

(1997) 01 P&H CK 0061

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No"s. 1033 and 1034 of 1987

Basant Tubewell Store and Others

APPELLANT

Vs

V.P. Garg, ITO and Another

RESPONDENT

Date of Decision : 21-01-1997

Acts Referred:

Income Tax Act, 1961 — Section 271(1), 276C, 278

Citation : (1999) 235 ITR 100 : (1997) 2 RCR(Criminal) 383

Hon'ble Judges : V.S. Aggarwal, J

Bench : Single Bench

Advocate : B.S. Gupta and Sanjay Bansal, for the Appellant; R.P. Sawhney, Senior Advocate and Devi Dayal, for the Respondent

Judgement

V.S. Aggarwal, J.—By this common judgment both the abovesaid revision petitions can conveniently be disposed of together.

2. The relevant facts are that Basant Tubewell Store, Sirsa, is a partnership concern. It had five partners, namely, Shanti Sarup Karopal, Krishan Kumar Sharma, Vinod Kumar Verma, Bal Kishan and Rajinder Kumar Karopal. The firm had business in the sale and purchase of iron, hardware and tubewell parts. The partners had filed the Income Tax return. On July 10, 1981, action was taken u/s 133A of the Income Tax Act by the Income Tax Officer, on the business premises of the petitioners. During the course of action, one uchanti note book was recovered and found in the control and possession of the petitioners. It was impounded by the Income Tax Officer. On the verification of the books of account maintained by the petitioners with the uchanti note book, it was found that sales to the tune of Rs. 20,788 and purchases to a stock of Rs. 7,655 had been made by the petitioners from May 1, 1981, to July 8, 1981. The same were not entered in the books of account. At the time of the said action, the stocks of the petitioners were physically verified and checked. Their value was assessed at Rs. 1,29,558 while according to the account books, the value of the stock was only Rs. 1,13,250. In other words, it showed an excess stock of Rs. 16,308.

3. Later on the statement of Vinod Kumar, partner of the firm, was recorded on July 14, 1981, by the Income Tax Officer, Sirsa. He admitted that pages 2 to 7 of the uchanti note book No. 4 were in his hand and recorded in English. It was also admitted that pages 37A, 38 and 39 had been written by their accountant, Durga Parshad. In this way, the petitioners were stated to have admitted the ownership and maintenance of the uchanti note book. He was questioned about the sale of Rs. 20,788 mentioned in the uchanti note book. Vinod Kumar had replied that they would have prepared a consolidated bill after the goods have been sold, as goods worth Rs. 3,000 to Rs. 4,000 were of defective nature. With respect to the purchases recorded in the said note book to a stock of Rs. 7,655 Vinod Kumar had admitted that they would have reflected the purchases at the time of closing of the account. In this process, it was asserted that the petitioners could not satisfactorily explain the understatement of the valuation of stock in their regular books of account against the actual verification. The statement of Durga Parshad, accountant, was also recorded by the Income Tax Officer. He admitted that he had written pages 37A, 58 and 39 of the uchanti note book in his hand.

4. The case of the prosecution was that the accused were under an obligation not to omit or cause to be omitted any relevant entry or statement in the books of account. They had wilfully attempted to evade the tax, penalty or interest chargeable under the Income Tax Act. By not making the entries of sale and purchase in their books of account, the accused were found to be in possession and control of books of account containing false entries. It was contended that they had committed the offence punishable under Sections 276C and 278 of the Income Tax Act.

5. In support of their case, evidence had been produced. The learned Chief Judicial Magistrate, Sirsa, considered the pre-charge evidence and concluded that no case was made out against the petitioners and that if unrebutted, it would not warrant their conviction. The accused-petitioners were discharged. The Income Tax Officer filed a revision petition in the Court of Sessions. On September 28, 1987, the learned Additional Sessions Judge, Sirsa, allowed the revision petition holding that the trial court proceeded on a wrong premise. The evidence was appreciated on wrong hypothesis. Accordingly, the order of the Chief Judicial Magistrate was set aside. He was directed to make further enquiry into the matter in accordance with law.

6. Aggrieved by the said judgment of the learned Additional Sessions Judge, Sirsa, the present revision petitions had been filed.

7. During the pendency of the revision petition, the petitioners preferred an application alleging that while the revision petition was pending, the Commissioner of Income Tax (Appeals), Rohtak, had set aside the amount of penalty of Rs. 19,040 levied by the Income Tax Officer, Sirsa, u/s 271(1)(c) of the said Act. The said order of the Commissioner of Income Tax (Appeals) has become final and no further appeal has been filed. Similarly, the Commissioner of Income Tax (Appeals) had deleted the additions made by the Income Tax Officer.

Against the same, the Commissioner of Income Tax had preferred an appeal. The said order was confirmed by the Income Tax Appellate Tribunal, Chandigarh, on July 13, 1993. On the strength of these orders, it was contended that the penalty imposed by the Income Tax Officer had been deleted and set aside and, therefore, the present petitions deserve to be allowed because the very basis of the complaint is knocked out. The petitioners were permitted to place on the record the order of the Commissioner of Income Tax (Appeals) and the judgment of the Income Tax Appellate Tribunal, Chandigarh.

8. During the course of the arguments, learned counsel for the petitioners raised a number of arguments but the respondents met their Waterloo because of the subsequent events. It becomes unnecessary, therefore, to consider the other contentions.

9. The subsequent events are clear that while the present revision petitions were pending, the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal had held that additions and penalty on the basis of which the prosecution had started, be deleted. The short question that comes up for consideration is as to whether in these circumstances, the prosecution proceeding should be quashed or not. Reference to some of the precedents in this regard would be in the fitness of things. In the case of Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, , the registration of the partnership firm under the Income Tax Act had been granted for the year 1969-70. The Income Tax Officer cancelled the registration on the ground that the firm was not genuine. The basis for so holding was the statement made by one of the partners. The Income Tax Officer had initiated prosecution of the partners. In the meantime, the Tribunal on an appraisal of the material on the record found that the firm was genuine. The question that came up for consideration was if after the findings of the Appellate Tribunal, it could be held that prosecution could continue or not. The petition was dismissed by this court. In appeal, the Supreme Court had set aside the said findings and allowed the appeal. It was held (page 910) :

"Heard counsel, special leave granted. In view of the finding recorded by the Income Tax Appellate Tribunal that it was clear on the appraisal of the entire material on the record that Shrimati Janak Rani was a partner of the assessee-firm and that the firm was a genuine firm, we do not see how the assessee can be prosecuted for filing false returns. We, accordingly, allow this appeal and quash the prosecution."

10. Subsequently, in the case of Surinder and Company and Another Vs. A.K. Thatai, Income Tax Officer, , a similar question had again cropped up. The prosecution had been launched for making false statement in verification. But the penalty proceedings with respect to concealment of income had been quashed by the Income Tax Appellate Tribunal. The question was again considered as to if the prosecution proceedings should be quashed or not. A single judge of this court relying upon the decision in the case of P. Jayappan Vs. S.K. Perumal, First

Income Tax Officer, Tuticorin, , held that it is unnecessary to continue with the criminal complaint and the proceedings. It would be an abuse of the process of the court because the penalty proceedings had been set aside. Accordingly, the criminal proceedings were quashed.

11. A Division Bench of this court in the case of Income Tax Officer Vs. B.B. Mittal and Others, , in a case where prosecution had been initiated u/s 276C and Section 277 of the Income Tax Act read with Section 193 of the Indian Penal Code also found that once the Income Tax Appellate Tribunal had recorded that there was no concealment of any income, the complaint should have been dismissed. It was held (page 811) :

"In view of the observations recorded by the Appellate Tribunal, under the Act, the trial court rightly placed reliance on Parkash Chand Vs. Income Tax Officer, A-Ward, wherein the facts involved were that prosecution was launched against the assessee for offences u/s 277 of the Act along with Sections 193 and 471 of the Indian Penal Code on the basis of filing false returns, false accounts and inflated items of purchases. During the pendency of the criminal proceedings, parallel penalty proceedings for concealment of income were also pending before the Tribunal. The Tribunal examined the whole incriminating material against the assessee and arrived at the conclusion that none of the Income Tax authorities has clearly established that particular items of purchases were inflated and as such there was no proof of the assessee having concealed his income or having furnished inaccurate and false particulars. Accepting the appeal of the assessee, the Tribunal recorded a finding that there was no concealment or submission of false accounts and as such cancelled the penalty. Under these circumstances, a Division Bench of this court opined that, in view of the finding of the Tribunal that there was no concealment and no inaccurate accounts were filed by the petitioners, the criminal proceedings against the petitioners could not continue and were to be quashed. In the present case also, the finding recorded by the Tribunal in its order dated April 29, 1986, is also to the same effect as recorded by the Tribunal in Parkash Chand Vs. Income Tax Officer, A-Ward, ."

12. The same was the view of the Kerala High court in the case of V. Rajasekharan Nair Vs. Commissioner of Income Tax and Others, .

13. The matter in this regard would be clinched further by the decision of the Supreme Court in the case of G.L. Didwania and Another Vs. Income Tax Officer and Another, . In the cited case the assessing authority held that the assessee had intentionally concealed the income derived from the company which belonged to him. The appellate authority had set aside the said findings and held that there was no material that the company belonged to the assessee. It was concluded that prosecution, therefore, could not continue. In paragraph 4 of the judgment the Supreme Court held (page 690) :

"In the instant case, the crux of the matter is attracted and whether the prosecution can be sustained in view of the order passed by the Tribunal. As

noted above, the assessing authority held that the appellant-assessee made a false statement in respect of income of Young India and Transport Company and that finding has been set aside by the Income Tax Appellate Tribunal. If that is the position then we are unable to see as to how criminal proceedings can be sustained."

14. Reverting back to the facts of the present case, one can easily refer to the order passed by the Commissioner of Income Tax (Appeals), Rohtak. It was held that there was no concealment of income. Only higher gross profit rates were applied and additions were made. It will not attract penalty u/s 271(1)(c) of the Income Tax Act. The Commissioner further found that the assessee was under a bona fide belief that no penalty was leviable. The order of the assessing authority was set aside. Similarly, on July 13, 1993, the Income Tax Appellate Tribunal, Chandigarh, had found that there were no defects in the sale, purchase and stores of the hardware. That being the position and the penalty having been set aside, the very basis of the criminal prosecution would be lost. These findings knock the bottom of the prosecution case.

15. In these circumstances, taking note of the subsequent evidence, it must follow that the basis of the criminal prosecution had been lost. The judgment of the learned Additional Sessions Judge cannot be sustained. Accordingly, the revision petitions are allowed and the order of the learned trial court is restored.