(1998) 10 P&H CK 0065

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 9059-M of 1991

Income Tax Officer APPELLANT

Vs

Achhpal Singh RESPONDENT

Date of Decision : 09-10-1998

Acts Referred:
Income Tax Act, 1961 — Section 139(1), 139(2), 139(8), 148, 215

Citation : (1999) 1 ILR (P&H) 303 : (1999) 238 ITR 75 : (1999) 1 RCR(Criminal) 168

Hon'ble Judges : N.K. Agarwal, J

Bench : Single Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

N.K. Agrawal, J.—A criminal complaint was filed in the court of Chief judicial Magistrate, Kurukshetra, by R. K. Kuchhal, Income Tax Officer, Kaithal, against Achhpal Singh. It was alleged that the accused, being an assessee under the Income Tax Act, 1961 (for short "the Act"), concealed income of Rs. 40,000 in the assessment year 1982-83. Offences under sections 276C and 277 of the Act were mentioned in the complaint.

2. The accused-assessee purchased a Matador van. The Assessing Officer, during the course of assessment proceedings, sought the assessee''s explanation regarding the source of investment. The assessee could not give satisfactory explanation. The Assessing Officer, after charging Income Tax on Rs. 40,000 as unexplained income of the assessee, proceeded to impose penalty also for the concealment of income. Penalty of Rs. 15,000 was imposed u/s 271(1)(c) of the Act.

3. The assessee filed an appeal against the assessment order, challenging the addition of Rs. 40,000 to his income. The Appellate Assistant Commissioner reduced the addition to Rs. 25,000. The Income Tax Appellate Tribunal affirmed the order of the Appellate Assistant Commissioner.

4. The learned Chief judicial Magistrate, Kurukshetra, recorded the statement of S. S. Thind, Income Tax Officer, and also that of R. K. Kuchhal, the complainant. The learned magistrate thereafter, discharged the assessee-accused on the ground that, after the reduction of the amount of penalty in appeal, prosecution could not proceed any further in view of the provisions contained in sub-section (1A) of section 279 of the Act.

5. The complainant filed a revision petition against the discharge order dated August 11, 1990 passed by the Chief judicial Magistrate, Kurukshetra. The learned Sessions judge, Kurukshetra, by order dated February 16, 1991, dismissed the revision petition.

6. This petition has been filed u/s 482 of the Code of Criminal Procedure, challenging the order of discharge passed by the Chief judicial Magistrate, Kurukshetra.

7. Shri R. P. Sawhney, learned senior counsel for the petitioner, has been heard, Shri J. K. Goel, counsel for the respondent, has not chosen to appear.

8. Shri R. P. Sawhney has argued that the learned Chief Judicial Magistrate has wrongly discharged the accused taking an incorrect view of section 279(1A) of the Act. His contention is that, under the aforesaid provision, prosecution would terminate if the amount of penalty imposed by the Assessing Officer is reduced or waived by an order u/s 273A of the Act. In the case of the accused-assessee, the amount of penalty was not reduced or waived by the Commissioner of Income Tax u/s 273A of the Act.

9. It would be relevant to read sub-section (1) of section 273A and also sub-section (1A) of section 279 of the Act :

"273A. Power to reduce or waive penalty, etc.., in certain cases. - (1) Notwithstanding anything contained in this Act, the Commissioer may, in his discretion, whether on his own motion or otherwise, -

(i) reduce or waive the amount of penalty imposed or imposable on a person under clause (i) of sub-section (1) of section 271 for failure, without reasonable cause, to furnish the return of total income which he was required to furnish under sub-section (1) of section 139; or

(ii) reduce or waive the amount of penalty imposed or imposable on a person under clause (iii) of sub-section (1) of section 271; or

(iii) reduce or waive the amount of interest paid or payable under subsection (8) of section 139 or section 215 or section 217 or the penalty imposed or imposable u/s 273,

if he is satisfied that such person -

(a) in the case referred to in clause (i), has, prior to the issue of a notice to him under sub-section (2) of section 139, voluntarily and in good faith made full and true disclosure of his income;

(b) in the case referred to in clause (ii), has, prior to the detection by the Assessing Officer, of the concealment of particulars of income or of the inaccuracy of particulars furnished in respect of such income, voluntarily and in good faith, made full and true disclosure of such particulars;

(c) in the cases referred to in clause (iii), has, prior to the issue of a notice to him tinder sub-section (2) of section 139, or where no such notice has been issued and the period for the issue of such notice has expired, prior to the issue of notice to him u/s 148, voluntarily and in good faith made full and true disclosure of his income and has paid the tax on the income so disclosed, and also has, in the cases referred to in clause (b), co-operated in any enquiry relating to the assessment of his income and has either paid or made satisfactory arrangements for the payment of any tax or interest payable in consequence of an order passed under this Act in respect of the relevant assessment year.

Explanation. - For the purposes of this sub-section, a person shall be deemed to have made full and true disclosure of his income or of the particulars relating thereto in any case where the excess of income assessed over the income returned is of such a nature as not to attract the provisions of clause (c) of sub-section (1) of section 271.

279. (1A) Prosecution to be at instance of Commissioner.-. . . .

(1A) A person shall not be proceeded against for an offence u/s 276C or section 277 in relation to the assessment for an assessment year in respect of which the penalty imposed or imposable on him under clause (iii) of sub-section (1) of section 271 has been reduced or waived by an order u/s 273A ......"

10. On a perusal of the aforesaid provisions, it is apparent that sub-section (1A) of section 279 comes into play where penalty imposed on an assessee u/s 271 is either reduced or waived by an order u/s 273A of the Act. In the case of the present assessee, the order by the Appellate Assistant Commissioner was passed on the assessee''s appeal u/s 250 of the Act. Further, the appeal filed before the Tribunal also came to be disposed of u/s 254 of the Act. Thus, neither the appellate order passed by the Appellate Assistant Commissioner nor the order by the Income Tax Appellate Tribunal was an order u/s 273A of the Act.

11. An order u/s 273A is passed by the Commissioner of Income Tax and the amount of penalty is reduced or waived where the Commissioner is satisfied that the assessee had, prior to the detection of concealment of particulars of income, made voluntarily and in good faith, full and true disclosure of the particulars of income.

12. The order of the Appellate Assistant Commissioner, passed in the assessee''s appeal, is not in the nature of an order passed by the Commissioner after the satisfaction as mentioned above. The first appellate order was passed u/s 250 and the second appellate order was passed u/s 254 of the Act.

13. In view of the above discussion, the conclusion arrived at by the learned Chief judicial Magistrate is found to be erroneous and unsustainable. This was not a case where the assessee filed any application before the Commissioner, seeking reduction or waiver of the amount of penalty imposed upon him by the Assessing Officer. The assessee had, on the other hand, filed an appeal which was heard by the Appellate Assistant Commissioner and the order was passed u/s 250 of the Act. In this view of the matter, sub-section (1A) of section 279 is not attracted at all inasmuch as it was not a case of reduction or waiver of the amount of penalty by the Commissioner in exercise of his power u/s 273A of the Act.

14. A similar matter was once examined by the Kerala High Court in Friends Union Oil Mills and Others Vs. Income Tax Officer and Others, . There also, penalty was reduced by the Appellate Tribunal and not by the Commissioner u/s 271(4A) of the Act. It was, therefore, held that the benefit conferred by section 279(1A) was not available to the assessee.

15. Similar view has been taken by the Allahabad High Court in Dr. D. N. Munshi v. N. B. Singh [1978] 112 ITR 173. There also, the assessee had been prosecuted u/s 277 of the Act. He was discharged by the trial court on the ground that there was a bar to the institution or continuance of a prosecution against the assessee u/s 279(1A) of the Act if the Commissioner waived the penalty imposable on the assessee under sub-section (4A) of section 271. It was noticed by the court that the assessee''s appeal against the imposition of penalty had been allowed by the Income Tax Appellate Tribunal, which did not act u/s 271(4A). The order of discharge was, therefore, held to be not sustainable.

16. In the result, the present petition is, allowed and the order of the learned Chief judicial Magistrate, Kurukshetra, as well as the order of the learned Sessions judge are set aside. The matter is remitted to the Chief judicial Magistrate, Kurukshetra, with a direction to proceed further in accordance with law in the matter from the stage at which it was on the date of the order of discharge.

