(1990) 02 CAL CK 0004

In the Calcutta High Court

Case No : Criminal Rev. No. 1569-72 of 1984

Hanuman Industries Pvt. Ltd. and Others APPELLANT

Vs

Amalendu Chatterjee, I.t.o. and Others RESPONDENT

Date of Decision : 14-02-1990

Acts Referred:
Income Tax Act, 1961 — Section 2(31), 276B, 277, 278, 278A

Citation : 94 CWN 960

Hon'ble Judges : Siba Prasad Rajkhowa, J

Bench : Single Bench

Advocate : Amit Bhattacharjee, for the Appellant; Tapas Kar for State and Dipak Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

Siba Prasad Rajkhowa, J.—By a apply judgement I am going to dispose of this batch of criminal revisions as (sic) as the same question of law is involved therein. The petitioners have prayed for'' quashing the proceedings u/s 276B read with Section 278B of the Income Tax Act, 1961.

Sri M.R. Mullick, learned Chief Metropolitan'' magistr, Calcutta, by his impugned order dated 29th March, 1984 passed in Case No. C/777 of 1984 took cognizance of the offences under Sections 276B/178B of the Income Tax Act, 1961 and issued Processes upon the accused persons for their appearance. By this impugned order dated 30th March, 1984 in case no. C/780 of 1984 took cogniance of the offences under Sections 276B/278B of the Income Tax Act, 1961 and issued processes upon the accused persons for their appearance.

By his impughed order dated 31st March, 1984 in case no. C/790 of 1984 took cognizance of the offences under Section. 276B/278B of the Income Tax Act, 1961 and issued processes upon the accused persons for their appearance.

Similarly, by his impugned order dated 28th march, 1984 in case no. C/764 of 1984 took cognizance of the offences under Sections 276B/278B of the Income

Tax Act, 1961 and issued processes upon the accused persons for their appearance.

2. Criminal Revision No. 1569 of 1984 arises out of the impugned order passed in case no. C/777 of 19S4. Criminal Revision No. 1570 of 1984 arises out of the impugned order passed in case no. C/780 of 1984. Criminal Revision No. 1571 of 1984 arises out of the impugned order passed in case no. C/790 of 1984. Criminal revision No. 1572 of 1984 arises out of the impugned order passed in case no. C/764 of 1984.

3. The only point canvassed before by Sri Amit Bhattacharjee, learned counsel for the petitioners is that the criminal proceedings pending before the learned Chief Metropolitan Magistrate are not maintainable in view of the penal provision contained in Section 276B of the Income Tax Act whereby infringement of certain provisions of the Income Tax Act will be visited with rigorous imprisonment for a term or and a Company being a juristic person cannot be sent to jail even if it is found that the Company has infringed the law. Sri Bhattacharjee has, in support of his contention, relied upon the following decisions : - (1) Kusum Products Ltd. Vs. S.K. Sinha, ITO, (2) (1983) 54 Com Cas 835 (Allahabad) (Modi Industries Ltd. v. B.C. Goel) & (3) (1989) O. Cr. LR (Cal) 171 (The East India Jute and Hessian Exchange Ltd- v. Amulya Krishna Mondal, I.T.C.E., Ward. Jute Circle, Calcutta & Ant.).

4. In the case of Kusum Products (supra) a Division bench of this Court presided over by the Hon''ble Mr. Justice P.C. Barooah ruled that:

Meansrea is an essential ingredient, for an offence of false statement in a verification, under S. 277 of the I.T. Act. 1961 and only an actual person who does any of the acts indicated in a section with a specific knowledge of foment can be made liable. Although, u/s 2(31), the definition of a "person" is wide enough to include a company or any juristic person, the word "person" could not have been used by Parliament in Section 277 in that sense because imprisonment has been made compulsory for an offence under the section and a company or a juristic person cannot be sent to prison and it not open to a court to impose a sentence of fine or not to award any punishment if the court finds a company guilty under the section. If the court does so it would be altering the very scheme of the act and usurping the legislative function.

5. Therefore the proceedings pending against the petitioner/company were quashed.

6. In the case of Modi Industrie Ltd. (supra), a Division Bench of the Allahabad High Court prescribed over by the Hon''ble Chief Justice Satish Chandra inter alia held as follows:

A company registered under the Companies Act, 1956, is a juristic Persian and cannot be awarded the punishment of imprisonment and hence cannot be prosecuted for breach of Sections 277 and 279 of the Act.

7. In the case of the East India Jute and Hession Exchange Ltd. (supra), a Division Bench of this court presided over by the Hon''ble Mr. Justice Monoj Kumar Mukherjee has held that Section 277 of the Income Tax Act provides for a punishment only of imprisonment and such punishment could not be imposed upon a company or a juristic person, unlike the punishment of fine. The company or a juristic person would, therefore, not be liable for such an offence.

8. Countering the argument of the learned counsel for the petitioner, Sri Dipak Mukherjee, learned counsel for the opposite party (Income Tax Officer) has submitted that the aforesaid rulings are not attracted to the cases in hand in view of the amendment of certain provisions of the Income Tax'' Act introduced by the Taxation Laws (Amendment) Act, 1975 which came into force on 1/10/1975. It is seen that Sections 277, 278, 278A, 278B, 278C and 278D have been substituted for Sections 277 and 278 by the Amendment Act of 1975. Section 278B reads as follows:

(1) 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 the 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;

Provided that nothing contained in this sub-section 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 dilligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section 91, where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly,

Explanation. For the purposes of this section,-

(a) "company" teens a body corporate, and includes-

(i) a firm; and

(ii) an association of persons or a body of individuals whether incorporated or not; and

(b) "director", in relation to

(i) a firm, means a partner in the firm;

(ii) any association of persons or a body of individuals, means any member controlling the affairs thereof.

9. By inserting Section 278B, the Parliament has made its intention by saying that the Company as well as the officers who are in charge of, and are responsible to the Company for the carat of its business, shall be deemed to be guilty of the offence. For the purpose of this newly added section, a Company has been defined to mean a body corporate which will include a firm and an association of persons or a body of individuals and a director in relation to a fire will mean a partner and in relation to any association of persons, will mean any member controlling the affairs thereof. Thus, of though the Parliament in its wisdom, has made the Company punish abet but in fact its members controlling its affairs shall in reality perished.

10. The above amendment had come in force with effect, from 1/10/1975 and in all the cases giving rise to there revision petitions, the assessment years are found to be subsequent to 1/10/1975. Whereas the assessment years of the reported cases cited above are found to relate to the periods before 1/10/1975. In view of the aforesaid discussions I find that the decided cases cited by the learned counsel for the petitioners have no application to the cases in hand. The learned Chief Metropoditan Magistrate, Calcutta was justified taking cognizance and issuing processes against the acrused petitioners in terms of the provisions of Sections 276B mead with Section 278B of the Income Tax Act, 1961 (as ascended). In the result revision petitions are rejected and the mules are discharged.

