
(1992) 01 P&H CK 0160

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 415-DBA of 1987

Income Tax Officer

APPELLANT

Vs

Anil Kumar Gupta and Others

RESPONDENT

Date of Decision : 13-01-1992

Acts Referred:

Income Tax Act, 1961 — Section 194A, 276B

Citation : (1992) 103 CTR 226 : (1992) 197 ITR 266

Hon'ble Judges : S.S. Rathor, J;S.D. Bajaj, J

Bench : Division Bench

Advocate : R.P. Sawhney and Baldev Goel, for the Appellant; Sumesh Ojha, for respondent Nos. 1 to 3 and None for respondent Nos. 4 to 6, for the Respondent

Judgement

S.S. Rathor, J.—For violation of Section 194A of the Income Tax Act, 1961 (hereinafter called " the Act "), by the accused, three complaints were filed by duly authorised Income tax Officer. Identical allegations against the accused were that, during the course of assessment, from a perusal of the record of the accused's firm, it transpired that the assessee-firm did not deduct tax at source out of interest paid to the creditors. Though such creditors are different persons in each complaint, yet the incriminating allegations are the same.

2. As all the complaints pertain to the commission of one and the same offence pertaining to the assessment year 1980-81, the trial court, vide its order dated March 3, 1984, consolidated all the complaints and it was ordered that the evidence be recorded in the complaint No. 141 dated March 24, 1983, against the present accused.

3. After putting in appearance in the court, the accused moved an application u/s 245(2) of the Criminal Procedure Code to the effect that, on the facts disclosed in the complaint, Section 194A of the said Act is not attracted in the case and, on similar allegations, revision was also dismissed by the authority under the Act. Accordingly, it was alleged in the application that the matter in dispute had become final between the parties. The charge being groundless, the complaint be

dismissed and the accused be discharged. This application was opposed by counsel for the complainant.

4. Without going into the merits of the case, the trial court, while interpreting the provisions of Section 194A(1) of the said Act and holding that the said provisions are not attracted to the facts of the case, passed the impugned order allowing the application moved by the accused u/s 245(2) of the Criminal Procedure Code and, while ordering dismissal of the complaint, discharged the accused. Feeling aggrieved against the order of acquittal, an appeal was filed in this court which was admitted on August 28, 1987, by an order of a Division Bench.

5. Section 194A of the Act runs as under :

" Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than income chargeable under the head Interest on securities", shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct Income Tax thereon at the rates in force."

6. There is no dispute that, in this case, the assessee had not actually paid interest but it was credited in the payee's account. The trial court took the view that, as interest had not been paid to the creditor by cheque, draft or cash, the crediting of the interest in the payee's account would only mean the reflecting of interest by the assessee following the mercantile system of accounting by debiting the interest payable to the creditor in its books in the interest payable account instead of the personal account of the creditors. In other words, the trial court was of the view that it was not credit of such income to the account of the payee and the procedure adopted by the assessee by crediting the income in the interest account of the payee would be a valid transaction under the mercantile system of accounting and such a mode is a valid mode of payment within the words "or any other mode" as incorporated in the section. In support of these observations, the trial court, in its wisdom, placed reliance on a judgment of the Supreme Court delivered in the case of J. Dalmia Vs. Commissioner of Income Tax, New Delhi, .

7. We have given deep thought to the interpretation put by the trial court over the applicability of the aforesaid section to the facts of the case. The view of the trial court is palpably wrong. A bare reading of the section shows without any manner of doubt that the tax is to be deducted at the source itself at the time of credit of such income or interest to the account of the payee. The word " or" has been used by the Legislature in the section making it clear that in any such eventuality, the tax has to be deducted by the assessee from the creditor. No doubt, the word " credit" used in the section has not been defined in the Act. But there is no ambiguity about the meaning of the word " credit". The facts and circumstances of the case are squarely covered by the words " at the time of credit of such income to the account of the payee". The latter part of the section

subsequent to the word " or" after the word " payee" is not attracted in any way to give an illogical interpretation such as that of the trial court. Above referred judgment of the" Supreme Court is of no help to the accused and has been wrongly relied upon in his favour by the trial court. Very fairly, counsel for the accused has also conceded that the interpretation of the trial court is incorrect and untenable in law.

8. In view of the discussion made above, there is no option left with this court but to accept this appeal and to set aside the impugned judgment. As the trial court has not decided the case on the merits and has discharged the accused while deciding the non maintainability of the complaint as per the allegations contained therein in view of Section 194A, the trial court is directed to decide all the three cases afresh on the merits in accordance with law. As the matter is old, the disposal by the trial court is expected to be expedited. The parties, through their counsel, are directed to appear before the trial court on February 19, 1992. The appeal is allowed to the extent indicated above.