(1988) 01 AP CK 0014

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 583 of 1987 and Criminal Revision Petition No. 580 of 1987

B. Ravindra Kumar APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 19-01-1988

Acts Referred:
Income Tax Act, 1961 — Section 139(5), 276C, 276C(1), 277

Citation : (1989) 1 ALT 106 : (1988) 1 APLJ 255 : (1988) 73 CTR 203 : (1989) 175 ITR 568 : (1988) 38 TAXMAN 1

Hon'ble Judges : I. Panduranga Rao, J

Bench : Single Bench

Advocate : M.S.K. Sastry, for the Appellant; N.V.S. Gopala Krishnamacharyulu, for the Respondent

Judgement

I. Panduranga Rao, J.—The petitioner, who is an Income Tax assessee for the accounting year 1980-81, having been convicted by the courts below under sections 276C(1)(ii) and 277(ii) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") has preferred this revision. He filed his return of income before the Income Tax Officer, A-Ward, Rajahmundry, on August 31, 1981, for the assessment year 1981-82 declaring an income of Rs. 11,845. The charge against him is that he failed to disclose the agricultural income in column No. 12 of the return of income filed before the Income Tax Officer and as such he made a false statement in the verification of return and also delivered the enclosed false statement knowing that the verification in the return and the statement enclosed thereto are false.

2. The assessee challenged the prosecution on various grounds including that the sanction to prosecute him is not valid, that the non-disclosure of agricultural income on his part is not with the intention of evading tax and that the prosecution has failed to establish mens rea. Both the courts below repelled the above contentions and convicted him holding that the necessary mens rea is

established in this case from the facts and circumstances of the case.

3. Learned counsel for the petitioner argued that agricultural income is not taxable, that after filing exhibit P-2 return before the Income Tax Officer for the accounting year 1980-81, the petitioner filed a revised return which is permitted u/s 139(5) of the Act, that the Income Tax Officer has accepted the said revised return, that the petitioner has shown the agricultural income in the return submitted by him for the previous accounting year, that when the agricultural income is not taxable, it is not possible to contend that the agricultural income is purposely suppressed and that mens rea which is an essential ingredient for the offence is not established by the prosecution.

4. Learned standing counsel for the Income Tax Department, on the other hand, argued that sanctity is attached to the verification made by the assessee in the return, that the offence is completed if the assessee makes the verification with the knowledge of its falsity or without believing it to be true, that along with the return the assessee has to file various statements and annexures and that the filing of the revised return including the agricultural income does not exonerate the assessee. He further argued that the filing of the revised return before the assessment was made is only a mitigating circumstance but not a circumstance which exonerates the assessee from the offence.

5. In the light of the above rival contentions, the only point that arises for consideration is :

"Whether the non-disclosure of agricultural income by the petitioner-assessee was with an ulterior motive ?"

6. The admitted facts are that the petitioner filed his return for the accounting year 1980-81 (assessment year 1981-82) on August 31, 1981, declaring taxable income of Rs. 11,845. He, however, filed a revised return of income on February 15, 1984, disclosing his agricultural income as Rs. 48,650. The Income Tax officer came to the conclusion that the agricultural income of the assessee could be only Rs. 12,000 but not Rs. 48,650 as claimed by him. Consequently, he added the balance of Rs. 36,650 as income from undisclosed sources and assessed the income of the assessee at Rs. 61,700. It is on that basis that the prosecution contends that the accused has intentionally suppressed the agricultural income in the first instance and showed an inflated amount of Rs. 48,650 under the head "Agricultural income" so as to evade tax and that, therefore, he is liable for punishment.

7. The prosecution case mainly rests upon the evidence of P.W. -1, the Income Tax officer, A-Ward, Rajahmundry. He deposed that net wealth statements were directed to be filed and they were accordingly filed on December 27, 1982, that exhibit P-3 is the net wealth statement for period ending March 31, 1981, that along with the return, exhibit P-4, the statement of total income was filed, that from the net wealth statement, he (P.W. -1) noticed that the assessee had derived agricultural income also, that exhibit P-5 is the account book which was

produced before him at the time of hearing, that he has completed the assessment for the year 1981-82 on February 24, 1984, determining the total income at Rs. 63,507 besides agricultural income of Rs. 12,000 and that the assessee has committed wilful attempt to evade tax which is punishable u/s 276C and for false verification u/s 277 of the Act.

8. In the cross-examination, P.W. -1 admitted that the assessee did not fill up column No. 12 of exhibit P-2 relating to agricultural income, but left it blank. It is elicited from him that the agricultural income as such is not taxable under the Act, that the Income Tax return forms were amended introducing a column showing agricultural income, that the writing in column No. 12 of exhibit P-2 is in his hand, that during the course of hearing he wrote "nil" and struck it off and noted "no income shown", that in exhibit P-2 a number of columns were left blank, that he has not made any endorsement therein, that during the hearing the accused filed exhibit P-12 revised return showing agricultural income and that after conducting an elaborate enquiry with regard to the quantum of agricultural income, he reduced the quantum of agricultural income. P.W. -1 further stated in the cross-examination that the assessee, the revision petitioner, preferred an appeal against the order of assessment which is pending.

9. Learned standing counsel for the Income Tax Department, however, stated that as a result of allowing the appeals filed by the firms of which the petitioner is a partner, the income of the petitioner as originally shown, i.e., Rs. 11,845, remained as it is. The Income Tax officer did not agree with the quantum of agricultural income claimed by the petitioner. He arrived at the agricultural income of Rs. 12,000 and added the balance as income from undisclosed sources.

10. Section 139(5) empowers the assessee to furnish a revised return at any time before the assessment is made if he discovers any omission or any wrong statement therein. In this case, as admitted by P.W. -1, the revised return, exhibit P-12, was filed on February 15, 1984, whereas the assessment was completed on February 24, 1984. Therefore, the petitioner acted well within his rights as empowered by the Act and filed his revised return before the assessment was made. Learned standing counsel relying upon exhibit P-13 notice dated November 24, 1982, argued that the net wealth statements were called for for previous year also. It cannot be said that exhibit P-3 statement disclosing the agricultural income as Rs. 48,650 was filed in response to exhibit P-13 notice, because exhibit P-13 notice shows that 14 copies of pro forma of net wealth statements were enclosed along with the notice, whereas exhibit P-3 is a typed statement showing the assets and liabilities as on March 31, 1981. Thus the contention of the Department that exhibit P-3 statement was filed during the assessment proceedings when called for by the Income Tax Officer cannot be correct. Since exhibit P-3 is not a pro forma statement enclosed by the Income Tax Officer to exhibit P-13 notice, the contention of the petitioner that he has voluntarily filed exhibit P-3 statement can be accepted. If really he had a dishonest intention, he would not have filed exhibit P-3 statement and produced

exhibit P-5 account book.

11. P.W. -1, during the course of his cross-examination, stated that the petitioner has inflated his agricultural income. But that is not the gravamen of the charge against the petitioner.

12. Learned standing counsel for the Income Tax Department argued that where an assessee deliberately conceals a part of his income, he would be liable for prosecution u/s 277 of the Act regardless of the fact that the assessment would have been the same even if the assessee had disclosed his true income. As I mentioned already, the crucial aspect is whether such non-disclosure is made with any ulterior motive. Admittedly, column No. 12 of exhibit P-2 was left blank. It is only the Income Tax Officer who has originally noted as against that column as "nil" and again corrected it as "no income shown". In the absence of clear proof that the revised return as per exhibit P-12 and exhibit P-3 statement were filed during the proceedings when called for, I hold that the petitioner has voluntarily filed the revised return and exhibit P-3 statement as permitted u/s 139(5) of the Act and as such his act is not vitiated by any mens rea. Both the previous and the subsequent conduct of the assessee are very important to judge whether his act is motivated. The mere fact that the Income Tax Officer did not accept the contention of the petitioner cannot be a ground for launching prosecution. When the petitioner has shown the agricultural income in the previous year of assessment, it cannot be said that he has acted with a mala fide intention in not disclosing the agricultural income in column No. 12 of exhibit P-2 return filed by him in the first instance. It is quite probable that as contended by the petitioner-assessee, he entrusted the return to the auditor and the auditor failed to note the agricultural income in the return.

13. As a result of allowing the appeals filed by the firms of which the petitioner is a partner, the income of the petitioner as originally shown is accepted by the Department. Taking into consideration the entire facts and circumstances of the case, I hold that the petitioner did not have the requisite mens rea so as to attract the penal consequences of his act. It can be seen from the evidence of P.W. -1 that it is from the net wealth statement filed by the assessee himself that he had detected the non-disclosure of agricultural income.

14. In view of the above facts and circumstances of the case, I find that the non-disclosure of agricultural income by the petitioner-assessee is not with any ulterior motive. The convictions and sentences imposed by the courts below are, therefore, set aside and the petitioner is acquitted of the charges framed against him. The criminal revision case is allowed accordingly.

