(2001) 03 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No''s. 7989-M of 1995 30 March 2001

Income Tax Officer APPELLANT

Vs

Jindal Enterprises RESPONDENT

Date of Decision : 30-03-2001

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 397, 482
Income Tax Act, 1961 — Section 269SS, 276DD, 278B

Citation : (2001) 2 RCR(Criminal) 843 : (2001) 117 TAXMAN 156

Hon'ble Judges : K.S. Kumaran, J

Bench : Division Bench

Advocate : R.P. Sawhney and Rajesh Bindal, for the Revenue Harsh Aggarwal, for the Assessee, for the Appellant;

Judgement

The Income Tax Officer, Rohtak, the petitioner herein, filed a complaint before the Judicial Magistrate First Class, Rohtak, u/s 276DD/278B of

the Income Tax Act, 1961 (hereinafter referred to as the Act) against the respondents herein (case No. 72/2 of 6-4-1989). The case of the

petitioner is as follows.

2. The respondents who are carrying on business of sale and purchase of agriculture implements filed the Income Tax return for the assessment

year 1988-89. They had received cash deposits from 15-4-1987 to 1-5-1987 amounting Rs. 22,000 and further sum of Rs. 68,812 on two

different dates, i.e., 2-3-1988 and 9-3-1988. The depositors have confirmed the deposits by their affidavits.

3. Section 269SS of the Act provides that no person can take or accept deposit or loan otherwise than by means of account payee cheque or

account payee bank draft if the amount of such loan or deposit is Rs. 10,000 or more in a year. Therefore, according to the petitioner, the

respondent who had received the abovesaid amounts in cash has contravened the provisions of section 269SS of the Act. The petitioner called

upon the respondents by issuing a show-cause notice on 9-2-1989, to explain as to why they should not be prosecuted u/s 276DD, and

dissatisfied with the reply by the respondents, the petitioner launched the prosecution of the respondents.

4. The learned Judicial Magistrate, by relying upon the decision in Kumari A.B. Shanthi (alias) Vennira Adai Nirmala Vs. Assistant Director of

Inspection, Investigation, discharged the respondents by the order dated 19-10-1993.

5. Thereupon the petitioner filed Criminal Revision No. 73 of 1993 on the file of the Additional Sessions Judge. Rohtak, against the respondents.

The learned Additional Sessions Judge, also relied upon the decision in Kumari A.B. Shanthis case (supra), wherein section 269SS has been held

to be ultra vires of the Constitution of India. The learned Additional Sessions Judge also took note of the fact that section 276DD has been omitted

by the Direct Tax Laws (Amendment) Act, 1987 with effect from 1-4-1989 and, therefore, held that the petitioner cannot institute a complaint

under this provision. Therefore, the learned Additional Sessions Judge held that the order passed by the trial court did not call for any interference

and dismissed the revision petition.

6. That is why the petitioner has now filed this petition u/s 482 of the Code of Criminal Procedure for quashing the orders of the learned Magistrate

and the Additional Sessions Judge (Annexures P-1 and P-2 respectively).

7. According to the petitioner, the provisions of section 269SS of the Act were upheld by a Division Bench of the Madras High Court, and also

that against the decision in Kumari A.B. Shanthis case (supra), the Supreme Court has not only granted special leave but also stay as in

Commissioner of Income Tax Vs. Shivsagar Estates (Aop), .

8. So far as the omission of section 276DD from the Act is concerned, the case of the petitioner is that the said section was deleted with effect

from 1-4-1989 whereas, the offence committed was prior to 1-4-1989, and therefore, the complaint is maintainable. So, according to the

petitioner, the respondents should not have been discharged.

9. Reply has been filed by the respondents urging that in view of section 397(3) of the Code of Criminal Procedure, a second revision in the garb

of a petition u/s 482 Criminal Procedure Code is not maintainable and, therefore, this petition has to be dismissed on this ground alone. Otherwise,

the respondents have taken the other pleas taken by them before the trial court and the Sessions Court.

10. I have heard the counsels for the both the sides.

11. The allegation in the complaint is that in violation of the provisions of section 269SS, the respondents have taken various amounts exceeding

Rs. 10,000 in a year as deposit in cash between 15-4-1987 to 9-3-1988 and, therefore, they are liable to be punished u/s 276DD. But the

learned Judicial Magistrate Ist Class, Rohtak, relying upon the decision of the Madras High Court in Kumari A.B. Shanthis case (supra) held that

there is no prima facie case against the respondents-accused and discharged them. On revision preferred by the Income Tax Officer (petitioner),

the learned Additional Sessions Judge, Rohtak, not only relied upon that decision but also took into consideration the fact that the provisions of

section 276DD have been omitted by the Direct Tax Laws (Amendment) Act, 1987 with effect from 1-4-1989 and dismissed the revision.

12. I will first deal with the contention of the respondents that the complaint is not maintainable in view of the omission of section 276DD from the

statute. The complaint was lodged by the petitioner before the learned Magistrate on 6-4-1989. Violation of section 269SS was punishable u/s

276DD of the said Act. But section 276DD has been deleted with effect from 1-4-1989. Therefore, the respondents contended that when the

provision for punishing the violation of section 269SS has been deleted on 1-4-1989 itself, the respondents cannot be punished on the basis of a

complaint lodged on 6-4-1989 and, therefore, the discharge of the accused-respondents on this ground is proper. But, the learned counsel for the

petitioner contends that the offence was committed between April 1987 to March 1988 when section 276DD was therein the statute, and the fact

that the same was deleted on 1-4-1989 will not affect the prosecution.

13. But the Madhya Pradesh High Court in Harikishan Vs. Union of India (UOI), considered the very same question and quashed the criminal

proceedings. That was also a case where a complaint had been made on the ground that the petitioners had taken certain deposits otherwise than

by account payee cheques or drafts in violation of the provisions of section 269SS. The complaint was made to the court in March 1992. Section

276DD was omitted with effect from 1-4-1989. The petitioners before the Madhya Pradesh High Court had moved an application before the

Magistrate for quashing the prosecution on the ground that on the date when the complaint was made the penal section 276DD did not exist on the

statute book, but the Magistrate rejected the application. On a petition u/s 482, the Madhya Pradesh High Court held as follows:

In the case before us the amendment brought in force by the Act of 1987 was a beneficial legislation intended to benefit the assessee and to

mitigate the rigour of law inasmuch as the law now does not make the default in question a crime but only provides for imposition of penalty in

terms of money. In view of the matter and as observed by their Lordships in the case of T. Barai Vs. Henry Ah Hoe and Another, , the rule of

beneficial construction requires that even ex post facto law of such a type should be applied to mitigate the rigour of the law. The

petitioners/assessees cannot be, therefore, deprived of the benefit of the amendment.

Ultimately, the High Court quashed the proceedings.

14. The Andhra Pradesh High Court in Assistant Commissioner v. Vijaya Finance (1997) 231 ITR 137 , also upheld the dismissal of a complaint

under similar circumstances by holding that the department filed the complaint for the deposits accepted by the respondents otherwise than by

cheque or bank draft after the omission of section 276DD and, therefore, the complaint was rightly dismissed by the Magistrate.

15. These two decisions clearly support the contention of the respondents. In these circumstances, I find no grounds for interference u/s 482.

Therefore, this petition is liable to be dismissed on this ground only.

16. Of course, the respondents also contended that this is only second revision petition under the garb of a petition u/s 482 and is also, therefore,

not maintainable. But, in view of the findings in the foregoing paragraphs, I am of the view that it is not necessary to go into this question.

17. Resultantly, the petition fails and is dismissed. However, this shall not preclude the right of the Income Tax Authorities to proceed against the

respondents for the imposition of penalty, if any, in accordance with law.