(2008) 10 DEL CK 0021

In the Delhi High Court

Case No : Criminal L.P. No. 23 of 2006

Income Tax Officer APPELLANT

Vs

Mohar Singh Banarsi Dass Co. RESPONDENT

Date of Decision : 01-10-2008

Acts Referred:
Income Tax Act, 1961 — Section 131, 271(1), 276C

Citation : (2009) 176 TAXMAN 140

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : P.L. Bansal and Anshul Sharma, for the Appellant; Pankaj Jain and R.K. Chauhan, for the Respondent

Judgement

Sunil Gaur, J.—Leave to appeal against impugned order dated 10-8-2005 is sought by the appellant by contending that the trial court has committed an illegality in acquitting the respondents for offence u/s 276C of the Income Tax Act.

2. Notice of this petition was issued to the respondents.

3. The facts put forth in this petition are as under:

During the course of assessment proceedings for the period relevant to the assessment year 1986-87 the Assessing Officer found that the accused No. 1 had accepted an aggregate a sum of Rs. 1,13,000 from three persons namely Smt. Moorti Devi, Ms. Anju Gupta and M/s. Prem Prakash & Sons. In order to verify the genuineness of the aforesaid loan, summons u/s 131 of the Income Tax Act issued to the concerned parties but despite service creditors did not comply against summons. Assessing Officer intimated the accused firm vide letter dated 3-2-1989 and after accused firm failed to establish the identity of cash creditors and bona fide of those transactions the amount of Rs. 1,13,000 was credited and income of accused from undisclosed sources and addition to the income of the accused made accordingly. Penalty proceedings were also initiated and penalty imposed u/s 271(1) of the Income Tax Act.

4. Both the sides have been heard and the record of the case is perused.

5. A bare perusal of the impugned judgment of acquittal reveals that in view of the deletion of the quantum of addition by the CIT and ITAT and in view of the fact that the department had not preferred any appeal against the order of the ITAT, it has been held that criminal proceedings on the same subject-matter cannot continue.

6. Impugned judgment is assailed on the ground that the departmental proceedings and the criminal proceedings are altogether different and on the basis of the favourable departmental proceedings, criminal proceedings cannot be put to an end. Nothing else is urged.

7. Aforesaid challenge does not survive in view or the verdict of the Apex Court in the case of K.C. Builders and Another Vs. The Assistant Commissioner of Income Tax, , wherein in a similar case, order of ITAT was not challenged and had become final and in such circumstances, it was held that no offence survived under the Income Tax Act arid hence the prosecution of the assessee u/s 276C of the Income Tax Act could not be maintained.

8. Learned counsel for the appellant could not distinguish the aforesaid decision, which, to my mind squarely applies to the facts of the instant case.

9. No good ground is made out for grant of leave to appeal. Therefore, the petition for leave to appeal is dismissed.

10. Consequently, the criminal appeal filed along with the petition also stands-dismissed.

