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M/S. GENERAL FINANCE CO. AND ANR.

v.

ASSISTANT COMMISSIONER OF INCOME TAX, PUNJAB

SEPTEMBER 4, 2002

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[S. RAJENDRA BABU AND P. VENKATARAMA REDDI, JJ.]

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Income Tax Act, 1961—Section 276 DD—Prosecution under—After omission of the provision by Direct Tax Law (Amendment) Act, 1987—Validity of—Held, not valid—Prosecution can not be launched or continued even by invoking General Clauses Act since the provision stood omitted from the Act, and not repealed—General Clauses Act, 1897—Section 6.

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General Clauses Act, 1897—Section 6—Applicability of—Held, will not apply to omission of a provision in an Act, but only to repeal, omission being different from repeal.

The appellants were prosecuted u/s 276DD of Income Tax Act, 1961 in March, 1989 for non-compliance of the provisions under Section 269SS of the Act, in respect of assessment year 1986-87.

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Appellants approached the High Court under Section 482 Cr.P.C. and Article 227 of the Constitution of India, for quashing the proceedings on the ground that Section 269SS was omitted from the Act by Direct Tax Law (Amendment) Act, 1987. High Court held that the prosecution was justified, as Section 276 DD was in force during the relevant assessment year and they were omitted only w.e.f. 1.4.1989. In appeal to this Court appellants contended that prosecution could not have continued u/s 276 DD of the Act after its omission and that section 6 of General Clauses Act also could not be applied to save the act of prosecution.

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Allowing the appeal, the Court

HELD: 1. The view taken by the High Court is not consistent with the principle underlying Section 6 of the General Clauses Act, 1897 as saving the right to initiate proceedings for liabilities incurred during the currency of the Act will not apply to omission of a provision in an Act

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but only to repeal, omission being different from repeal. In the Income Tax Act, 1961 Section 276DD stood omitted from the Act but not repealed and hence, a prosecution could not have been launched or continued by invoking Section 6 of the General Clauses Act after its omission.

[110-G-H; 111-A]

2. Non-compliance with Section 269 SS of Income Tax Act attracted prosecution as well as penalty. Omission of the provision regarding prosecution will not affect the levy of penalty. The advantage arising out of application of the ratio in *Rayala Corporation and Kolhapur Canesugar* resulting in prosecution in cases of non-compliance with Section 269SS of the Act is only transitional affecting a few cases arising prior to 1.4.1989. Such cases may be few and far between. Hence this is not an appropriate case for reference to the larger Bench. [110-E-F]

M/s. Rayala Corporation (P) Ltd. and M.R. Pratap v. Director of Enforcement, New Delhi, [1969] 2 SCC 412 and *Kolhapur Canesugar Works Ltd. and Anr. v. Union of India and Ors.*, [2000] 2 SCC 536, followed.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 442 of 1994.

From the Judgment and Order dated 6.5.1994 of the Punjab and Haryana High Court in Crl. M.No. 8708-M of 1992.

Harbans Lal and Ashok Mahajan, for the Appellant.

S. Ganesh, K.C. Kaushik and B.V. Balram Das for the Respondent.

The Judgment of the Court was delivered by

RAJENDRA BABU, J. The appellants before us received deposits from Amar Singh, Gurdev Singh and Hardev Singh on different dates in the year 1985 and this fact was disclosed in the Income Tax Return filed for the assessment year 1986-87. The Income Tax Department initiated prosecution against the appellants for offences arising from non-compliance with Section 269SS of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). Section 269SS of the Act provides that 'no person shall take or accept from any other person any loan or deposit otherwise than by an account-payee cheque or account-payee bank draft which exceeds Rs. 10 thousand' (now,

A 20 thousand). Punishment for non-compliance with provisions of Section 269SS is provided under Section 276DD of the Act. In addition, penalty is leviable under Section 271D of the Act. Section 276DD has been omitted from the Act by the Direct Tax Law (Amendment) Act, 1987 with effect from 1.4.1989. A complaint under Section 276DD of the Act was filed in the court of Chief Judicial Magistrate, Sangrur on 31.3.1989.

B The appellants sought for quashing of the proceedings for prosecution under Section 276DD of the Act by filing a petition under Section 482 of the Code of Criminal Procedure and Article 227 of the Constitution. The High Court held that the provisions of the Act under which the appellants had been prosecuted were in force during the accounting year relevant to the assessment year 1986-87 and they stood omitted from the statute book only from 1.4.1989. The High Court, therefore, took the view that the prosecution was justified and dismissed the writ petition. Hence, this appeal by special leave.

D The contention put forth on behalf of the appellants is that the offence, if at all, had been committed in the year 1985 prosecution could not be continued nor could the punishment be imposed under Section 276DD of the Act after it was omitted on and from 1.4.1989. Section of the General Clauses Act cannot also be applied to save the action now taken.

E Shri S. Ganesh, learned senior counsel for the respondent, contended that Section 276DD of the Act is omitted with effect from 1.4.1989 and hence for the offence committed prior to that date the provision could be enforced. He further emphasized that complaint had been filed prior to omission of Section 276DD of the Act on 1.4.1989. Since the effect of Section 6 of the General Clauses Act is to prevent obliteration of a statute in spite of its repeal and to keep intact the rights acquired and liabilities incurred during its operation and permit continuance or institution of any legal proceedings or recourse to any remedy available before the repeal for enforcement of the same, it is contended that the offences committed during the continuance of a statute can be prosecuted and punished even after its repeal, perhaps we would have agreed with this submission of the learned counsel, but for the two decisions by the Constitution Benches in *Messrs. Rayala Corporation (P) Ltd. and M.R. Pratap v. Director of Enforcement, New Delhi*, [1969] 2 SCC 412, and *Kolhapur Canesugar Works Ltd. and Anr. v. Union of India and Ors.*, [2000] 2 SCC 536, where there are observations to the effect that an 'omission' of a provision is different from a 'repeal' and

Section 6 of the General Clauses Act applies to a repealed law and not to omission. However, Shri Ganesh submitted that those observations made by this Court in *Messrs. Rayala Corporation (P) Ltd. and Kolhapur Canesugar Works Ltd.* cases need reconsideration, for an 'omission' of a provision results in abrogation or obliteration of that provision in the same way as it happens in a 'repeal'; that in the said two cases this Court was concerned with a rule which was neither a Central Act or a regulation as defined under the General Clauses Act and it was, therefore, held that 'omission' or 'repeal' of a rule by another rule could not attract Section 6 of the General Clauses Act and the proceedings initiated under an omitted rule cannot continue unless the new rule contains a saving clause to that effect.

He further elaborated that nowhere in either of the judgments any argument to the effect that 'omission' would not amount to 'repeal' has been raised and hence there was no occasion for this Court to consider the difference between 'omission' and 'repeal' of an enactment; that the observation that 'omission' being different from 'repeal' has abruptly been made without preceded by a discussion or reference to authoritative text books; that no reason or rationale could be found to discern a distinction between 'repeal' and 'omission'; that the reason for this approach is obvious; that when this Court held that a rule is not an Act or Regulation, further examination of the same whether it would apply to an omission did not really arise for consideration; that observations in that regard only escaped inadvertently and not after consideration; that 'Omission' of a provision results in abrogation or obliteration of the omitted provision in the same way as it would have happened in the case of 'repeal'; that a conclusion of law not raised or not preceded by consideration attracts the rule of sub-silentio; that any declaration or conclusion arrived at without application of mind preceded without reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent; that the principle that Section 6 of the General Clauses Act is not attracted to "omissions" but only to "repeals" is not a declaration of law made for general application. He referred to Sutherland's Statutory Construction, 3rd Edn., Vol.I, at p.477 and Francis Bennion's Statutory Construction (2nd Edn.) at page 201 in explaining the meaning of 'repeal'.

He further submitted that the use of any particular form of expression is not necessary to bring about a repeal; that it is a matter of legislative practice to provide by enacting an amendment that an existing provision shall be omitted; that such omission has the effect of repeal of the existing provision;

A that such a law may also provide for the introduction of a new provision. He explained that viewed from that angle, there may be no real distinction between 'repeal' or 'omission'; that what is required is that the words used show an intention to abrogate the Act or provision in question. Legislature adopts different forms for the same; that the usual form is to use the words 'is hereby repealed' and thereafter enumerate the Acts sought to be repealed or put them in a schedule; that sometimes the words 'shall cease to have effect' are used; that when the object of repeal affects only a part of the Act, the words 'shall be omitted' are used; that this aspect has been dealt with by Halsbury, 4th Edn., Vol. 44, at page 604, footnote 4; that 'omission' and 'repeal' have identical effect in operation of statutes.

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He adverted to Section 6-A of the General Clauses Act in which it is stated that if any Act repeals any enactment making textual amendment in the Act by express omission, insertion or substitution of any matter, then, unless different intention appears, the repeal shall not affect the continuance of such amendment made by an enactment so repealed and in operation at the time of such repeal; that the use of the words 'repeals by express omission, insertion or substitution' will cover different aspects of repeal; that this is a further legislative indication that 'omission' also amounts to a 'repeal' of an enactment.

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Though we find the submissions of the learned counsel to be forceful, we are constrained to follow the two decisions of the Constitution Benches of this Court in *Messrs Rayala Corporation (P) Ltd.* case (supra) and *Kolhapur Canesugar Works Ltd.* case (supra). This view has held the field for over three decades and reiterated even as late as two years ago. Non-compliance with Section 269SS of the Act attracted prosecution as well as penalty.

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Omission of the provision regarding prosecution will not affect the levy of penalty. The advantage arising out of application of the ratio of the two decisions resulting in prosecution in cases of non-compliance with Section 269SS of the Act is only transitional affecting a few cases arising prior to 1.4.1989. Such cases may be few and far between. Hence we find this is not an appropriate case for reference to the larger Bench.

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Net result of this discussion is that the view taken by the High Court is not consistent with what has been stated by this Court in the two decisions aforesaid and the principle underlying Section 6 of the General Clauses Act as saving the right to initiate proceedings for liabilities incurred during the

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currency of the Act will not apply to omission of a provision in an Act but

only to repeal, omission being different from repeal as held in the aforesaid decisions. In the Income Tax Act, Section 276DD stood omitted from the Act but not repealed and hence, a prosecution could not have been launched or continued by invoking Section 6 of the General Clauses Act after its omission. A

Hence, we allow this appeal, set aside the order of the High Court and quash the proceedings for prosecution. B

K.K.T.

Appeal allowed.