
(2004) 01 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 431-MA of 2003

Income Tax Officer

APPELLANT

Vs

Gagneja Traders and Others

RESPONDENT

Date of Decision : 29-01-2004

Acts Referred:

Income Tax Act, 1961 — Section 148, 271(1), 276C, 277, 278B

Citation : (2004) 191 CTR 111 : (2004) 268 ITR 97

Hon'ble Judges : G.S. Singhvi, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : N.L. Sharda, for the Appellant;

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—This is a petition for leave to appeal filed by the Revenue against the order dated February 26, 2003, passed by the Chief Judicial Magistrate, Jalandhar (hereinafter referred to as "the trial court"), by which he acquitted non-petitioners--M/s. Gagneja Traders and its partners--Shri Joginder Pal, and Smt. Sheila Devi in Criminal Case No. 683/02 of 2002 registered on the basis of the complaint filed by the petitioner under Sections 276C and 277 read with Section 278B of the Income Tax Act, 1961 (for short, "the Act"), with regard to the assessment year 1988-89.

2. Non-petitioner No. 1 is a registered firm and is deriving income from purchase and sale of gur and sugar. Non-petitioners Nos. 2 and 3 were partners in non-petitioner No. 1 having equal shares. For the assessment year 1988-89, the return of income was filed on behalf of respondent No. 1 on August 29, 1988, declaring an income of Rs. 38,584, The assessment was completed on December 28, 1988. Non-petitioner No. 2--Joginder Pal had signed the verification portion of the return as a partner of the accused firm. Enquiries were made by investigating agency of the Income Tax Department about the purchase of a draft by non-petitioner No. 1 on March 14, 1988, for Rs. 70,320 from the State Bank of India. The inspector signed the cash book on July 19, 1989. Thereupon, the

assessee filed the revised return on July 21, 1989, surrendering Rs. 70,320. The Department issued notice u/s 148 of the Act to bring to tax the escaped income. In response thereto, the assessee filed a revised return on February 15, 1990, declaring total income of Rs. 18,904. The verification of these returns were also signed by non-petitioner No. 2--Joginder Pal. The assessment was made at net income of Rs. 1,14,404 on February 22/28, 1990. The Assessing Officer imposed penalty of Rs. 30,245, which was 100 per cent. of the tax sought to be evaded vide order dated August 28/29, 1990. The assessee unsuccessfully challenged the order imposing penalty before the Commissioner of Income Tax (Appeals), who rejected its appeal vide order dated March 7, 1991. On second appeal, the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short, "the Tribunal"), reversed the appellate order and deleted the penalties.

3. In the meanwhile, the Revenue filed a complaint under Sections 276C and 277 read with Section 278B of the Act in the trial court. After trial, all the non-petitioners were acquitted with the observation that in view of the order dated May 27, 1999, passed by the Tribunal in I. T. A. No. 834 (ASR) of 1991, they could not be held guilty of concealment of income or furnishing of inaccurate particulars of income.

4. Dr. N. L. Sharda, learned counsel for the petitioner, argued that the trial court committed a serious illegality by acquitting the non-petitioners only on the ground that the Tribunal had set aside the order of penalty. He argued that the Revenue has not accepted the decision of the Tribunal and filed appeal u/s 260A of the Act before the High Court and, therefore, that decision could not have been made the basis for acquitting the non-petitioners. In support of his arguments, Dr. Sharda relied on the judgments of the apex court in *P. Jayappan Vs. S.K. Perumal*, *First Income Tax Officer, Tuticorin*, and *K.T.M.S. Mohd. and another Vs. Union of India*, .

5. We have given serious thought to the arguments of Dr. Sharda, but have not felt persuaded to agree with him. In *P. Jayappan Vs. S.K. Perumal*, *First Income Tax Officer, Tuticorin*, , the facts were that search of the premises of the assessee has resulted in the seizure of several documents and account books which revealed suppression of purchase of chicory seeds, existence of several bank accounts, fixed deposits, investments in the names of his wife and daughters by the assessee and several bank accounts not disclosed in the statement filed by him along with the original return for the year 1977-78. The Revenue filed a complaint u/s 276C (wilful attempt to evade tax), Section 277 (false statement in verification) of the Act and Section 193 (punishment for false evidence) and Section 196 (using evidence knowing to be false) of the Indian Penal Code on the allegation that he deliberately filed a false return and had kept false accounts with the intention of using them as general evidence in the assessment proceedings. Similar complaints were filed for the three successive assessment years, i.e., the assessment years 1978-79, 1979-80 and 1980-81. The petitioners had filed the petition u/s 482 of the Criminal Procedure Code, before

the High Court seeking quashing of proceedings by contending that the launching of the criminal prosecution was premature because the reassessment proceedings have not been completed. The High Court dismissed the petition. The assessee filed a SLP before the Supreme Court and it was in that context, that their Lordships observed that the criminal court no doubt has to give due regard to the result of any proceeding under the Act having a bearing on the question in issue and, in an appropriate case, it may drop the proceedings in the light of an order passed under the Act. It was further observed that it did not, however, mean that the result of the proceeding under the Act would be binding on the criminal court.

6. In our opinion, the decision of *P. Jayappan Vs. S.K. Perumal*, First Income Tax Officer, Tuticorin, has no bearing on the present case, inasmuch as, there, even the assessment had not been completed at the time of filing of the petition u/s 482 of the Criminal Procedure Code. In the case before us, the assessment has been completed and the penalty imposed by the Assessing Officer has been set aside by the Tribunal.

7. In *K.T.M.S. Mohd. and another Vs. Union of India*, , the Supreme Court upheld the decision of the High Court which had quashed the complaint and observed (page 218) :

"Mr. A. T. M. Sampath very strenuously contended that the convictions recorded by the subordinate courts as affirmed by the High Court u/s 120B read with Section 277 and Section 277 of the Income Tax Act, 1961, are liable to be set aside in view of the judgment of the Tribunal completely exonerating the appellants from the liability to Income Tax. We shall examine this contention and dispose of the same on the ratio of the decisions of this court in *P. Jayappan Vs. S.K. Perumal*, First Income Tax Officer, Tuticorin, .

In that case, the following dictum has been laid down (at page 700):

"The criminal court no doubt has to give due regard to the result of any proceeding under the Act having a bearing on the question in issue and in an appropriate case it may drop the proceedings in the light of an order passed under the Act. It does not, however, mean that the result of a proceeding under the Act would be binding on the criminal court. The criminal court has to judge the case independently on the evidence placed before it."

In the penultimate paragraph of the same judgment, the following observation was made (at page 702) :

"It may be that in an appropriate case the criminal court may adjourn or postpone the hearing of a criminal case in exercise of its discretionary power u/s 309 of the Code of Criminal Procedure if the disposal of any proceeding under the Act which has a bearing on the proceedings before it is imminent so that it may take also into consideration the order to be passed therein. Even here the discretion should be exercised judicially and in such a way as not to frustrate the

object of the criminal proceedings. There is no rigid rule which makes it necessary for a criminal court to adjourn or postpone the hearing of a case before it indefinitely or for an unduly long period only because some proceeding which may have some bearing on it is pending elsewhere".

8. In *G.L. Didwania and Another Vs. Income Tax Officer and Another*, , the Supreme Court held as under (page 690) :

"In the instant case, the crux of the matter is attracted and whether the prosecution can be sustained in view of the order passed by the Tribunal. As noted above, the assessing authority held that the appellant-assessee made a false statement in respect of income of Young India and Transport Company and that finding has been set aside by the Income Tax Appellate Tribunal. If that is the position then we are unable to see as to how criminal proceedings can be sustained."

9. The ratio of the above noted decisions is that the result of the proceedings under the Act is one of the major factors to be considered and the resultant finding in the said proceedings will have some bearing in deciding the criminal prosecution in appropriate cases.

10. In view of the above discussion, we hold that the trial court did not commit any error by acquitting the non-petitioners.

11. In the result, the petition for leave to appeal is dismissed.