(2001) 10 P&H CK 0141

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 295-MA of 2001

Income Tax Officer APPELLANT

Vs

Raja Ram and Co. and Others RESPONDENT

Date of Decision : 24-10-2001

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 378(4)
Income Tax Act, 1961 — Section 276C, 277, 278B

Citation : (2002) 256 ITR 79 : (2003) 126 TAXMAN 245

Hon'ble Judges : Jawahar Lal Gupta, J;Ashutosh Mohunta, J

Bench : Division Bench

Advocate : R.P. Sawhney and Jai Shree Thakur, for the Appellant;

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—A complaint u/s 276C/277 read with Section 278B of the Income Tax Act, 1961, was filed against Raja Ram and Company as also its partners. The trial court found that the charge has been proved. The accused were convicted. Aggrieved by the order, they filed an appeal. It has been allowed by the learned sessions judge, Faridkot. The Revenue has now filed this petition u/s 378(4) of the Code of Criminal Procedure, 1973, for leave to file appeal.

2. Mr. Sawhney contends that the learned sessions judge has erred in acquitting the accused persons. Is it so ?

3. The firm had filed its return through Vinay Kumar for the assessment year 1986-87. It claimed to have suffered a loss of Rs. 47,380 in its business relating to cotton. It had also claimed a deduction of Rs. 10,368 on account of depreciation for the car and Rs. 16,376 on account of maintenance of the car and salary of the driver. The claim was not accepted by the Revenue. Additions were made by the Assessing Officer. The appeal filed by the assessee was dismissed. A penalty of Rs. 36,258 was also imposed u/s 271(1)(c) of the Act.

4. The Revenue filed a complaint for the prosecution of the assessee and its

partners. The appellate court after examination of the evidence has found that the charge of wilful evasion of tax or preparation of false accounts is not proved. It has been, inter alia, observed that the authorities had placed reliance on the statement of Subash Chander. He was not a partner of the firm. He had nowhere agreed to surrender the amount of purchase of car, depreciation or salary of the driver. The statement of Subash Chander was conditional. It was specifically said that he was making the surrender subject to no penal action. This statement, the court has held, could not be used as an admission of the assessee in the proceedings for prosecution. Still further, it was also held that the admission made by one person could not form the basis of conviction of another person. It was further held that the evidence on record did not prove the charge. The orders passed by the authorities were not in the presence of the accused. The order of penalty was passed without any notice to the firm or its partners. Thus, it could not form the basis for conviction.

5. Nothing has been referred to which may show that the findings recorded by the lower trial court are not in consonance with the evidence.

6. No other point has been raised.

7. In view of the above, we find no merit in this petition. It is, consequently, dismissed in limine.