court Decision was done in others cases of Escorts Limited/Dr. Naresh Trehan – key man Insurance tax evasion cases. (These cases are decided in favour of Tax Payers, by stating that tax payers are allowed Tax planning. In this case Key-man Insurance Booklet was removed, which prove assignment was illegal. Tax department had also not informed, other illegality involved (like fund siphoning by key person by transferring company assets below their fair value (without shareholder permission). Illegal acts are not called Tax planning). In ITA 398/2009 and ITA 484/2009 index Page and Page 3-4 of affidavit (relevant Para 5 Start from Page 3 and ends on Page 4 signed by Sr. Standing Counsel Mr. N.P. Sahni and Jr. Standing Counsel Mr. Ruchesh Sinha. **To help the tax payer, terms was used incomplete assignment instead of illegal***

assignment. And enclosed At Page 46-48.

*List of Key man insurances cases lost is given on **Page 54 of affidavit.** Now above cases, are pending in the Supreme Court (without giving correct fact).*

J. Reason (of giving unsigned document) is simple, both tax payers and tax official does not want to face Contempt proceeding for deliberately misleading (by incorrect facts) Honourable Court.

K. Above inaction, force Intervener, to informed, all the concerned party about deliberate weakening of case by tax officials/their representative and forgery by tax payers by letter dated 14/1/2015 (forwarding of letter is enclosed As page 49-55 of affidavit).

L. Honourable Court has ample power to take necessary actions to protect Justice and protect Public interest of Government (to gets it legitimate Taxes). No further actions is necessary from my side.

M. By this intervener affidavit, I withdraw unconditionally my express statement about involvement of Standing Counsel in weakening the department case as directed by Honourable Court.

Statement in my letter

Please refer to above mentioned cases, there is collusion between Tax payers and Government Department officers (including their Standing Counsel/Advocate), they had deliberately presented weak case. So that Government lose these cases for the benefits of Tax payers and for getting bribe for themselves.”

3. The affidavit further levels others allegations in paras 5, 6 and 7 against various officials.

In the affidavit, Sh. Gupta further deposed as follows:

“8. Now, kindly see actions of Tax official in these cases.
Detail of deliberate wrong actions by Income tax official

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C. Summarized Brief Particulars of the case is already given to Court vide letter/e-mail dated 15/10/2014 & 14/1/2015. There are two issue (of tax evasion pending above ITA/writs) related to false evidence created by tax payers and in the knowledge of Standing Counsel of Income Tax, all the connected Income Tax officials and all concerned Assessee.

Issue One: these parties Escorts Limited, Big Apple Clothing, Dr. Naresh Trehan & AAA Portfolio became owner of EHIRC hospital (Delhi Society by fraud)."

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11. Tax payers as well Tax departments Action of deliberately misleading Hon'ble Delhi High Court is contempt of Court. Papers given by above parties are under oath. And all concerned party (Concerned CIT (at present CIT 3 Delhi, CIT 21 Delhi & CIT Faridabad), Income Tax Counsel and Tax payers) know about forgery, even then hiding it, is clearly contempt of court for malafide reasons."

4. At the outset, when the above fact was pointed out, learned counsel for the Revenue and the assessee pointed to the affidavit and stated that this does not amount to compliance with the previous order. Sh. Gupta was asked whether he wishes to unconditionally withdraw the affidavit and the allegations, to which he agreed conditionally. The condition proposed by him was that even whilst he was willing to withdraw the affidavit and the allegations with respect to the Standing Counsel and the conduct of the case before this Court, he would feel free to press those allegations elsewhere. He also stated that he had no desire and did not wish to withdraw any other allegations against the officers or the officials of the Income Tax

Department, the CIT (Appeals) and the department generally, and that the allegations of fraud etc. against the assessee should remain as a matter of record.

5. This Court is of the opinion that given the nature of the conduct displayed by Sh. Gupta, i.e. preferring an application for intervention which was rejected, being Intervener Application No. 5779/2008; thereafter engaging in e-mail communications with the Standing Counsel and levelling allegations against them; addressing e-mails directly to this Court and finally, placing on record an affidavit detailing the allegations even while stating that he would withdraw some of them *vis-a-vis* the Standing Counsel, but would nevertheless press those allegations against the same individuals elsewhere, *prima facie* amounts to *criminal contempt* punishable in accordance with law. This Court has been informed that two of the Standing Counsels – Sh. Balbir Singh and Sh. Rohit Madan, who had previously appeared, have already recused themselves from the matter. The behaviour outlined above amounts to seeking to prejudice and interfere or tending to interfere with the due course of proceedings in the present appeals, i.e. ITA 1428/2006, ITA 2011/2010 and ITA 1262/2011 and in W.P.(C) 836/2007.

6. This Court is of the opinion that consequently appropriate action and further proceedings under Section 15 of the *Contempt of Courts Act, 1971* is warranted. In the circumstances, Sh. Rakesh Kumar Gupta is issued with Show Cause Notice, returnable on 09.04.2015 to give his explanation why he should not be proceeded with under Section 15 of the *Contempt of Courts Act, 1971* in respect of the above allegations. The notice shall also annex a copy of this order and the copy of the Intervener Affidavit filed by him. The

Registry is directed to register a separate criminal contempt proceeding and file the originals of the Intervener Affidavit which is part of the record in ITA No.1428/2006 in the said criminal contempt proceedings. Besides, the Registry shall place on record a copy of the e-mail and fax communication numbering 100 pages which was addressed by Sh. Rakesh Kumar Gupta directly to this Court. These shall be annexed along with the Show Cause Notice to be served upon Sh. Rakesh Kumar Gupta on the next returnable date, i.e. 09.04.2015. Sh. Rakesh Kumar Gupta is present in Court and has been apprised of this order.

C.M. Nos.2553/2015 & 2554/2015 in ITA 1428/2006

Issue notice. Ms. Suruchii Aggarwal, Sr. Standing Counsel accepts notice.

List on 12.03.2015.

**S. RAVINDRA BHAT
(JUDGE)**

**R.K. GAUBA
(JUDGE)**

**FEBRUARY 12, 2015
'ajk'**