

Ct. Cases 2907/2023  
ITO vs. M/s. UNITECH LIMITED & ORS.

07.01.2025

Present: Sh. Manmeet Singh Arora, Ld. SPP for the complainant.

Further arguments heard on the point of summoning.

Complaint u/s 200 Cr.P.C is made by the complainant through its AR Sh. Harsh Siddharth Gautam, DCIT, Circle-78 (1), New Delhi alleging commission of offence punishable u/s 276B read with section 278B/278E of The Income Tax Act, 1961 (hereinafter referred to as 'The Act'). Since, the present complaint is filed by a public servant acting in discharge of his official duties and in course of his employment, so the formal examination of the AR of complainant is dispensed with, in terms of proviso (a) of Section 200 Cr.P.C.

The inquiry under Section 202 Cr.P.C is not being conducted, in compliance of judgments of Apex Court in the matters of '*Shivjee Singh v. Nagendra Tiwary & Ors.*', *Crl. Appeal no.1158/2010, decided on 06.07.2010* and '*M/s Cheminova India Limited & Anr. v. State of Punjab & Ors.*' *Crl. Appeal no.750/2021, decided on 04.08.2021*.

The gravamen of accusation against the accused is that the accused No.1 company M/s. Unitech Limited had deducted TDS of Rs.21,14,54,538/- during the financial year 2015-16 but it did not deposit the same in the government account within the time stipulated as per the provisions of The Act and rule 30 of The Income Tax Rules. The complainant has placed on record show cause notices issued, order passed under section 2(35) of The Act, the proposal sent to CIT concerned for grant of sanction, copy of show cause notice issued by CIT, sanction accorded by CIT to prosecute the accused persons and TRACES report etc. in support of its case.

An application u/s 200 Cr.P.C is also made along with the complaint seeking exemption from personal appearance of AR of complainant on each date of hearing during the course of proceedings. Considering the fact that the complaint is filed by the applicant in discharge of his official duty, the application is allowed subject to the condition that he shall be duly represented by the SPP on each date of hearing and he shall appear in person as and when directed to do so.

Since order under section 2(35) of The Act has already been passed against accused No.2 Ajay Chandra and No.3 Sanjay Chandra, therefore, in terms of section 204, accused persons became person responsible for paying the TDS in terms of Section 204 of The Act. This court has jurisdiction to entertain the present complaint.

From the entire material available on record, this court is of the considered view that prima facie offence u/s 276B r/w section 278B/278E of The Act is made out. Accused No.1 has not been summoned in view of judgment of hon'ble Apex Court titled *Bhupinder Singh vs. Unitech Ltd. Civil Appeal No.10856/2016*. A detailed summoning order is not being passed in compliance of the order of the Apex Court in '*Bhushan Kumar & Anr. v. State (NCT of Delhi) & Anr.*' (2012) 5 SCC 424. Accordingly, let summons be issued to accused No.2 and 3, returnable for **15.04.2025**. If the summons remain unserved for any reason whatsoever, then the same be served by way of affixation.

Complainant is directed to collect dasti copy of additional summons and speed post for service upon accused persons and to report on the next date of hearing.

(Mayank Mittal)  
ACJM (Special Acts): Central District:  
THC: Delhi: 07.01.2025