In Chamber/ Court No.5 **Neutral Citation No. - 2024:AHC-LKO:55105**

[AFR]

Reserved

Case :- CONTEMPT APPLICATION (CIVIL) No. - 562 of 2016

Applicant :- Prashant Chandra

Opposite Party :- Harish Gidwani Deputy Commissioner Of Income Tax Range 2

Counsel for Applicant :- Mudit Agarwal,Anand Prakash Sinha,Radhika Singh

Counsel for Opposite Party :- Neerav Chitravanshi,Kushagra Dikshit,Manish Mishra

Hon'ble Irshad Ali,J.

1. Heard Ms. Radhika Singh, learned counsel for the applicant and Shri Neerav Chitravanshi, learned counsel for the opposite party assisted by Shri Kushagra Dikshit, learned Advocate at length.

2. Order dated 1.11.2023 vide which charges have been framed, notices gist of the matter. The said order is extracted hereinbelow:

> *1. Heard Ms. Radhika Singh, learned Advocate for the applicant along with Sri Anand Prakash Sinha, learned Advocate and Shri Neerav Chitravanshi, learned counsel for the opposite party assisted by Shri Kushagra Dikshit, learned Advocate.*
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> *2. The present contempt application under Section 12 of the Contempt of Courts Act, 1971 has been filed alleging willful and deliberate disobedience of judgment and order dated 31.03.2015 passed by a Division Bench of this Court in Writ Petition No.9525 (MB) of 2013 whereby the following direction was issued:*
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> *"A perusal of Annexure SA-3 annexed with the supplementary affidavit dated 31.3.2015 shows that in response to the notice dated 3.11.2014, the petitioner preferred written objection to the Assessing Officer bringing to his notice the pendency of the aforesaid writ petition and also apprising him that Section 127 was not even remotely attracted. Therefore, it was incumbent upon the opposite party No.2 to have waited for the outcome of the writ petition, but he proceeded with the matter which shows prejudicial and impartial attitude of the authority. It may be noted that transparency and fairness is the essence of the state action. Therefore, the authorities are expected to proceed in disciplined manner without creating any doubt in the mind of the asseessees. As averred above, it was the duty of the Assessing Officer to have referred the question of jurisdiction to the Chief Commissioner or the Commissioner as the case may be under sub-section (2) of Section 124 of the Act and not doing so, this vitiated the further proceedings.*
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> *Here, there is complete departure from the settled procedure. It comes out from the record that when the petitioner refused to submit to the jurisdiction of the said Assessing Officer at Lucknow, the authority/respondent No.2 proceeded ex parte and dispatched a demand of almost Rs.52 lacs. At the cost of repetition, we would like to mention that in the notice dated 11.9.2013, which is computer generated clearly reveals that the Delhi address of the petitioner was scored out and in handwriting, the local address has been added. Therefore, it is incorrect to*

say that the Delhi Address was not in the knowledge of the respondents and we find force in the submissions of the petitioner that local address was inserted deliberately to create jurisdiction, which, in fact, legally was not vested with the opposite party No.2. Therefore, the opposite party No.2 exceeded its jurisdiction, which not only vitiates the impugned show cause notice but the entire proceedings. In these circumstances, the entire proceedings being ab initio illegal, without jurisdiction and in violation of Section 143 (1) (a) of the Income-tax Act.

For the reasons aforesaid, the writ petition is allowed and the impugned notice dated 11.9.2013 is quashed. As the notice notice has already been quashed, consequential orders, if any, are also quashed. "

3. This Court had, after after several hearings, passed an order dated 22.09.2022 putting the respondent-contemnor to notice as to why the charge should not be framed against him for having willfully flouting the order dated 31.03.2015 passed by the writ Court. After hearing the counsel for the parties at length and examining the pleadings of the parties, an order dated 16.12.2022 was passed by this Court disposing of the contempt application and a fine of Rs.25000/- was awarded and the opposite party/ contemnor was ordered to undergo simple imprisonment for a period of one week. Thereafter, vide an order dated 17.01.2022 now the matter has to be heard afresh.

4. Ms. Radhika Singh, learned counsel for the applicant submitted that the order dated 31.03.2015 passed by the writ Court had clearly provided that the jurisdiction to assess the applicant at Lucknow is conspicuously absent in the income tax authority at Lucknow and that the petitioner can only be assessed by the assessing authority at New Delhi. She next submitted that the writ petition had been filed when notices for a manual scrutiny for the assessment year 2012-13 had been received by the applicant and the assessing officer at Lucknow that is the respondent-contemnor did not pay any heed to the objection of jurisdiction taken by the applicant and proceeded with the assessment proceedings threaten to complete the same by 30.03.2015.

5. Learned counsel for the applicant next submitted that as per the official records of the income tax also the applicant is an assessee of income tax at New Delhi and therefore, the computer-generated notice records the New Delhi address of the assessee. She next submitted that scoring out the New Delhi address and sending the notice at Lucknow address was an act of fraud.

6. Learned counsel for the applicant next submitted that the opposite party-contemnor proceeded with the assessment despite the filing of the writ petition and passed an order of assessment which was also assailed by amending the writ petition and the writ Court quashed the order of assessment. Despite the said order having been quashed, the respondent-contemnor did not withdraw the demand which continued to be displayed on the income tax web portal for about 7 years and 7 months and it was only after it was pointed out before this Court during the hearing of the application that the outstanding demand on the web portal had been causing grave humiliation to the applicant who was being treated as a defaulter of income tax by financial institution and the credit worthiness of the applicant had also been seriously impacted which had deprived the applicant in several ways.

7. Learned counsel for the applicant next submitted that even after the writ Court had clearly provided in the judgment and order dated 31.03.201 that the tax authority at Lucknow had no jurisdiction to assess the applicant, the same officer i.e. the opposite party-Mr. Harish Gidwani, Deputy Commissioner of Income Tax, Range-II, Lucknow revived the notice dated 20.09.2014 which has been issued for manual scrutiny for the succeeding assessment year 2013-14 was revived and a notice dated 24.06.2015 was sent to applicant at his New Delhi address and again on 15.03.2016 another notice was issued to the applicant threatening to make an exparte assessment pursuant to earlier notices sent in respect to the assessment year 2012-13.

8. Learned counsel for the applicant next submitted that written representations were made to the opposite party pointing out that he did not have the jurisdiction to assess the applicant in view of the orders passed by the writ Court on 31.03.2015, but the applicant was told that the order of the writ Court was being appealed against before the Supreme Court and hence, the opposite party was not bound to comply with the order of the writ Court. Learned counsel for the applicant thus submitted that the opposite party is guilty for willful and deliberate contempt as he was fully aware of the impact of the order dated 31.03.2015 passed by the writ Court and had refused to ensure compliance on the ground that the special leave petition was to be filed before the Supreme Court and in furtherance of the said deliberation the opposite party did not withdraw the demand which had been generated in furtherance of the order of assessment made by him although the said order had been set aside by the writ Court vide the order dated 31.03.2015.

9. Per contra, learned counsel for the opposite party submitted that as the Department had taken decision to file a special leave petition against the judgment and order dated 31.03.2015, the opposite party did not commit any illegality in not complying with the order dated 31.03.2015. He pointed out that in paragraph 23 of the counter affidavit, this aspect had clearly been mentioned and only because the special leave petition was not filed would not mean that the opposite party had willfully and deliberately violated the order dated 31.03.2015.

10. Learned counsel for the opposite party next submitted that the order dated 31.03.2015 had been passed in the writ petition filed by the applicant assailing the assessment for the assessment year 2012-13 and as such, the order dated 31.03.2015 would have no application in the succeeding financial year 2013-14. He also pointed out that earlier in respect of the assessment year 2011-12 the applicant had preferred writ petition No.1848 of 2014 which had been dismissed vide an order dated 27.03.2014. This Court in the aforesaid writ petition has held that main place of profession of the applicant would be at Lucknow for the assessment year 2011-12 and accordingly, the assessing officer had rightly exercised power under Section 142 of the Act. Learned counsel next submitted that every assessment year for the purpose of income tax is different and since the order dated 31.03.2015 had been passed in respect of assessment year 2012-13 it would have no application in respect of the assessment year 2013-14.

11. Learned counsel for the opposite party next submitted that the opposite party was not responsible for withdrawing the demand from the web portal of the income tax and in any case after the same had been pointed out clearing the hearing of the contempt petition the opposite party was instrumental in getting the demand reflected on the web portal withdrawn by the present assessing officer and as of now the demand stands withdrawn on 22.11.2022 and the said order dated 22.11.2022 has been placed on record with the supplementary affidavit of Mr. Harish Gidwani filed on 5.12.2022 and indicates that the same was being withdrawn in compliance of the orders dated 31.03.2015 passed in writ petition No.9525(MB) of 2013.

12. Learned counsel for the opposite party next submitted that upon to the jurisdiction being raised by the applicant, sufficient opportunity had been given by the opposite party and on 15.03.2016 the opposite party had given further opportunity to the applicant indicating that no application for transfer of jurisdiction had been received by the opposite party and the applicant had not invoked Section 127 by moving the competent authority to transfer the case to some other assessing officer and no application was made by the applicant to transfer his case to New Delhi.

13. Learned counsel for the opposite party next submitted that the opposite party was the assessing officer as the PAN database was showing his jurisdiction in assessment year 2013-14 against which no order or direction had been passed by this Court in the judgment and order dated 31.03.2015 passed in Writ Petition No.9525 (MB) of 2013. Learned counsel next submitted that the initial notice for the assessment year 2013-14 had been given by the opposite party on 20.9.2014 and the applicant had not filed any objection within 30 days of the issuance of the said notice as is required under Section 124 (3) of the Income Tax Act, 1961 and

hence, the notice was valid and the assessment made for the assessment year 2013-14 cannot be faulted.

14. Learned counsel for the opposite party next submitted that new notice issued was also valid as per para-6 of the AST Instruction no.115 of Directorate of Income Tax, Systems, New Delhi circulated vide letter F.No.DIT(S)-II/CASS/2014 dated 02.08.2013 which categorically says that in all cases under compulsory scrutiny, notice under Section 143(2) will be generated from the system only by the officer having PAN in his/ her jurisdiction.

15. Learned counsel for the opposite party next submitted that in order to get the jurisdiction changed, an order under Section 127 of the Income Tax Act, 1961 issued by the competent authority is required which was not complied with by the applicant and as the objections were filed beyond 30 days, the same was not considered by this Court in writ petition No.1848 (MB) of 2014 and the same was dismissed and it has been denied that for the assessment year 2011-12 the applicant was assessed at New Delhi.

16. Learned counsel for the opposite party next submitted that after he passing of the judgment and order dated 31.03.2015, the opposite party has never proceeded against the applicant for the assessment year 2012-13 and the merely changing the principal place of profession or residential address in PAN does not automatically change the jurisdiction of the assessment officer. He next submitted that while passing the assessment order for the assessment year 2013-14 the assessing officer had given opportunity to the applicant during course of the assessment proceedings to provide any such letter or application for transfer of jurisdiction, but no reply was submitted by him. He again submitted that the opposite party has not violated the directions given by this Court vide judgment and order dated 31.3.2015 and no further proceedings for assessment year 2012-13 was initiated by the opposite party is found to have inadvertently violated the orders of this Court, then he renders unconditional apology to this Court.

17. I have considered the submissions advanced by learned counsel for the parties and perused the material on record.

18. On its perusal, it is found that the judgment and order dated 31.03.2015 passed by the writ Court in Writ Petition No.9525 (MB) of 2013 is unambiguous and clear and is not confined to any particular year but lays down the jurisdiction of the authority in accordance with the provisions contained in the Income Tax Act, 1961. The Divisional Bench also considered the effect of Sections 124 and 127 of the Act and has clearly recorded that in case any objection being raised in respect of the jurisdiction of the assessing officer as has been done in the present case when the applicant had referred the pending writ petition after the issuance of the first notice dated 20.09.2014, the opposite party should have awaited the decision of the writ Court and in any case as the income tax authorities are expected to proceed in disciplined manner without creating any doubt in the minds of the assessee's, it was the duty of the assessing officer (opposite party) to have referred the question of jurisdiction to the Chief Commissioner or Commissioner as the case may be under Section 124(2) of the Act, 1961 and not doing so renders the action of the opposite party illegal.

18. As regards the demand on the income tax portal pursuant to assessment made by the opposite party, I find that the assessment order for the assessment year 2012-13 was passed on 30.03.2015 during the pendency of the writ petition and on the very next day the writ Court had passed the order on 31.03.2015. The demand generated pursuant to the assessment order was only after 31.03.2015 and had been generated by the opposite party who had assessed the applicant. The opposite party, therefore, knowing that judgment and order dated 31.03.2015 had been passed generated the demand. He, thus, acted in contempt of the judgment and order dated 31.3.2015.

19. The submission made by the learned counsel for the applicant that the writ Court vide the judgment and order dated 31.03.2015 had decided the question of jurisdiction and not of any particular assessment year and also that each year

assessment being different has no application in cases where the jurisdiction prima facie appears to be correct as this Court finds that the judgment and order dated 31.03.2015 is not confined to any particular assessment year and has generally recorded that the income tax authority at Lucknow does not have jurisdiction over the applicant who is assessed at New Delhi. This Court, is therefore, of the prima facie view that the opposite party is guilty of contempt of the orders dated 31.03.2015 passed by the writ Court and the opposite party does not the jurisdiction or authority to interpret the orders passed by this Court by putting in words which are not contained in the judgment and order dated 31.03.2015 appears to be willful and deliberate.

20. Considering in totalities of facts and circumstances of the case, following charges are being framed and the applicant is required to appear in person and answer the charge of contempt on the next date of listing:

"(i) Why the opposite party-contemnor, Mr. Harish Gidwani, Deputy Commissioner of Income Tax, Range-II, Lucknow be not punished for willfully flouting the order dated 31.03.2015 passed in Writ Petition (MB) No.9525 of 2013 and proceeded with the assessment year 2013-14 when the writ Court had recorded that the Tax Authority at Lucknow do not have jurisdiction to assess the petitioner at Lucknow and passed an assessment order.

(ii) Why the opposite party-contemnor, Mr. Harish Gidwani, Deputy Commissioner of Income Tax, Range-II, Lucknow be not punished for willfully flouting the order of writ Court dated 31.03.2015 passed in Writ Petition (MB) No.9525 of 2013 that local address was inserted deliberately to create jurisdiction, which, in fact, legally was not vested with the opposite party i.e. the present contemnor.

(iii) Why the opposite party-contemnor, Mr. Harish Gidwani, Deputy Commissioner of Income Tax, Range-II, Lucknow be not punished for the reason that the outstanding amount was not deleted from the web portal for several years which amounts to deliberate and willful disobedience of the judgment and order dated 31.03.2015."

21. List this contempt application on 21.11.2023 to enable learned counsel for the opposite party-contemnor to make submission on the charges so framed."

3. Ms. Radhika Singh, learned counsel for the applicant submitted that the applicant changed his place of business in the assessment year 2011-12 from Lucknow to New Delhi on account of harassment being meted by the Income Tax Authorities at Lucknow, the applicant having businesses at Lucknow as well as New Delhi.

4. Learned counsel for the applicant next submitted that the change in the official records were incorporated only in the assessment year 2012-13 and a note to the said effect was made in the official records of the Income Tax Department and the address of the applicant was shown as that of New Delhi.

5. Learned counsel for the applicant next submitted that as after change of business, for assessment year 2011-12 an assessment was made at Lucknow, the same was challenged but the writ petition was dismissed as by the time the assessment was made, the official records

had not been corrected incorporating the place of business of the applicant as New Delhi. The Income Tax Department having recorded the change in the PAN database, an application for review was preferred which is pending disposal before this Hon'ble Court.

6. Learned counsel for the applicant next submitted that a manual notice for scrutiny in respect of the returns of income fired for the assessment for the assessment year 2011-12 was issued by the respondent on 13.09.2013. The address in the official communication which was recorded as that of New Delhi, but is cut out by hand and replaced by the Lucknow address.

7. Learned counsel for the applicant next submitted that the applicant against the manual scrutiny notice for the assessment year 2011-12 was made a representation informing the opposite party-contemnor that he did not have jurisdiction to proceed with the assessment of the applicant on account of the place of business having been transferred from Lucknow to New Delhi, where the return of income had been filed by the applicant. The Delhi address of the applicant had been duly incorporated in official records of the Income Tax Department.

8. Learned counsel for the applicant next submitted that as the opposite party-contemnor refused to stay his hands and continued with the scrutiny proceedings despite categoric objection of the applicant regarding jurisdiction, a writ petition no.9525 (MB) of 2013 was filed seeking quashing of the order/ notice dated 11.09.2013 which was allowed vide the judgment and order dated 31.03.2015.

9. Learned counsel for the applicant next submitted that the writ Court held that after change of business from Lucknow to New Delhi, the Income Tax Authorities at Lucknow did not have the jurisdiction to assess the applicant at Lucknow. It was also recorded that in case the opposite party-contemnor had any doubt, all that he could have done was to refer the matter to the Chief Commissioner of Income Tax for a decision on the question of jurisdiction but could not have proceeded with the assessment. Sections 124 and 127 were specifically referred to and it was finally laid at rest that there was no jurisdiction with the Income Tax Authorities at Lucknow.

10. Learned counsel for the applicant next submitted that during the pendency of the writ petition, an ex-parte assessment had been made pursuant to the order dated 11.09.2013 assuming jurisdiction at Lucknow. The said order was also set aside by the writ Court vide the judgment and order dated 31.03.2015. After the rendering of the judgment and order dated 31.03.2015, the opposite party-contemnor issued a notice dated 24.06.2015 recording the PAN number of the applicant and the address as D 127 East of Kailash, New Delhi manually selecting the applicant for scrutiny for the assessment year 2013-14, the return of income in respect of which had already been filed at New Delhi.

11. Learned counsel for the applicant next submitted that response to the said notice was submitted by the applicant on 5.7.2015 giving reference of the judgment and order dated 31.03.2015 passed in Writ Petition No.9525 (MB) of 2015 categorically pointing out that the opposite party-contemnor did not have the jurisdiction to select the applicant for manual scrutiny of a return of income already filed at New Delhi and that the issuance of the notice was extraneous and brazenly contemptuous.

12. Learned counsel for the applicant next submitted that after the submission of the response dated 15.07.2015 the opposite party-contemnor maintained a cryptic silence and on 15.03.2016 issued another manually prepared notice and not a notice taken out from the official records in which reference to the notice dated 24.06.2015 was made but the address of the applicant was altered by the opposite party-contemnor from New Delhi to that of Lucknow, contrary to the official records and against the same PAN number. Seven day's time was granted by him to respond to the notice issued without jurisdiction and in violation of the judgment and order dated 31.03.2015.

13. Learned counsel for the applicant next submitted that opposite party-contemnor obstinately responded that he was not bound by orders passed by the High Court and he will get it set aside by the Hon'ble Supreme Court and a SLP is being filed. This assertion is contained in paragraph 7 of the instant contempt application preferred on 28.03.2016. Response has been given in paragraph 23 of the opposite party's counter affidavit dated 18.5.2016 containing a changed stand that a proposal for filing a special leave petition has been submitted duly recommended by

the contempt authority before Supreme Court. No SLP was actually filed. The respondent contemnor has filed a false affidavit.

14. Learned counsel for the applicant next submitted that the assessment order was made ex parte and the opposite party-contemnor did not refrain from proceeding with the scrutiny assessment in violation of the judgment and order dated 31.03.2015. In the counter affidavit, the correctness of the judgment and order dated 31.03.2015 has been disputed and submissions contrary to the finding recorded by the Division Bench of this Hon'ble Court in the said judgment and order dated 31.03.2015 have been made. Sections 124 and 127 of the Income Tax Act have deliberately been misread contrary to the finding recorded by the Division Bench in the order dated 31.03.2015.

15. Learned counsel for the applicant next submitted that noticeably no remorse has been expressed and no apology has been tendered. It has been alleged that in case it is found to be inadvertent mistake, the opposite party-contemnor tenders an apology, making it clear that if this Hon'ble Court finds that the mistake was not inadvertent but was deliberate and wilful, no apology for the same is being tendered.

16. Learned counsel for the applicant next submitted that several affidavit have been filed thereafter to justify the contumacious action by reference to extraneous material which had not been considered or were not in existence at the time of committing contempt by scrutinizing the assessment filed at Delhi after selecting the applicant's case for manual scrutiny. In the meantime the opposite party-contemnor had allowed the demand which had been set aside by this Hon'ble Court to be displayed on the income tax portal showing the applicant as a defaulter and thus causing deliberate harm to the reputation of the applicant.

17. Learned counsel for the applicant next submitted that the demand was taken down from the portal by the opposite party-contemnor only after it was pointed out to this Hon'ble Court in November, 2023 that in blatant contempt of the order dated 31.03.2015 the default had been displayed on the official portal of the Income Tax Department by the opposite party. The default was continued to be shown for a period of about 7 years and 7 months.

18. Learned counsel for the applicant next submitted that after several hearings in the present contempt petition, it was found that the action of the opposite party-contemnor in violating the judgment and order dated 31.05.2015 was deliberate and willful, charges were framed in the order dated 1.11.2023. She next submitted that an affidavit has been filed in response to the charges framed against the opposite party-contemnor and the same submissions have been repeated as were made on several hearings before the framing of the charge.

19. Learned counsel for the applicant next submitted that emphasis was laid that the PAN database indicated the address of the applicant as that of Lucknow and as such the opposite party-contemnor had selected the applicant's case for scrutiny. This is factually incorrect. The address in the database had been changed.

20. Learned counsel for the applicant next submitted that notice issued by the opposite party-contemnor himself on 24.06.2015 to the applicant is at his Delhi address calling for information for scrutiny pertaining to the return filed at New Delhi for assessment year 2013-14 and with meticulous cleverness reference has been made only to the notice dated 16.03.2015 which is not an officially generated communication but a notice prepared by the opposite party-contemnor himself by replacing the Delhi address by the Lucknow address.

21. Learned counsel for the applicant next submitted that the judgment and order rendered by this Hon'ble Court has primacy and the plea raised as an afterthought at a very late stage that the representation given by the applicant on July 5, 2015 had been referred to the CIT in January, 2016 is not quite correct. The respondent is not required to seek any directions of any authority and has to punctiliously and without any reservation follow the orders passed by the High Court. The CIT has not passed any orders contrary to the judgment and order dated 31.03.2015 and the allegation to the contrary made by the respondent is factually incorrect. No such order of the CIT had been brought on record. The respondent is guilty of criminal contempt for having filed a false affidavit knowing it to be false.

22. In support of her submissions, learned counsel for the applicant placed reliance upon the following judgments:

(i) Sebastian M. Hongray v. Union of India; (1984)3 SCC 82

(ii) T.N. Godavarman Thirumulpad (102) through the Amicus Curiae v. Ashok Khot and another; (2006)5 SCC 1.

(iii) Patel Rajnikant Dhulalbai and another v. Patel Chandrkant Dhulabhai and others; (2008) 14 SCC 561

(iv) Civil Appeal No.4955 of 2022 titled 'Balwantbhai Somabhai Bhandari v. Hiralal Somabhai Contractor (Deceased) Rep. By LRS. and others', decided on Spetember 06,2023.

23. On the other hand, learned counsel for the opposite party submitted that the opposite party-contemnor has highest regard for the dignity and majesty of this Hon'ble Court and he could not even think of disobeying or violating the orders of this Hon'ble Court. It is most respectfully submitted that the opposite party-contemnor has not disobeyed or violated the judgment dated 31.03.2015 passed by the Hon'ble Court, in any manner and no further proceedings for the assessment year 2012-13 were undertaken by the deponent. However, if this Hon'ble Court considers any act of omission or commission of the deponent to be contempt of this Hon'ble Court, the deponent renders his unconditional and unequivocal apology for the same.

24. Learned counsel for the opposite party next submitted that the aforesaid contempt petition was filed in impleading the deponent in respect of the alleged contempt committed by him while he was posted as Deputy Commissioner of Income Tax (2), Lucknow. In this regard, it is respectfully submitted that the deponent joined the post of Deputy Commissioner of Income Tax, Lucknow on 9.10.2014 and remained posted there till 09.06.2016 only. Thereafter, he was transferred from the said post and was posted as Deputy Commissioner of Income Tax (Audit), Lucknow and was having no interference or authority regarding the work of his earlier post since he has already handed over the charge of DCIT(2), Lucknow. Further the applicant after serving with the Income Tax Department on different posts has ultimately superannuated from the Income Tax Department on 30.06.2023.

25. In regard to charge no.1, learned counsel for the opposite party while denying the charge so framed submitted that though the notice dated 20.09.2014 and 15.10.2014 u/s 143(2) were issued to the applicant

for the assessment year 2013-14 much prior to the passing of the judgment dated 31.03.2015, but neither the applicant has made any challenge, nor raised any grievance against the said notice issued for the assessment year 2013-14 before this Hon'ble Court nor the Court has taken any cognizance in respect to the said notices which were for the assessment year 2013-14. Thus, the Hon'ble Court in its judgment dated 31.03.2015 was pleased not to consider or deal with either the notices issued for assessment year 2013-14 or the assessment of the assessment year 2013-14 in any manner.

26. Learned counsel for the opposite party next submitted that there no violation of Hon'ble High Court's judgment dated 31.03.2015 as deponent has not proceeded against the applicant in any manner whatsoever for the assessment year 2012-13 as per the mandate of the judgment. The present contempt petition was filed for assessment year 2013-14. There was no objection to the notice on jurisdiction dated 20.9.2014 and 15.10.2014 raised by the applicant within 30 days of the issue of notice under Section 143(2) as required under the provisions of 124(3) of the Income Tax Act and these notices were not even assailed in the writ petition No.9525 of 2013.

27. Learned counsel for the opposite party next submitted that no notice for assessment year 2013-14 was quashed by the Hon'ble Court in its judgment dated 31.03.2015. Further, there was not even any challenge made in the writ petition regarding notices issued for the assessment year 2013-14 which were issued more than six months before the passing of the judgment in writ petition no.9525 of 2013 on 31.03.2015. The applicant has not even objected to the jurisdiction of the Assessing Officer within the mandatory period provided under Section 124(3) of the Income Tax Act, which is 30 days from the date of notice which was first issued to him on 20.9.2014.

28. Learned counsel for the opposite party next submitted that the applicant was requested to submit an application for transfer of jurisdiction u/s 127 of the Act during the course of hearing in the assessment year 2013-14 to which no reply was filed. There is no problem with the Department in transferring cases from one jurisdiction to another. But there is a procedure which when followed, the jurisdiction is transferred which procedure was never adopted for assessment year 2013-14. The said procedure was however, later on,

adopted by the applicant for getting his case transferred from New Delhi to Lucknow in the year 2019.

The deponent after taking charge of the office of Deputy Commissioner, Range-2, Lucknow on 9.10.2014 issued notice under Section 143(2) in all cases as required by the statute. In the case of the applicant, notice u/s 143(2) for assessment year 2013-14 was issued by the undersigned on 15.10.2014 subsequent to the first notice issued on 20.09.2014 by his predecessor to which nobody attended which is apparent from the order sheet and the order itself. It is blatantly wrong that compliance was made on 26.09.2014 (six days after the date of notice).

29. Learned counsel for the opposite party next submitted that no objection to the jurisdiction was filed within 30 days of the issue of notice u/s 143(2) dated 20.9.2014. However, the Assessing Officer/ deponent in good faith and gesture referred the matter to the Commissioner of Income Tax vide letter dated 5.1.2015 narrating the non-corporation of the applicant. It is wrongly claimed by the applicant that the matter was never referred to the Commissioner of Income Tax which was further transmitted to the Board. In view of this letter and subsequent letters written by his successor the case of the applicant was transferred u/s 127(2) vide order dated 21.09.2016. In compliance to the order u/s 127(2) the then Assessing Officer transferred the case records along with other miscellaneous records to the officer having jurisdiction in Delhi.

30. Learned counsel for the opposite party next submitted that under the taxation law each assessment year is considered as an independent from the other and order passed for a year does not act as *res judicata* for the other year. In this reference, it is relevant to point out that even the proceedings for the year 2011-12 were challenged by the applicant by filing writ petition no.1848 of 2014. However, the Hon'ble Court after observing that since the applicant did not object to the jurisdiction within the statutory period of 30 days, the Assessing Officer has rightly exercised the jurisdiction and hence, demised the writ petition vide judgment dated 27.03.2014.

31. Learned counsel for the opposite party next submitted that under the online system of filing of Income Tax Returns, online return for any assessment year can be filed from any corner of the entire country and a

change of address in the PAN or even return filed online does not change the jurisdiction of the Assessing Officer automatically from the PAN database, as alleged and therefore, since the jurisdiction to assess the applicant was not transferred in accordance with the provisions of the Act, the deponent was having the jurisdiction to asses the applicant for the assessment year 2013-14 even if he had filed his return with Delhi residential address. Even the acknowledgment of ITR for assessment year 2013-14 shows that it was filed under the jurisdiction of ACIT, Range-II, Lucknow. Further, since as per the PAN database the jurisdiction to the assess the applicant was with the deponent, therefore, he was supposed to perform his functions as per the provisions of the Act unless the jurisdiction was transferred as per Section 127 of the Act, which is not the case here.

Merely by change of address in the ITR or PAN would not automatically change the jurisdiction of the Assessing Officer under the provisions of the Income Tax Act. Hence, in absence of any orders of the competent court or the higher Authorities transferring assessment, he had no other option except to pass the assessment order for assessment year 2013-14 on 22.03.2016 as per the provisions of the Act as the matter was time barring on 31.03.2016 in view of Section 153 of the I.T. Act, 1961 which he did and hence, has not in any manner disobeyed or violated the judgment of the Hon'ble Court.

32. Learned counsel for the opposite party next submitted that the respondent joined the office of DCIT, Range 2, Lucknow on 9.10.2014 and was functioning in accordance with the jurisdiction as conferred by the Central Board of Direct Taxes/ Higher Authorities in accordance with the provisions of Section 120(1) of Income Tax Act. The respondent does not have any power/ authority to transfer the jurisdiction of the case of the applicant on his own and has to perform the function of the Assessing Officer and make assessment as per the provisions of the Act within time frame as provided under Section 153 of the Income Tax Act. Further, as the limitation for passing of the order was expiring on 31.03.2016 and since there was no direction or order from higher authorities or any competent court either for transferring the jurisdiction of the applicant or directing the deponent/ respondent to not to pass final assessment order in the case of the applicant for assessment year 2013-14, there was no alternative left with the deponent, but to pass the order which would have been otherwise barred by limitation on 31.03.2016. Therefore, the deponent has merely performed his duties conferred upon

him by virtue of the provisions of the Income Tax Act and has neither disobeyed nor violated, much less deliberately and willfully violated the judgment dated 31.03.2015 passed by this Hon'ble Court and thus, the charge so framed by this Hon'ble Court is libale to be dropped against the deponent.

33. In regard to charge no.II, learned counsel for the opposite party while denying the charge so framed, submitted that the local address on the alleged notice was never inserted by the deponent/ contemnor. He next submitted that the subject writ petition was filed against the notice dated 11.09.2013, allegedly in which address was inserted, issued for assessment year 2012-13 which was quashed by the Hon'ble Court vide judgment and order dated 31.03.2015 and proceedings held in pursuance to notice dated 11.09.2013 are related to the assessment year 2012-13. It is also denied that the applicant has striked off the Delhi address and inserted the local address.

34. Learned counsel for the opposite party next submitted that the deponent has not held any proceeding nor issued notice to the applicant for the assessment year 2012-13, so it is not correct to say that the deponent has inserted the local address to create the jurisdiction.

35. Learned counsel for the opposite party next submitted that the proceeding for assessment year 2013-14 were not the subject matter of any litigation and proceedings were already commenced even prior to the joining of the deponent on the post of DCIT, Range-II, Lucknow on 9.10.2014. The details already provided by the deponent for assessment year 2013-14 have been discussed in detail in reply to charge-I.

36. Learned counsel for the opposite party categorically denied that in any of notices issued to the applicant the deponent has deliberately inserted the local address after striking off any other address. It is submitted that since the deponent has issued notice as per the address available in the PAN records to proceed with the proceedings which were already commenced before the passing of the order by this Hon'ble Court. Moreover, the proceedings for assessment year 2013-14 were not subject-matter of writ petition no.9525 of 2013.

37. Learned counsel for the opposite party next submitted that the deponent has neither disobeyed nor violated much less deliberately and willfully violated, the judgment dated 31.03.2015 passed by this Hon'ble Court in any manner and thus, the charge so framed by this Hon'ble Court is liable to be dropped against the deponent.

38. In regard to charge no.III, learned counsel for the opposite party while denying the charge so framed, submitted that though the assessment order for assessment year 2012-13 in pursuance to initial notice dated 11.09.2013 was passed by the deponent on 25.03.2015 wherein a demand for Rs.51 lacs was raised through demand notice dated 25.03.2015. However, after the judgment of this Court dated 31.03.2015, the Court quashed the notice dated 11.09.2013 and consequential proceedings for assessment year 2012-13. The said demand was never pressed against the applicant and no fresh notice of demand was issued to the applicant after the judgment of this Court, nor was the demand adjusted from the refund for any subsequent assessment years.

39. Learned counsel for the opposite party next submitted that the deponent was transferred from the office of DCIT Range-II, Lucknow to DCIT, Lucknow in June, 2016 and was not at all related with the issuance of demand against the applicant or uploading it on web portal. He next submitted that the case of the applicant transferred u/s 127(2) vide order dated 21.09.2016. In compliance with the order u/s 127(2), the then Assessing Officer transferred the case records along with other miscellaneous records to the officer having jurisdiction in Delhi. As per the transfer Memo the case records of 2009-10, 2011-12, 2012-13, 2013-14 along with two writ petition folders for 2011-12 and 2012-13 were transferred.

40. Learned counsel for the opposite party next submitted that part-B of this transfer memo shows the demands which were transferred from Lucknow, AO to Delhi AO. The arrears demands during these periods were kept in annual form as the digitization of arrears demands had not yet started. As per column (a), demands only in respect of assessment year 2011-12 and 2009-10 have been transferred. No demand has been transferred for 2012-13. The respondent was, therefore, in no way responsible for the demand being reflected in the portal in the year 2022 for assessment year 2012-13.

41. Learned counsel for the opposite party next submitted that during this period, the demands were all in a manual state and no uploading or digitization of arrears demands was in vogue. Thus, the demand was not uploaded on the portal till 27.09.2016, the date when the case records were transferred to Delhi after the transfer of the respondent. It is also relevant to mention here that the opposite party-contemnor was transferred from the office of Deputy Commissioner of Income Tax, Range-II, Lucknow in June, 2016 meaning that the demand was not uploaded in his tenure and as the records were transferred and the office in Lucknow could not do anything with any proceedings of the case since the case of the applicant was transferred from Lucknow to Delhi before the uploading of alleged demand on the web portal

42. Learned counsel for the opposite party next submitted that the issue about the reflection of demand on the web portal was raised for the first time by the applicant through his affidavit dated 10.11.2022 and though deponent was not dealing with the matter at that point of time, he immediately raised the issue with present officer on the post and got the same rectified, which was due to some technical error of office maintaining the portal and relevant document in this regard was also placed on record with his affidavit dated 5.12.2022.

43. Learned counsel for the opposite party next submitted that the deponent was a responsible officer of the Government and while performing his duties and responsibilities has retired from the services of the Government on 30.6.20213. The deponent has the highest regard for the order of this Court.

44. In support of his submissions, learned counsel for the opposite parties relied upon following judgments:

(i) Sudhir Vasudeva v. M. George Ravishekaran reported in (2014)3 SCC 373

(ii) B.K. Kar v. The Chief Justice and His Companion Judges reported AIR 1961 SC367

(iii) Mrityunjoy Das and other v. Hasibur Rahaman and others reported in 2002(3)SCC 739

(iv) Dinesh Kumar Gupta v. Unite India Insurance Company Limited and others reported in (2010)12 SCC 770

(v) Ram Kishan v. Tarun Bajaj and others reported in 2014(16) SCC 204

(vi) Avishek Raja and others v. Sanjay Gupta reported in (2017)8 SCC 435

(vii) Principal Commissioner of Income Tax v. M/S I-Ven Interactive Ltd., Mumbai (Civil Appeal No.8132 of 2019)

(viii) In Re: P.C. Sen v. Unknown, AIR 1970 SC 1821.

(ix) Raza Textiles Ltd. v. Commissioner of Income Tax reported in 1989(178) ITR 496

(x) Commissioner of Income Tax v. Lalit Kumar Bardia reported in ITA 127 of 2006.

(xi) Commissioner of Income Tax v. M/s All India Children Care & Education, IAPL 89 of 2003

(xii) Commissioner of Income Tax v. Sohan Lal Sewa Ram Jaggi decided on 5 February, 2008.

45. I have considered the submissions advanced by learned counsel for the parties and perused the judgments relied upon by learned counsel for the parties.

46. To resolve the controversy involved in the matter, the judgments relied upon by learned counsel for the parties are being quoted below:

(A) Judgment relied upon by learned counsel for the applicant:

<u>i) Sebastian M. Hongray (Supra):</u>

6. Civil contempt is punishable with imprisonment as well as fine. In a given case, the court may also penalise the party in contempt by ordering him to pay the costs of the application. (2) A fine can also be imposed upon the contemnor.

7. Now in the facts and circumstances of the case, we do not propose to impose imprisonment nor any amount as and by way of fine but keeping in view the torture, the agony and the mental oppression through which Mrs. C. Thingkhuila, wife of Shri C. Daniel and Mrs. C. Vangamla, wife of Shri C. Paul had to pass and they being the proper applicants, the formal application being by Sebastian M. Hongray, we direct that as a measure of exem- plary costs as is

permissible in such cases, respondents Nos. 1 and 2 shall pay Rs 1 lac to each of the aforementioned two women within a period of four weeks from today.

8. A query was posed to the learned Attorney General about the further step to be taken. It was made clear that further adjourning the matter to enable the respondents to trace or locate the two missing persons is to shut the eyes to the reality and to pursue a mirage. As we are inclined to direct registration of an offence and an investigation, we express no opinion as to what fate has befallen to Shri C. Daniel and Shri C. Paul, the missing two persons in respect of whom the writ of habeas corpus was issued save and except saying that they have not met their tragic end in an encounter as is usually claimed and the only possible inference that can be drawn from circumstance already discussed is that both of them must have met an unnatural death. Prima facie, it would be an offence of murder. Who is individually or collectively the perpetrator of the crime or is responsible for their disappearance will have to be determined by a proper, thorough and responsible police investigation. It is not necessary to start casting a doubt on anyone or any particular person. But prima facie there is material on record to reach an affirmative conclusion that both Shri C. Daniel and Shri C. Paul are not alive and have met an unnatural death. And the Union of India cannot disown the responsibility in this behalf. If this inference is permissible which we consider reasonable in the facts and circumstances of the case, we direct that the Registrar (Judicial) shall forward all the papers of the case accompanied by a writ of mandamus to the Superintendent of Police, Ukhrul, Manipur State to be treated as information of a cognizable offence and to commence investigation as prescribed by the relevant provisions of the Code of Criminal Procedure.

ii) T.N. Godavarman Thirumulpad (102) through the Amicus Curiae (supra):

5. Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very corner stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court's orders are to be followed and complied with.

7. On the basis of submissions made by learned Amicus Curiae, proceedings were initiated against them. It was highlighted by learned Amicus Curiae that the respondents have acted in brazen defiance of the orders of this Court and their conduct constitutes the contempt by way of (a) wilful dis- obedience of directions issued by this Court, (b) the manner in which contemnors have conducted themselves clearly tends to lower the authority of this Court and obstructs the administration of justice (c) as their conduct falls both under the definition of Civil contempt, as well as seeing dimensions of the matters, under criminal contempt.

20. In B.M. Bhattacharjee (Major General) v. Russel Estate Corpn. it was observed by this Court that "all of the officers of the Government must be presumed to know that under the constitutional scheme obtaining in this country, orders of the courts have to be obeyed implicitly and that orders of the apex court-for that matter any court- should not be trifled with".

21. Any country or society professing rule of law as its basic feature or characteristic does not distinguish between high or low, weak or mighty. Only monarchies and even some democracies have adopted the age old principle that the king cannot be sued in his own courts.

22. Professor Dicey's words in relation to England are equally applicable to any nation in the world. He said as follows:

"When we speak of the rule of law as a characteristic of our country, not only that with us no man is above the law but that every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. In England the idea of legal equality, or the universal subjection of all classes to one law administered by the ordinary courts, has been pushed to its utmost limit. With us every official, from Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done with legal justification as any other citizen. The reports abound with cases in which officials have been brought before the courts, and made, in their personal capacity, liable to punishment, or to the payment of damages, for acts done in their official character but in excess of their lawful authority. A colonial governor, a secretary of State, a military officer, and all subordinates, though carrying out the commands of their official superiors, are as responsible for any act which the law does not authorize as is a private and unofficial person. (See Introduction to the Study of the Law of the Constitution, 10th Edn. 1965, pp. 193-194).

23. Respect should always be shown to the Court. If any party is aggrieved by the order which is in its opinion is wrong or against rules or implementation is neither practicable nor feasible, it should approach the Court. This had been done and this Court after consideration had rejected the I.A. long before.

26. It is thus crystal clear that the applications of those eligible for grant of licenses were required to be sent to CEC, who was then required to submit a report to this Court. Thereafter, this Court would have decided on the question of entitlement for license. The procedure mandated by this Court was not followed. Instead of that by their impugned actions, the contemnors permitted resumption of operations by the unit holders. There was absolutely no confusion or scope for entertaining doubt as claimed by the contemnors.

28. The explanations of the contemnors are clearly unacceptable. Mens rea is writ large.

29. The inevitable conclusion is that both the contemnors 1 and 2 deliberately flouted the orders of this Court in a brazen manner. It cannot be said by any stretch of imagination that there was no mens rea involved. The fact situation clearly shows to the contrary.

30. Learned counsel appearing for contemnor No.1 and 2 stated that they have tendered unconditional apology which should be accepted.

31. Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace, the apology is shorn of penitence and hence it is liable to be rejected. If the apology is offered at the time when the contemnor finds that the court is going to impose punishment it ceases to be an apology and becomes an act of a cringing coward.

32. Apology is not a weapon of defence to purge the guilty of their offence, nor is it intended to operate as universal panacea, but it is intended to be evidence of real contriteness. As was noted in L.D. Jaikwal v. State of U.P. (SCC p. 406, para 1)

"We are sorry to say we cannot subscribe to the 'slap-say sorry-and forget' school of thought in administration of contempt jurisprudence. Saying 'sorry' does not make the slapper taken the slap smart less upon the said hypocritical word being uttered. Apology shall not be paper apology and expression of sorrow should come from the heart and not from the pen. For it is one thing to 'say' sorry-it is another to 'feel' sorry.

33. Proceedings for contempt are essentially personal and punitive. This does not mean that it is not open to the Court, as a matter of law to make a finding of contempt against any official of the Government say Home Secretary or a Minister.

34. While contempt proceedings usually have these characteristics and contempt proceedings against a Government department or a minister in an official capacity would not be either personal or punitive (it would clearly not be appropriate to fine or sequest the assets of the Crown or a Government department or an officer of the Crown acting in his official capacity), this does not mean that a finding of contempt against a Government department or minister would be pointless. The very fact of making such a finding would vindicate the requirements of justice. In addition an order for costs could be made to underline the significance of a contempt. A purpose of the court's powers to make findings of contempt is to ensure the orders of the court are obeyed. This jurisdiction is required to be co-extensive with the courts' jurisdiction to make the orders which need the protection which the jurisdiction to make findings of contempt provides. In civil proceedings the court can now make orders (other than injunctions or for specific performance) against authorized Government departments or the Attorney General. On applications for judicial review orders can be made against ministers. In consequence such orders must be taken not to offend the theory that the Crown can supposedly do no wrong. Equally, if such orders are made and not obeyed, the body against whom the orders were made can be found guilty of contempt without offending that theory, which could be the only justifiable impediment against making a finding of contempt.

35. This is a case where not only right from the beginning attempt has been made to overreach the orders of this Court but also to draw red-herrings. Still worse is the accepted position of inserting a note in the official file with oblique motives. That makes the situation worse. In this case the contemnors deserve severe punishment. This will set an example for those who have propensity of dis-regarding the court's orders because of their money power, social status or posts held. Exemplary sentences are called for in respect of both the contemnors. Custodial sentence of one month simple imprisonment in each case would meet the ends of justice. It is to be noted that in Re: Sri Pravakar Behera (Suo Motu C.P. 301/2003 dated 19.12.2003) (2003 (10) SCALE 1126), this Court had imposed costs of Rs.50,000/- on a D.F.O. on the ground that renewal of license was not impermissible in cases where licenses were issued prior to this Court's order dated 4.3.1997. That was the case of an officer in the lower rung. Considering the high positions held by the contemnors more stringent punishment is called for, and, therefore, we are compressing custodial sentence.

iii) Patel Rajnikant Dhulabhai and another (supra):

58. The provisions of the Contempt of Courts Act, 1971 have also been invoked. Section 2 of the Act is a definition clause. Clause (a) enacts that contempt of court means `civil contempt or criminal contempt'. Clause (b) defines `civil contempt' thus;

2. (b) `civil contempt' means wilful disobedience to any judgement, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.

Reading of the above clause makes it clear that the following conditions must be satisfied before a person can be held to have committed a civil contempt;

(i) there must be a judgment, decree, direction, order, writ or other process of a Court (or an undertaking given to a Court);

(ii) there must be disobedience to such judgment, decree, direction, order, writ or other process of a Court (or breach of undertaking given to a Court); and

(iii) such disobedience of judgment, decree, direction, order, writ or other process of a Court (or breach of undertaking) must be wilful.

59. Section 12 provides punishment for contempt of Court. The relevant part of the provision reads thus;

"12 - Punishment for contempt of court--(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

Explanation.--An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any Contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court , if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

60. In Ashok Paper Kamgar Union v. Dharam Godha & Ors., (2003) 11 SCC 1, this Court had an occasion to consider the concept of `wilful disobedience' of an order of the Court. It was stated that `wilful' means an act or omission which is done voluntarily and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. According to the Court, it signifies the act done with evil intent or with a bad motive for the purpose. It was observed that the act or omission has to be judged having regard to the facts and circumstances of each case.

61. In Kapildeo Prasad Sah & Ors. v. State of Bihar & Ors., (1999) 7 SCC 569, it was held that for holding a person to have committed contempt, it must be shown that there was wilful disobedience of the judgment or order of the Court. But it was indicated that even negligence and carelessness may amount to contempt. It was further observed that issuance of notice for contempt of Court and power to punish are having far reaching consequences, and as such, they should be resorted to only when a clear case of wilful disobedience of the court's order is made out. A petitioner who complains breach of Court's order must allege deliberate or contumacious disobedience of the Court's order and if such allegation is proved, contempt can be said to have been made out, not otherwise. The Court noted that power to punish for contempt is intended to

maintain effective legal system. It is exercised to prevent perversion of the course of justice.

62. In the celebrated decision of Attorney General v. Times Newspaper Ltd.; 1974 AC 273 : (1973) 3 All ER 54 : (1973) 3 WLR 298; Lord Diplock stated:

"There is an element of public policy in punishing civil contempt, since the administration of justice would be undermined if the order of any court of law could be disregarded with impunity."

63. In Anil Ratan Sarkar & Ors. v. Hirak Ghosh & Ors., (2002) 4 SCC 21, this Court held that the Contempt of Courts Act has been introduced in the statute-book for securing confidence of people in the administration of justice. If an order passed by a competent Court is clear and unambiguous and not capable of more than one interpretation, disobedience or breach of such order would amount to contempt of Court. There can be no laxity in such a situation because otherwise the Court orders would become the subject of mockery. Misunderstanding or own understanding of the Court's order would not be a permissible defence.

(iv) Balwantbhai Somabhai Bhandari (supra):

116. We may summarise our final conclusion as under:

(i) We hold that an assurance in the form of an undertaking given by a counsel/ advocate on behalf of his client to the court; the wilful breach or disobedience of the same would amount to "civil contempt" as defined under Section 2(b) of the Act, 1971.

(ii) There exists a distinction between an undertaking given to a party to the lis and the undertaking given to a court. The undertaking given to a court attracts the provisions of the Act, 1971 whereas an undertaking gvien to a party to the lis by way of an agreement of settlement or otherwise would not attract the provisions of the Act, 1971. In the facts of the present case, we hold that the undertaking was given to the High Court and to breach or disobedience would definitely attract the provisions of the Act, 1971.

(iii) Although the transfer of the suit property pendente lite may not be termed as void ab initio yet when the court is looking into such transfers in contempt proceedings the court can definitely declare such transactions to be void in order to maintain the majesty of law. Apart from punishing the contemnor, for his contumacious conduct, the majesty of law may demand that appropriate directions be issued by the court so that any advantage secured as a result of such contumacious conduct is completely nullified. This may include issue of directions either for reversal of the transactions by declaring such transactions to be void or passing appropriate directions to the concerned authorities to ensure that the contumacious conduct on the part of the cotemnor does not continue to ensure to the advantage of the contemnor or any one claiming under him

(iv) The beneficiaries of any contumacious transaction have no right or locus to be heard in the contempt proceedings on the ground that they are bona fide purchasers of the property for value without notice and therefore, are necessary parties. Contempt is between the court and the contemnor and no third party can involve itself into the same.

(v) The apology tendered should not be accepted as a matter of course and the course is not bound to accept the same. The apology may be unconditional, unqualified and bona fide, still if the conduct is serious, which has caused damage to the dignity of the institution, the same should not be accepted. There

ought not to be a tendency by courts, to show compassion when disobedience of an undertaking or an order is with impunity and with total consciousness.

(B) Judgments relied upon by learned counsel for the opposite party:

i) Sudhir Vasudeva (supra):-

19. The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or willful violation of the same. Decided issues cannot be reopened; nor can the plea of equities be considered. The Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdiction like review or appal is not trenched upon. No order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above. The above principles would appear to be the cumulative outcome of the precedents cited at the Bar, namely, Jhareswar Prasad Paul v. Tarak Nath Ganguly, V.M. Manohar Coop. Society Ltd v. Gautam Goswami and Union of India v. Subedar Devassy PV.

ii) B.K Kar (supra):-

"Before a subordinate court can be found guilty of disobeying the order of the superior court and thus to have committed contempt of court, it is necessary to show that the disobedience was intentional. There is no room for inferring an intention to disobey an order unless the person charged had knowledge of the order. If what a subordinate court has done is in utter ignorance of an order of a superior court, it would clearly not amount to intentional disobedience of that court's order and would, therefore, not amount to a contempt of court at all. There may perhaps be a case where an order disobeyed could be reasonably construed in two ways and the subordinate court construed it in one of those ways but in a way different from that intended by the superior court. Surely, it cannot be said that disobedience of the order by the subordinate court was contempt of the superior court. There may possibly be a case where disobedience is accidental. If that is so, there would be no contempt. What is, therefore, necessary to establish in a case of this kind is that the subordinate court knew of the order of the High Court and that knowing the order it disobeyed it. The knowledge must, however, be obtained from a source which is either authorised or otherwise authentic. In the case before us it is not clear as to who the person who signed the application dated November 27, 1957 was because the signature is illegible.

It was not countersigned by a pleader nor is there anything to show that it was presented in court by a pleader authorised to appear on behalf of the complainant. Furthermore, it was not accompanied by an affidavit. Therefore, there could be no guarantee for the truth of the facts stated there- The in. No doubt, it was accompanied by a telegram and even though it was addressed to a pleader there is nothing to indicate that he was authorised to appear for the complainant. Further it is not possible to say as to the capacity of the sender. Had the telegram been received from the court or from an advocate appearing on behalf of the complainant before the High Court and addressed either to the court or pleader for the complainant different considerations would have arisen and it may have been possible to take the view that the information contained therein had the stamp of authenticity. Of course, we do not want to lay it down here as law that every telegram purporting to be signed by an advocate or a pleader is per se guarantee of the truth of the facts stated therein and also of the fact that it was actually sent by the person whose name it bears. In order to assure the Court about these matters an affidavit from the party would be necessary. Upon the materials before us we are satisfied that the Sub-Divisional Magistrate was entitled to ignore the telegram as well as the application. We, therefore, hold that his refusal to act on the telegram did not amount to contempt of court. We may add that the fact that on receiving a copy of the High Court's order through the Additional District Magistrate not only were further proceedings stayed but a writ to redeliver possession was not permitted to issue. This would show clearly that there was no intention on the part either of the Sub-Divisional Magistrate or the second officer to disobey the order of the High Court. The conviction as also the fine of the appellant is erroneous and accordingly set aside."

iii. Mrityunjoy Das (supra):-

"Before however, proceeding with the matter any further it noted that exercise of powers under the Contempt of Courts Act shall have to be rather cautions and use of it rather sparingly after addressing itself to the true effect of the contemptuous conduct. The Court must otherwise come to a conclusion that the conduct complained of tentamounts to obstruction of justice which if allowed, would even permeat in our society (vide Murray & Co. v. Ashok Kr. Newatia & Anr.: 2000(2) SCC 367) this is a special jurisdiction conferred on to the law courts to punish an offender for his contemptuous conduct or obstruction to the majesty of law. It is in this context that the obsrvations of the this Court in Murrays case (supra) in which one of us (Banerjee,J.) was party needs to be noticed.

The other aspect of the matter ought also to be noticed at this juncture viz., the burden and standard of proof. The common English phrase he who asserts must prove has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the standard of proof, be it noted that a proceeding under the extra-ordinary jurisdiction of the Court in terms of the provisions of the Contempt of Court Act is quasi criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond reasonable doubt.The observations of Lord Denning in Re Bramblevale (1969 3 All ER 1062) lend support to the aforesaid. Lord Denning in Re Bramblevale stated:

A contempt of court is an offence of a criminal character. A man may be sent to prison for it,. It must be satisfactorily proved. To use the time- honoured

phrase, it must be proved beyond all reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him. But there must be some other evidence. Where there are two equally consistent possibilities open to the Court, it is not right to hold that the offence is proved beyond reasonable doubt.

In this context, the observations of the Calcutta High Court in Archana Guha v. Ranjit Guha Neogi (1989 (II) CHN 252) in which one of us was a party (Banerjee,J.) seem to be rather apposite and we do lend credence to the same and thus record our concurrence therewith.

In The Aligarh Municipal Board and Others v. Ekka tonga Mazdoor Union and Others 970 (III) SCC 98), this Court in no uncertain term stated that in order to bring home a charge of contempt of court for disobeying orders of Courts, those who assert that the alleged contemners had knowledge of the order must prove this fact beyond reasonable doubt. This Court went on to observe that in case of doubt, the benefit ought to go to the person charged.

In a similar vein in V.G. Nigam and others V. Kedar Nath Gupta and another (1992 (4) SCC 697), this Court stated that it would be rather hazardous to impose sentence for contempt on the authorities in exercise of contempt jurisdiction on mere probabilities.

iv) Dinesh Kumar Gupta (supra):-

12. On a scrutiny of the sequence of events narrated herein before, we are clearly of the view in the first place that the contempt alleged against the appellant would not amount to a criminal contempt because the alleged contempt even if made out would clearly at the best be of a civil nature, which is evident from Section 2 of the Contempt of Courts Act 1971 which lays down as follows:

(a) "contempt of court" means civil contempt or criminal contempt;

(b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;

(c) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which-
(i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court; or
(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;

On perusal of the aforesaid provision enumerated under Section 2 quoted hereinbefore, it can clearly be inferred that the initiation of contempt proceeding against the petitioner even as it stands, would not give rise to a proceeding for criminal contempt and in any event the alleged contempt cannot be stretched beyond civil contempt under the prevailing facts and circumstances of the case discussed hereinbefore. Nevertheless, it would not

be correct on behalf of the appellant to contend that the learned single Judge was not authorised to initiate contempt proceeding against the appellant merely because he was sitting in a single Bench although he might have been in a position to notice whether the alleged action at the instance of any party or anyone else who obstructed the cause of justice, amounted to contempt of Court of a civil or criminalnature and yet would be precluded from intiating suo moto contempt proceedings. The Contempt of Courts Act, 1971 clearly postulates the existence of only the following preconditions before a person can be held to have committed civil contempt:
"(i) There must be a judgment or order or decree or direction or writ or other process of a court; or
(ii) The judgment etc. must be of the court and undertaking must have been given to a court;
(iii) There must be a disobedience to such judgment, etc. or breach of such undertaking;
(iv) The disobedience or breach, as the case may be, must be wilful."

Hence, it would not be right to contend that even though the learned Single Judge might have found material which persuaded him to form an opinion that a contempt has been committed, yet the learned Judge had no authority or jurisdiction to initiate a proceeding for contempt against the plerson who indulged in such action. Thus we find no substance in the plea which has been raised on behalf of the appellant on this court."

13. This now leads us to the next question and a more relevant one, as to whether a proceeding for contempt initiated against the appellant can be held to be sustainable merely on speculation, assumption and inference drawn from facts and circumstances of the instant case. In our considered opinion, the answer clearly has to be in the negative in view of the well-settled legal position reflected in a catena of decisions of this court that contempt of a civil nature can be held to have been made out only if there has been a wilful disobedience of the order and even though there may be disobedience, yet if the same does not reflect that it has been a conscious and wilful disobedience, a case for contempt cannot be held to have been made out. In fact, if an order is capable of more than one interpretation giving rise to variety of consequences, non-compliance of the same cannot be held to be wilful disobedience of the order so as to make out a case of contempt entailing the serious consequence including imposition of punishment. However, when the Courts are confronted with a question as to whether a given situation could be treated to be a case of wilful disobedience, or a case of a lame excuse, in order to subvert its compliance, howsoever articulate it may be, will obviously depend on the facts and circumstances of a particular case; but while deciding so, it would not be legally correct to be too speculative based on assumption as the Contempt of Courts Act 1971 clearly postulates and emphasizes that the ingredient of wilful disobedience must be there before anyone can be hauled up for the charge of contempt of a civil nature.

18. Besides this, it would also not be correct to overlook or ignore an important statutory ingredient of contempt of a civil nature given out u/s (b) of the Contempt of Courts Act 1971 that the disobedience to the order alleging contempt has to satisfy the test that it is a wilful disobedience to the order. Bearing this important factor in mind, it is relevant to note that a proceeding for civil contempt would not lie if the order alleged to have been disobeyed itself provides scope for reasonable or rational interpretation of an order or circumstance which is the factual position in the instant matter. It

would equally not be correct to infer that a party although acting due to misapprehension of the correct legal position and in good faith without any motive to defeat or defy the order of the Court, should be viewed as a serious ground so as to give rise to a contempt proceeding.

19. To reinforce the aforesaid legal position further, it would be relevant and appropriate to take into consideration the settled legal position as reflected in the judgment and order delivered in the matter of Ahmad Ali Vs. Supdt., District Jail, AIR 1987 SC 1491 : Supp. SCC 556 that mere unintentional disobedience is not enough to hold anyone guilty of contempt and although, disobedience might have been established, absence of wilful disobedience on the part of the contemnor, will not hold him guilty unless the contempt involves a degree of fault or misconduct.

Thus, accidental or unintentional disobedience is not sufficient to justify one for holding guilty of contempt. It is further relevant to bear in mind the settled law on the law of contempt that casual or accidental or unintentional acts of disobedience under the circumstances which negate any suggestion of contumacy, would amount to a contempt in theory only and does not render the contemnor liable to punishment and this was the view expressed also in cases reported in AIR 1954 Patna 513, State of Bihar Vs. Rani Sonabati Kumari and AIR 1957 Patna 528, N. Bakshi Vs. O.K Ghosh.

v) Ram Kishan (supra):-

9. Contempt jurisdiction conferred onto the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizens that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi- criminal in nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of contempt jurisdiction on mere probabilities.

10. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is 'wilful'. The word 'wilful' introduces a mental element and hence, requires looking into the mind of person/contemnor by gauging his actions, which is an indication of one's state of mind. 'Wilful' means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bonafide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a "bad purpose or without justifiable excuse or stubbornly, obstinately or perversely". Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. "Committal or

sequestration will not be ordered unless contempt involves a degree of default or misconduct".

13. It is well settled principle of law that if two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. The effect and purport of the order is to be taken into consideration and the same must be read in its entirety. Therefore, the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act.

vi) Avishek Raja and others (supra):-

19. The contours of power of the Court so far as commission of civil contempt is concerned have been elaborated upon in a number of pronouncements of this Court. Illustratively, reference may be made to the following observations in the case of Kapildeo Prasad Sah vs. State of Bihar "For holding the respondents to have committed contempt, civil contempt at that, it has to be shown that there has been wilful disobedience of the judgment or order of the Court. Power to punish for contempt is to be resorted to when there is clear violation of the Court's order.
Since notice of contempt and punishment for contempt is of far reaching consequence and these powers should be invoked only when a clear case of wilful disobedience of the court's order has been made out.Whether disobedience is wilful in a particular case depends on the facts and circumstances of that case. Judicial orders are to be properly understood and complied with. Even negligence and carelessness can amount to disobedience particularly when the attention of the person is drawn to the Court's orders and its implication.

Jurisdiction to punish for contempt exists to provide ultimate sanction against the person who refuses to comply with the order of the court or disregards the order continuously.

No person can defy the Court's order. Wilful would exclude casual, accidental, bona fide or unintentional acts or genuine inability to comply with the terms of the order. A petitioner who complains breach of Court's order must allege deliberate or contumacious disobedience of the Court's order."

(Emphassis is supplied by us)

20. Similar is the view expressed by this Court in Ashok Paper Kamgar Union vs. Dharam Godha, Anil Kumar Shahi v. Professor Ram Sevak Yadav, Jhareswar Prasad Paul vs. Tarak Nath Ganguly, Union of India vs. Subedar Devassy PV, Bihar Finance Service House Construction Co-operative Society Ltd. vs. Gautam Goswami and Chhotu Ram vs. Urvashi Gulati. In view of the consistency in the opinions rendered therein, it will not be necessary to burden this order by any detailed reference to what has been held in the above cases except to reiterate that the standard of proof required to hold a person guilty of contempt would be the same as in a criminal proceeding and the breach alleged shall have to be established beyond all reasonable doubt [Chhotu Ram vs. Urvashi Gulati (supra)]. More recent in point of time is the view expressed by this Court in Noor Saba vs. Anoop Mishra wherein the scope of the contempt power in case of breach of a Court's order has been dealt with in paragraph 14 of the report in the following manner-

"To hold the respondents or anyone of them liable for contempt this Court has to arrive at a conclusion that the respondents have wilfully disobeyed the

order of the Court. The exercise of contempt jurisdiction is summary in nature and an adjudication of the liability of the alleged contemnor for wilful disobedienceof the Court is normally made on admitted and undisputed facts. In the present case not only there has been a shift in the stand of the petitioner with regard to the basic facts on which commission of contempt has been alleged even the said new/ altered facts do not permit an adjudicationin consonance with the established principles of exercise of contempt jurisdiction so as to enable the Court to come to a conclusion that any of the respondents have wilfully disobeyed the order of this Court..."

(Emphassis is supplied by us)

21. Similarly, in Sudhir Vasudeva vs. George Ravishekaran9 the issue has been dealt with in a manner which may be of relevance to the present case. Para 19 of the report is as follows.

"The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act of 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution.

This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self-determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. The Courts must not, therefore, travel beyond the four corners of the order which is 9 (2014) 3 SCC 373 24 alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self-evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or wilful violation of the same.

Decided issues cannot be reopened; nor can the plea of equities be considered. The Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above."

(Emphassis is supplied by us)

vii) Principal Commissioner of Income Tax (supra):-

7. Now so far as the observations made by the High Court while concurring with the view of the learned Tribunal that merely by filing of return of income with the new address, it shall be enough for the assessee to discharge its legal responsibility for observing proper procedural steps as per the Companies Act and the Income Tax Act is concerned, we are of the opinion that mere mentioning of the new address in the return of income without specifically intimating the Assessing Officer with respect to change of address and without getting the PAN database changed, is not enough and sufficient. In absence of any specific intimation to the Assessing Officer with respect to change in address and/or change in the name of the assessee, the Assessing Officer would be justified in sending the notice at the available address mentioned in the PAN database of the assessee, more particularly

when the return has been filed under E-Module scheme. It is required to be noted that notices under Section 143 (2) of the 1961 Act are issued on selection of case generated under automated system of the Department which picks up the address of the assessee from the database of the PAN. Therefore, the change of address in the database of PAN is must, in case of change in the name of the company and/or any change in the registered office or the corporate office and the same has to be intimated to the Registrar of Companies in the prescribed format (Form 18) and after completing with the said requirement, the assessee is required to approach the Department with the copy of the said document and the assessee is also required to make an application for change of address in the departmental database of PAN, which in the present case the assessee has failed to do so.

viii) In Re: P.C Sen v. Unknown(supra):-

5. Instead of making a frank statement before the Court, the Chief Minister was apparently advised to adopt grossly technical pleas. Counsel informed the Court that the Chief Minister did "not like to use any affidavit showing cause". Evidence was then led before the Court to prove that the offending speech was in fact broadcast by the Chief Minister on the All India Radio, Calcutta Station. After evidence was recorded in the Court about the speech broadcast by the Chief Minister he somewhat belatedly filed an affidavit on March 4, 1966, admitting that he had delivered the speech on the AH India Radio on the night of November 25, 1965, the contents of which were proved by the evidence of the Programme Director. It was also admitted that the Chief Minister had knowledge of the filing of the petition when he broadcast the speech and of the rule served upon the State Government. By the affidavit it was attempted to justify the speech, on the plea that the Chief Minister came to learn that certain persons had started publicly propagating the view that far from achieving the objects, the Order will not only reduce the supply of fluid milk in the area, but also displace numerous persons from their normal avocation resulting in unemployment for many, that the object of the propaganda was to criticise and ridicule the policy of the State Government in promulgating the Order, that the propaganda had misled certain sections of the people about the object, purpose and nature of the Order and the consequences thereof, particularly with regard to the position of supply of milk and the question of continued employment of the persons working in the sweetmeat shops in the area, that taking advantage of the situation, attempts were made to commence a political agitation against the State Government for having promulgated the Order, and in the circumstances and particularly with a view to preventing widespread agitation in connection with the Order, it was thought that it was the duty of the Chief Minister of the State to explain to the people the policy underlying and the reasons for promulgating the Order, that in making the speech his sole and only intention and purpose was to "remove the confusion and allay the fears, if any, from the minds of the people with regard to the purpose nature, object and effect of the promulgation of the Order", that he had no intention: whatsoever of either showing any disrespect to the Court or interfering in any manner with the due course of the administration of justice, nor did he anticipate that his speech could have any such effect, and that by broadcasting his speech he had committed no contempt of Court nor had he any intention of doing so.

6. Banerjee, J., after a detailed examination of the relevant law and the speech broadcast, held that the speech broadcast amounted to contempt of Court "in the sense that it was likely to have several baneful effects upon the petitioners" in Petition No. 369 of 1965, "upon their cause and upon others

having a cause similar to that of the petitioners". The learned Judge accordingly recorded that "the Chief Minister cannot wholly escape the charge of having committed contempt of Court", since "the speech was contumacious in the sense that it was likely to have baneful effects upon the petitioners" in Petition No. 369 of 1965 "their cause, and upon persons having a similar cause and as such was likely to interfere with the administration of justice by the Court." The learned Judge, however, observed that "the contemner Mr. Sen should be let off with an expression of disapproval of his conduct and in the hope that the sort of indiscretion will not be repeated"

8. The law relating to contempt of Court is well settled. Any act done or writing published which is calculated to bring a Court or a Judge into contempt, or to lower his authority, or to interfere with the due course of justice or the lawful process of the Court, is a contempt of Court : R. v. Gray, [1900] 2 Q.B.D. 36 at p. 40. Contempt by speech or writing may be by scandalising the Court itself, or by abusing parties to actions, or by prejudicing mankind in favour of or against a party before the cause is heard. It is incumbent upon Courts of justice to preserve their proceedings from being misrepresented, for prejudicing the minds of the public against persons concerned as parties in causes before the cause is finally heard has pernicious consequences. Speeches or writings misrepresenting the proceedings of the Court or prejudicing the public for or against a party or involving reflections on parties to a proceeding amount to contempt. To make a speech tending to influence the result of a pending trial, whether civil or criminal is a grave contempt. Comments on pending proceedings, if emanating from the parties or their lawyers, are generally a more serious contempt than those coming from independent sources. The question in all cases of comment on pending proceedings is not whether the publication does interfere, but whether it tends to interfere, with the due course of justice. The question is not so much of the intention of the contemner as whether it is calculated to interfere with the administration of justice. As observed by the Judicial Committee in Debi Prasad Sharma and Ors. v. The King-Emperor , L.R. 70 I. A. 216 at p. 224:
"... the test applied by the ....Board which heard the reference was whether the words complained of were in the circumstances calculated to obstruct or interfere with the course of justice and the due administration of the law."

22. Ordinarily a Court will not initiate proceedings for commitment for contempt where there is a mere technical contempt. In Legal Remembrancer v. Matilal Ghose and Ors., I.L.R. 41 Cal. 173 it was observed by Jenkins, C.J., that proceedings for contempt should be initiated with utmost reserve and no court in the due discharge of its duty can afford to disregard them. It was also observed that jurisdiction to punish for contempt was arbitrary, unlimited and uncontrolled and should be exercised with the greatest caution : that this power merits this description will be realised when it is understood that there is no limit to the imprisonment that may be inflicted or the fine that may be imposed save the Court's unfettered discretion, and that the subject is protected by no right of general appeal. We may at once observe that since the enactment of the Contempt of Courts Act12 of 1926 and Act 32 of 1952 the power of the Court in imposing punishment for con tempt of court is not an uncontrolled or unlimited power, That, however does not justify the court in commencing proceedings without due caution and reserve. But Banerjee, J., who must be conversant with local conditions was of the view that action of the Chief Minister was likely to interfere with the course of justice for it was likely to have "baneful effects" upon the

petitioners their cause and upon persons having a similar cause, and sitting in appeal we do not think that we can hold that he took an erroneous view of his power or of the tendency of the speech, which hs has chisraeterified as having "baneful effects". Banerjee, J., has ultimately treated the contempt as technical for he has not imposed any substantive sentence, not even a warning.He has merely expressed his displeasure. The speech was ex facie calculated to interfere with the administration of justice. In the circumstances the order of Banerjee, J., observing that the Chief Minister had acted improperly and expressing disapproval of the action does not call for any interference by this Court.

ix. Raza Textiles Ltd. (supra):-

6. It is settled that an assessment year is a self-contained assessment period and a decision in one assessment year does not ordinarily operate as res judicata or estoppel in respect of the matters decided in another year. It is open to the Income-tax Officer to depart from the decision in another year since the assessment is final and conclusive between the parties only in relation to the assessment for a particular year for which it is made.

x. Commissioner of Income Tax v. Lalit Kumar Bardia (supra):-

20. Transfer of proceedings u/s 127 of the Act cannot be retrospective so as to confer jurisdiction on a person who does not have it. Section 127 of the Act does not empower the Authorities under the Act to confer jurisdiction on a person who does not have jurisdiction with retrospective effect. In fact, the explanation under Section 12 of the Act clearly provides that all the proceedings under the Act which are pending on the date of such order of transfer and all the proceedings which may be commenced after date of such order of transfer would stand transferred to the Assessing Officer to whom the case is transferred by Section 127(1) of the Act. This provision makes it clear that though transfer would come into effect from the date the order of Commissioner passed under Section 127(1) of the Act, the proceedings already commenced would not abate and continue with new Assessing Officer, who assumes charge consequent to transfer subject of course to the pending notices being within jurisdiction of the Officer issuing the notices. It is not a provision which validates without jurisdiction notice issued by an Income Tax Officer. If the submission of the Revenue on the above account is to be accepted, then an order which is without jurisdiction could be bestowed with jurisdiction by passing an order of transfer with retrospective effect. Section 127 of the Act does not validate notices/orders issued without jurisdiction, even if they are transferred to a new Officer by an Order under Section 127 of the Act.

xi. Commissioner of Income Tax v. M/s All India Children Care & Educational (supra):-

"The Apex Court has held, thus under Section 64(3) the question of determination as to the place of assessment only arises if an objection is taken of assessment only arises if an objection is taken by the assessee and the Income Tax officer has any doubts as to the matter. But the determination is to be by the Commissioner of Income Tax or the Central Board of Revenue. The Act does not "contemplate any other authority."

We find that similar kind of provision is contained in sub-section (4) of Section 124. In this view of the matter, it is the Commissioner, or where the

question is one relating to areas within the jurisdiction of different Commissioners concerned, or if they are not in agreement by the Board lies. It necessarily excludes any other court or authority. Complete machinery for determination of place of assessment or the authority for assessment is provided for under Section 124."

xii) Commissioner of Income Tax v. Sohan Lal Sewa Ram Jaggi:-

6. We have given our anxious consideration to the various pleas of the learned counsel for the parties. From the facts above, we find that the notice under Section 143(2) of the Act had been served upon the assessee on 18-11-1995. The provisions of Sub section (3) of Section 124 of the Act are specific and clear that an assessee or any other person should have raised objection regarding jurisdiction within 30 days from the date of notice i.e. the service. In the present case, objection, if any, was raised only on 21-3-1996, which is much beyond the period of 30 days as provided in Sub Section (3) of Section 124 of the Act. It is well settled that there is no place for equity in tax laws. Whether the assessee is under a factual impression or has no knowledge of the order of transfer in a particular case and if he is to raise any objection regarding jurisdiction, he should do so within 30 days and not beyond that and the same having not been done in the present case, we are of the considered opinion that the Tribunal was not justified in annulling the assessment on this ground alone.

47. On perusal of the judgments relied upon by learned counsel for the opposite party, it is evident that Courts must not travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. It is also evident that there may perhaps be a case where an order disobeyed could be reasonably construed in two ways and the subordinate court construed it in one of those ways but in a way different from that intended by the superior court. Surely, it cannot be said that disobedience of the order by the subordinate court was contempt of the superior court.

It is also evident that in order to bring home a charge of contempt of court for disobeying orders of Courts, those who assert that the alleged contemnor had knowledge of the order must prove this fact beyond reasonable doubt. This Court went on to observe that in case of doubt, the benefit ought to go to the person charged. It is also evident that accidental or unintentional disobedience is not sufficient to justify one for holding guilty of contempt. It is well settled principle of law that if two interpretations are possible, and if the action is not contumacious, a contempt proceedings would not be maintainable.

It is also evident that mere mentioning of the new address in return of income without specifically intimating the Assessing Officer with respect to change of address and without getting the PAN database changed, is not enough and sufficient. In absence of aforesaid, the Assessing Officer would be justified in sending the notice at the available address mentioned in the PAN database of the assessee, more particularly when the return has been filed under Emodule scheme. It is also evident that a Court will not initiate proceedings for commitment for contempt where there is a mere technical contempt.

It is also evident from perusal of the judgments that an assessment year is a self-contained assessment period and a decision in one assessment year does not ordinarily operate as res judicata or estoppel in respect of the matter decided in another year. It is also evident that if the submission of the revenue on the account is to be accepted, then an order which is without jurisdiction could be bestowed with jurisdiction by passing an order of transfer with retrospective effect.

It is also evident that the Apex Court has held thus under Section 64(3) the question of determination as to the place of assessment only arise if an objection is taken of assessment only arise if an objection is taken by the assessee and the Income Tax Officer has any doubts as to the matter. It is well settled that there is no place for equity in tax laws. Whether the assessee is under a factual impression or has no knowledge of the order of transfer in a particular case and if he is to raise any objection regarding jurisdiction, he should do so within 30 days and not beyond that.

48. Perusal of the material available on record shows that the present contempt application has been filed alleging willful and deliberate disobedience of the judgment and order dated 31.03.2015 passed by a Division Bench of this Court in Writ Petition No.9525(MB) of 2013, whereby notice issued to the petitioner-applicant for the assessment year 2012-13 dated 3.11.2014 was quashed on the ground of jurisdictional error and the opposite party was to delete all the outstanding amount from the web portal showing the dues to be paid. Vide order of this Court dated 28.09.2022, a show cause notice was issued to the opposite party- Mr. Harish Gidwani, Deputy Commissioner of Income Tax, Range-2, Lucknow that why he should not be tried and punished under Section 12 of the Contempt of Courts Act, 1971 for willful and

deliberate disobedience of the order dated 31.03.2015 passed in Writ Petition No.9525 (M/B) of 2013. In pursuance to the same, the opposite party filed his reply. This Court, while considering the conduct of the opposite party, has taken prima facie view that the opposite party is guilty of contempt of the judgment and order dated 31.03.2015 and vide order dated 1.11.2023, this Court has framed three charges against the opposite party-contemnor which is extracted hereinbelow:

> "*(i) Why the opposite party-contemnor, Mr. Harish Gidwani, Deputy Commissioner of Income Tax, Range-II, Lucknow be not punished for willfully flouting the order dated 31.032015 passed in Writ Petition (MB) No.9525 of 2013 and proceeded with the assessment year 2013-14 when the writ Court had recorded that the Tax Authority at Lucknow do not have jurisdiction to assess the petitioner at Lucknow and passed an assessment order.*
>
> *(ii) Why the opposite party-contemnor, Mr. Harish Gidwani, Deputy Commissioner of Income Tax, Range-II, Lucknow be not punished for willfully flouting the order of writ Court dated 31.03.2015 passed in Writ Petition (MB) No.9525 of 2013 that local address was inserted deliberately to create jurisdiction, which, in fact, legally was not vested with the opposite party i.e. the present contemnor.*
>
> *(iii) Why the opposite party-contemnor, Mr. Harish Gidwani, Deputy Commissioner of Income Tax, Range-II, Lucknow be not punished for the reason that the outstanding amount was not deleted from the web portal for several years which amounts to deliberate and willful disobedience of the judgment and order dated 31.03.2015.*"

49. Learned counsel for the opposite while denying the aforesaid charges reiterated the same submissions as have been advanced at the time of framing of charges which have been quoted in paragraph 2 of this judgment.

50. The submission made by the learned counsel for the applicant that the writ Court vide the judgment and order dated 31.03.2015 had decided the question of jurisdiction and not of any particular assessment

year and also that each year assessment being different has no application in cases where the jurisdiction prima facie appears to be correct as this Court finds that the judgment and order dated 31.03.2015 is not confined to any particular assessment year and has generally recorded that the Income Tax Authority at Lucknow does not have jurisdiction over the applicant who is assessed at Delhi. This Court is therefore of the view that the opposite party is guilty of contempt of the order dated 31.03.2015 passed by the writ Court and the opposite party does not have the jurisdiction or authority to interpret the order passed by the Court by putting words which are not contained in the judgment and order dated 31.03.2015 appears to be willful and deliberate.

51. It is not in dispute that notice issued to the applicant for the assessment year 2012-13 dated 3.11.2014 was quashed on the ground of jurisdictional as well as consequential orders were also directed to be set aside. Meaning thereby, the Assessing Officer has to take care that the entry existing on the web portal was to be deleted immediately after passing of the judgment and order dated 31.03.2015 but deliberately and intentionally the outstanding of notice of assessment year 2011-12 became operation on the web portal till seven years and seven months which ruined the reputation of the applicant and this act of the Income Tax Authority was in deliberate and willful disobedience of the judgment and order dated 31.03.2015.

52. Here, in the present case, as per own admission of previous learned counsel for the opposite party, the outstanding amount was deleted from the web portal after seven months, although it is actually seven years and seven months which amounts deliberate and willful disobedience of the judgment and order dated 31.03.201 for which the opposite party is liable to be punished with imprisonment as well as fine.

53. It is also relevant to note that the present contempt application was disposed of vide judgment and order dated 16.12.2022 against which, a review application was filed and the order dated 16.12.2022 was recalled vide order dated 17.1.2023. Against the said order dated 17.01.2023, a special appeal was filed by the opposite party in which the Division Bench refrained from making any observation on the issue as to whether learned Contempt Judge does or does not have power of review and was dismissed the special appeal vide judgment and order dated 24.04.2023

on the ground that no cause of action has accrued to the appellant-opposite party to institute these proceedings.

54. The judgment and order passed by this Court has primacy and the plea raised at a very late stage that the representation given by the applicant on July 5, 2015 had been referred to the CIT in January, 2016 is not acceptable because after referring the representation, the opposite party neither sent any reminder in this regard and neither took any steps for obtaining a decision/ direction from the CIT nor any document in this regard has been produced before this Court till now so as to show his best efforts and regard towards the order of the Court.

55. The Hon'ble Supreme Court as well as this Court, on several occasions while considering the willful disobedience of the order, repeatedly held that willful and deliberate contempt must be punished both by the imprisonment and fine as it is absolutely imperative to uphold the dignity and majesty of a court of law.

56. In view of the above, the ratio of judgments relied upon by learned counsel for the opposite party is not applicable to the present facts and circumstances of the case as in all the decisions a definite finding has been recorded that in case the commission of contempt is willful and deliberate, the contemnor must be punished to uphold the dignity and majesty of a court of law.

57. In the judgment rendered in the case of **Balwantbhai Somabhai Bhandari (supra)** relied upon by learned counsel for the applicant, it has been held that on account of contempt no benefit can accrue to any beneficiary of the contempt. It has also been held that the apology tendered should not be accepted as a matter of course and the court is not bound to accept the same. The apology may be unconditional, unqualified and bonafide, still if the conduct is serious, which has caused damage to the dignity of the institution, the same should not be accepted. There ought not to be a tendency by courts, to show compassion when disobedience of an undertaking or an order is with impunity and will total consciousness.

58. In the celebrated decision of **Attorney General v. Time Newspaper Ltd.; 1974 AC 273**, the Hon'ble Court has held that there is

an element of public policy in punishing civil contempt since the administration of justice would be undermined if the order of any court of law could be disregarded with impunity.

59. Civil contempt is punishable with imprisonment as well as fine. In a given case, the court may also penalise the party in contempt by order him to pay the costs of the application and a fine can also be imposed upon the contemnor.

60. Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protect at all costs. Otherwise, the very corner stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court's orders are to be followed and complied with.

61. Considering in totalities of the facts and circumstances of the case as well as law-reports cited by learned counsel for the parties, this Court finds the charges framed vide order dated 1.11.2023 to be proved against the opposite party. This Court is also of the opinion that the action of the opposite party is not only contemptuous but is also malicious. He took care with the money of the applicant in spite of clear direction of this Court and there is no justifiable reason for the said action. If the action of Mr. Harish Gidwani, Deputy Commissioner of Income Tax, Range-2, Lucknow (now retired) is considered in the background by the allegations made against him, it was his purposeful act to harass the applicant in spite of order of the writ Court. Unnecessarily *mens rea* is not required to be proved in a case of contempt but in the present case the violation is willful, deliberate and coupled with intention and motive to harass the applicant.

62. For the reasons given above, this Court finds the opposite party-Mr. Harish Gidwani, Deputy Commissioner of Income Tax, Range-2, Lucknow (now retired) to be guilty under Section 12 of the Contempt of Courts Act, 1971.

63. On these facts, fine only would not meet the ends of justice because Mr. Harish Gidwani, Deputy Commissioner of Income Tax, Range-2, Lucknow (now retired) was a senior officer, who was the custodian of assessing of the applicant and had committed a grossly reprehensible act and in case he is not punished, it would send down a wrong signal to other officials of Income Tax Department that even such unbusiness like conduct invites only a warning or fine, as Courts are flooded with matters, where orders are passed.

64. Accordingly, a fine of Rs.25,000/- along with simple imprisonment for a period of one week is awarded to the contemnor-Mr. Harish Gidwani, Deputy Commissioner of Income Tax, Range-2, Lucknow (now retired). In case of default, he would suffer one day's further simple imprisonment.

65. The contemnor-opposite party (Mr. Harish Gidwani, Deputy Commissioner of Income Tax, Range-2, Lucknow (now retired)) will surrender before the Senior Registrar of this Court 3.30p.m. on 9.8.2024 who will send him jail to serve out the sentence.

66. The Senior Registrar of this Court is directed to submit a report by 12.8.2024 to this Court in regard to compliance of the order.

67. Resultantly, the contempt application is finally **disposed off**.

68. All the pending applications, if any pending, are disposed of accordingly.

Order after deliver of Judgment:

(i) After delivery of judgment on 9.8.2024, Shri Neerav Chitravanshi, learned counsel for the opposite party assisted by Shri Kushagra Dikshit, learned Advocate requested that effect and operation of the judgment dated 9.8.2024 be extended for ten days.

(ii) Ms. Radhika Singh, learned counsel for the applicant has serious objection for extension of time for its applicability.

(iii) In view of the fact that the matter has been lingering since long, the prayer made by Shri Neerav Chitravanshi, learned counsel for the opposite party-contemnor for enforcement of judgment dated 9.8.2024 after ten days is **rejected**.

Order Date :- 09/08/2024

GK Sinha **[Irshad Ali,J.]**