

(1988) 08 DEL CK 0002

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 : (1988) 73 CTR 150 : (1988) 36 DLT 211 : (1989) 16 DRJ 197 :
(1988) RLR 664

Hon'ble Judges : M.K. Chawla, J;Charanjit Talwar, J

Bench : Division Bench

Advocate : Sat Pal, P.K. Behl, Maninder Singh, O.P. Soni and Kamlesh Dutt, for the Appellant;

Judgement

Charanjit Talwar, J.

(1) 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 S. 193 and S. 196 of the Indian Penal Code. The impugned judgment is dated the 30th August, 1979.

(2) 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.

(3) The complainant in discharge of his official duties and on being authorised by the Commissioner of Income Tax, Delhi filed the complaint for the said offences against the respondent in his capacity as sole proprietor of M/s. Pneumatic Spares Industries. The respondent was an Income Tax assessed. For the assessment year 1965-66 he filed a return on 30th June, 1965 declaring his income to be Rs. 1452.12. He had declared his total sales at Rs. 15.970.00 . 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.

(4) The enquiries revealed that the accused had infact made sales of Rs. 1,17,447.00 to one Shri S.C. Roy proprietor of M/s. 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 the 10th January, 1969 before the Commissioner of Income Tax, Delhi admitting the suppression of sales and inflation of expenses. He, however, offered concealed income amounting to Rs. 2,45,500.00 for assessment in the assessment years from 1965-66 to 68-69. That offer was rejected. Thereafter the accused submitted another offer whereby the concealed income was enhanced to Rs. 3,17,472.00 for assessment. This offer ultimately resulted in a settlement whereby the accused accepted and agreed to be assessed at a total income of Rs. 3,40,000.00 for the said four assessment years. A penalty was imposed on him u/s 271(l)(c) of the Act. The difference in the income declared in the return filed on 30th June, 1965 and the income for the year 1965-66 was finally assessed at Rs. 31,898.00 .

(5) 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.

(6) The allegations were that the accused had made false statement in the verification to the return of all the four years in question and had delivered a false statement of accounts to the Income Tax authorities knowing it to be false. It was prayed that he be punished in accordance with law.

(7) 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 Public Witness . 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 the 4th February, 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, he had paid Income Tax on the enhanced income and the penalty. That letter reads as follows:

"AS a result-of settlement with you, your assessment for the assessment year 1965-66 to 68-69 were finalised. At the time of settlement it was agreed upon by you that the entire demand shall be paid on or before 31st March, 1971. The assessments for these years resulted in the following demands : 1. Assessment Year 1965-66 : Refund : Rs. 916.00 . 2. Assessment Year 1966-67 : Demand : Rs. 29,624.00 (after adjustment of payment of tax amounting to Rs. 16,961.00). 3. Assessment year 1967-68: Demand: Rs. 31,576.00 (after adjustment of Rs. 5,000.00). 4. Assessment year : 1968-69 : Demand : Rs. 69,665.00 (after adjustment of Rs. 12,980.00). In nut shell you have to pay the demand of approximately Rs. 1,40,000.00 in respect of assessment years

1966-67 to 68-69. Even though the demand notices were served upon you on 14-1-1970. You have not paid any tax so far. I would like you to let me know how you would pay this demand before 31st March, 1971. The reply to this letter should reach me by 11-2-1981."

(8) 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 to not 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."

(9) Mr. Satpal's argument is that no doubt Ex. 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.

(10) We are unable to agree with Mr. Satpal. The proceedings under the Act regarding the settlement (Ex. DA), which settlement was admittedly acted upon by the authorities, were within jurisdiction. It was not the case of the complaint before the trial court that the Income Tax authorities could not settle the matter in the manner it was done. Because of the revised assessment for the said four years viz., 1965-66 to 1968-69, the demands as well as the penalty 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.

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

(12) As the very foundation of the complainant's case regarding filing of the false return was not accepted due to the settlement arrived at, the second charge u/s 193 read with 196 of the Indian Penal Code can not stand.

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