
(2002) 02 P&H CK 0051

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 118-MA of 2001

Income Tax Officer

APPELLANT

Vs

Delhi Fruit Company

RESPONDENT

Date of Decision : 04-02-2002

Acts Referred:

Income Tax Act, 1961 — Section 271(1), 276C, 277, 278B

Citation : (2002) 254 ITR 1

Hon'ble Judges : N.K. Sud, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : R.P. Sawhney and N.G. Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

N. K. Sud, J.—This application for leave to appeal is directed against the judgment of the Chief Judicial Magistrate, Jalandhar, dated March 24, 2000, holding that the complaint filed by the appellant against the respondents for the alleged offences committed under sections 276C and 277 read with section 278B of the Income Tax Act, 1961 (for short "the Act"), as not maintainable and consequently acquitting all the accused.

2. The relevant facts are that respondent No. 1--Delhi Fruit Company, is a partnership firm carrying on its business at Sabzi Mandi, Jalandhar. For the assessment year 1980-81, it consisted of six partners, namely, Ram Sarup, Vas Dev, Darshan Lal, Balbir Singh, Vinod Kumar and Varinder Kumar. It filed its return of income for that year before the Income Tax Officer, District-II(2), Jalandhar, on November 5, 1980, declaring an income of Rs. 46,214. The verification in the return was signed by a partner, Ram Sarup. During the assessment proceedings, the Income Tax Officer noticed certain interpolations in the cash book which resulted in the introduction of cash amount of Rs. 41,927.02 on account of fictitious credits under the head "Ugrahi Account" and corresponding fictitious reduction in the debtors. Accordingly, he treated the same as concealed income of the firm while framing its assessment u/s 143(3) of

the Act on March 30, 1981. He also initiated penalty proceedings u/s 271(1)(c) of the Act for concealment of true particulars of income/filing of inaccurate particulars of income. A criminal complaint was also filed for commission of alleged offences under sections 276C and 277 read with section 278B of the Act. The accused-firm preferred an appeal before the Appellate Assistant Commissioner, Jalandhar, who, vide his order dated May 31, 1984, set aside the assessment made by the Income Tax Officer and directed it to be made afresh. Aggrieved by the order of the Appellate Assistant Commissioner, the Revenue filed an appeal before the Income Tax Appellate Tribunal. Meanwhile, during the pendency of the Revenue's appeal, all the accused were discharged by the court in the criminal case filed against them vide order dated January 7, 1985. Thereafter, the Tribunal vide its order dated July 19, 1985, accepted the appeal of the Revenue. The order of the Appellate Assistant Commissioner dated May 31, 1984, was set aside and that of the Income Tax Officer dated March 30, 1981, restored. The addition of Rs. 41,927 was upheld.

3. The Income Tax Officer, thereafter, levied penalty for concealment of income u/s 271(1)(c) of the Act vide order dated January 30, 1986. The assessee-firm preferred an appeal against the order of penalty before the Commissioner of Income Tax (Appeals)-II, Jalandhar, which was dismissed on May 2, 1988.

4. It is at this stage that the Income Tax Officer, Ward 2(1), Jalandhar, filed another complaint against the firm and all the six partners accusing them of offences punishable under sections 276C and 277 read with section 278B of the Act. The said complaint has been dismissed vide impugned order dated March 24, 2000, by the Chief Judicial Magistrate. The Chief Judicial Magistrate noted that two of the accused-partners, namely, Darshan Lal and Vinod Kumar, had died during the pendency of the proceedings before him and, therefore, the proceedings against them could not continue. Regarding the other accused, he referred to the partnership deed and found that only Ram Sarup was the active partner who was responsible for the day-to-day carrying on of the business of the firm and the other partners were merely dormant in business. He, therefore, held that in view of the decision of this court in *Sat Pal and Another Vs. State of Punjab and Another*, besides the firm it was only the person or partner who, at the time of commission of offence was in charge of and was responsible to the firm for the conduct of its business, who was liable to be prosecuted. Thus, according to him only Ram Sarup could be proceeded against. He also found that even the return of income and other documents filed along with it, were signed and verified by Ram Sarup alone. Thus, according to him, no other partner could be held responsible for any act done by Ram Sarup. Coming to the liability of Ram Sarup, the court found that he had already been discharged of the same offences in a similar complaint on January 7, 1985, and the order of discharge had become final. Therefore, he held that no second complaint for the same offences was maintainable. The complaint was held to be not maintainable on the ground of limitation as also for want of sanction of the appropriate authority in accordance with section 279(1) of the Act.

5. Mr. R. P. Sawhney, learned counsel for the appellant, has challenged the findings of the court in respect of discharge of Ram Sarup. According to him, the accused had been earlier discharged on January 7, 1985, as on that date, the order of the Appellate Assistant Commissioner setting aside the order of assessment in which addition of Rs. 41,927 had been made was in operation and, therefore, the order of discharge on that basis was justified. However, since the addition had been restored by the Tribunal vide its order dated July 19, 1985, and penalty for concealment had been levied thereafter, a fresh complaint for the same offences was maintainable. He relied on a judgment of this court in D.N. Bhasin and Another Vs. Union of India (UOI) and Others, . He also relied on the decision of the Delhi High Court in W.L. Kohli and Vijay Kohli Vs. Commissioner of Income Tax and Another, . The aforesaid two decisions were followed by the Kerala High Court in Madras Spinners Ltd. and Others Vs. Deputy Commissioner of Income Tax (Assessment), . He also challenged the finding about limitation on the ground that there was no limitation as far as the criminal proceedings are concerned. He also disputed the finding that there was no sanction of the appropriate authority.

6. After applying our mind to the arguments raised on behalf of the appellant and after perusing the record, we are satisfied that the appeal deserves to be dismissed. The Chief Judicial Magistrate was justified in holding that after the discharge of an accused in a complaint alleging commission of certain offences, no second complaint in respect of the same offences was maintainable.

7. He has correctly observed that if the appellant was satisfied that there was a case for prosecution of the accused even though the assessment had been set aside by the Appellate Assistant Commissioner against which the Revenue's appeal was pending before the Tribunal, the order of discharge should have been challenged in appeal/revision, which had not been done. Mr. Sawhney was not able to draw our attention to any provision of law or to any judicial pronouncement which permits the filing of a second complaint for the same offences.

8. None of the authorities cited by learned counsel for the appellant advance his case. In D.N. Bhasin and Another Vs. Union of India (UOI) and Others, , certain additions were made in reassessment proceedings on the basis of material seized during the course of search in the assessee's premises. On the basis of these additions, criminal complaints were also filed under sections 276C and 277 of the Act against the assessee. The additions were deleted in appeal by the first appellate authority. The Revenue had filed appeals before the Tribunal which were pending. It was at this stage that the accused-assessee had filed petitions for quashing of the criminal complaints as the additions which were the basis of the complaints, did not survive after the order of the Commissioner of Income Tax (Appeals). The Revenue had resisted these petitions on the ground that the appeals filed by it were pending before the Tribunal. It was, therefore, held that since the additions had been deleted by the Commissioner (Appeals), the

proceedings had to be quashed. However, it was made clear that in case the orders of the Commissioner of Income Tax (Appeals) were set aside by the Tribunal and that order achieves finality, the Revenue would be entitled to file fresh complaints against the assessee on the same facts and grounds in accordance with law. Similar was the position in the cases of W.L. Kohli and Vijay Kohli Vs. Commissioner of Income Tax and Another, and Madras Spinners Ltd. and Others Vs. Deputy Commissioner of Income Tax (Assessment), . The case in hand is entirely different. The earlier complaint in the present case was not quashed on the ground that the assessment had been set aside by the Appellate Assistant Commissioner but the accused had been discharged. The proper remedy for the Revenue under such circumstances would have been to challenge the order of discharge on the ground of pendency of its appeal before the Tribunal and obtain a clarification or direction like the one given in the three authorities cited before us. Thus, no fault can be found with the finding of the Chief Judicial Magistrate that no second complaint against an accused on the same charges and on the same facts and grounds was maintainable. Since the impugned order can be upheld on this ground itself, we do not find it necessary to deal with the other grounds on which the complaint has been held to be not maintainable.

9. Before parting, we may mention that the assessment year involved is 1980-81 and the first criminal complaint for prosecution had been filed in the year 1983-84. The second complaint was filed in 1989. The accused has been undergoing the agony of facing these proceedings for the past seventeen years. We are, therefore, of the view that it would not be just and fair to interfere with the order of the trial court.

10. In view of the above, we find no ground to interfere in the impugned order. The application for leave to appeal is, accordingly, dismissed. Since no one has appeared on behalf of the respondents, there shall be no order as to costs.