

(1988) 08 DEL CK 0003

In the Delhi High Court

Case No : Criminal Appeal No. 72 of 1980

Income Tax OFFICER

APPELLANT

Vs

MOHD. YOUSUF.

RESPONDENT

Date of Decision : 19-08-1988

Acts Referred:

Citation : (1989) 73 CTR 150 : (1989) 175 ITR 263

Hon'ble Judges : Charanjit Talwar, J

Bench : Division Bench

Judgement

CHARANJIT TALWAR J. - By this appeal, the Income Tax Officer, Special Circle, challenges the acquittal of Mohd. Yousuf, respondent herein by the Metropolitan Magistrate u/s 277 of the Income Tax Act, 1961 (hereinafter called "the Act"), and for offences under sections 193 and 196 of the Indian Penal Code. The impugned judgment is dated August 30, 1979.

To appreciate the contentions of the appellant, it is necessary to set out briefly the facts of the complaints which were filed by the appellant against the respondent in the Court of the Metropolitan Magistrate.

The complainant, in discharge of his official duties and on being authorised by the Commissioner of Income Tax, Delhi, filed a complaint for the said offences against the respondent in his capacity s sole proprietor of Pneumatic Spares Industries. The respondent was an Income Tax assessed. For the assessment year 1965-66, he filed a return on June 30, 1965, declaring his income to be Rs. 1,452.12. He had declared his total sales at Rs. 15,970. The Income Tax Officer found the return to be false. He was also of the opinion that the respondent herein, i.e., the accused, had fabricated false evidence and had attempted to use it as true and genuine evidence, which evidence he knew to be false.

The enquiries revealed that the accused had in fact made sales of Rs. 1,17,447 to one Shri S. C. Roy, proprietor of Dee Kay Engineering Co., during the relevant year which fact was completely suppressed by him in his return. On being found

out, the accused filed a disclosure petition dated January 10, 1969, before the Commissioner of Income Tax Delhi, admitting suppression of sales and inflation of expenses. He, however, offered concealed income amounting to Rs. 2,45,500 for assessment for the assessment years from 1965-66 to 1968-69. That offer was rejected. Thereafter the accused submitted another offer whereby the concealed income was enhanced to Rs. 3,17,472 for assessment. This offer ultimately resulted in a settlement whereby the accused accepted and agreed to be assessed on a total income of Rs. 3,40,000 for the said four assessment years. Penalty was imposed on him u/s 271(1)(c) of the Act. The difference in the income declared in the return filed on June 30, 1965, and the income for the year 1965-66 was finally assessed at Rs. 31,898.

It is the admitted case of the parties that the accused paid the Income Tax as well as the penalty as per the settlement arrived at.

The allegations were that the accused had made false statements in the verification to the returns for all the four years in question and had delivered false statements of accounts to the Income Tax authorities knowing them to be false. It was prayed that he be punished in accordance with law.

After trial, the learned Magistrate acquitted the accused mainly on the ground that the matter had been compounded by the Income Tax Department. This finding was based on the evidence of P. W. 5, R. R. Gupta, who was at the relevant time the Assessing Officer of the appellant. In his cross-examination, he proved the issuance of letter dated February 4, 1971, by him to the accused. That letter completely supported the plea of the accused that there had been a settlement between the parties and in accordance with that settlement between the parties and in accordance with that settlement, he had paid Income Tax on enhanced incomes and the penalty. That letter reads as follows :

"As a result of settlement with you, your assessment for the assessment years 1964-66 to 1968-69 were finalised. At the time of settlement, it was agreed upon by you that the entire demand shall be paid on or before March 31, 1971. The assessments for these years resulted in the following demands :

1. Assessment year 1965-66 : Refund : Rs. 916.
2. Assessment year 1966-67 : Demand : Rs. 29,624 (after adjustment of payment of tax amounting to Rs. 16,961).
3. Assessment year 1967-68 : Demand : Rs. 31,576 (after adjustment of Rs. 5,000).
4. Assessment year 1968-69 : Demand : Rs. 69,665 (after adjustment of Rs. 12,980).

In a nutshell, you have to pay the demand of approximately Rs. 1,40,000 in respect of the assessment years 1966-67 to 1968-69. Even though the demand notices were served upon you on January 14, 1970, you have not paid any tax so

far. I would like you to let me know how you would pay this demand before March 31, 1971. The reply to this letter should reach me by February 11, 1971."

The plea raised before us on behalf of the appellant is that till such time the Commissioner of Income Tax compounds the offence u/s 279(2) of the Act, a settlement arrived at is not to be considered as valid and, Therefore, not binding. Section 279(2) of the Act at the relevant time read as follows :

"(2) The Commissioner may either before or after the institution of proceedings compound any such offence."

Mr. Satpals argument is that no doubt exhibit DA had been written by the predecessor of the complainant in his official capacity but since he had no authority to compound the offence, the court ought not to have acted upon the same. He, however, admits that the accused had in terms of that settlement acted upon it.

We are unable to agree with Mr. Satpal. The proceedings under the Act regarding the settlement (exhibit DA), which settlement was admittedly acted upon by the authorities, were within jurisdiction. It was not the case of the complainant before the trial court that the Income Tax authorities could not settle the matter in the manner it was done. Because of the revised assessments for the said four years, viz., 1965-66 to 1968-69, the demands as well as the penalties imposed on the respondent were paid by him. This piece of evidence has a bearing on the question in issue and was rightly relied upon by the trial court.

We find that the findings arrived at by the trial court are reasonable and not liable to be disturbed.

As the very foundation of the complainants case regarding filing of the false return was not accepted due to the settlement arrived at, the second charge u/s 193 read with section 196 of the Indian Penal Code cannot stand.

We agree with the findings of the trial court. There is no merit in this appeal. It is dismissed.