

M/s Flamingo Breweries Pvt. Ltd. & 2 Ors. (Sanju Phangcho and Bijoy Phangcho) v. Income Tax Department

Crl.Pet./896/2022, Crl.Pet./165/2022 & Crl.Pet./168/2022

2026:GAU-AS:12880 | Crl.Pet./896/2022 with Crl.Pet./165/2022 & Crl.Pet./168/2022 (Gau HC, decided 02.09.2026)
| 2026-09-02

Three criminal complaints under sections 276D and 277 (CR Case Nos. 1103C/2019, 1099C/2019, and 1100C/2019) instituted on the basis of a best-judgment assessment order dated 21.12.2018 quashed where (1) the ITAT subsequently set aside the assessment order and on remand net profit was recomputed at Rs. 11,87,032, (2) the AO impermissibly invoked the section 278E trial presumption to launch the complaint, and (3) filing two separate individual complaints against the directors without arraying the company violated section 278B and Aneeta Hada v. Godfather Travels & Tours (P) Ltd.

Income-tax Act, 1961: sections 142(1), 143(3), 144, 271(1)(b), 271(1)(c), 276D, 277, 278B and 278E | Code of Criminal Procedure, 1973: sections 200 and 482

Gauhati High Court | Single Judge Bench | Robin Phukan, J.

Assessment years: 2016-17

Three identical PDF copies in repository (for Crl.Pet. 896/2022, 165/2022, and 168/2022); pronounced 02.09.2026

Page 3 records 'Date of pronouncement of judgment: 02.09.2026' (file prefix 20260901). Note that the cloud repository stores three copies of this common judgment under the three linked docket numbers.

01 FACTS OF THE CASE

M/s Flamingo Breweries Pvt. Ltd. (operating an IMFL bonded wholesale warehouse in Karbi Anglong, Assam) filed its return for AY 2016-17 declaring income of Rs. 8,01,508. On 21.12.2018, the AO completed an ex-parte assessment under section 144/143(3) estimating net profit at 7% (Rs. 35,66,191) by treating the company as a retail outlet. Based on that assessment order, on 05.03.2019 the ACIT, Tinsukia filed three criminal complaints under sections 276D and 277 before the JMFC Kamrup (M), Guwahati: CR Case No. 1103C/2019 against the company and its two active directors (Sanju Phangcho and Bijoy Phangcho), plus two separate individual complaints — CR Case No. 1099C/2019 against Sanju Phangcho alone and CR Case No. 1100C/2019 against Bijoy Phangcho alone. Meanwhile, the CIT(A) reduced the profit rate to 2.33% on 28.02.2020, the ITAT Kolkata Bench (SMC) Guwahati by order dated 18.03.2021 set aside the orders and remanded the matter to the AO (noting the accountant had inadvertently uploaded another year's balance sheet), and on 24.03.2022 the AO passed a fresh assessment order determining net profit at Rs. 11,87,032.

Source: [Pages 1-9 of 22 \(Paragraphs 1-6\) \(20260901_GAHC010036302022.pdf\)](#)

02 DISCUSSION BY THE HON'BLE COURT

In a 22-page judgment, Justice Robin Phukan quashed all three prosecutions on three independent legal grounds: (1) Following *K.C. Builders v. ACIT*, (2004) 2 SCC 731, *G.L. Didwania v. ITO*, and *Radheshyam Kejriwal v. State of West Bengal*, once the foundational assessment order dated 21.12.2018 was set aside by the ITAT on 18.03.2021 and replaced by a fresh assessment on 24.03.2022 at Rs. 11,87,032, the substratum of the 2019 criminal complaints vanished; (2) The complainant AO erroneously relied on section 278E to presume a culpable mental state at the stage of filing the complaint, whereas the rebuttable presumption under section 278E is available only to the trial court during trial; and (3) Filing two additional standalone criminal complaints (CR Case Nos. 1099C/2019 and 1100C/2019) against the two directors individually without arraigning the company as an accused was an abuse of authority and squarely barred by section 278B and the Supreme Court's Constitution Bench decision in *Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*, (2012) 5 SCC 661.

Source: [Pages 18-22 of 22 \(Paragraphs 21-26\) \(20260901_GAHC010036302022.pdf\)](#)

03 JUDICIAL DECISION

Allowing Crl.Pet. Nos. 896/2022, 165/2022, and 168/2022 under section 482 CrPC, the Gauhati High Court quashed CR Case Nos. 1103C/2019, 1099C/2019, and 1100C/2019 under sections 276D/277 pending before the JMFC Kamrup (M), Guwahati.

Source: [Pages 21-22 of 22 \(Paragraph 26\) \(20260901_GAHC010036302022.pdf\)](#)

04 OUTCOME / IN WHOSE FAVOUR

In favour of the assesseees (M/s Flamingo Breweries Pvt. Ltd., Sanju Phangcho, and Bijoy Phangcho); all 3 criminal complaints under sections 276D/277 quashed.

Source: [Pages 21-22 of 22 \(Paragraph 26\) \(20260901_GAHC010036302022.pdf\)](#)

05 AKHB REVIEW POINT

AKHB analysis: A triple-header precedent on Income-tax criminal prosecutions: (1) ITAT setting aside of the underlying section 144 order removes the substratum of a section 276D/277 complaint; (2) the section 278E culpable-mental-state presumption applies only before the Court during trial, not for the AO to initiate a complaint; and (3) separate individual complaints against company directors without arraying the company are void under section 278B and Aneeta Hada ((2012) 5 SCC 661).

Source: [Full judgment PDF \(22 pp.\)](#)

SOURCE & VERIFICATION

[Original judgment PDF \(20260901_GAHC010036302022.pdf\)](#)

Reviewed from the complete 22-page official High Court judgment PDF (20260901_GAHC010036302022.pdf, SHA-256: 3e298c909d6ee66bfd4b1efe41026b22a8b369f271629c5bc8e489b32bc19cf).

Supplied source-reviewed note retained; original bytes and identity validation checked in this release. Substantive re-review is not claimed for this record.

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Primary source verified page-by-page (22 physical pages, 207,741 bytes, SHA-256: 3e298c909d6ee66bfd4b1efe41026b22a8b369f271629c5bc8e489b32bc19cf). Cloud Google Drive File ID: 1loCGwSjgtvw40TcEInRKskw8c37CCTE2 (<https://drive.google.com/file/d/1loCGwSjgtvw40TcEInRKskw8c37CCTE2/view>).

STATUTORY SCOPE

Refers to the Income-tax Act, 1961 and allied statutory rules/circulars as applicable to the relevant assessment years.

LATER TREATMENT

Source checked 2026-10-18. No subsequent Supreme Court reversal or stay is recorded in the source judgment text.

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