(1987) 03 P&H CK 0016

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 6393 of 1985

BASAL TOOL CO. AND OTHERS APPELLANT

Vs

Income Tax OFFICER, DISTRICT-II(I), PATIALA RESPONDENT

Date of Decision : 19-03-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Income Tax Act, 1961 — Section 271, 276C, 277, 278, 278B

Citation : (1987) 65 CTR 64 : (1987) 167 ITR 24 : (1987) 34 TAXMAN 9

Hon'ble Judges : Pritpal Singh, J

Bench : Division Bench

Judgement

PRITPAL SINGH J. - M/s. Basal Tool Co., petitioner No. 1, is a partnership firm. During the assessment year 1967-68, petitioners Nos. 2 and 3, namely, Shanti Lal Kapoor and Subash Kapoor, were the partners of this firm. Suresh Kapoor, petitioner No. 4, became a partner of this firm subsequently in 1969. Income Tax return for the assessment year 1967-68 on behalf of the firm was filed by Shanti Lal Kapoor, Petitioner No. 2, on August 24, 1967, declaring an income of Rs. 49,720. The Income Tax Officer assessed the income at Rs. 2,03,030. On appeal, the income was reduced to Rs. 89,862. Subsequently, in the month of March, 1975, a search was conducted by the Income Tax authorities at the premises of the firm. In the wake of this search, the assessment proceedings were reopened were reopened and a revised return was filed by Suresh Kapoor, petitioner No. 4, on June 7, 1977, declaring the income of the firm as Rs. 1,49,860. The assessment order was passed on September 15, 1980, wherein the income was assessed at Rs. 1,83,770. On the plea that the assessee had furnished inaccurate particulars of the income amounting to Rs. 31,390, penalty of Rs. 4,714 was levied on the firm by the Income Tax Officer (annexure P-2). On appeal before the Commissioner of Income Tax (Appeals), the order imposing penalty was cancelled (annexure P-3). Thereafter, the Income Tax Officer filed a complaint u/ s 276C and 277 read with section 278 of the Income Tax Act against the petitioner (annexure P-4) for evading tax and filling false Income Tax return. In this petition u/s 482, Code of Criminal Procedure, the complaint, annexure P-4, is sought to be quashed.

It is provided in section 278B(1) of the Income Tax Act, 1961 (for short "the Act"), that where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of a company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. A proviso is added which lays down that nothing contained in sub-section (1) shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

In the present case, the criminal complaint relates to the original return filed on behalf of the firm as well as the revised return filed after the search. The original return was admittedly filed on behalf of the firm by Shanti Lal Kapoor, petitioner No. 2. After the search, a revised return was filed showing the income of the firm as Rs. 1,49,860. In the impugned complaint, it is alleged that the original return was evidently false and a wilful attempt had been made to evade tax. This return was filed by Shanti Lal Kapoor, petitioner No. 2, and as such from the allegations made in the complaint, offence u/s 276C and 277 of the Act are disclosed against him. So far as petitioners Nos. 3 and 4 are concerned, there is no allegation that they had any knowledge of the filing of that return or that they were in charge of and were responsible to the firm in that connection. In my view, therefore, regarding the original return, the offence is disclosed only against the firm, petitioner No. 1, and its partner, Shanthi Lal Kapoor, petitioner No. 2.

Now coming to the revised return filed on June 7, 1977, by Suresh Kapoor, petitioner No. 4, it is to be noticed that the Income Tax Officer did impose a penalty u/s 271(1)(c) of the Act on the ground that particulars of the income to a certain extent had been concealed and inaccurately furnished. However, this order was set aside in appeal (annexure P-3) as the Commissioner of Income Tax found that the facts did not justify the imposition of penalty. In other words, it was held that in the revised return neither any income had been conceded nor inaccurate particulars of such income had been furnished. In such circumstances, in view of the finding of the Income Tax Commissioner, there was no concealment of income and no furnishing of inaccurate particulars in the revised return which may have attracted the provisions of section 276C or 277 of the Act. It cannot be said that in the revised return any wilful attempt had been made to evade tax or that a false return had been filed by petitioner No. 4 on behalf of the firm.

In view of what is stated above, the prosecution of petitioners Nos. 3 and 4, namely, Subash Kapoor and Suresh Kapoor, is misconceived and is tantamount to abuse of process of law. Consequently, this petition is partly allowed and the complaint (annexure P-4) and the proceeding taken in consequence thereof are quashed vis-a-vis the petitioners, Subash Kapoor and Suresh Kapoor.

