
(1995) 04 PAT CK 0045

In the Patna High Court

Case No : Criminal W.J.C. No. 229 of 1993(R)

EQUIPMENT SERVICE CENTRE AND OTHERS

APPELLANT

Vs

UNION OF INDIA AND OTHERS

RESPONDENT

Date of Decision : 19-04-1995

Acts Referred:

Citation : (1995) 04 PAT CK 0045

Hon'ble Judges : S. K. Chattopadhyaya, J

Bench : Single Bench

Judgement

RANCHI BENCH

S. K. CHATTOPADHYAYA J. - In the present writ application, the petitioners have prayed for quashing the complaint in Complaint Case No. 287 of 1992 now pending before the Special Judicial Magistrate (Economic Offences), Jamshedpur, respondent No. 2. A prayer has also been made for quashing the order taking cognizance under sections 276C and 277 of the Income Tax Act, 1961, including the entire criminal proceedings against the petitioners.

Before dealing with the grievances made by the petitioners, it would be appropriate to refer to the factual background. Petitioner No. 1 is a partnership firm, whereas petitioner No. 5 is a private limited company incorporated under the Companies Act, 1956. Petitioner Nos. 2, 3 and 4 are partners of petitioner No. 1 and petitioner No. 6 is the director of petitioner No. 5. A complaint was filed by respondent No. 2 in the Court of the Special judicial Magistrate, Muzaffarpur, alleging, inter alia, that petitioner No. 1 was engaged in the business of leasing equipment like air-conditioners, etc., and pays a commission of Rs. 66,500 to petitioner No. 5. On scrutiny, this was disallowed and added to the total income of petitioner No. 1. Penalty proceeding u/s 271(1) (c) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), was initiated. The complaint alleges that this accused firm have deliberately and wilfully furnished inaccurate particulars of income and attempted to evade tax within the meaning of section 276C of the Act and as a false verification in the

return of income u/s 277 of the Act was made. The firm, as well as the partners and the director, were liable for prosecution under sections 276C and 277 of the Act. A certified copy of the complaint has been annexed as annexure 1 to the writ application.

By an order dated March 28, 1992, the Special Court (Economic Offences), Muzaffarpur, took cognizance of the offence under sections 276C and 277 of Act. It appears that by an order dated July 14, 1992, passed in Crl. W.J.C. No. 216 of 1992(R), a Division Bench of this court stayed the aforesaid complaint case pending before the Presiding Officer-cum-Special Judicial Magistrate (Economic Offences), Muzaffarpur, till the case was transferred to the court of competent jurisdiction at Jamshedpur. This order was passed on the basis of a notification issued by the State Government for constituting a court for economic offences at Jamshedpur.

The above complaint petition was filed on the basis of an order passed by respondent No. 2 in an assessment proceeding of the year 1989-90 in which it was held that there was absolutely no justification for petitioner No. 1 for paying Rs. 66,500 to its sister concern for maintenance charges in the assessee-firm first year. On the aforesaid finding, the said entire amount was disallowed and, as stated above, the same was added back and penalty proceeding was initiated.

Being aggrieved by the aforesaid order dated March 27, 1991, petitioner No. 1 filed a statutory appeal before the Commissioner of Income Tax (Appeals) which was registered as Appeal No. 80/JSR of 1991-92. By an order dated March 24, 1992, as contained in annexure 4, the appellate court set aside the assessment order by observing as follows :

"I have carefully considered the above arguments. I have also gone through the certificates issued by the companies to whom the air-conditioners have been leased out. In my opinion, the entire matter needs a fresh look at the end of Assessing Officer. The Assessing Officer is also directed to examine whether Messrs. Narbheram and Co. Ltd. have rendered regular services in the maintenance of air-conditioners. The payment to Messrs. Narbheram and Co. Ltd. cannot be treated as diversion of income because in the hands of the company, the amount must have been taxed at the higher rate. With these remarks, the assessment order is set aside to be framed de novo after considering the arguments of the learned authorised representative. The other material evidence should also be looked into."

The matter was remanded by the appellate court and on remand, by an order dated February 26, 1993, the Income Tax Officer accepted the claim made by the petitioner observing that on the basis of the service card the debit notes are sent to the assessee-firm. This practice was examined thoroughly and nothing adverse was found. Respondent No. 2 held that in the course of examination of the books of account, it was found that a sum of Rs. 20,000 was received as cash from Jamshedpur Jain Swetambar Murty Pujak Sangh, Golpahadi Mandir.

According to him, the said deposits have been received in violation of section 269SS of the Act and, as such, a penalty proceeding u/s 271D was initiated. It is not controversy that in the original assessment order, this finding was also there in respect of the receipt of a sum of Rs. 20,000 as cash and a penalty proceeding u/s 271D of the Act was initiated. Against the said proceeding, the petitioners moved the appellate authority, Jamshedpur, in Income Tax Appeal No. 150/(SSR) of 1991-92, and by order dated February 6, 1992, the said appeal was allowed.

It appears that when again a fresh penalty proceeding was initiated in respect of the same amount, the petitioners again moved the appellate authority in Income Tax Appeal No. 369 of 1994-95. By an order dated November 14, 1994, the said appeal was partly allowed. The aforesaid orders dated February 6, 1992, and November 14, 1994, passed by the appellate authority have been annexed as annexures 9 and 10, respectively, in the supplementary affidavit.

This factual position has not been controverted by the respondents in their counter-affidavit.

Mr. P. S. Dayal, learned senior counsel appearing on behalf of the petitioners, has contended that in view of the uncontroverted fact that the appellate court passed an order in favour of the petitioners, the present proceeding cannot be allowed to continue. Advancing his argument, he contends that the basis of the complaint was the assessment order of respondent No. 2. The appeal was allowed on March 24, 1992, whereas the complaint was filed on March 28, 1992, meaning thereby that respondent No. 2, without taking note of the fact that the appeal of the petitioners has been allowed, filed a complaint without any basis. It is further urged that the reassessment order was passed on February 26, 1993, by reason of which respondent No. 2 allowed the claim of the petitioners in respect of which the complaint was filed. Mr. Dayal submits that when respondent No. 2, during reassessment, allowed the claim of the petitioner, by all fairness he should have withdrawn the prosecution against the petitioners.

Mr. Jhunhunwala, learned counsel appearing on behalf of the Department, on the other hand, submits that only because the appellate authority has found favour with the claim of the petitioners he has allowed the appeal. It does not debar the authority to initiate a criminal proceeding under the Act. He submits its further that it is well-known that findings of the criminal court may be binding on the authorities under the Act but the findings of the authorities cannot be held to be binding on the criminal court.

In support of his contention, he has relied upon a Division Bench decision of this court in the case of Surendra Kumar Jhunhunwala v. State of Bihar [1991] 1 BLJ 468.

On the premises of the aforesaid submissions made on behalf of the parties, the question which is required to be answered is whether a criminal proceeding should be allowed to continue when the basis of which has been nullified by a superior authority under the Act.

It is not in dispute that the appellate order is dated March 24, 1992, whereas the complaint was filed on March 28, 1992. This finding of the appellate court has not been challenged and, as such, it reached its finality. A close reading of the order of the Tribunal shows that the petitioners-firm was exonerated completely from the charge by the Income Tax Officer. Moreover, when after the remand, reassessment was made by the Income Tax Officer, the claim of the petitioners in respect of Rs. 66,500 was allowed. Under these circumstances, in my view, it will be an abuse of the process of the court if the criminal proceeding against the petitioners is allowed to continue.

In the case of K.T.M.S. Mohd. and another Vs. Union of India, , their Lordships, after discussion of various case-law, have held that taking into consideration the finding of the Tribunal, we are constrained to hold that the appellants cannot be held to be liable for punishment u/s 120B read with section 277 and section 277 (simpliciter) of the Income Tax Act as the very basis of the prosecution is completely nullified by the order of the Tribunal which fact can be given due regard in deciding the question of the criminal liability of appellants nos. 1 and 2. Similarly, in the case of Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, , their Lordships held that the prosecution once initiated may be quashed in the light of a finding favourable to the assessee recorded by an authority under the Act subsequently in respect of the relevant assessment proceedings.

Without multiplying the decisions on this point, I may, however, usefully refer to a decision of a learned single judge of this court in the case of Banwarilal Satyanarain and Others Vs. State of Bihar and Another, . The petitioners in that case moved this court against the order refusing discharge in a criminal prosecution u/s 276B of the Act. His Lordship, while considering the import of section 276B vis-a-vis sections 201 and 221 of the Act, observed that : "I am clearly of the view that the process of the criminal court should not be allowed to be abused in cases where an assessee has succeeded in proving good and sufficient reasons for his failure before an authority under the Act in a penalty proceeding".

In the aforesaid case, this court quashed the prosecution on the ground that during the pendency of the criminal prosecution, the penalty imposed by the Income Tax Officer and partly approved by the Appellate Assistant Commissioner has been deleted in its entirety by the Commissioner of Income Tax on the merits, after having been satisfied that good and sufficient reasons were furnished by the assessee for not deducting and paying the tax within time. On the basis of the same analogy in the present case, it can be said that the order of assessment passed by the Income Tax Officer was set aside by the appellate authority and the matter was remitted back for fresh assessment. On reassessment the Income Tax Officer allowed the claim made by the petitioners. In my view, on this fact alone, without hesitation, it can be held that the facts constituting the offence for criminal prosecution of the petitioners have been

nullified by the appellate authority and on this score alone, the proceedings cannot be allowed to continue against the petitioners.

Coming to the case of Surendra Kumar Jhunjhunwala [1991] 1 BLJ 468 , relied upon on behalf of the Department, in my opinion, in view of the latest pronouncement of the apex court in the case of K.T.M.S. Mohd. and another Vs. Union of India, , this case can be easily distinguished. The Division Bench, while noticing the decision of the Supreme Court rendered in Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, and the decision of this court in Banwarilal Satyanarain and Others Vs. State of Bihar and Another, , have distinguished them by observing that these two cases were under the Income Tax Act whereas the case before the Division bench was under the Essential Commodities Act. On the same analogy given by the Division Bench, I may say with great respect that the said Division Bench decision is not applicable in this case inasmuch as the present case is under the Income Tax Act and not under the Essential Commodities Act.

After considering the matter from various angles and after giving my thoughtful consideration, I am of the opinion that the continuation of the criminal proceeding against the petitioners will result in abuse of the process of the court.

In the result, this application is allowed and the Complaint Case No. 287 of 1992 including the order taking cognizance dated March 28, 1992, as contained in annexure 2 is hereby quashed. There will be no order as to costs.