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(2002) 08 P&H CK 0092

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 15943-M of 2001

Income Tax Officer — APPELLANT

Vs

Dr. Smt. Usha Gupta — RESPONDENT

Date of Decision : 13-08-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 244, 245, 245(2), 482
Income Tax Act, 1961 — Section 276C, 277

Citation : (2003) 262 ITR 679

Hon'ble Judges : Nirmal Singh, J

Bench : Single Bench

Advocate : N.L. Sharda, for the Appellant; Mahavir Singh, for Deepak Bajaj, for the Respondent

Final Decision : Dismissed

Judgement

Nirmal Singh, J.

1 A complaint under Sections 276C and 277 of the Income Tax Act, 1961 (hereinafter called "the Act") was filed by the Income Tax Officer, Ward No. 1, Muktsar, against the respondent, Dr. Usha Gupta, proprietor Bansal Nursing Home, Muktsar, on the ground that the respondent had not shown Rs. 1 lakh in the Income Tax return filed by her on August 29, 1988.

2. The respondent was summoned in those proceedings. During the pendency of those proceedings, the respondent filed an application for dropping the criminal proceedings against her. The petitioner pleaded in the application that she is being prosecuted for an offence, that she had paid Rs. 1 lakh to Uniscan and Sonics Ltd., Chandigarh, and this amount has not been shown by the respondent in her account books. In the application, it was further pleaded that the respondent filed a revised return in which she had shown the amount, even though the respondent claimed that she came to know that Uniscans and Sonics Ltd., Chandigarh, had wrongly credited this amount, the revised return was filed to avoid the legal complications.

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3. On filing of the revised return by the respondent, the assessment was reopened and a sum of Rs. 1 lakh was taken as concealed income of the respondent by the complainant upon the petitioner. The petitioner again served notice u/s 271(1)(c) of the Act upon the respondent and penalty proceedings were launched against her. The Income Tax Officer imposed penalty upon the respondent vide order dated September 24, 1991. The respondent filed an appeal before the Income Tax Commissioner who maintained the penalty but reduced the amount of penalty from 150 per cent. to 100 per cent, vide order dated January 28, 1992.

4. The respondent challenged the order of the Income Tax Officer as well as of the Commissioner of Income Tax (Appeals) imposing penalty before the Income Tax Tribunal. The appeal of the respondent was accepted by the Income Tax Tribunal vide order dated June 6, 1994. The Tribunal while accepting the appeal observed that the respondent has not concealed income and imposition of penalty was set aside. On this ground, it was prayed that the proceedings may be dropped. The petitioner was given notice of the application. The petitioner filed a reply to the application.

5. The learned magistrate after hearing the counsel for the parties and perusing the record, dropped the proceedings vide order dated October 13, 1999. Aggrieved by the order, the petitioner filed a criminal revision before the Sessions Judge, Faridkot, which was dismissed on June 8, 2002. Aggrieved by which, the present petition u/s 482 of the Code of Criminal Procedure, has been filed for quashing the orders passed by the courts below,

6. Mr. N.L. Sharda, learned counsel for the petitioner, submitted that the courts below have erred in passing the order dated October 13, 1999, and June 8, 2002. He submitted that after recording the preliminary evidence, the respondent has been summoned to face the trial u/s 276C/277 of the Act as the respondent has concealed the income of Rs. 1 lakh. He contended that the charge against the respondent has been framed. After framing of charge, the proceedings cannot be dropped in the midway, as there is no such provision in the Code of Criminal Procedure. He further contended that on the basis of the order passed by the Income Tax Tribunal, the criminal proceedings cannot be dropped. He also contended that those proceedings were for imposing the penalty whereas the proceedings under the Code of Criminal Procedure can continue despite the fact that penalty has been waived by the Income Tax Tribunal.

7. I have heard learned counsel for the petitioner and perused the record. The submissions made by learned counsel for the petitioner that the proceedings cannot be dropped after framing of charge are without any foundation.

8. Section 245 of the Code of Criminal Procedure, deals with the provisions when an accused shall be discharged. Section 245 of the Code of Criminal Procedure reads as under :

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"245. When accused shall be discharged,--(1) If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if un-rebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless."

9. A bare perusal of the above-quoted section shows that the accused is to be discharged after taking into consideration all the evidence referred to in Section 244 and if evidence remains unrebutted, no case is made out against the accused. Sub-section (2) to Section 245 of the Code of Criminal Procedure, empowers the magistrate to discharge the accused at any previous stage of the case, if for reasons to be recorded by such magistrate, he considers the charge to be groundless.

10. It has been repeatedly held by the apex court and this court that once the concealment of income has not been proved and the penalty has been deleted by the Income Tax Tribunal, then criminal proceedings cannot continue.

11. In Procolor and Others Vs. Chief Judicial Magistrate and Others, this court in the concluding para, has held as under (page 854) :

"One finds oneself in complete agreement with the said view. Once the findings on the basis of which the complaint was filed have been set aside, it would be an exercise in futility for allowing the criminal complaint to continue. The very basis on which the complaint was filed no more exists. Once the said basis has ceased to be existent the complaint necessarily should come to its natural death. For these reasons, the petition is accepted and the proceedings pending in the court of the Chief Judicial Magistrate, Chandigarh, on the basis of the complaint of the Income Tax Officer, are quashed."

12. In Income Tax Officer Vs. Taran Taran Steel Sales and Others, it has been held as under (page 584) :

"Mr. Sawhney submits that the judgment of the trial court cannot be sustained in view of the decision of their Lordships of the Supreme Court in P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, . This was a case where the assessee had approached the court and it was held that the mere pendency of reassessment proceedings could not operate as a bar to the institution of criminal prosecution for offences punishable u/s 276C or 277. Such is not the situation in the present case. Herein, the Tribunal has found that no case for the imposition of penalty u/s 271(1)(c) was made out against the assessee. When it has been found by the Tribunal that the assessee has not concealed any income or furnished any inaccurate particulars, it cannot be said that the assessee is guilty of an offence as contemplated u/s 276C or Section 277."

13. Similar view has been taken in Shastri Sales Corporation and others Vs.

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Income Tax Officer, ; M.A. Quddus Vs. Income Tax Officer, and Assistant Commissioner of Income Tax Vs. Thirumal Agencies and Others, .

14. In the instant case, it is the admitted case of the parties that the Income Tax Appellate Tribunal has waived the penalty. The Revenue filed an application for making reference to this court. The Tribunal declined the application of the Revenue by observing as under :

"On further appeal by the assessee, the Tribunal deleted the penalty for the reasons given in detail in paras. 7, 8 and 9 of the Tribunal''s order relying on the decision of the Punjab and Haryana High Court in the case of Krishan Lal Shiv Chand Rai Vs. Commissioner of Income Tax, Since the penalty has been deleted relying on the judgment of the jurisdictional High Court in the case of Krishan Lal Shiv Chand Rai Vs. Commissioner of Income Tax, referred to extensively in the judgment, no referable question of law arises out of the order of the Tribunal in view of the decisions of the Punjab and Haryana High Court in the cases of Commissioner of Income Tax (Central) Vs. Shiv Parshad, and Telu Ram Raunqi Ram Vs. Commissioner of Income Tax, ".

15. So, the order deleting the penalty has become final.

16. In view of the above discussion, I am of the considered opinion that the courts below have rightly allowed the application of the assessee as the assessee cannot be held guilty under Sections 276C and 277 of the Act, in view of the findings recorded by the Income Tax Appellate Tribunal. Therefore, this petition is dismissed.

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