(1992) 03 P&H CK 0059

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 99-DBA of 1989

Income Tax Officer APPELLANT

Vs

Prem Dass RESPONDENT

Date of Decision : 23-03-1992

Acts Referred:
Income Tax Act, 1961 — Section 132(4A), 276C, 277

Citation : (1992) 104 CTR 352 : (1992) 198 ITR 93

Hon'ble Judges : S.D. Bajaj, J;B.S. Nehra, J

Bench : Division Bench

Advocate : R.P. Sawhney, for the Appellant; Harsh Aggarwal, for the Respondent

Judgement

S.D. Bajaj, J.—On August 1, 1980, the respondent, Prem Dass, proprietor of Messrs. Rajdhani Express Goods Transport Company, NIT Faridabad, filed before the Income Tax Officer, Faridabad, an Income Tax return dated July 31, 1980, for the year 1979-80 declaring an income of Rs. 25,219 out of which Rs. 20,000 were given out in the return as estimated income from transport business. The assessment was finalised on February 25, 1981. On October 22, 1982, the Income Tax Department conducted a raid on his business premises and collected books of account showing an income of Rs. 5,23,758 made up on the basis of freight income minus expenditure entered therein for the period covered by the return. Finding that the books of account had been withheld from the Department, the return had been filed on the basis of estimated income and that the verification in the Income Tax return had been incorrectly made, the Income Tax Officer, A-Ward, Faridabad, filed against the assessee on March 30, 1983, before the learned Chief Judicial Magistrate, Faridabad, a criminal complaint under Sections 276C and 277 of the Income Tax Act, 1961, as amended up to date.

2. Vide its impugned judgment dated September 22, 1986, the learned trial court convicted the assessee of the commission of both the offences aforesaid. For his conviction u/s 276C of the Income Tax Act, 1961, the accused was sentenced to

undergo rigorous imprisonment for six months and fined Rs. 1,000. In default of payment of fine, the accused was ordered to undergo rigorous imprisonment for a further period of three months. Identically, the same sentence was awarded to the assessee accused for his conviction u/s 277 of the Income Tax Act as well. Substantive sentences of imprisonment awarded to him on both these counts were, however, ordered to run concurrently. On appeal, vide its impugned judgment dated October 7, 1988, the learned lower appellate court gave to the assessee accused the benefit of doubt and acquitted him. The Income Tax Officer, A-Ward, Faridabad, has filed Criminal Appeal No. 99-DBA of 1989 against the acquittal judgment aforesaid in this court.

3. We have heard Shri R. P. Sawhney, advocate, for the appellant and Shri Harsh Aggarwal, advocate, for the respondent-assessee and have gone through the entire relevant material on record very carefully.

4. In order to substantiate the charge against the accused, the prosecution has examined five witnesses. PW-5, Rajesh Kumar, is the receipt clerk in the office of the Income Tax Officer, Faridabad, who states that the Income Tax return for the assessment year 1980-81 was filed by the accused in his office on August 1, 1980. A photocopy of the return filed has been brought on record as exhibit PG.

5. Shri Z. S. Gupta, PW-3, the then Income Tax Officer states, " Prem Dass of Messrs. Rajdhani Express Goods Transport Co., Faridabad, is an Income Tax assessee. At that time, he became an assessee in C-Ward. Earlier, I was an Income Tax Inspector and, on the authority of the Income Tax Commissioner, Rohtak, I had made their assessment for the year 1980-81. I have seen the assessment order in original. Photocopy thereof is exhibit PF. This assessment was made u/s 143(1) of the Income Tax Act, 1961. The return that they had filed, I have seen the same in original. Its photostat copy is exhibit PG. The estimated income chart that was given with the return, copy thereof is exhibit PH. Challans that were given to get the tax money deposited, copies thereof are exhibit PJ, exhibit PK, exhibit PL and exhibit PM. In the return, the income was shown as Rs. 25,219. We had rounded it off to Rs. 25,220 ".

6. PW-2, J. B. Bhardwaj states :

" The original warrant of authorisation had been sent to me. On October 22, 1982, after taking the same with me, I along with my team went to the Rajdhani Express Transport situate near railway crossing, Faridabad. I had gone at 10.10 a.m. The premises was meant for carrying on business and the books, etc., were seized therefrom and an inventory of the same was prepared. An entry to this effect was made in the panchnama. I have seen the original panchnama and a copy thereof is exhibit PB. I have seen the carbon copy of the inventory which is an annexure thereof. Its copy is exhibit PC. I had prepared the copy of the inventory at the same time. It was made approximately. I have seen the carbon copy of the statement which bears the signatures of the accused person and the witnesses, copies whereof are exhibit PD and exhibit PE. Documents and books were seized and were given to the local officer." After entrustment of books of account recovered from the business premises of the respondent, Shri Z. S. Gupta, local Income Tax Officer examined them and states, "I had examined the said books on the order of the Commissioner of Income Tax and under the supervision of the Assistant Commissioner of Income Tax. In that examination, there were freight receipts for Rs. 8,80,001. Those receipts were of the period from April 1, 1979 to March 31, 1980. Expenditure of Rs. 2 lakhs seventy-four thousand and five hundred eighty was recorded therein. These two figures were not shown in the return. " Shri O. P. Bhatia, Income Tax Officer ''C'' Ward, Faridabad, who was a party to the raid conducted at the business premises of the accused also asserts : " On October 21, 1982, I was posted at Rohtak as Income Tax Officer, Special Investigation Circle III. At that time, Shri C. B. Rathee was posted as Commissioner of Income Tax, Haryana, at Rohtak. I have seen him writing and putting signatures because I have worked with him. On October 22, 1982, in order to conduct a raid on the premises of Prem Dass, present in the court, I along with Shri J. B. Bhardwaj, Income Tax Officer, Shri G, D. Goyal, Income Tax Officer and (other members of) staff had come to Faridabad. We had come under the authorisation dated October 21, 1982, given by the Commissioner of Income Tax, Haryana. I have brought the original authorisation. That bears the signatures of Shri C. B. Rathee. Its photocopy is exhibit PN. On October 22, 1982, this authorisation was shown to Prem Dass by Shri J. B. Bhardwaj, Income Tax Officer, and signatures of Prem Dass were secured thereon. Besides this, signatures of two witnesses, namely, Ladda Ram and Ajit, were secured thereon. Before conducting the search, the member of the team had offered their search that was not taken. It was entered in the panchnama. Search of Rajdhani Express Goods Transport Co. situate near railway crossing was conducted. During the course of search, an inventory of the books found was prepared and those books were seized. That inventory bears my signatures and that of Shri J. B. Bhardwaj, Income Tax Officer. Besides this, there are signatures of Prem Dass and both the witnesses. Copy of the inventory is exhibit PC. At serial Nos, 5 and 6 of the inventory, the two ledgers for the financial years 1980-81 and 1979-80 were shown to be seized. I have brought the original whereof. These bear my signature and that of Prem Dass. The photocopy of its written sheets is exhibit PO (157 photostat sheets with one page index) and exhibit PP (285 photostat sheets with one page index). Raid was conducted u/s 132 of the Income Tax Act read with Rule 112(1) of the Income Tax Rules."

7. The giving of authority for conducting the raid as also for filing the complaint against the accused by Shri C. B. Rathee, Commissioner of Income Tax, has been proved by Shri B. L. Khatri, PW-1, who states, " On March 30, 1983, I was posted as Income Tax Officer, A-Ward at Faridabad. The area of Faridabad was under my jurisdiction. I have filed this complaint in the capacity of Income Tax Officer, A-Ward, Faridabad and, under the letter of authorisation of the Commissioner of Income Tax, Haryana, Rohtak. This letter is exhibit PA. This letter has been issued by Shri C. B. Rathee, the Commissioner of Income Tax,

Rohtak. I identify his signatures on this letter, I have seen his writing and signing a number of times. Complaint, annexures and vakalatnama bear my signatures. "

8. Section 132(4A) of the Income Tax Act, 1961, as amended up to date reads : " Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed-

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person ;

(ii) that the contents of such books of account and other documents are true ; and

(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person''s handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested. "

9. Availing of the presumption envisaged therein, the learned trial court rightly held the accused guilty of wilful attempt to evade tax and furnishing a false statement in the verification of the return filed on August 1, 1980, vide its judgment of conviction and sentence dated September 22, 1986.

10. Learned lower appellate court erred in holding that the prosecution had not discharged the onus of proof. Recovery of the ledger and other documents entered in the panchnama, exhibit PB, having been duly proved, they being in the hand and signatures of the accused it had to be presumed to be true in terms of Section 132(4A) reproduced above. The charges thus stood proved to the hilt.

11. The ratio of the observations made by the apex court in P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, does not help the respondent at all. It reads :

" On a careful consideration of the relevant provisions of the Act, we are of the view that the pendency of the reassessment proceedings cannot act as a bar to the institution of the criminal prosecution for offences punishable u/s 276C or Section 277 of the Act. The institution of the criminal proceedings cannot, in the circumstances, also amount to an abuse of the process of the court. The High Court was, therefore, right in refusing to quash the prosecution proceeding in the four cases instituted against the petitioner u/s 482 of the Code of Criminal Procedure. " The learned lower appellate court wrongly construed it in favour of the respondent while recording the acquittal.

12. Similarly, observations made by this court in Jog Raj Vs. State of Punjab, are

not attracted for application on the peculiar facts and circumstances obtaining in the present case. In that case, the accused assessee was proved to have offered the peak credit to the Department for the purpose of securing peace with it and it was, therefore, held that his statement in this regard could not be construed as a confession of having concealed his income. In the present case, concealment of the income as also false verification of the return are both duly borne out from the contents of the ledger and other documents recovered through the raid from the business premises of the accused.

13. For the reasons given above, Criminal Appeal No. 99-DBA of 1989 succeeds and is allowed ; the impugned judgment dated October 7, 1988, of the learned lower appellate court is set aside and reversed and the conviction and sentence (judgment delivered by the learned trial court on September 22, 1986) is restored. The learned Chief Judicial Magistrate, Faridabad, would get respondent-Prem Dass arrested and remand him to judicial custody for undergoing the sentence awarded to him by the learned trial court.

