
(1994) 06 AP CK 0025

In the Andhra Pradesh High Court

Case No : Criminal Appeal No's. 779 and 780 of 1992

Income Tax Officer

APPELLANT

Vs

Ashoka Biscuit Works and Others

RESPONDENT

Date of Decision : 27-06-1994

Acts Referred:

Income Tax Act, 1961 — Section 276, 276C, 277

Citation : (1996) 219 ITR 458

Hon'ble Judges : M. Ranga Reddy, J

Bench : Single Bench

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

Judgement

M. Ranga Reddy, J.—These two appeals in Criminal Appeals Nos. 779 of 1992 and 780 of 1992 are filed by the Income Tax Officer, E-Ward, Circle-II, Hyderabad, against the judgments in C.C. No. 128 of 1986 and C.C. No. 127 of 1986 on the file of the Special Judge for Economic Offences, Hyderabad, respectively, acquitting the respondents-accused of offences u/s 276C and 277 of the Income Tax Act, 1961, and sections 193 and 196 of the Indian Penal Code, by separate judgments dated October 31, 1991. As the dispute in respect of these two appeals is identical they are being disposed of by this common judgment.

2. The facts of the case as emerging from the evidence of witnesses adduced during the trial can briefly be stated as follows : The R-1 firm was carrying on business in manufacture and sale of biscuits. The biscuits are supplied on sale and return basis to the commission agents. The value of stocks supplied cannot be treated as sold out, unless the commission agents informed the sale and sent the statements. The entries in the accounts were made only after the sales statements were received from the commission agents. The R-1 firm filed its return of income on October 14, 1977, and November 21, 1978, declaring the total taxable incomes at Rs. 2,14,014 and Rs. 3,43,027 for the assessment years 1977-78 and 1978-79, respectively.

3. While working out the taxable income, the firm omitted to take into account the sales made through the commission agents during the last quarter of the years 1977 and 1978 in the assessment years 1977-78 and 1978-79, respectively. Thus, an amount of Rs. 7,79,796 being amount of sales during February and March, 1977, which ought to have been included in the returns for the assessment year 1976-77 are not included in that year but are included in the returns for the assessment year 1977-78. Similarly, sales to the tune of Rs. 7,17,059 effected in March, 1978, which ought to have been shown in the returns for 1977-78 are shown in 1978-79. Thus, by following this mistaken system of recording the commission sales on the day of receipt of the sale statement, the consignment sales pertaining to the year 1977-78 were accounted for in the year 1978-79 and the consignment sales pertaining to the year 1978-79 were recorded in the books of account of the year 1979-80.

4. It so happened during course of examination of accounts of R-1 firm, that the Income Tax Officer had an occasion to go through the ledger relating to the assessment year 1977-78, wherein the sales through the commission agents relating to the year ending March 31, 1976, were found accounted during the assessment year 1977-78. As this mistake in accounting the consignment was realised, the first accused-firm immediately filed a revised return on June 15, 1979, disclosing a total income of Rs. 4,06,569 for the assessment year 1977-78 and for 1978-79 by July 21, 1979, by duly adjusting the taxable income. The assessment for both the years was completed accordingly and simultaneously the penalty proceedings were initiated for both the years. The Income Tax Appellate Tribunal deleted the penalties by holding that the revised returns were filed before any detection by the Department and further held that the Income Tax Officer has not brought home concealment of income by R-1 firm and the orders of the Tribunal have become final as no reference was filed before the High Court against the findings of the Department. So, in both the cases it was found that there was no wilful attempt to conceal the income.

5. Even the evidence of P.W. - 1 is to the effect that there was only postponement of payment of tax and there was no loss of revenue. The main ingredient of the offence u/s 276 of the Income Tax Act is wilful attempt to conceal the income. The Income Tax Appellate Tribunal which is the highest fact-finding body came to the conclusion that there was no wilful attempt to conceal the income. In *Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar*, it was observed 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. There is no legal bar in giving due regard to the result of the proceedings under the Income Tax Act. In the instant case, the alleged wilful concealment is only on account of the mistaken system of method of accounting followed by the accountant of the firm and so it cannot be said that there was any deliberate or intentional attempt on the part of R-1 firm to suppress or conceal the income. Under these circumstances, the trial court found that no offence under sections

276C and 277 of the Income Tax Act are made out.

6. Learned counsel for the respondents took me through the entire judgment and I find that the trial court has given cogent and convincing reasons for acquitting the accused. I do not think that the circumstances of the case warrant any interference with the order of acquittal recorded by the trial court. I, therefore, find that the appeals preferred by the Department are liable to be dismissed and are accordingly dismissed.