(1991) 10 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 332-DBA of 1987

Income Tax Officer — APPELLANT

Vs

Anil Kumar — RESPONDENT

Date of Decision : 01-10-1991

Acts Referred:
Income Tax Act, 1961 — Section 276B

Citation : (1993) 1 ILR (P&H) 344 : (1992) 196 ITR 638 : (1992) 1 RCR(Criminal) 27

Hon'ble Judges : J.B. Garg, J;A.P. Chowdhri, J

Bench : Division Bench

Advocate : A.K. Mittal, for the Appellant; Somesh Ojha, for the Respondent

Judgement

J.B. Garg, J.—Anil Kumar, a partner of M/s. Ashok Steel Trading Corporation, G. T. Road, Khanna, was prosecuted u/s 276B of the Income Tax Act, 1961, arid he was convicted for the aforesaid offence and sentenced to pay a fine of Rs. 12,000 by the Chief Judicial Magistrate, Ludhiana, on September 5, 1985.

2. In appeal, the conviction was set aside by Shri P. C. Singal, Additional Sessions Judge, Ludhiana, on the plea that the firm was not a juristic person and that the sentence of imprisonment which was also mandatory could not be imposed upon it. Aggrieved against it, the present appeal has been preferred.

3. Briefly, the facts as alleged are that M/s. Ashok Steel Trading Corporation, G. T. Road, Khanna, paid interest to the tune of Rs. 89,832.40 to M/s. Amar Ginning and Oil Mills, Khanna, but they did not deduct the Income Tax nor deposit it as required u/s 276B of the Income Tax Act, 1961. This omission came to the notice of the Income Tax Officer of Ludhiana while examining the record for the assessment year 1980-81 relevant to the financial year 1979-80.

4. The fact that M/s Amar Ginning and Oil Mills, Khanna, were disbursed a sum of Rs. 89,832.40 as interest by M/s. Ashok Steel Trading Corporation, G. T. Road, Khanna, is not disputed. The only question which requires decision here is

whether M/s. Ashok Steel Trading Corporation which in fact is a partnership concern could be prosecuted and punishment imposed notwithstanding the fact that the sentence prescribed u/s 276B of the Income Tax Act, 1961, contains imposition of the substantive sentence as well to the extent of six months.

5. On behalf of the accused, attention has been invited to Modi Industries Ltd. Vs. B.C. Goel, , where the delinquent was a Corporation and it was observed that it being a juristic person could not be awarded the punishment of imprisonment. In the case now in hand, the delinquent concern was a firm which is a person "as defined in Section 2(31) of the Income Tax Act." As observed in A.D. Jayaveerapandia Nadar and Co. and Others Vs. Income Tax Officer, , there is no doubt regarding the criminal liability. On behalf of the Union of India, it has been here argued that the provisions of Section 276B of the Income Tax Act, 1961, as amended with effect from October 1, 1975, have been contravened. In RISHIKESH BALKISHANDAS AND OTHERS Vs. I. D. MANCHANDA, Income Tax OFFICER, DIST. II(1), D-BLOCK, NEW DELHI., , as has been referred to by learned counsel for the Union of India, it was stressed that a firm maintained a legal entity for purposes of tax laws and, obviously, contravention of the requirement of Section 276B of the Income Tax Act attracted prosecution as well as punishment. The conclusion is that the appeal is accepted and the judgment of the learned Additional Sessions Judge, Ludhiana, is hereby set aside. The accused is convicted u/s 276B of the Income Tax Act, 1961, and the quantum of fine of Rs. 12,000 imposed by the learned trial court on September 5, 1985, is hereby affirmed.

